

**ROBERT T. STAFFORD DISASTER RELIEF AND  
EMERGENCY ASSISTANCE ACT**

[Public Law 93–288; Approved May 22, 1974]

[As Amended Through P.L. 118–44, Enacted March 18, 2024]

【Currency: This publication is a compilation of the text of Public Law 93-288. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>】

【Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).】

AN ACT Entitled the “Disaster Relief Act Amendments of 1974”.

*Be it enacted by the Senate and House of Representatives of the  
United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Robert T. Stafford Disaster Relief and Emergency Assistance Act”.

【42 U.S.C. 5121 note】

**TITLE I—FINDINGS, DECLARATIONS, AND DEFINITIONS**

**FINDINGS AND DECLARATIONS**

SEC. 101. (a) The Congress hereby finds and declares that—

(1) because disasters often cause loss of life, human suffering, loss of income, and property loss and damage; and

(2) because disasters often disrupt the normal functioning of governments and communities, and adversely affect individuals and families with great severity;

special measures, designed to assist the efforts of the affected States in expediting the rendering of aid, assistance, and emergency services, and the reconstruction and rehabilitation of devastated areas, are necessary.

(b) It is the intent of the Congress, by this Act, to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters by—

(1) revising and broadening the scope of existing disaster relief programs;

(2) encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the States and by local governments;

(3) achieving greater coordination and responsiveness of disaster preparedness and relief programs;

(4) encouraging individuals, States, and local governments to protect themselves by obtaining insurance coverage to supplement or replace governmental assistance;

(5) encouraging hazard mitigation measures to reduce losses from disasters, including development of land use and construction regulations;

(6) providing Federal assistance programs for both public and private losses sustained in disasters; and

(7) identifying and improving the climate and natural hazard resilience of vulnerable communities.

[42 U.S.C. 5121]

#### DEFINITIONS

SEC. 102. As used in this Act—

(1) **EMERGENCY.**—“Emergency” means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

(2) **MAJOR DISASTER.**—“Major disaster” means any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(3) “United States” means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(4) “State” means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(5) “Governor” means the chief executive of any State.

(6) **INDIAN TRIBAL GOVERNMENT.**—The term “Indian tribal government” means the governing body of any 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 et seq.).

(7) **INDIVIDUAL WITH A DISABILITY.**—The term “individual with a disability” means an individual with a disability as de-

defined in section 3(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2)).

(8) LOCAL GOVERNMENT.—The term “local government” means—

(A) a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;

(B) an Indian tribe or authorized tribal organization, or Alaska Native village or organization, that is not an Indian tribal government as defined in paragraph (6); and

(C) a rural community, unincorporated town or village, or other public entity, for which an application for assistance is made by a State or political subdivision of a State.

(9) “Federal agency” means any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, but shall not include the American National Red Cross.

(10) PUBLIC FACILITY.—“Public facility” means the following facilities owned by a State or local government:

(A) Any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility.

(B) Any non-Federal-aid street, road, or highway.

(C) Any other public building, structure, or system, including those used for educational, recreational, or cultural purposes.

(D) Any park.

(11) PRIVATE NONPROFIT FACILITY.—

(A) IN GENERAL.—The term “private nonprofit facility” means private nonprofit educational (without regard to the religious character of the facility), center-based childcare, utility, irrigation, emergency, medical, rehabilitational, and temporary or permanent custodial care facilities (including those for the aged and disabled) and facilities on Indian reservations, as defined by the President.

(B) ADDITIONAL FACILITIES.—In addition to the facilities described in subparagraph (A), the term “private nonprofit facility” includes any private nonprofit facility that provides essential social services to the general public (including museums, zoos, performing arts facilities, community arts centers, community centers, libraries, homeless shelters, senior citizen centers, rehabilitation facilities, shelter workshops, food banks, broadcasting facilities, houses of worship, and facilities that provide health and safety services of a governmental nature), as defined by the President. No house of worship may be excluded from this definition because leadership or membership in the or-

ganization operating the house of worship is limited to persons who share a religious faith or practice.

(12) CHIEF EXECUTIVE.—The term “Chief Executive” means the person who is the Chief, Chairman, Governor, President, or similar executive official of an Indian tribal government.

[42 U.S.C. 5122]

**SEC. 103. REFERENCES.**

Except as otherwise specifically provided, any reference in this Act to “State and local”, “State or local”, “State, and local”, “State, or local”, or “State, local” (including plurals) with respect to governments or officials and any reference to a “local government” in sections 406(d)(3) and 417 is deemed to refer also to Indian tribal governments and officials, as appropriate.

[42 U.S.C. 5123]

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

### **FEDERAL AND STATE DISASTER PREPAREDNESS PROGRAMS**

SEC. 201. (a) The President is authorized to establish a program of disaster preparedness that utilizes services of all appropriate agencies and includes—

- (1) preparation of disaster preparedness plans for mitigation, warning, emergency operations, rehabilitation, and recovery;
- (2) training and exercises;
- (3) postdisaster critiques and evaluations;
- (4) annual review of programs;
- (5) coordination of Federal, State, and local preparedness programs;
- (6) application of science and technology;
- (7) research.

(b) The President shall provide technical assistance to the States in developing comprehensive plans and practicable programs for preparation against disasters, including hazard reduction, avoidance, and mitigation; for assistance to individuals, businesses, and State and local governments following such disasters; and for recovery of damaged or destroyed public and private facilities.

(c) Upon application by a State, the President is authorized to make grants, not to exceed in the aggregate to such State \$250,000, for the development of plans, programs, and capabilities for disaster preparedness and prevention. Such grants shall be applied for within one year from the date of enactment of this Act. Any State desiring financial assistance under this section shall designate or create an agency to plan and administer such a disaster preparedness program, and shall, through such agency, submit a State plan to the President, which shall—

- (1) set forth a comprehensive and detailed State program for preparation against and assistance following, emergencies and major disasters, including provisions for assistance to individuals, businesses, and local governments; and

(2) include provisions for appointment and training of appropriate staffs, formulation of necessary regulations and procedures and conduct of required exercises.

(d) The President is authorized to make grants not to exceed 50 per centum of the cost of improving, maintaining and updating State disaster assistance plans, including evaluations of natural hazards and development of the programs and actions required to mitigate such hazards, except that no such grant shall exceed \$50,000 per annum to any State.

[42 U.S.C. 5131]

#### DISASTER WARNINGS

SEC. 202. (a) The President shall insure that all appropriate Federal agencies are prepared to issue warnings of disasters to State and local officials.

(b) The President shall direct appropriate Federal agencies to provide technical assistance to State and local governments to insure that timely and effective disaster warning is provided.

(c) The President is authorized to utilize or to make available to Federal, State, and local agencies the facilities of the civil defense communications system established and maintained pursuant to section 611(c) of this Act or any other Federal communications system for the purpose of providing warning to governmental authorities and the civilian population in areas endangered by disasters.

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

[42 U.S.C. 5132]

#### SEC. 203. PREDISASTER HAZARD MITIGATION.

(a) DEFINITION OF SMALL IMPOVERISHED COMMUNITY.—In this section, the term “small impoverished community” means a community of 3,000 or fewer individuals that is economically disadvantaged, as determined by the State in which the community is located and based on criteria established by the President.

(b) ESTABLISHMENT OF PROGRAM.—The President may establish a program to provide technical and financial assistance to States and local governments to assist in the implementation of predisaster hazard mitigation measures that are cost-effective and are designed to reduce injuries, loss of life, and damage and destruction of property, including damage to critical services and facilities under the jurisdiction of the States or local governments.

(c) APPROVAL BY PRESIDENT.—If the President determines that a State or local government has identified natural disaster hazards in areas under its jurisdiction and has demonstrated the ability to form effective public-private natural disaster hazard mitigation partnerships, the President, using amounts in the National Public Infrastructure Predisaster Mitigation Fund established under subsection (i) (referred to in this section as the “Fund”), may provide

technical and financial assistance to the State or local government to be used in accordance with subsection (e).

(d) STATE RECOMMENDATIONS.—

(1) IN GENERAL.—

(A) RECOMMENDATIONS.—The Governor of each State may recommend to the President not fewer than five local governments to receive assistance under this section.

(B) DEADLINE FOR SUBMISSION.—The recommendations under subparagraph (A) shall be submitted to the President not later than October 1, 2001, and each October 1st thereafter or such later date in the year as the President may establish.

(C) CRITERIA.—In making recommendations under subparagraph (A), a Governor shall consider the criteria specified in subsection (g).

(2) USE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), in providing assistance to local governments under this section, the President shall select from local governments recommended by the Governors under this subsection.

(B) EXTRAORDINARY CIRCUMSTANCES.—In providing assistance to local governments under this section, the President may select a local government that has not been recommended by a Governor under this subsection if the President determines that extraordinary circumstances justify the selection and that making the selection will further the purpose of this section.

(3) EFFECT OF FAILURE TO NOMINATE.—If a Governor of a State fails to submit recommendations under this subsection in a timely manner, the President may select, subject to the criteria specified in subsection (g), any local governments of the State to receive assistance under this section.

(e) USES OF TECHNICAL AND FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—Technical and financial assistance provided under this section—

(A) shall be used by States and local governments principally to implement predisaster hazard mitigation measures that are cost-effective and are described in proposals approved by the President under this section; and

(B) may be used—

(i) to support effective public-private natural disaster hazard mitigation partnerships;

(ii) to improve the assessment of a community's vulnerability to natural hazards;

(iii) to establish hazard mitigation priorities, and an appropriate hazard mitigation plan, for a community; or

(iv) to establish and carry out enforcement activities and implement the latest published editions of relevant consensus-based codes, specifications, and standards that incorporate the latest hazard-resistant designs and establish minimum acceptable criteria for the design, construction, and maintenance of residen-

tial structures and facilities that may be eligible for assistance under this Act for the purpose of protecting the health, safety, and general welfare of the buildings' users against disasters.

(2) DISSEMINATION.—A State or local government may use not more than 10 percent of the financial assistance received by the State or local government under this section for a fiscal year to fund activities to disseminate information regarding cost-effective mitigation technologies.

(f) ALLOCATION OF FUNDS.—

(1) IN GENERAL.—The President shall award financial assistance under this section on a competitive basis for mitigation activities that are cost effective and in accordance with the criteria in subsection (g).

(2) MINIMUM AND MAXIMUM AMOUNTS.—In providing financial assistance under this section, the President shall ensure that the amount of financial assistance made available to a State (including amounts made available to local governments of the State) for a fiscal year—

(A) is not less than the lesser of—

(i) \$575,000; or

(ii) the amount that is equal to 1 percent of the total funds appropriated to carry out this section for the fiscal year; and

(B) does not exceed the amount that is equal to 15 percent of the total funds appropriated to carry out this section for the fiscal year.

(3) REDISTRIBUTION OF UNOBLIGATED AMOUNTS.—The President may—

(A) withdraw amounts of financial assistance made available to a State (including amounts made available to local governments of a State) under this subsection that remain unobligated by the end of the third fiscal year after the fiscal year for which the amounts were allocated; and

(B) in the fiscal year following a fiscal year in which amounts were withdrawn under subparagraph (A), add the amounts to any other amounts available to be awarded on a competitive basis pursuant to paragraph (1).

(g) CRITERIA FOR ASSISTANCE AWARDS.—In determining whether to provide technical and financial assistance to a State or local government under this section, the President shall provide financial assistance only in States that have received a major disaster declaration in the previous 7 years, or to any Indian tribal government located partially or entirely within the boundaries of such States, and take into account—

(1) the extent and nature of the hazards to be mitigated;

(2) the degree of commitment of the State or local government to reduce damages from future natural disasters;

(3) the degree of commitment by the State or local government to support ongoing non-Federal support for the hazard mitigation measures to be carried out using the technical and financial assistance;

(4) the extent to which the hazard mitigation measures to be carried out using the technical and financial assistance con-

tribute to the mitigation goals and priorities established by the State;

(5) the extent to which the technical and financial assistance is consistent with other assistance provided under this Act;

(6) the extent to which prioritized, cost-effective mitigation activities that produce meaningful and definable outcomes are clearly identified;

(7) if the State or local government has submitted a mitigation plan under section 322, the extent to which the activities identified under paragraph (6) are consistent with the mitigation plan;

(8) the opportunity to fund activities that maximize net benefits to society;

(9) the extent to which assistance will fund mitigation activities in small impoverished communities;

(10) the extent to which the State, local, Indian tribal, or territorial government has facilitated the adoption and enforcement of the latest published editions of relevant consensus-based codes, specifications, and standards, including amendments made by State, local, Indian tribal, or territorial governments during the adoption process that incorporate the latest hazard-resistant designs and establish criteria for the design, construction, and maintenance of residential structures and facilities that may be eligible for assistance under this Act for the purpose of protecting the health, safety, and general welfare of the buildings' users against disasters;

(11) the extent to which the assistance will fund activities that increase the level of resiliency; and

(12) such other criteria as the President establishes in consultation with State and local governments.

(h) FEDERAL SHARE.—

(1) IN GENERAL.—Financial assistance provided under this section may contribute up to 75 percent of the total cost of mitigation activities approved by the President.

(2) SMALL IMPOVERISHED COMMUNITIES.—Notwithstanding paragraph (1), the President may contribute up to 90 percent of the total cost of a mitigation activity carried out in a small impoverished community.

(i) NATIONAL PUBLIC INFRASTRUCTURE PREDISASTER MITIGATION ASSISTANCE.—

(1) IN GENERAL.—The President may set aside from the Disaster Relief Fund, with respect to each major disaster, an amount equal to 6 percent of the estimated aggregate amount of the grants to be made pursuant to sections 403, 406, 407, 408, 410, 416, and 428 for the major disaster in order to provide technical and financial assistance under this section and such set aside shall be deemed to be related to activities carried out pursuant to major disasters under this Act.

(2) ESTIMATED AGGREGATE AMOUNT.—Not later than 180 days after each major disaster declaration pursuant to this Act, the estimated aggregate amount of grants for purposes of paragraph (1) shall be determined by the President and such esti-



mated amount need not be reduced, increased, or changed due to variations in estimates.

(3) NO REDUCTION IN AMOUNTS.—The amount set aside pursuant to paragraph (1) shall not reduce the amounts otherwise made available for sections 403, 404, 406, 407, 408, 410, 416, and 428 under this Act.

(j) MULTHAZARD ADVISORY MAPS.—

(1) DEFINITION OF MULTHAZARD ADVISORY MAP.—In this subsection, the term “multihazard advisory map” means a map on which hazard data concerning each type of natural disaster is identified simultaneously for the purpose of showing areas of hazard overlap.

(2) DEVELOPMENT OF MAPS.—In consultation with States, local governments, and appropriate Federal agencies, the President shall develop multihazard advisory maps for areas, in not fewer than five States, that are subject to commonly recurring natural hazards (including flooding, hurricanes and severe winds, and seismic events).

(3) USE OF TECHNOLOGY.—In developing multihazard advisory maps under this subsection, the President shall use, to the maximum extent practicable, the most cost-effective and efficient technology available.

(4) USE OF MAPS.—

(A) ADVISORY NATURE.—The multihazard advisory maps shall be considered to be advisory and shall not require the development of any new policy by, or impose any new policy on, any government or private entity.

(B) AVAILABILITY OF MAPS.—The multihazard advisory maps shall be made available to the appropriate State and local governments for the purposes of—

- (i) informing the general public about the risks of natural hazards in the areas described in paragraph (2);
- (ii) supporting the activities described in subsection (e); and
- (iii) other public uses.

(k) REPORT ON FEDERAL AND STATE ADMINISTRATION.—Not later than 18 months after the date of the enactment of this section, the President, in consultation with State and local governments, shall submit to Congress a report evaluating efforts to implement this section and recommending a process for transferring greater authority and responsibility for administering the assistance program established under this section to capable States.

(l) PROHIBITION ON EARMARKS.—

(1) DEFINITION.—In this subsection, the term “congressionally directed spending” means a statutory provision or report language included primarily at the request of a Senator or a Member, Delegate or Resident Commissioner of the House of Representatives providing, authorizing, or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality, or Con-

gressional district, other than through a statutory or administrative formula-driven or competitive award process.

(2) PROHIBITION.—None of the funds appropriated or otherwise made available to carry out this section may be used for congressionally directed spending.

(3) CERTIFICATION TO CONGRESS.—The Administrator of the Federal Emergency Management Agency shall submit to Congress a certification regarding whether all financial assistance under this section was awarded in accordance with this section.

[42 U.S.C. 5133]

**SEC. 204. INTERAGENCY TASK FORCE.**

(a) IN GENERAL.—The President shall establish a Federal interagency task force for the purpose of coordinating the implementation of predisaster hazard mitigation programs administered by the Federal Government.

(b) CHAIRPERSON.—The Administrator of the Federal Emergency Management Agency shall serve as the chairperson of the task force.

(c) MEMBERSHIP.—The membership of the task force shall include representatives of—

- (1) relevant Federal agencies;
- (2) State and local government organizations (including Indian tribes); and
- (3) the American Red Cross.

[42 U.S.C. 5134]

**SEC. 205. GRANTS TO ENTITIES FOR ESTABLISHMENT OF HAZARD MITIGATION REVOLVING LOAN FUNDS.**

(a) GENERAL AUTHORITY.—

(1) IN GENERAL.—The Administrator may enter into agreements with eligible entities to make capitalization grants to such entities for the establishment of hazard mitigation revolving loan funds (referred to in this section as “entity loan funds”) for providing funding assistance to local governments to carry out eligible projects under this section to reduce disaster risks for homeowners, businesses, nonprofit organizations, and communities in order to decrease—

- (A) the loss of life and property;
- (B) the cost of insurance; and
- (C) Federal disaster payments.

(2) AGREEMENTS.—Any agreement entered into under this section shall require the participating entity to—

- (A) comply with the requirements of this section; and
- (B) use accounting, audit, and fiscal procedures conforming to generally accepted accounting standards.

(b) APPLICATION.—

(1) IN GENERAL.—To be eligible to receive a capitalization grant under this section, an eligible entity shall submit to the Administrator an application that includes the following:

- (A) Project proposals comprised of local government hazard mitigation projects, on the condition that the entity

provides public notice not less than 6 weeks prior to the submission of an application.

(B) An assessment of recurring major disaster vulnerabilities impacting the entity that demonstrates a risk to life and property.

(C) A description of how the hazard mitigation plan of the entity has or has not taken the vulnerabilities described in subparagraph (B) into account.

(D) A description about how the projects described in subparagraph (A) could conform with the hazard mitigation plan of the entity and of the unit of local government.

(E) A proposal of the systematic and regional approach to achieve resilience in a vulnerable area, including impacts to river basins, river corridors, watersheds, estuaries, bays, coastal regions, micro-basins, micro-watersheds, ecosystems, and areas at risk of earthquakes, tsunamis, droughts, severe storms, and wildfires, including the wildland-urban interface.

(2) TECHNICAL ASSISTANCE.—The Administrator shall provide technical assistance to eligible entities for applications under this section.

(c) ENTITY LOAN FUND.—

(1) ESTABLISHMENT OF FUND.—An entity that receives a capitalization grant under this section shall establish an entity loan fund that complies with the requirements of this subsection.

(2) FUND MANAGEMENT.—Except as provided in paragraph (3), entity loan funds shall—

(A) be administered by the agency responsible for emergency management; and

(B) include only—

(i) funds provided by a capitalization grant under this section;

(ii) repayments of loans under this section to the entity loan fund; and

(iii) interest earned on amounts in the entity loan fund.

(3) ADMINISTRATION.—A participating entity may combine the financial administration of the entity loan fund of such entity with the financial administration of any other revolving fund established by such entity if the Administrator determines that—

(A) the capitalization grant, entity share, repayments of loans, and interest earned on amounts in the entity loan fund are accounted for separately from other amounts in the revolving fund; and

(B) the authority to establish assistance priorities and carry out oversight activities remains in the control of the entity agency responsible for emergency management.

(4) ENTITY SHARE OF FUNDS.—

(A) IN GENERAL.—On or before the date on which a participating entity receives a capitalization grant under this section, the entity shall deposit into the entity loan

fund of such entity, an amount equal to not less than 10 percent of the amount of the capitalization grant.

(B) REDUCED GRANT.—If, with respect to a capitalization grant under this section, a participating entity deposits in the entity loan fund of the entity an amount that is less than 10 percent of the total amount of the capitalization grant that the participating entity would otherwise receive, the Administrator shall reduce the amount of the capitalization grant received by the entity to the amount that is 10 times the amount so deposited.

(d) APPORTIONMENT.—

(1) IN GENERAL.—Except as otherwise provided by this subsection, the Administrator shall apportion funds made available to carry out this section to entities that have entered into an agreement under subsection (a)(2) in amounts as determined by the Administrator.

(2) RESERVATION OF FUNDS.—The Administrator shall reserve not more than 2.5 percent of the amount made available to carry out this section for the Federal Emergency Management Agency for—

(A) administrative costs incurred in carrying out this section; and

(B) providing technical assistance to participating entities under subsection (b)(2).

(3) PRIORITY.—In the apportionment of capitalization grants under this subsection, the Administrator shall give priority to entity applications under subsection (b) that—

(A) propose projects increasing resilience and reducing risk of harm to natural and built infrastructure;

(B) involve a partnership between two or more eligible entities to carry out a project or similar projects;

(C) take into account regional impacts of hazards on river basins, river corridors, micro-watersheds, macro-watersheds, estuaries, lakes, bays, and coastal regions and areas at risk of earthquakes, tsunamis, droughts, severe storms, and wildfires, including the wildland-urban interface; or

(D) propose projects for the resilience of major economic sectors or critical national infrastructure, including ports, global commodity supply chain assets (located within an entity or within the jurisdiction of local governments and Tribal governments), power and water production and distribution centers, and bridges and waterways essential to interstate commerce.

(e) ENVIRONMENTAL REVIEW OF REVOLVING LOAN FUND PROJECTS.—The Administrator may delegate to a participating entity all of the responsibilities for environmental review, decision making, and action pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and other applicable Federal environmental laws including the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and the National Historic Preservation Act of 1966 (54 U.S.C. 300101 et seq.) that would apply to the Administrator were the Administrator to undertake projects under this section as Federal projects so long as the participating entity carries

out such responsibilities in the same manner and subject to the same requirements as if the Administrator carried out such responsibilities.

(f) USE OF FUNDS.—

(1) TYPES OF ASSISTANCE.—Amounts deposited in an entity loan fund, including loan repayments and interest earned on such amounts, may be used—

(A) to make loans, on the condition that—

(i) such loans are made at an interest rate of not more than 1 percent;

(ii) annual principal and interest payments will commence not later than 1 year after completion of any project and all loans made under this subparagraph will be fully amortized—

(I) not later than 20 years after the date on which the project is completed; or

(II) for projects in a low-income geographic area, not later than 30 years after the date on which the project is completed and not longer than the expected design life of the project;

(iii) the loan recipient of a loan under this subparagraph establishes a dedicated source of revenue for repayment of the loan;

(iv) the loan recipient of a loan under this subparagraph has a hazard mitigation plan that has been approved by the Administrator; and

(v) the entity loan fund will be credited with all payments of principal and interest on all loans made under this subparagraph;

(B) for mitigation efforts, in addition to mitigation planning under section 322 not to exceed 10 percent of the capitalization grants made to the participating entity in a fiscal year;

(C) for the reasonable costs of administering the fund and conducting activities under this section, except that such amounts shall not exceed \$100,000 per year, 2 percent of the capitalization grants made to the participating entity in a fiscal year, or 1 percent of the value of the entity loan fund, whichever amount is greatest, plus the amount of any fees collected by the entity for such purpose regardless of the source; and

(D) to earn interest on the entity loan fund.

(2) PROHIBITION ON DETERMINATION THAT LOAN IS A DUPLICATION.—In carrying out this section, the Administrator may not determine that a loan is a duplication of assistance or programs under this Act.

(3) PROJECTS AND ACTIVITIES ELIGIBLE FOR ASSISTANCE.—Except as provided in this subsection, a participating entity may use funds in the entity loan fund to provide financial assistance for projects or activities that mitigate the impacts of natural hazards including—

(A) drought and prolonged episodes of intense heat;

(B) severe storms, including hurricanes, tornados, wind storms, cyclones, and severe winter storms;

- (C) wildfires;
- (D) earthquakes;
- (E) flooding, including the construction, repair, or replacement of a non-Federal levee or other flood control structure, provided that the Administrator, in consultation with the Army Corps of Engineers (if appropriate), requires an eligible entity to determine that such levee or structure is designed, constructed, and maintained in accordance with sound engineering practices and standards equivalent to the purpose for which such levee or structure is intended;
- (F) shoreline erosion;
- (G) high water levels; and
- (H) storm surges.

(4) ZONING AND LAND USE PLANNING CHANGES.—A participating entity may use not more than 10 percent of a capitalization grant under this section to enable units of local government to implement zoning and land use planning changes focused on—

(A) the development and improvement of zoning and land use codes that incentivize and encourage low-impact development, resilient wildland-urban interface land management and development, natural infrastructure, green stormwater management, conservation areas adjacent to floodplains, implementation of watershed or greenway master plans, and reconnection of floodplains;

(B) the study and creation of agricultural risk compensation districts where there is a desire to remove or set-back levees protecting highly developed agricultural land to mitigate for flooding, allowing agricultural producers to receive compensation for assuming greater flood risk that would alleviate flood exposure to population centers and areas with critical national infrastructure;

(C) the study and creation of land use incentives that reward developers for greater reliance on low impact development stormwater best management practices, exchange density increases for increased open space and improvement of neighborhood catch basins to mitigate urban flooding, reward developers for including and augmenting natural infrastructure adjacent to and around building projects without reliance on increased sprawl, and reward developers for addressing wildfire ignition; and

(D) the study and creation of an erosion response plan that accommodates river, lake, forest, plains, and ocean shoreline retreating or bluff stabilization due to increased flooding and disaster impacts.

(5) ESTABLISHING AND CARRYING OUT BUILDING CODE ENFORCEMENT.—A participating entity may use capitalization grants under this section to enable units of local government to establish and carry out the latest published editions of relevant building codes, specifications, and standards for the purpose of protecting the health, safety, and general welfare of the building's users against disasters and natural hazards.

(6) ADMINISTRATIVE AND TECHNICAL COSTS.—For each fiscal year, a participating entity may use the amount described in paragraph (1)(C) to—

(A) pay the reasonable costs of administering the programs under this section, including the cost of establishing an entity loan fund; and

(B) provide technical assistance to recipients of financial assistance from the entity loan fund, on the condition that such technical assistance does not exceed 5 percent of the capitalization grant made to such entity.

(7) LIMITATION FOR SINGLE PROJECTS.—A participating entity may not provide an amount equal to or more than \$5,000,000 to a single hazard mitigation project.

(8) REQUIREMENTS.—For fiscal year 2022 and each fiscal year thereafter, the requirements of subchapter IV of chapter 31 of title 40, United States Code, shall apply to the construction of projects carried out in whole or in part with assistance made available by an entity loan fund authorized by this section.

(g) INTENDED USE PLANS.—

(1) IN GENERAL.—After providing for public comment and review, and consultation with appropriate government agencies of the State or Indian tribal government, Federal agencies, and interest groups, each participating entity shall annually prepare and submit to the Administrator a plan identifying the intended uses of the entity loan fund.

(2) CONTENTS OF PLAN.—An entity intended use plan prepared under paragraph (1) shall include—

(A) the integration of entity planning efforts, including entity hazard mitigation plans and other programs and initiatives relating to mitigation of major disasters carried out by such entity;

(B) an explanation of the mitigation and resiliency benefits the entity intends to achieve by—

(i) reducing future damage and loss associated with hazards;

(ii) reducing the number of severe repetitive loss structures and repetitive loss structures in the entity;

(iii) decreasing the number of insurance claims in the entity from injuries resulting from major disasters or other natural hazards; and

(iv) increasing the rating under the community rating system under section 1315(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4022(b)) for communities in the entity;

(C) information on the availability of, and application process for, financial assistance from the entity loan fund of such entity;

(D) the criteria and methods established for the distribution of funds;

(E) the amount of financial assistance that the entity anticipates apportioning;

(F) the expected terms of the assistance provided from the entity loan fund; and

- (G) a description of the financial status of the entity loan fund, including short-term and long-term goals for the fund.
- (h) AUDITS, REPORTS, PUBLICATIONS, AND OVERSIGHT.—
- (1) BIENNIAL ENTITY AUDIT AND REPORT.—Beginning not later than the last day of the second fiscal year after the receipt of payments under this section, and biennially thereafter, any participating entity shall—
- (A) conduct an audit of the entity loan fund established under subsection (c); and
- (B) provide to the Administrator a report including—
- (i) the result of any such audit; and
- (ii) a review of the effectiveness of the entity loan fund of the entity with respect to meeting the goals and intended benefits described in the intended use plan submitted by the entity under subsection (g).
- (2) PUBLICATION.—A participating entity shall publish and periodically update information about all projects receiving funding from the entity loan fund of such entity, including—
- (A) the location of the project;
- (B) the type and amount of assistance provided from the entity loan fund;
- (C) the expected funding schedule; and
- (D) the anticipated date of completion of the project.
- (3) OVERSIGHT.—
- (A) IN GENERAL.—The Administrator shall, at least every 4 years, conduct reviews and audits as may be determined necessary or appropriate by the Administrator to carry out the objectives of this section and determine the effectiveness of the fund in reducing natural hazard risk.
- (B) GAO REQUIREMENTS.—A participating entity shall conduct audits under paragraph (1) in accordance with the auditing procedures of the Government Accountability Office, including generally accepted government auditing standards.
- (C) RECOMMENDATIONS BY ADMINISTRATOR.—The Administrator may at any time make recommendations for or require specific changes to an entity loan fund in order to improve the effectiveness of the fund.
- (i) REGULATIONS OR GUIDANCE.—The Administrator shall issue such regulations or guidance as are necessary to—
- (1) ensure that each participating entity uses funds as efficiently as possible;
- (2) reduce waste, fraud, and abuse to the maximum extent possible; and
- (3) require any party that receives funds directly or indirectly under this section, including a participating entity and a recipient of amounts from an entity loan fund, to use procedures with respect to the management of the funds that conform to generally accepted accounting standards.
- (j) WAIVER AUTHORITY.—Until such time as the Administrator issues final regulations to implement this section, the Administrator may—



(1) waive notice and comment rulemaking, if the Administrator determines the waiver is necessary to expeditiously implement this section; and

(2) provide capitalization grants under this section as a pilot program.

(k) **LIABILITY PROTECTIONS.**—The Agency shall not be liable for any claim based on the exercise or performance of, or the failure to exercise or perform, a discretionary function or duty by the Agency, or an employee of the Agency in carrying out this section.

(l) **GAO REPORT.**—Not later than 1 year after the date on which the first entity loan fund is established under subsection (c), the Comptroller General of the United States shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that examines—

(1) the appropriateness of regulations and guidance issued by the Administrator for the program, including any oversight of the program;

(2) a description of the number of the entity loan funds established, the projects funded from such entity loan funds, and the extent to which projects funded by the loan funds adhere to any applicable hazard mitigation plans;

(3) the effectiveness of the entity loan funds to lower disaster related costs; and

(4) recommendations for improving the administration of entity loan funds.

(m) **DEFINITIONS.**—In this section, the following definitions apply:

(1) **ADMINISTRATOR.**—The term “Administrator” means the Administrator of the Federal Emergency Management Agency.

(2) **AGENCY.**—The term “Agency” means the Federal Emergency Management Agency.

(3) **ELIGIBLE ENTITY.**—The term “eligible entity” means a State or an Indian tribal government that has received a major disaster declaration pursuant to section 401.

(4) **HAZARD MITIGATION PLAN.**—The term “hazard mitigation plan” means a mitigation plan submitted under section 322.

(5) **LOW-INCOME GEOGRAPHIC AREA.**—The term “low-income geographic area” means an area described in paragraph (1) or (2) of section 301(a) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3161(a)).

(6) **PARTICIPATING ENTITY.**—The term “participating entity” means an eligible entity that has entered into an agreement under this section.

(7) **REPETITIVE LOSS STRUCTURE.**—The term “repetitive loss structure” has the meaning given the term in section 1370 of the National Flood Insurance Act of 1968 (42 U.S.C. 4121).

(8) **SEVERE REPETITIVE LOSS STRUCTURE.**—The term “severe repetitive loss structure” has the meaning given the term in section 1366(h) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c(h)).

(9) **WILDLAND-URBAN INTERFACE.**—The term “wildland-urban interface” has the meaning given the term in section 101

of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6511).

(n) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$100,000,000 for each of fiscal years 2022 through 2023 to carry out this section.

[42 U.S.C. 5135]

**SEC. 206. NATURAL HAZARD RISK ASSESSMENT.**

(a) DEFINITIONS.—In this section:

(1) COMMUNITY DISASTER RESILIENCE ZONE.—The term “community disaster resilience zone” means a census tract designated by the President under subsection (d)(1).

(2) ELIGIBLE ENTITY.—The term “eligible entity” means—  
 (A) a State;  
 (B) an Indian tribal government; or  
 (C) a local government.

(b) PRODUCTS.—The President shall continue to maintain a natural hazard assessment program that develops and maintains products that—

(1) are available to the public; and  
 (2) define natural hazard risk across the United States.

(c) FEATURES.—The products maintained under subsection (b) shall, for lands within States and areas under the jurisdiction of Indian tribal governments—

(1) show the risk of natural hazards; and  
 (2) include ratings and data for—  
 (A) loss exposure, including population equivalence, buildings, and agriculture;  
 (B) social vulnerability;  
 (C) community resilience; and  
 (D) any other element determined by the President.

(d) COMMUNITY DISASTER RESILIENCE ZONES DESIGNATION.—

(1) IN GENERAL.—Not later than 30 days after the date on which the President makes the update and enhancement required under subsection (e)(4), and not less frequently than every 5 years thereafter, the President shall identify and designate community disaster resilience zones, which shall be—

(A) the 50 census tracts assigned the highest individual hazard risk ratings; and  
 (B) subject to paragraph (3), in each State, not less than 1 percent of census tracts that are assigned high individual risk ratings.

(2) RISK RATINGS.—In carrying out paragraph (1), the President shall use census tract risk ratings derived from a product maintained under subsection (b) that—

(A) reflect—  
 (i) high levels of individual hazard risk ratings based on an assessment of the intersection of—  
 (I) loss to population equivalence;  
 (II) building value; and  
 (III) agriculture value;  
 (ii) high social vulnerability ratings and low community resilience ratings; and

- (iii) any other elements determined by the President; and
  - (B) reflect the principal natural hazard risks identified for the respective census tracts.
- (3) GEOGRAPHIC BALANCE.—In identifying and designating the community disaster resilience zones described in paragraph (1)(B)—
- (A) for the purpose of achieving geographic balance, when applicable, the President shall consider making designations in coastal, inland, urban, suburban, and rural areas; and
  - (B) the President shall include census tracts on Tribal lands located within a State.
- (4) DURATION.—The designation of a community disaster resilience zone under paragraph (1) shall be effective for a period of not less than 5 years.
- (e) REVIEW AND UPDATE.—Not later than 180 days after the date of enactment of the Community Disaster Resilience Zones Act of 2022, and not less frequently than every 5 years thereafter, the President shall—
- (1) with respect to any product that is a natural hazard risk assessment—
    - (A) review the underlying methodology of the product; and
    - (B) receive public input on the methodology and data used for the product;
  - (2) consider including additional data in any product that is a natural hazard risk assessment, such as—
    - (A) the most recent census tract data;
    - (B) data from the American Community Survey of the Bureau of the Census, a successor survey, a similar survey, or another data source, including data by census tract on housing characteristics and income;
    - (C) information relating to development, improvements, and hazard mitigation measures;
    - (D) data that assesses past and future loss exposure, including analysis on the effects of a changing climate on future loss exposure;
    - (E) data from the Resilience Analysis and Planning Tool of the Federal Emergency Management Agency; and
    - (F) other information relevant to prioritizing areas that have—
      - (i) high risk levels of—
        - (I) natural hazard loss exposure, including population equivalence, buildings, infrastructure, and agriculture; and
        - (II) social vulnerability; and
      - (ii) low levels of community resilience;
  - (3) make publicly available any changes in methodology or data used to inform an update to a product maintained under subsection (b); and
  - (4) update and enhance the products maintained under subsection (b), as necessary.

(f) **NATURAL HAZARD RISK ASSESSMENT INSIGHTS.**—In determining additional data to include in products that are natural hazard risk assessments under subsection (e)(2), the President shall consult with, at a minimum—

(1) the Administrator of the Federal Emergency Management Agency;

(2) the Secretary of Agriculture and the Chief of the Forest Service;

(3) the Secretary of Commerce, the Administrator of the National Oceanic and Atmospheric Administration, the Director of the Bureau of the Census, and the Director of the National Institute of Standards and Technology;

(4) the Secretary of Defense and the Commanding Officer of the United States Army Corps of Engineers;

(5) the Administrator of the Environmental Protection Agency;

(6) the Secretary of the Interior and the Director of the United States Geological Survey;

(7) the Secretary of Housing and Urban Development; and

(8) the Director of the Federal Housing Finance Agency.

(g) **COMMUNITY DISASTER RESILIENCE ZONE.**—With respect to financial assistance provided under section 203(i) to perform a resilience or mitigation project within, or that primarily benefits, a community disaster resilience zone, the President may increase the amount of the Federal share described under section 203(h) to not more than 90 percent of the total cost of the resilience or mitigation project.

(h) **RESILIENCE OR MITIGATION PROJECT PLANNING ASSISTANCE.**—

(1) **IN GENERAL.**—The President may provide financial, technical, or other assistance under this title to an eligible entity that plans to perform a resilience or mitigation project within, or that primarily benefits, a community disaster resilience zone.

(2) **PURPOSE.**—The purpose of assistance provided under paragraph (1) shall be to carry out activities in preparation for a resilience or mitigation project or seek an evaluation and certification under subsection (i)(2) for a resilience or mitigation project before the date on which permanent work of the resilience or mitigation project begins.

(3) **APPLICATION.**—If required by the President, an eligible entity seeking assistance under paragraph (1) shall submit an application in accordance with subsection (i)(1).

(4) **FUNDING.**—In providing assistance under paragraph (1), the President may use amounts set aside under section 203(i).

(i) **COMMUNITY DISASTER RESILIENCE ZONE PROJECT APPLICATIONS.**—

(1) **IN GENERAL.**—If required by the President or other Federal law, an eligible entity shall submit to the President an application at such time, in such manner, and containing or accompanied by such information as the President may reasonably require.

(2) **EVALUATION AND CERTIFICATION.**—

(A) IN GENERAL.—Not later than 120 days after the date on which an eligible entity submits an application under paragraph (1), the President shall evaluate the application to determine whether the resilience or mitigation project that the entity plans to perform within, or that primarily benefits, a community disaster resilience zone—

(i) is designed to reduce injuries, loss of life, and damage and destruction of property, such as damage to critical services and facilities; and

(ii) substantially reduces the risk of, or increases resilience to, future damage, hardship, loss, or suffering.

(B) CERTIFICATION.—If the President determines that an application submitted under paragraph (1) meets the criteria described in subparagraph (A), the President shall certify the proposed resilience or mitigation project.

(C) EFFECT OF CERTIFICATION.—The certification of a proposed resilience or mitigation project under subparagraph (B) shall not be construed to exempt the resilience or mitigation project from the requirements of any other law.

(3) PROJECTS CAUSING DISPLACEMENT.—With respect to a resilience or mitigation project certified under paragraph (2)(B) that involves the displacement of a resident from any occupied housing unit, the entity performing the resilience or mitigation project shall—

(A) provide, at the option of the resident, a suitable and habitable housing unit that is, with respect to the housing unit from which the resident is displaced—

(i) of a comparable size;

(ii) located in the same local community or a community with reduced hazard risk; and

(iii) offered under similar costs, conditions, and terms;

(B) ensure that property acquisitions resulting from the displacement and made in connection with the resilience or mitigation project—

(i) are deed restricted in perpetuity to preclude future property uses not relating to mitigation or resilience; and

(ii) are the result of a voluntary decision by the resident; and

(C) plan for robust public participation in the resilience or mitigation project.

[42 U.S.C. 5136]

## TITLE III—MAJOR DISASTER AND EMERGENCY ASSISTANCE ADMINISTRATION

### SEC. 301. WAIVER OF ADMINISTRATIVE CONDITIONS.

Any Federal agency charged with the administration of a Federal assistance program may, if so requested by the applicant State or local authorities, modify or waive, for a major disaster, such administrative conditions for assistance as would otherwise prevent the giving of assistance under such programs if the inability to meet such conditions is a result of the major disaster.

[42 U.S.C. 5141]

### COORDINATING OFFICERS

SEC. 302. (a) Immediately upon his declaration of a major disaster or emergency, the President shall appoint a Federal coordinating officer to operate in the affected area.

(b) In order to effectuate the purposes of this Act, the Federal coordinating officer, within the affected area, shall—

(1) make an initial appraisal of the types of relief most urgently needed;

(2) establish such field offices as he deems necessary and as are authorized by the President;

(3) coordinate the administration of relief, including activities of the State and local governments, the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief or disaster assistance organizations, which agree to operate under his advise or direction, except that nothing contained in this Act shall limit or in any way affect the responsibilities of the American National Red Cross under the Act of January 5, 1905, as amended (33 Stat. 599); and

(4) take such other action, consistent with authority delegated to him by the President, and consistent with the provisions of this Act, as he may deem necessary to assist local citizens and public officials in promptly obtaining assistance to which they are entitled.

(c) When the President determines assistance under this Act is necessary, he shall request that the Governor of the affected State designate a State coordinating officer for the purpose of coordinating State and local disaster assistance efforts with those of the Federal Government.

(d) Where the area affected by a major disaster or emergency includes parts of more than 1 State, the President, at the discretion of the President, may appoint a single Federal coordinating officer for the entire affected area, and may appoint such deputy Federal coordinating officers to assist the Federal coordinating officer as the President determines appropriate.

[42 U.S.C. 5143]

**SEC. 303. EMERGENCY SUPPORT AND RESPONSE TEAMS.<sup>2</sup>**

(a) **EMERGENCY SUPPORT TEAMS.**—The President shall form emergency support teams of Federal personnel to be deployed in an area affected by a major disaster or emergency. Such emergency support teams shall assist the Federal coordinating officer in carrying out his responsibilities pursuant to this Act. Upon request of the President, the head of any Federal agency is directed to detail to temporary duty with the emergency support teams on either a reimbursable or nonreimbursable basis, as is determined necessary by the President, such personnel within the administrative jurisdiction of the head of the Federal agency as the President may need or believe to be useful for carrying out the functions of the emergency support teams, each such detail to be without loss of seniority, pay, or other employee status.

(b) **EMERGENCY RESPONSE TEAMS.**—

(1) **ESTABLISHMENT.**—In carrying out subsection (a), the President, acting through the Administrator of the Federal Emergency Management Agency, shall establish—

(A) at a minimum 3 national response teams; and

(B) sufficient regional response teams, including Regional Office strike teams under section 507 of the Homeland Security Act of 2002; and

(C) other response teams as may be necessary to meet the incident management responsibilities of the Federal Government.

(2) **TARGET CAPABILITY LEVEL.**—The Administrator shall ensure that specific target capability levels, as defined pursuant to the guidelines established under section 646(a) of the Post-Katrina Emergency Management Reform Act of 2006, are established for Federal emergency response teams.

(3) **PERSONNEL.**—The President, acting through the Administrator, shall ensure that the Federal emergency response teams consist of adequate numbers of properly planned, organized, equipped, trained, and exercised personnel to achieve the established target capability levels. Each emergency response team shall work in coordination with State and local officials and onsite personnel associated with a particular incident.

(4) **READINESS REPORTING.**—The Administrator shall evaluate team readiness on a regular basis and report team readiness levels in the report required under section 652(a) of the Post-Katrina Emergency Management Reform Act of 2006.

<sup>2</sup> Paragraph (1) of section 633 of Public Law 109–295 provides as follows:

**SEC. 633. EMERGENCY RESPONSE TEAMS.**

Section 303 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5144) is amended—

(1) by striking “sec. 303.” and all that follows through “The President shall” and inserting the following:

**“SEC. 303. EMERGENCY SUPPORT AND RESPONSE TEAMS.**

“(a) **EMERGENCY SUPPORT TEAMS.**—The President shall”; and

Such amendment should have struck the centered section heading which precedes “SEC. 303.” and reads “EMERGENCY SUPPORT TEAM” and all that follows through “The President shall”. The amendment was executed to reflect the probable intent of Congress.

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【42 U.S.C. 5144】

REIMBURSEMENT

SEC. 304. Federal agencies may be reimbursed for expenditures under this Act from funds appropriated for the purposes of this Act. Any funds received by Federal agencies as reimbursement for services or supplies furnished under the authority of this Act shall be deposited to the credit of the appropriation or appropriations currently available for such services or supplies.

【42 U.S.C. 5147】

NONLIABILITY

SEC. 305. The Federal Government shall not be liable for any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of this Act.

【42 U.S.C. 5148】

PERFORMANCE OF SERVICES

SEC. 306. (a) In carrying out the purposes of this Act, any Federal agency is authorized to accept and utilize the services or facilities of any State or local government, or of any agency, office, or employee thereof, with the consent of such government.

(b) In performing any services under this Act, any Federal agency is authorized—

(1) to appoint and fix the compensation of such temporary personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in competitive service;

(2) to employ experts and consultants in accordance with the provisions of section 3109 of such title, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates; and

(3) to incur obligations on behalf of the United States by contract or otherwise for the acquisition, rental, or hire of equipment, services, materials, and supplies for shipping, drayage, travel, and communications, and for the supervision and administration of such activities. Such obligations, including obligations arising out of the temporary employment of additional personnel, may be incurred by an agency in such amount as may be made available to it by the President.

(c) The Administrator of the Federal Emergency Management Agency is authorized to appoint temporary personnel, after serving continuously for 3 years, to positions in the Federal Emergency Management Agency in the same manner that competitive service employees with competitive status are considered for transfer, reassignment, or promotion to such positions. An individual appointed under this subsection shall become a career-conditional employee, unless the employee has already completed the service requirements for career tenure.



(d) PERSONNEL PERFORMING SERVICE RESPONDING TO DISASTERS AND EMERGENCIES.—

(1) USERRA EMPLOYMENT AND REEMPLOYMENT RIGHTS.—

The protections, rights, benefits, and obligations provided under chapter 43 of title 38, United States Code, shall apply to intermittent personnel appointed pursuant to subsection (b)(1) to perform service to the Federal Emergency Management Agency under sections 401 and 501 or to train for such service.

(2) NOTICE OF ABSENCE FROM POSITION OF EMPLOYMENT.—

Preclusion of giving notice of service by necessity of service under subsection (b)(1) to perform service to the Federal Emergency Management Agency under sections 401 and 501 or to train for such service shall be considered preclusion by “military necessity” for purposes of section 4312(b) of title 38, United States Code, pertaining to giving notice of absence from a position of employment. A determination of such necessity shall be made by the Administrator and shall not be subject to review in any judicial or administrative proceeding.

[42 U.S.C. 5149]

#### SEC. 307. USE OF LOCAL FIRMS AND INDIVIDUALS.

(a) CONTRACTS OR AGREEMENTS WITH PRIVATE ENTITIES.—

(1) IN GENERAL.—In the expenditure of Federal funds for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities which may be carried out by contract or agreement with private organizations, firms, or individuals, preference shall be given, to the extent feasible and practicable, to those organizations, firms, and individuals residing or doing business primarily in the area affected by such major disaster or emergency.

(2) CONSTRUCTION.—This subsection shall not be considered to restrict the use of Department of Defense resources under this Act in the provision of assistance in a major disaster.

(3) SPECIFIC GEOGRAPHIC AREA.—In carrying out this section, a contract or agreement may be set aside for award based on a specific geographic area.

(b) IMPLEMENTATION.—

(1) CONTRACTS NOT TO ENTITIES IN AREA.—Any expenditure of Federal funds for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities which may be carried out by contract or agreement with private organizations, firms, or individuals, not awarded to an organization, firm, or individual residing or doing business primarily in the area affected by such major disaster shall be justified in writing in the contract file.

(2) TRANSITION.—Following the declaration of an emergency or major disaster, an agency performing response, relief, and reconstruction activities shall transition work performed under contracts in effect on the date on which the President declares the emergency or major disaster to organizations, firms, and individuals residing or doing business primarily in any area affected by the major disaster or emergency, unless

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the head of such agency determines that it is not feasible or practicable to do so.

(3) FORMULATION OF REQUIREMENTS.—The head of a Federal agency, as feasible and practicable, shall formulate appropriate requirements to facilitate compliance with this section.

(c) PRIOR CONTRACTS.—Nothing in this section shall be construed to require any Federal agency to breach or renegotiate any contract in effect before the occurrence of a major disaster or emergency.

[42 U.S.C. 5150]

**NONDISCRIMINATION IN DISASTER ASSISTANCE**

SEC. 308. (a) The President shall issue, and may alter and amend, such regulations as may be necessary for the guidance of personnel carrying out Federal assistance functions at the site of a major disaster or emergency. Such regulations shall include provisions for insuring that the distribution of supplies, the processing of applications, and other relief and assistance activities shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, disability, English proficiency, or economic status.

(b) As a condition of participation in the distribution of assistance or supplies under this Act or of receiving assistance under this Act, governmental bodies and other organizations shall be required to comply with regulations relating to nondiscrimination promulgated by the President, and such other regulations applicable to activities within an area affected by a major disaster or emergency as he deems necessary for the effective coordination of relief efforts.

[42 U.S.C. 5151]

**USE AND COORDINATION OF RELIEF ORGANIZATIONS**

SEC. 309. (a) In providing relief and assistance under this Act, the President may utilize, with their consent, the personnel and facilities of the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, long-term recovery groups, domestic hunger relief, and other relief, or disaster assistance organizations, in the distribution of medicine, food, supplies, or other items, and in the restoration, rehabilitation, or reconstruction of community services housing and essential facilities, whenever the President finds that such utilization is necessary.

(b) The President is authorized to enter into agreements with the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, long-term recovery groups, domestic hunger relief, and other relief, or disaster assistance organizations under which the disaster relief activities of such organizations may be coordinated by the Federal coordinating officer whenever such organizations are engaged in providing relief during and after a major disaster or emergency. Any such agreement shall include provisions assuring that use of Federal facilities, supplies, and services will be in compliance with regulations prohibiting duplication of benefits and guaranteeing nondiscrimination promulgated

by the President under this Act, and such other regulation as the President may require.

[42 U.S.C. 5152]

**SEC. 310. PRIORITY TO CERTAIN APPLICATIONS FOR PUBLIC FACILITY AND PUBLIC HOUSING ASSISTANCE.**

(a) **PRIORITY.**—In the processing of applications for assistance, priority and immediate consideration shall be given by the head of the appropriate Federal agency, during such period as the President shall prescribe, to applications from public bodies situated in areas affected by major disasters under the following Acts:

(1) The United States Housing Act of 1937 for the provision of low-income housing.

(2) Section 702 of the Housing Act of 1954 for assistance in public works planning.

(3) The Community Development Block Grant Program under title I of the Housing and Community Development Act of 1974.

(4) Section 306 of the Consolidated Farm and Rural Development Act.

(5) The Public Works and Economic Development Act of 1965.

(6) The Appalachian Regional Development Act of 1965.

(7) The Federal Water Pollution Control Act.

(b) **OBLIGATION OF CERTAIN DISCRETIONARY FUNDS.**—In the obligation of discretionary funds or funds which are not allocated among the States or political subdivisions of a State, the Secretary of Housing and Urban Development and the Secretary of Commerce shall give priority to applications for projects for major disaster areas.

[42 U.S.C. 5153]

**SEC. 311. INSURANCE.**

(a) **APPLICANTS FOR REPLACEMENT OF DAMAGED FACILITIES.**—

(1) **COMPLIANCE WITH CERTAIN REGULATIONS.**—An applicant for assistance under section 406 of this Act (relating to repair, restoration, and replacement of damaged facilities), section 422 of this Act (relating to simplified procedure) or section 209(c)(2) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3149(c)(2)) shall comply with regulations prescribed by the President to assure that, with respect to any property to be replaced, restored, repaired, or constructed with such assistance, such types and extent of insurance will be obtained and maintained as may be reasonably available, adequate, and necessary, to protect against future loss to such property.

(2) **DETERMINATION.**—In making a determination with respect to availability, adequacy, and necessity under paragraph (1), the President shall not require greater types and extent of insurance than are certified to him as reasonable by the appropriate State insurance commissioner responsible for regulation of such insurance.

(b) **MAINTENANCE OF INSURANCE.**—No applicant for assistance under section 406 of this Act (relating to repair, restoration, and

replacement of damaged facilities), section 422 of this Act (relating to simplified procedure), or section 209(c)(2) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3149(c)(2)) may receive such assistance for any property or part thereof for which the applicant has previously received assistance under this Act unless all insurance required pursuant to this section has been obtained and maintained with respect to such property. The requirements of this subsection may not be waived under section 301.

(c) STATE ACTING AS SELF-INSURER.—A State may elect to act as a self-insurer with respect to any or all of the facilities owned by the State. Such an election, if declared in writing at the time of acceptance of assistance under section 406 or 422 of this Act or section 209(c)(2) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3149(c)(2)) or subsequently and accompanied by a plan for self-insurance which is satisfactory to the President, shall be deemed compliance with subsection (a). No such self-insurer may receive assistance under section 406 or 422 of this Act for any property or part thereof for which it has previously received assistance under this Act, to the extent that insurance for such property or part thereof would have been reasonably available.

[42 U.S.C. 5154]

**SEC. 312. DUPLICATION OF BENEFITS.**

(a) GENERAL PROHIBITION.—The President, in consultation with the head of each Federal agency administering any program providing financial assistance to persons, business concerns, or other entities suffering losses as a result of a major disaster or emergency, shall assure that no such person, business concern, or other entity will receive such assistance with respect to any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source.

(b) SPECIAL RULES.—

(1) LIMITATION.—This section shall not prohibit the provision of Federal assistance to a person who is or may be entitled to receive benefits for the same purposes from another source if such person has not received such other benefits by the time of application for Federal assistance and if such person agrees to repay all duplicative assistance to the agency providing the Federal assistance.

(2) PROCEDURES.—The President shall establish such procedures as the President considers necessary to ensure uniformity in preventing duplication of benefits.

(3) EFFECT OF PARTIAL BENEFITS.—Receipt of partial benefits for a major disaster or emergency shall not preclude provision of additional Federal assistance for any part of a loss or need for which benefits have not been provided.

(4)<sup>3</sup> WAIVER OF GENERAL PROHIBITION.—

(A) IN GENERAL.—The President may waive the general prohibition provided in subsection (a) upon request of a Governor on behalf of the State or on behalf of a person,

<sup>3</sup>Section 1210(a)(4) of division D of Public Law 115–254 states “On the date that is 5 years after the date of enactment of this Act [effective on October 5, 2023], section 312(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5155(b)) is amended by striking paragraph (4), as added by subsection (a)(1) of this section.”.

business concern, or any other entity suffering losses as a result of a major disaster or emergency, if the President finds such waiver is in the public interest and will not result in waste, fraud, or abuse. In making this decision, the President may consider the following:

(i) The recommendations of the Administrator of the Federal Emergency Management Agency made in consultation with the Federal agency or agencies administering the duplicative program.

(ii) If a waiver is granted, the assistance to be funded is cost effective.

(iii) Equity and good conscience.

(iv) Other matters of public policy considered appropriate by the President.

(B) GRANT OR DENIAL OF WAIVER.—A request under subparagraph (A) shall be granted or denied not later than 45 days after submission of such request.

(C) PROHIBITION ON DETERMINATION THAT LOAN IS A DUPLICATION.—Notwithstanding subsection (c), in carrying out subparagraph (A), the President may not determine that a loan is a duplication of assistance, provided that all Federal assistance is used toward a loss suffered as a result of the major disaster or emergency.

(c) RECOVERY OF DUPLICATIVE BENEFITS.—A person receiving Federal assistance for a major disaster or emergency shall be liable to the United States to the extent that such assistance duplicates benefits available to the person for the same purpose from another source. The agency which provided the duplicative assistance shall collect such duplicative assistance from the recipient in accordance with chapter 37 of title 31, United States Code, relating to debt collection, when the head of such agency considers it to be in the best interest of the Federal Government.

(d) ASSISTANCE NOT INCOME.—Federal major disaster and emergency assistance provided to individuals and families under this Act, and comparable disaster assistance provided by States, local governments, and disaster assistance organizations, shall not be considered as income or a resource when determining eligibility for or benefit levels under federally funded income assistance or resource-tested benefit programs.

[42 U.S.C. 5155]

#### SEC. 313. STANDARDS AND REVIEWS.

The President shall establish comprehensive standards which shall be used to assess the efficiency and effectiveness of Federal major disaster and emergency assistance programs administered under this Act. The President shall conduct annual reviews of the activities of Federal agencies and State and local governments in major disaster and emergency preparedness and in providing major disaster and emergency assistance in order to assure maximum coordination and effectiveness of such programs and consistency in policies for reimbursement of States under this Act.

[42 U.S.C. 5156]

**SEC. 314. PENALTIES.**

(a) MISUSE OF FUNDS.—Any person who knowingly misapplies the proceeds of a loan or other cash benefit obtained under this Act shall be fined an amount equal to one and one-half times the misapplied amount of the proceeds or cash benefit.

(b) CIVIL ENFORCEMENT.—Whenever it appears that any person has violated or is about to violate any provision of this Act, including any civil penalty imposed under this Act, the Attorney General may bring a civil action for such relief as may be appropriate. Such action may be brought in an appropriate United States district court.

(c) REFERRAL TO ATTORNEY GENERAL.—The President shall expeditiously refer to the Attorney General for appropriate action any evidence developed in the performance of functions under this Act that may warrant consideration for criminal prosecution.

(d) CIVIL PENALTY.—Any individual who knowingly violates any order or regulation issued under this Act shall be subject to a civil penalty of not more than \$5,000 for each violation.

【42 U.S.C. 5157】

## AVAILABILITY OF MATERIALS

SEC. 315. The President is authorized, at the request of the Governor of an affected State, to provide for a survey of construction materials needed in the area affected by a major disaster on an emergency basis for housing repairs, replacement housing, public facilities repairs and replacement, farming operations, and business enterprises and to take appropriate action to assure the availability and fair distribution of needed materials, including, where possible, the allocation of such materials for a period of not more than one hundred and eighty days after such major disaster. Any allocation program shall be implemented by the President to the extent possible, by working with and through those companies which traditionally supply construction materials in the affected area. For the purposes of this section “construction materials” shall include building materials and materials required for repairing housing, replacement housing, public facilities repairs and replacement, and for normal farm and business operations.

【42 U.S.C. 5158】

**SEC. 316. PROTECTION OF ENVIRONMENT.**

An action which is taken or assistance which is provided pursuant to section 402, 403, 406, 407, or 502, including such assistance provided pursuant to the procedures provided for in section 422, which has the effect of restoring a facility substantially to its condition prior to the disaster or emergency, shall not be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852). Nothing in this section shall alter or affect the applicability of the National Environmental Policy Act of 1969 to other Federal actions taken under this Act or under any other provisions of law.

【42 U.S.C. 5159】

**SEC. 317. RECOVERY OF ASSISTANCE.**

(a) **PARTY LIABLE.**—Any person who intentionally causes a condition for which Federal assistance is provided under this Act or under any other Federal law as a result of a declaration of a major disaster or emergency under this Act shall be liable to the United States for the reasonable costs incurred by the United States in responding to such disaster or emergency to the extent that such costs are attributable to the intentional act or omission of such person which caused such condition. Such action for reasonable costs shall be brought in an appropriate United States district court.

(b) **RENDERING OF CARE.**—A person shall not be liable under this section for costs incurred by the United States as a result of actions taken or omitted by such person in the course of rendering care or assistance in response to a major disaster or emergency.

[42 U.S.C. 5160]

**SEC. 318. AUDITS AND INVESTIGATIONS.**

(a) **IN GENERAL.**—Subject to the provisions of chapter 75 of title 31, United States Code, relating to requirements for single audits, the President shall conduct audits and investigations as necessary to assure compliance with this Act, and in connection therewith may question such persons as may be necessary to carry out such audits and investigations.

(b) **ACCESS TO RECORDS.**—For purposes of audits and investigations under this section, the President and Comptroller General may inspect any books, documents, papers, and records of any person relating to any activity undertaken or funded under this Act.

(c) **STATE AND LOCAL AUDITS.**—The President may require audits by State and local governments in connection with assistance under this Act when necessary to assure compliance with this Act or related regulations.

[42 U.S.C. 5161]

**SEC. 319. ADVANCE OF NON-FEDERAL SHARE.**

(a) **IN GENERAL.**—The President may lend or advance to an eligible applicant or a State the portion of assistance for which the State is responsible under the cost-sharing provisions of this Act in any case in which—

(1) the State is unable to assume its financial responsibility under such cost-sharing provisions—

(A) with respect to concurrent, multiple major disasters in a jurisdiction, or

(B) after incurring extraordinary costs as a result of a particular disaster; and

(2) the damages caused by such disasters or disaster are so overwhelming and severe that it is not possible for the applicant or the State to assume immediately their financial responsibility under this Act.

(b) **TERMS OF LOANS AND ADVANCES.**—

(1) **IN GENERAL.**—Any loan or advance under this section shall be repaid to the United States.

(2) **INTEREST.**—Loans and advances under this section shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields

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on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance.

(c) REGULATIONS.—The President shall issue regulations describing the terms and conditions under which any loan or advance authorized by this section may be made.

【42 U.S.C. 5162】

**SEC. 320. LIMITATION ON USE OF SLIDING SCALES.**

No geographic area shall be precluded from receiving assistance under this Act solely by virtue of an arithmetic formula or sliding scale based on income or population.

【42 U.S.C. 5163】

**SEC. 321. RULES AND REGULATIONS.**

The President may prescribe such rules and regulations as may be necessary and proper to carry out the provisions of this Act, and may exercise, either directly or through such Federal agency as the President may designate, any power or authority conferred to the President by this Act.

【42 U.S.C. 5164】

**SEC. 322. MITIGATION PLANNING.**

(a) REQUIREMENT OF MITIGATION PLAN.—As a condition of receipt of an increased Federal share for hazard mitigation measures under subsection (e), a State, local, or tribal government shall develop and submit for approval to the President a mitigation plan that outlines processes for identifying the natural hazards, risks, and vulnerabilities of the area under the jurisdiction of the government.

(b) LOCAL AND TRIBAL PLANS.—Each mitigation plan developed by a local or tribal government shall—

- (1) describe actions to mitigate hazards, risks, and vulnerabilities identified under the plan; and
- (2) establish a strategy to implement those actions.

(c) STATE PLANS.—The State process of development of a mitigation plan under this section shall—

- (1) identify the natural hazards, risks, and vulnerabilities of areas in the State;
- (2) support development of local mitigation plans;
- (3) provide for technical assistance to local and tribal governments for mitigation planning; and
- (4) identify and prioritize mitigation actions that the State will support, as resources become available.

(d) FUNDING.—

(1) IN GENERAL.—Federal contributions under section 404 may be used to fund the development and updating of mitigation plans under this section.

(2) MAXIMUM FEDERAL CONTRIBUTION.—With respect to any mitigation plan, a State, local, or tribal government may use an amount of Federal contributions under section 404 not to exceed 7 percent of the amount of such contributions available to the government as of a date determined by the government.



(e) INCREASED FEDERAL SHARE FOR HAZARD MITIGATION MEASURES.—

(1) IN GENERAL.—If, at the time of the declaration of a major disaster or event under section 420, a State has in effect an approved mitigation plan under this section, the President may increase to 20 percent, with respect to the major disaster or event under section 420, the maximum percentage specified in the last sentence of section 404(a).

(2) FACTORS FOR CONSIDERATION.—In determining whether to increase the maximum percentage under paragraph (1), the President shall consider whether the State has established—

(A) eligibility criteria for property acquisition and other types of mitigation measures;

(B) requirements for cost effectiveness that are related to the eligibility criteria;

(C) a system of priorities that is related to the eligibility criteria; and

(D) a process by which an assessment of the effectiveness of a mitigation action may be carried out after the mitigation action is complete.

[42 U.S.C. 5165]

**SEC. 323. MINIMUM STANDARDS FOR PUBLIC AND PRIVATE STRUCTURES.**

(a) IN GENERAL.—As a condition of receipt of a disaster loan or grant under this Act—

(1) the recipient shall carry out any repair or construction to be financed with the loan or grant in accordance with applicable standards of safety, decency, and sanitation and in conformity with applicable codes, specifications, and standards; and

(2) the President may require safe land use and construction practices, after adequate consultation with appropriate State and local government officials.

(b) EVIDENCE OF COMPLIANCE.—A recipient of a disaster loan or grant under this Act shall provide such evidence of compliance with this section as the President may require by regulation.

[42 U.S.C. 5165a]

**SEC. 324. MANAGEMENT COSTS.**

(a) DEFINITION OF MANAGEMENT COST.—In this section, the term “management cost” includes any indirect cost, any direct administrative cost, and any other administrative expense associated with a specific project under a major disaster, emergency, or disaster preparedness or mitigation activity or measure.

(b) ESTABLISHMENT OF MANAGEMENT COST RATES.—

(1) IN GENERAL.—Notwithstanding any other provision of law (including any administrative rule or guidance), the President shall by regulation implement management cost rates, for grantees and subgrantees, that shall be used to determine contributions under this Act for management costs.

(2) SPECIFIC MANAGEMENT COSTS.—The Administrator of the Federal Emergency Management Agency shall provide the following percentage rates, in addition to the eligible project

costs, to cover direct and indirect costs of administering the following programs:

(A) HAZARD MITIGATION.—A grantee under section 404 may be reimbursed not more than 15 percent of the total amount of the grant award under such section of which not more than 10 percent may be used by the grantee and 5 percent by the subgrantee for such costs.

(B) PUBLIC ASSISTANCE.—A grantee under sections 403, 406, 407, and 502 may be reimbursed not more than 12 percent of the total award amount under such sections, of which not more than 7 percent may be used by the grantee and 5 percent by the subgrantee for such costs.

(c) REVIEW.—The President shall review the management cost rates established under subsection (b) not later than 3 years after the date of establishment of the rates and periodically thereafter.

【42 U.S.C. 5165b】

**SEC. 325. PUBLIC NOTICE, COMMENT, AND CONSULTATION REQUIREMENTS.**

(a) PUBLIC NOTICE AND COMMENT CONCERNING NEW OR MODIFIED POLICIES.—

(1) IN GENERAL.—The President shall provide for public notice and opportunity for comment before adopting any new or modified policy that—

(A) governs implementation of the public assistance program administered by the Federal Emergency Management Agency under this Act; and

(B) could result in a significant reduction of assistance under the program.

(2) APPLICATION.—Any policy adopted under paragraph (1) shall apply only to a major disaster or emergency declared on or after the date on which the policy is adopted.

(b) CONSULTATION CONCERNING INTERIM POLICIES.—

(1) IN GENERAL.—Before adopting any interim policy under the public assistance program to address specific conditions that relate to a major disaster or emergency that has been declared under this Act, the President, to the maximum extent practicable, shall solicit the views and recommendations of grantees and subgrantees with respect to the major disaster or emergency concerning the potential interim policy, if the interim policy is likely—

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

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

(2) NO LEGAL RIGHT OF ACTION.—Nothing in this subsection confers a legal right of action on any party.

(c) PUBLIC ACCESS.—The President shall promote public access to policies governing the implementation of the public assistance program.

【42 U.S.C. 5165c】

**SEC. 326. DESIGNATION OF SMALL STATE AND RURAL ADVOCATE.**

(a) **IN GENERAL.**—The President shall designate in the Federal Emergency Management Agency a Small State and Rural Advocate.

(b) **RESPONSIBILITIES.**—The Small State and Rural Advocate shall be an advocate for the fair treatment of small States and rural communities in the provision of assistance under this Act.

(c) **DUTIES.**—The Small State and Rural Advocate shall—

(1) participate in the disaster declaration process under section 401 and the emergency declaration process under section 501, to ensure that the needs of rural communities are being addressed;

(2) assist small population States in the preparation of requests for major disaster or emergency declarations;

(3) assist States in the collection and presentation of material in the disaster or emergency declaration request relevant to demonstrate severe localized impacts within the State for a specific incident, including—

(A) the per capita personal income by local area, as calculated by the Bureau of Economic Analysis;

(B) the disaster impacted population profile, as reported by the Bureau of the Census, including—

(i) the percentage of the population for whom poverty status is determined;

(ii) the percentage of the population already receiving Government assistance such as Supplemental Security Income and Supplemental Nutrition Assistance Program benefits;

(iii) the pre-disaster unemployment rate;

(iv) the percentage of the population that is 65 years old and older;

(v) the percentage of the population 18 years old and younger;

(vi) the percentage of the population with a disability;

(vii) the percentage of the population who speak a language other than English and speak English less than “very well”; and

(viii) any unique considerations regarding American Indian and Alaskan Native Tribal populations raised in the State’s request for a major disaster declaration that may not be reflected in the data points referenced in this subparagraph;

(C) the impact to community infrastructure, including—

(i) disruptions to community life-saving and life-sustaining services;

(ii) disruptions or increased demand for essential community services; and

(iii) disruptions to transportation, infrastructure, and utilities; and

(D) any other information relevant to demonstrate severe local impacts; and

(4) conduct such other activities as the Administrator of the Federal Emergency Management Agency considers appropriate.

[42 U.S.C. 5165d]

**SEC. 327. NATIONAL URBAN SEARCH AND RESCUE RESPONSE SYSTEM.**

(a) **DEFINITIONS.**—In this section, the following definitions shall apply:

(1) **ADMINISTRATOR.**—The term “Administrator” means the Administrator of the Federal Emergency Management Agency.

(2) **AGENCY.**—The term “Agency” means the Federal Emergency Management Agency.

(3) **HAZARD.**—The term “hazard” has the meaning given the term in section 602.

(4) **NONEMPLOYEE SYSTEM MEMBER.**—The term “non-employee System member” means a System member not employed by a sponsoring agency or participating agency.

(5) **PARTICIPATING AGENCY.**—The term “participating agency” means a State or local government, nonprofit organization, or private organization that has executed an agreement with a sponsoring agency to participate in the System.

(6) **SPONSORING AGENCY.**—The term “sponsoring agency” means a State or local government that is the sponsor of a task force designated by the Administrator to participate in the System.

(7) **SYSTEM.**—The term “System” means the National Urban Search and Rescue Response System to be administered under this section.

(8) **SYSTEM MEMBER.**—The term “System member” means an individual who is not a full-time employee of the Federal Government and who serves on a task force or on a System management or other technical team.

(9) **TASK FORCE.**—The term “task force” means an urban search and rescue team designated by the Administrator to participate in the System.

(b) **GENERAL AUTHORITY.**—Subject to the requirements of this section, the Administrator shall continue to administer the emergency response system known as the National Urban Search and Rescue Response System.

(c) **FUNCTIONS.**—In administering the System, the Administrator shall provide for a national network of standardized search and rescue resources to assist States and local governments in responding to hazards.

(d) **TASK FORCES.**—

(1) **DESIGNATION.**—The Administrator shall designate task forces to participate in the System. The Administration shall determine the criteria for such participation.

(2) **SPONSORING AGENCIES.**—Each task force shall have a sponsoring agency. The Administrator shall enter into an agreement with the sponsoring agency with respect to the participation of each task force in the System.

(3) **COMPOSITION.**—

(A) **PARTICIPATING AGENCIES.**—A task force may include, at the discretion of the sponsoring agency, one or

more participating agencies. The sponsoring agency shall enter into an agreement with each participating agency with respect to the participation of the participating agency on the task force.

(B) OTHER INDIVIDUALS.—A task force may also include, at the discretion of the sponsoring agency, other individuals not otherwise associated with the sponsoring agency or a participating agency. The sponsoring agency of a task force may enter into a separate agreement with each such individual with respect to the participation of the individual on the task force.

(e) MANAGEMENT AND TECHNICAL TEAMS.—The Administrator shall maintain such management teams and other technical teams as the Administrator determines are necessary to administer the System.

(f) APPOINTMENT OF SYSTEM MEMBERS INTO FEDERAL SERVICE.—

(1) IN GENERAL.—The Administrator may appoint a System member into Federal service for a period of service to provide for the participation of the System member in exercises, preincident staging, major disaster and emergency response activities, and training events sponsored or sanctioned by the Administrator.

(2) NONAPPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Administrator may make appointments under paragraph (1) without regard to the provisions of title 5, United States Code, governing appointments in the competitive service.

(3) RELATIONSHIP TO OTHER AUTHORITIES.—The authority of the Administrator to make appointments under this subsection shall not affect any other authority of the Administrator under this Act.

(4) LIMITATION.—A System member who is appointed into Federal service under paragraph (1) shall not be considered an employee of the United States for purposes other than those specifically set forth in this section.

(g) COMPENSATION.—

(1) PAY OF SYSTEM MEMBERS.—Subject to such terms and conditions as the Administrator may impose by regulation, the Administrator shall make payments to the sponsoring agency of a task force—

(A) to reimburse each employer of a System member on the task force for compensation paid by the employer to the System member for any period during which the System member is appointed into Federal service under subsection (f)(1); and

(B) to make payments directly to a nonemployee System member on the task force for any period during which the nonemployee System member is appointed into Federal service under subsection (f)(1).

(2) REIMBURSEMENT FOR EMPLOYEES FILLING POSITIONS OF SYSTEM MEMBERS.—

(A) IN GENERAL.—Subject to such terms and conditions as the Administrator may impose by regulation, the Administrator shall make payments to the sponsoring agency

of a task force to be used to reimburse each employer of a System member on the task force for compensation paid by the employer to an employee filling a position normally filled by the System member for any period during which the System member is appointed into Federal service under subsection (f)(1).

(B) LIMITATION.—Costs incurred by an employer shall be eligible for reimbursement under subparagraph (A) only to the extent that the costs are in excess of the costs that would have been incurred by the employer had the System member not been appointed into Federal service under subsection (f)(1).

(3) METHOD OF PAYMENT.—A System member shall not be entitled to pay directly from the Agency for a period during which the System member is appointed into Federal Service under subsection (f)(1).

(h) PERSONAL INJURY, ILLNESS, DISABILITY, OR DEATH.—

(1) IN GENERAL.—A System member who is appointed into Federal service under subsection (f)(1) and who suffers personal injury, illness, disability, or death as a result of a personal injury sustained while acting in the scope of such appointment, shall, for the purposes of subchapter I of chapter 81 of title 5, United States Code, be treated as though the member were an employee (as defined by section 8101 of that title) who had sustained the injury in the performance of duty.

(2) ELECTION OF BENEFITS.—

(A) IN GENERAL.—A System member (or, in the case of the death of the System member, the System member's dependent) who is entitled under paragraph (1) to receive benefits under subchapter I of chapter 81 of title 5, United States Code, by reason of personal injury, illness, disability, or death, and to receive benefits from a State or local government by reason of the same personal injury, illness, disability or death shall elect to—

(i) receive benefits under such subchapter; or

(ii) receive benefits from the State or local government.

(B) DEADLINE.—A System member or dependent shall make an election of benefits under subparagraph (A) not later than 1 year after the date of the personal injury, illness, disability, or death that is the reason for the benefits, or until such later date as the Secretary of Labor may allow for reasonable cause shown.

(C) EFFECT OF ELECTION.—An election of benefits made under this paragraph is irrevocable unless otherwise provided by law.

(3) REIMBURSEMENT FOR STATE OR LOCAL BENEFITS.—Subject to such terms and conditions as the Administrator may impose by regulation, if a System member or dependent elects to receive benefits from a State or local government under paragraph (2)(A), the Administrator shall reimburse the State or local government for the value of the benefits.

(4) PUBLIC SAFETY OFFICER CLAIMS.—Nothing in this subsection shall be construed to bar any claim by, or with respect

to, any System member who is a public safety officer, as defined in section 1204 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b), for any benefits authorized under part L of title I of that Act (42 U.S.C. 3796 et seq.).

(i) **LIABILITY.**—A System member appointed into Federal service under subsection (f)(1), while acting within the scope of the appointment, shall be considered to be an employee of the Federal Government under section 1346(b) of title 28, United States Code, and chapter 171 of that title, relating to tort claims procedure.

(j) **EMPLOYMENT AND REEMPLOYMENT RIGHTS.**—With respect to a System member who is not a regular full-time employee of a sponsoring agency or participating agency, the following terms and conditions apply:

(1) **SERVICE.**—Service as a System member shall be considered to be “service in the uniformed services” for purposes of chapter 43 of title 38, United States Code, relating to employment and reemployment rights of individuals who have performed service in the uniformed services (regardless of whether the individual receives compensation for such participation). All rights and obligations of such persons and procedures for assistance, enforcement, and investigation shall be as provided for in such chapter.

(2) **PRECLUSION.**—Preclusion of giving notice of service by necessity of appointment under this section shall be considered to be preclusion by “military necessity” for purposes of section 4312(b) of title 38, United States Code, pertaining to giving notice of absence from a position of employment. A determination of such necessity shall be made by the Administrator and shall not be subject to judicial review.

(k) **LICENSES AND PERMITS.**—If a System member holds a valid license, certificate, or other permit issued by any State or other governmental jurisdiction evidencing the member’s qualifications in any professional, mechanical, or other skill or type of assistance required by the System, the System member is deemed to be performing a Federal activity when rendering aid involving such skill or assistance during a period of appointment into Federal service under subsection (f)(1).

(l) **PREPAREDNESS COOPERATIVE AGREEMENTS.**—Subject to the availability of appropriations for such purpose, the Administrator shall enter into an annual preparedness cooperative agreement with each sponsoring agency. Amounts made available to a sponsoring agency under such a preparedness cooperative agreement shall be for the following purposes:

(1) Training and exercises, including training and exercises with other Federal, State, and local government response entities.

(2) Acquisition and maintenance of equipment, including interoperable communications and personal protective equipment.

(3) Medical monitoring required for responder safety and health in anticipation of and following a major disaster, emergency, or other hazard, as determined by the Administrator.

(m) RESPONSE COOPERATIVE AGREEMENTS.—The Administrator shall enter into a response cooperative agreement with each sponsoring agency, as appropriate, under which the Administrator agrees to reimburse the sponsoring agency for costs incurred by the sponsoring agency in responding to a major disaster or emergency.

(n) OBLIGATIONS.—The Administrator may incur all necessary obligations consistent with this section in order to ensure the effectiveness of the System.

(o) EQUIPMENT MAINTENANCE AND REPLACEMENT.—Not later than 180 days after the date of enactment of this section, the Administrator shall submit to the appropriate congressional committees (as defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101)) a report on the development of a plan, including implementation steps and timeframes, to finance, maintain, and replace System equipment.

(p) FEDERAL EMPLOYEES.—Nothing in this section shall be construed to mean that a task force may not include Federal employees. In the case of a Federal employee detailed to a task force, the sponsoring agency shall enter into an agreement with the relevant employing Federal agency.

[42 U.S.C. 5165f]

## TITLE IV—MAJOR DISASTER ASSISTANCE PROGRAMS

### SEC. 401. PROCEDURE FOR DECLARATION.

(a) IN GENERAL.—All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State. Such a request shall be based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As part of such request, and as a prerequisite to major disaster assistance under this Act, the Governor shall take appropriate response action under State law and direct execution of the State's emergency plan. The Governor shall furnish information on the nature and amount of State and local resources which have been or will be committed to alleviating the results of the disaster, and shall certify that, for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will comply with all applicable cost-sharing requirements of this Act. Based on the request of a Governor under this section, the President may declare under this Act that a major disaster or emergency exists.

(b) INDIAN TRIBAL GOVERNMENT REQUESTS.—

(1) IN GENERAL.—The Chief Executive of an affected Indian tribal government may submit a request for a declaration by the President that a major disaster exists consistent with the requirements of subsection (a).

(2) REFERENCES.—In implementing assistance authorized by the President under this Act in response to a request of the Chief Executive of an affected Indian tribal government for a major disaster declaration, any reference in this title or title



III (except sections 310 and 326) to a State or the Governor of a State is deemed to refer to an affected Indian tribal government or the Chief Executive of an affected Indian tribal government, as appropriate.

(3) SAVINGS PROVISION.—Nothing in this subsection shall prohibit an Indian tribal government from receiving assistance under this title through a declaration made by the President at the request of a State under subsection (a) if the President does not make a declaration under this subsection for the same incident.

(c) COST SHARE ADJUSTMENTS FOR INDIAN TRIBAL GOVERNMENTS.—

(1) IN GENERAL.—In providing assistance to an Indian tribal government under this title, the President may waive or adjust any payment of a non-Federal contribution with respect to the assistance if—

(A) the President has the authority to waive or adjust the payment under another provision of this title; and

(B) the President determines that the waiver or adjustment is necessary and appropriate.

(2) CRITERIA FOR MAKING DETERMINATIONS.—The President shall establish criteria for making determinations under paragraph (1)(B).

[42 U.S.C. 5170]

**SEC. 402. GENERAL FEDERAL ASSISTANCE.**

In any major disaster, the President may—

(1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) in support of State and local assistance response or recovery efforts, including precautionary evacuations;

(2) coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments, including precautionary evacuations and recovery;

(3) provide technical and advisory assistance to affected State and local governments for—

(A) the performance of essential community services;

(B) issuance of warnings of risks and hazards;

(C) public health and safety information, including dissemination of such information;

(D) provision of health and safety measures;

(E) management, control, and reduction of immediate threats to public health and safety; and

(F) recovery activities, including disaster impact assessments and planning;

(4) assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance;

(5) provide assistance to State and local governments for building code and floodplain management ordinance adminis-

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tration and enforcement, including inspections for substantial damage compliance; and

(6) provide accelerated Federal assistance and Federal support where necessary to save lives, prevent human suffering, or mitigate severe damage, which may be provided in the absence of a specific request and in which case the President—

(A) shall, to the fullest extent practicable, promptly notify and coordinate with officials in a State in which such assistance or support is provided; and

(B) shall not, in notifying and coordinating with a State under subparagraph (A), delay or impede the rapid deployment, use, and distribution of critical resources to victims of a major disaster.

[42 U.S.C. 5170a]

**SEC. 403. ESSENTIAL ASSISTANCE.**

(a) **IN GENERAL.**—Federal agencies may on the direction of the President, provide assistance essential to meeting immediate threats to life and property resulting from a major disaster, as follows:

(1) **FEDERAL RESOURCES, GENERALLY.**—Utilizing, lending, or donating to State and local governments Federal equipment, supplies, facilities, personnel, and other resources, other than the extension of credit, for use or distribution by such governments in accordance with the purposes of this Act.

(2) **MEDICINE, FOOD, AND OTHER CONSUMABLES.**—Distributing or rendering through State and local governments, the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief and disaster assistance organizations medicine durable medical equipment,<sup>4</sup> food, and other consumable supplies, and other services and assistance to disaster victims.

(3) **WORK AND SERVICES TO SAVE LIVES AND PROTECT PROPERTY.**—Performing on public or private lands or waters any work or services essential to saving lives and protecting and preserving property or public health and safety, including—

(A) debris removal;

(B) search and rescue, emergency medical care, emergency mass care, emergency shelter, and provision of food, water, medicinedurable medical equipment,<sup>4</sup> and other essential needs, including movement of supplies or persons;

(C) clearance of roads and construction of temporary bridges necessary to the performance of emergency tasks and essential community services;

(D) provision of temporary facilities for schools and other essential community services;

(E) demolition of unsafe structures which endanger the public;

(F) warning of further risks and hazards;

(G) dissemination of public information and assistance regarding health and safety measures;

<sup>4</sup> So in law. See amendments made by section 689(b) of Public Law 109–295.

- (H) provision of technical advice to State and local governments on disaster management and control;
- (I) reduction of immediate threats to life, property, and public health and safety; and
- (J) provision of rescue, care, shelter, and essential needs—
- (i) to individuals with household pets and service animals; and
  - (ii) to such pets and animals.
- (4) CONTRIBUTIONS.—Making contributions to State or local governments or owners or operators of private nonprofit facilities for the purpose of carrying out the provisions of this subsection.
- (b) FEDERAL SHARE.—The Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of such assistance.
- (c) UTILIZATION OF DOD RESOURCES.—
- (1) GENERAL RULE.—During the immediate aftermath of an incident which may ultimately qualify for assistance under this title or title V of this Act, the Governor of the State in which such incident occurred may request the President to direct the Secretary of Defense to utilize the resources of the Department of Defense for the purpose of performing on public and private lands any emergency work which is made necessary by such incident and which is essential for the preservation of life and property. If the President determines that such work is essential for the preservation of life and property, the President shall grant such request to the extent the President determines practicable. Such emergency work may only be carried out for a period not to exceed 10 days.
- (2) RULES APPLICABLE TO DEBRIS REMOVAL.—Any removal of debris and wreckage carried out under this subsection shall be subject to section 407(b), relating to unconditional authorization and indemnification for debris removal.
- (3) EXPENDITURES OUT OF DISASTER RELIEF FUNDS.—The cost of any assistance provided pursuant to this subsection shall be reimbursed out of funds made available to carry out this Act.
- (4) FEDERAL SHARE.—The Federal share of assistance under this subsection shall be not less than 75 percent.
- (5) GUIDELINES.—Not later than 180 days after the date of the enactment of the Disaster Relief and Emergency Assistance Amendments of 1988, the President shall issue guidelines for carrying out this subsection. Such guidelines shall consider any likely effect assistance under this subsection will have on the availability of other forms of assistance under this Act.
- (6) DEFINITIONS.—For purposes of this section—
- (A) DEPARTMENT OF DEFENSE.—The term “Department of Defense” has the meaning the term “department” has under section 101 of title 10, United States Code.
- (B) EMERGENCY WORK.—The term “emergency work” includes clearance and removal of debris and wreckage and temporary restoration of essential public facilities and services.

## (d) SALARIES AND BENEFITS.—

(1) IN GENERAL.—If the President declares a major disaster or emergency for an area within the jurisdiction of a State, tribal, or local government, the President may reimburse the State, tribal, or local government for costs relating to—

(A) basic pay and benefits for permanent employees of the State, tribal, or local government conducting emergency protective measures under this section, if—

(i) the work is not typically performed by the employees; and

(ii) the type of work may otherwise be carried out by contract or agreement with private organizations, firms, or individuals;<sup>5</sup> or

(B) overtime and hazardous duty compensation for permanent employees of the State, tribal, or local government conducting emergency protective measures under this section.

(2) OVERTIME.—The guidelines for reimbursement for costs under paragraph (1) shall ensure that no State, tribal, or local government is denied reimbursement for overtime payments that are required pursuant to the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

(3) NO EFFECT ON MUTUAL AID PACTS.—Nothing in this subsection shall affect the ability of the President to reimburse labor force expenses provided pursuant to an authorized mutual aid pact.

[42 U.S.C. 5170b]

**SEC. 404. HAZARD MITIGATION.**

(a) IN GENERAL.—The President may contribute up to 75 percent of the cost of hazard mitigation measures which the President has determined are cost effective and which substantially reduce the risk of, or increase resilience to, future damage, hardship, loss, or suffering in any area affected by a major disaster, or any area affected by a fire for which assistance was provided under section 420. Such measures shall be identified following the evaluation of natural hazards under section 322 and shall be subject to approval by the President. Subject to section 322, the total of contributions under this section for a major disaster or event under section 420 shall not exceed 15 percent for amounts not more than \$2,000,000,000, 10 percent for amounts of more than \$2,000,000,000 and not more than \$10,000,000,000, and 7.5 percent on amounts of more than \$10,000,000,000 and not more than \$35,333,000,000 of the estimated aggregate amount of grants to be made (less any associated administrative costs) under this Act with respect to the major disaster or event under section 420.

(b) PROPERTY ACQUISITION AND RELOCATION ASSISTANCE.—

(1) GENERAL AUTHORITY.—In providing hazard mitigation assistance under this section in connection with flooding, the Administrator of the Federal Emergency Management Agency may provide property acquisition and relocation assistance for projects that meet the requirements of paragraph (2).

<sup>5</sup>The grammar at the end of subparagraph (A)(ii) is so in law.

(2) TERMS AND CONDITIONS.—An acquisition or relocation project shall be eligible to receive assistance pursuant to paragraph (1) only if—

(A) the applicant for the assistance is otherwise eligible to receive assistance under the hazard mitigation grant program established under subsection (a); and

(B) on or after the date of enactment of this subsection, the applicant for the assistance enters into an agreement with the Administrator that provides assurances that—

(i) any property acquired, accepted, or from which a structure will be removed pursuant to the project will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices;

(ii) no new structure will be erected on property acquired, accepted or from which a structure was removed under the acquisition or relocation program other than—

(I) a public facility that is open on all sides and functionally related to a designated open space;

(II) a rest room; or

(III) a structure that the Administrator approves in writing before the commencement of the construction of the structure; and

(iii) after receipt of the assistance, with respect to any property acquired, accepted or from which a structure was removed under the acquisition or relocation program—

(I) no subsequent application for additional disaster assistance for any purpose will be made by the recipient to any Federal entity; and

(II) no assistance referred to in subclause (I) will be provided to the applicant by any Federal source.

(3) STATUTORY CONSTRUCTION.—Nothing in this subsection is intended to alter or otherwise affect an agreement for an acquisition or relocation project carried out pursuant to this section that was in effect on the day before the date of enactment of this subsection.

(c) PROGRAM ADMINISTRATION BY STATES.—

(1) IN GENERAL.—A State desiring to administer the hazard mitigation grant program established by this section with respect to hazard mitigation assistance in the State may submit to the President an application for the delegation of the authority to administer the program.

(2) CRITERIA.—The President, in consultation and coordination with States and local governments, shall establish criteria for the approval of applications submitted under paragraph (1). Until such time as the Administrator promulgates regulations to implement this paragraph, the Administrator may waive notice and comment rulemaking, if the Administrator determines doing so is necessary to expeditiously imple-

ment this section, and may carry out this section as a pilot program. The criteria shall include, at a minimum—

- (A) the demonstrated ability of the State to manage the grant program under this section;
- (B) there being in effect an approved mitigation plan under section 322; and
- (C) a demonstrated commitment to mitigation activities.

(3) APPROVAL.—The President shall approve an application submitted under paragraph (1) that meets the criteria established under paragraph (2).

(4) WITHDRAWAL OF APPROVAL.—If, after approving an application of a State submitted under paragraph (1), the President determines that the State is not administering the hazard mitigation grant program established by this section in a manner satisfactory to the President, the President shall withdraw the approval.

(5) AUDITS.—The President shall provide for periodic audits of the hazard mitigation grant programs administered by States under this subsection.

(d) STREAMLINED PROCEDURES.—

(1) IN GENERAL.—For the purpose of providing assistance under this section, the President shall ensure that—

- (A) adequate resources are devoted to ensure that applicable environmental reviews under the National Environmental Policy Act of 1969 and historic preservation reviews under the National Historic Preservation Act are completed on an expeditious basis; and
- (B) the shortest existing applicable process under the National Environmental Policy Act of 1969 and the National Historic Preservation Act is utilized.

(2) AUTHORITY FOR OTHER EXPEDITED PROCEDURES.—The President may utilize expedited procedures in addition to those required under paragraph (1) for the purpose of providing assistance under this section, such as procedures under the Prototype Programmatic Agreement of the Federal Emergency Management Agency, for the consideration of multiple structures as a group and for an analysis of the cost-effectiveness and fulfillment of cost-share requirements for proposed hazard mitigation measures.

(e) ADVANCE ASSISTANCE.—The President may provide not more than 25 percent of the amount of the estimated cost of hazard mitigation measures to a State grantee eligible for a grant under this section before eligible costs are incurred.

(f) USE OF ASSISTANCE.—Recipients of hazard mitigation assistance provided under this section and section 203 may use the assistance to conduct activities to help reduce the risk of future damage, hardship, loss, or suffering in any area affected by a wild-fire or windstorm, such as—

- (1) reseeding ground cover with quick-growing or native species;
- (2) mulching with straw or chipped wood;
- (3) constructing straw, rock, or log dams in small tributaries to prevent flooding;

- (4) placing logs and other erosion barriers to catch sediment on hill slopes;
- (5) installing debris traps to modify road and trail drainage mechanisms;
- (6) modifying or removing culverts to allow drainage to flow freely;
- (7) adding drainage dips and constructing emergency spillways to keep roads and bridges from washing out during floods;
- (8) planting grass to prevent the spread of noxious weeds;
- (9) installing warning signs;
- (10) establishing defensible space measures;
- (11) reducing hazardous fuels;
- (12) mitigating windstorm and wildfire damage, including—

(A) replacing or installing electrical transmission or distribution utility pole structures with poles that are resilient to extreme wind, wildfire, and combined ice and wind loadings for the basic wind speeds and ice conditions associated with the relevant location; and

(B) the installation of fire-resistant wires and infrastructure and the undergrounding of wires;

(13) removing standing burned trees; and

(14) replacing water systems that have been burned and have caused contamination.

(g) USE OF ASSISTANCE FOR EARTHQUAKE HAZARDS.—Recipients of hazard mitigation assistance provided under this section and section 203 may use the assistance to conduct activities to help reduce the risk of future damage, hardship, loss, or suffering in any area affected by earthquake hazards, including—

(1) improvements to regional seismic networks in support of building a capability for earthquake early warning;

(2) improvements to geodetic networks in support of building a capability for earthquake early warning; and

(3) improvements to seismometers, Global Positioning System receivers, and associated infrastructure in support of building a capability for earthquake early warning.

[42 U.S.C. 5170c]

#### FEDERAL FACILITIES

SEC. 405. (a) The President may authorize any Federal agency to repair, reconstruct, restore, or replace any facility owned by the United States and under the jurisdiction of such agency which is damaged or destroyed by any major disaster if he determines that such repair, reconstruction, restoration, or replacement is of such importance and urgency that it cannot reasonably be deferred pending the enactment of specific authorizing legislation or the making of an appropriation for such purposes, or the obtaining of congressional committee approval.

(b) In order to carry out the provisions of this section, such repair, reconstruction, restoration, or replacement may be begun notwithstanding a lack or an insufficiency of funds appropriated for such purpose, where such lack or insufficiency can be remedied by

the transfer, in accordance with law, of funds appropriated to that agency for another purpose.

(c) In implementing this section, Federal agencies shall evaluate the natural hazards to which these facilities are exposed and shall take appropriate action to mitigate such hazards, including safe land-use and construction practices, in accordance with standards prescribed by the President.

[42 U.S.C. 5171]

**SEC. 406. REPAIR, RESTORATION, AND REPLACEMENT OF DAMAGED FACILITIES.**

(a) CONTRIBUTIONS.—

(1) IN GENERAL.—The President may make contributions—

(A) to a State or local government for the repair, restoration, reconstruction, or replacement of a public facility damaged or destroyed by a major disaster and for associated expenses incurred by the government; and

(B) subject to paragraph (3), to a person that owns or operates a private nonprofit facility damaged or destroyed by a major disaster for the repair, restoration, reconstruction, or replacement of the facility and for associated expenses incurred by the person.

(2) ASSOCIATED EXPENSES.—For the purposes of this section, associated expenses shall include—

(A) the costs of mobilizing and employing the National Guard for performance of eligible work;

(B) the costs of using prison labor to perform eligible work, including wages actually paid, transportation to a worksite, and extraordinary costs of guards, food, and lodging;

(C) base and overtime wages for the employees and extra hires of a State, local government, or person described in paragraph (1) that perform eligible work, plus fringe benefits on such wages to the extent that such benefits were being paid before the major disaster; and

(D) base and overtime wages for extra hires to facilitate the implementation and enforcement of adopted building codes for a period of not more than 180 days after the major disaster is declared.

(3) CONDITIONS FOR ASSISTANCE TO PRIVATE NONPROFIT FACILITIES.—

(A) IN GENERAL.—The President may make contributions to a private nonprofit facility under paragraph (1)(B) only if—

(i) the facility provides critical services (as defined by the President) in the event of a major disaster; or

(ii) the owner or operator of the facility—

(I) has applied for a disaster loan under section 7(b) of the Small Business Act (15 U.S.C. 636(b)); and

(II)(aa) has been determined to be ineligible for such a loan; or



(bb) has obtained such a loan in the maximum amount for which the Small Business Administration determines the facility is eligible.

(B) DEFINITION OF CRITICAL SERVICES.—In this paragraph, the term “critical services” includes power, water (including water provided by an irrigation organization or facility), sewer, wastewater treatment, communications (including broadcast and telecommunications), education, and emergency medical care.

(C) RELIGIOUS FACILITIES.—A church, synagogue, mosque, temple, or other house of worship, educational facility, or any other private nonprofit facility, shall be eligible for contributions under paragraph (1)(B), without regard to the religious character of the facility or the primary religious use of the facility. No house of worship, educational facility, or any other private nonprofit facility may be excluded from receiving contributions under paragraph (1)(B) because leadership or membership in the organization operating the house of worship is limited to persons who share a religious faith or practice.

(4) NOTIFICATION TO CONGRESS.—Before making any contribution under this section in an amount greater than \$20,000,000, the President shall notify—

(A) the Committee on Environment and Public Works of the Senate;

(B) the Committee on Transportation and Infrastructure of the House of Representatives;

(C) the Committee on Appropriations of the Senate; and

(D) the Committee on Appropriations of the House of Representatives.

(b) FEDERAL SHARE.—

(1) MINIMUM FEDERAL SHARE.—Except as provided in paragraph (2), the Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of repair, restoration, reconstruction, or replacement carried out under this section.

(2) REDUCED FEDERAL SHARE.—The President shall promulgate regulations to reduce the Federal share of assistance under this section to not less than 25 percent in the case of the repair, restoration, reconstruction, or replacement of any eligible public facility or private nonprofit facility following an event associated with a major disaster—

(A) that has been damaged, on more than one occasion within the preceding 10-year period, by the same type of event; and

(B) the owner of which has failed to implement appropriate mitigation measures to address the hazard that caused the damage to the facility.

(3) INCREASED FEDERAL SHARE.—

(A) INCENTIVE MEASURES.—The President may provide incentives to a State or Tribal government to invest in measures that increase readiness for, and resilience from, a major disaster by recognizing such investments through

a sliding scale that increases the minimum Federal share to 85 percent. Such measures may include—

(i) the adoption of a mitigation plan approved under section 322;

(ii) investments in disaster relief, insurance, and emergency management programs;

(iii) encouraging the adoption and enforcement of the latest published editions of relevant consensus-based codes, specifications, and standards that incorporate the latest hazard-resistant designs and establish minimum acceptable criteria for the design, construction, and maintenance of residential structures and facilities that may be eligible for assistance under this Act for the purpose of protecting the health, safety, and general welfare of the buildings' users against disasters;

(iv) facilitating participation in the community rating system; and

(v) funding mitigation projects or granting tax incentives for projects that reduce risk.

(B) COMPREHENSIVE GUIDANCE.—Not later than 1 year after the date of enactment of this paragraph, the President, acting through the Administrator, shall issue comprehensive guidance to State and Tribal governments regarding the measures and investments, weighted appropriately based on actuarial assessments of eligible actions, that will be recognized for the purpose of increasing the Federal share under this section. Guidance shall ensure that the agency's review of eligible measures and investments does not unduly delay determining the appropriate Federal cost share.

(C) REPORT.—One year after the issuance of the guidance required by subparagraph (B), the Administrator shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report regarding the analysis of the Federal cost shares paid under this section.

(D) SAVINGS CLAUSE.—Nothing in this paragraph prevents the President from increasing the Federal cost share above 85 percent.

(c) LARGE IN-LIEU CONTRIBUTIONS.—

(1) FOR PUBLIC FACILITIES.—

(A) IN GENERAL.—In any case in which a State or local government determines that the public welfare would not best be served by repairing, restoring, reconstructing, or replacing any public facility owned or controlled by the State or local government, the State or local government may elect to receive, in lieu of a contribution under subsection (a)(1)(A), a contribution in an amount equal to the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.

(B) USE OF FUNDS.—Funds contributed to a State or local government under this paragraph may be used—

(i) to repair, restore, or expand other selected public facilities;

(ii) to construct new facilities; or

(iii) to fund hazard mitigation measures that the State or local government determines to be necessary to meet a need for governmental services and functions in the area affected by the major disaster.

(C) LIMITATIONS.—Funds made available to a State or local government under this paragraph may not be used for—

(i) any public facility located in a regulatory floodway (as defined in section 59.1 of title 44, Code of Federal Regulations (or a successor regulation)); or

(ii) any uninsured public facility located in a special flood hazard area identified by the Administrator of the Federal Emergency Management Agency under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.).

(2) FOR PRIVATE NONPROFIT FACILITIES.—

(A) IN GENERAL.—In any case in which a person that owns or operates a private nonprofit facility determines that the public welfare would not best be served by repairing, restoring, reconstructing, or replacing the facility, the person may elect to receive, in lieu of a contribution under subsection (a)(1)(B), a contribution in an amount equal to the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.

(B) USE OF FUNDS.—Funds contributed to a person under this paragraph may be used—

(i) to repair, restore, or expand other selected private nonprofit facilities owned or operated by the person;

(ii) to construct new private nonprofit facilities to be owned or operated by the person; or

(iii) to fund hazard mitigation measures that the person determines to be necessary to meet a need for the person's services and functions in the area affected by the major disaster.

(C) LIMITATIONS.—Funds made available to a person under this paragraph may not be used for—

(i) any private nonprofit facility located in a regulatory floodway (as defined in section 59.1 of title 44, Code of Federal Regulations (or a successor regulation)); or

(ii) any uninsured private nonprofit facility located in a special flood hazard area identified by the Administrator of the Federal Emergency Management Agency under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.).

(d) FLOOD INSURANCE.—

(1) REDUCTION OF FEDERAL ASSISTANCE.—If a public facility or private nonprofit facility located in a special flood hazard area identified for more than 1 year by the Administrator pursuant to the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.) is damaged or destroyed, after the 180th day following the date of the enactment of the Disaster Relief and Emergency Assistance Amendments of 1988, by flooding in a major disaster and such facility is not covered on the date of such flooding by flood insurance, the Federal assistance which would otherwise be available under this section with respect to repair, restoration, reconstruction, and replacement of such facility and associated expenses shall be reduced in accordance with paragraph (2). This section shall not apply to more than one building of a multi-structure educational, law enforcement, correctional, fire, or medical campus, for any major disaster or emergency declared by the President under section 401 or 501, respectively, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170, 5191) on or after January 1, 2016, through December 31, 2018.

(2) AMOUNT OF REDUCTION.—The amount of a reduction in Federal assistance under this section with respect to a facility shall be the lesser of—

(A) the value of such facility on the date of the flood damage or destruction, or

(B) the maximum amount of insurance proceeds which would have been payable with respect to such facility if such facility had been covered by flood insurance under the National Flood Insurance Act of 1968 on such date.

(3) EXCEPTION.—Paragraphs (1) and (2) shall not apply to a private nonprofit facility which is not covered by flood insurance solely because of the local government's failure to participate in the flood insurance program established by the National Flood Insurance Act.

(4) DISSEMINATION OF INFORMATION.—The President shall disseminate information regarding the reduction in Federal assistance provided for by this subsection to State and local governments and the owners and operators of private nonprofit facilities who may be affected by such a reduction.

(e) ELIGIBLE COST.—

(1) DETERMINATION.—

(A) IN GENERAL.—For the purposes of this section, for disasters declared on or after August 1, 2017, or a disaster in which a cost estimate has not yet been finalized for a project, or for any project for which the finalized cost estimate is on appeal, the President shall estimate the eligible cost of repairing, restoring, reconstructing, or replacing a public facility or private nonprofit facility—

(i) on the basis of the design of the facility as the facility existed immediately before the major disaster;

(ii) in conformity with the latest published editions of relevant consensus-based codes, specifications, and standards that incorporate the latest hazard-resistant designs and establish minimum acceptable criteria for the design, construction, and maintenance of

residential structures and facilities that may be eligible for assistance under this Act for the purposes of protecting the health, safety, and general welfare of a facility's users against disasters (including floodplain management and hazard mitigation criteria required by the President or under the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.)); and

(iii) in a manner that allows the facility to meet the definition of resilient developed pursuant to this subsection.

(B) COST ESTIMATION PROCEDURES.—

(i) IN GENERAL.—Subject to paragraph (2), the President shall use the cost estimation procedures established under paragraph (3) to determine the eligible cost under this subsection.

(ii) APPLICABILITY.—The procedures specified in this paragraph and paragraph (2) shall apply only to projects the eligible cost of which is equal to or greater than the amount specified in section 422.

(C) CONTRIBUTIONS.—Contributions for the eligible cost made under this section may be provided on an actual cost basis or on cost-estimation procedures.

(2) MODIFICATION OF ELIGIBLE COST.—

(A) ACTUAL COST GREATER THAN CEILING PERCENTAGE OF ESTIMATED COST.—In any case in which the actual cost of repairing, restoring, reconstructing, or replacing a facility under this section is greater than the ceiling percentage established under paragraph (3) of the cost estimated under paragraph (1), the President may determine that the eligible cost includes a portion of the actual cost of the repair, restoration, reconstruction, or replacement that exceeds the cost estimated under paragraph (1).

(B) ACTUAL COST LESS THAN ESTIMATED COST.—

(i) GREATER THAN OR EQUAL TO FLOOR PERCENTAGE OF ESTIMATED COST.—In any case in which the actual cost of repairing, restoring, reconstructing, or replacing a facility under this section is less than 100 percent of the cost estimated under paragraph (1), but is greater than or equal to the floor percentage established under paragraph (3) of the cost estimated under paragraph (1), the State or local government or person receiving funds under this section shall use the excess funds to carry out cost-effective activities that reduce the risk of future damage, hardship, or suffering from a major disaster.

(ii) LESS THAN FLOOR PERCENTAGE OF ESTIMATED COST.—In any case in which the actual cost of repairing, restoring, reconstructing, or replacing a facility under this section is less than the floor percentage established under paragraph (3) of the cost estimated under paragraph (1), the State or local government or person receiving assistance under this section shall reimburse the President in the amount of the difference.

(C) NO EFFECT ON APPEALS PROCESS.—Nothing in this paragraph affects any right of appeal under section 423.

(3) EXPERT PANEL.—

(A) ESTABLISHMENT.—Not later than 18 months after the date of the enactment of this paragraph, the President, acting through the Administrator of the Federal Emergency Management Agency, shall establish an expert panel, which shall include representatives from the construction industry and State and local government.

(B) DUTIES.—The expert panel shall develop recommendations concerning—

(i) procedures for estimating the cost of repairing, restoring, reconstructing, or replacing a facility consistent with industry practices; and

(ii) the ceiling and floor percentages referred to in paragraph (2).

(C) REGULATIONS.—Taking into account the recommendations of the expert panel under subparagraph (B), the President shall promulgate regulations that establish—

(i) cost estimation procedures described in subparagraph (B)(i); and

(ii) the ceiling and floor percentages referred to in paragraph (2).

(D) REVIEW BY PRESIDENT.—Not later than 2 years after the date of promulgation of regulations under subparagraph (C) and periodically thereafter, the President shall review the cost estimation procedures and the ceiling and floor percentages established under this paragraph.

(E) REPORT TO CONGRESS.—Not later than 1 year after the date of promulgation of regulations under subparagraph (C), 3 years after that date, and at the end of each 2-year period thereafter, the expert panel shall submit to Congress a report on the appropriateness of the cost estimation procedures.

(4) SPECIAL RULE.—In any case in which the facility being repaired, restored, reconstructed, or replaced under this section was under construction on the date of the major disaster, the cost of repairing, restoring, reconstructing, or replacing the facility shall include, for the purposes of this section, only those costs that, under the contract for the construction, are the owner's responsibility and not the contractor's responsibility.

(5) NEW RULES.—

(A) IN GENERAL.—Not later than 18 months after the date of enactment of this paragraph, the President, acting through the Administrator of the Federal Emergency Management Agency, and in consultation with the heads of relevant Federal departments and agencies, shall issue a final rulemaking that defines the terms “resilient” and “resiliency” for purposes of this subsection.

(B) INTERIM GUIDANCE.—Not later than 60 days after the date of enactment of this paragraph, the Administrator shall issue interim guidance to implement this subsection. Such interim guidance shall expire 18 months after the

date of enactment of this paragraph or upon issuance of final regulations pursuant to subparagraph (A), whichever occurs first.

(C) GUIDANCE.—Not later than 90 days after the date on which the Administrator issues the final rulemaking under this paragraph, the Administrator shall issue any necessary guidance related to the rulemaking.

(D) REPORT.—Not later than 2 years after the date of enactment of this paragraph, the Administrator shall submit to Congress a report summarizing the regulations and guidance issued pursuant to this paragraph.

【42 U.S.C. 5172】

#### DEBRIS REMOVAL

SEC. 407. (a) The President, whenever he determines it to be in the public interest, is authorized—

(1) through the use of Federal departments, agencies, and instrumentalities, to clear debris and wreckage resulting from a major disaster from publicly and privately owned lands and waters; and

(2) to make grants to any State or local government or owner or operator of a private nonprofit facility for the purpose of removing debris or wreckage resulting from a major disaster from publicly or privately owned lands and waters.

(b) No authority under this section shall be exercised unless the affected State or local government shall first arrange an unconditional authorization for removal of such debris or wreckage from public and private property, and, in the case of removal of debris or wreckage from private property, shall first agree to indemnify the Federal Government against any claim arising from such removal.

(c) RULES RELATING TO LARGE LOTS.—The President shall issue rules which provide for recognition of differences existing among urban, suburban, and rural lands in implementation of this section so as to facilitate adequate removal of debris and wreckage from large lots.

(d) FEDERAL SHARE.—The Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of debris and wreckage removal carried out under this section.

(e) EXPEDITED PAYMENTS.—

(1) GRANT ASSISTANCE.—In making a grant under subsection (a)(2), the President shall provide not less than 50 percent of the President's initial estimate of the Federal share of assistance as an initial payment in accordance with paragraph (2).

(2) DATE OF PAYMENT.—Not later than 60 days after the date of the estimate described in paragraph (1) and not later than 90 days after the date on which the State or local government or owner or operator of a private nonprofit facility applies for assistance under this section, an initial payment described in paragraph (1) shall be paid.

【42 U.S.C. 5173】

**SEC. 408. FEDERAL ASSISTANCE TO INDIVIDUALS AND HOUSEHOLDS.****(a) IN GENERAL.—**

(1) **PROVISION OF ASSISTANCE.**—In accordance with this section, the President, in consultation with the Governor of a State, may provide financial assistance, and, if necessary, direct services, to individuals and households in the State who, as a direct result of a major disaster, have necessary expenses and serious needs in cases in which the individuals and households are unable to meet such expenses or needs through other means.

(2) **RELATIONSHIP TO OTHER ASSISTANCE.**—Under paragraph (1), an individual or household shall not be denied assistance under paragraph (1), (3), or (4) of subsection (c) solely on the basis that the individual or household has not applied for or received any loan or other financial assistance from the Small Business Administration or any other Federal agency.

**(b) HOUSING ASSISTANCE.—**

(1) **ELIGIBILITY.**—The President may provide financial or other assistance under this section to individuals and households to respond to the disaster-related housing needs of individuals and households who are displaced from their predisaster primary residences or whose predisaster primary residences are rendered uninhabitable, or with respect to individuals with disabilities, rendered inaccessible or uninhabitable, as a result of damage caused by a major disaster.

**(2) DETERMINATION OF APPROPRIATE TYPES OF ASSISTANCE.—**

(A) **IN GENERAL.**—The President shall determine appropriate types of housing assistance to be provided under this section to individuals and households described in subsection (a)(1) based on considerations of cost effectiveness, convenience to the individuals and households, and such other factors as the President may consider appropriate.

(B) **MULTIPLE TYPES OF ASSISTANCE.**—One or more types of housing assistance may be made available under this section, based on the suitability and availability of the types of assistance, to meet the needs of individuals and households in the particular disaster situation.

**(c) TYPES OF HOUSING ASSISTANCE.—****(1) TEMPORARY HOUSING.—****(A) FINANCIAL ASSISTANCE.—**

(i) **IN GENERAL.**—The President may provide financial assistance to individuals or households to rent alternate housing accommodations, existing rental units, manufactured housing, recreational vehicles, or other readily fabricated dwellings. Such assistance may include the payment of the cost of utilities, excluding telephone service.

(ii) **AMOUNT.**—The amount of assistance under clause (i) shall be based on the fair market rent for the accommodation provided plus the cost of any transportation, utility hookups, security deposits, or



unit installation not provided directly by the President.

(B) DIRECT ASSISTANCE.—

(i) IN GENERAL.—The President may provide temporary housing units, acquired by purchase or lease, directly to individuals or households who, because of a lack of available housing resources, would be unable to make use of the assistance provided under subparagraph (A).

(ii) LEASE AND REPAIR OF RENTAL UNITS FOR TEMPORARY HOUSING.—

(I) IN GENERAL.—The President, to the extent the President determines it would be a cost-effective alternative to other temporary housing options, may—

(aa) enter into lease agreements with owners of multifamily rental property impacted by a major disaster or located in areas covered by a major disaster declaration to house individuals and households eligible for assistance under this section; and

(bb) make repairs or improvements to properties under such lease agreements, to the extent necessary to serve as safe and adequate temporary housing.

(II) IMPROVEMENTS OR REPAIRS.—Under the terms of any lease agreement for property entered into under this subsection, the value of the improvements or repairs shall be deducted from the value of the lease agreement.

(iii) PERIOD OF ASSISTANCE.—The President may not provide direct assistance under clause (i) with respect to a major disaster after the end of the 18-month period beginning on the date of the declaration of the major disaster by the President, except that the President may extend that period if the President determines that due to extraordinary circumstances an extension would be in the public interest.

(iv) COLLECTION OF RENTAL CHARGES.—After the end of the 18-month period referred to in clause (iii), the President may charge fair market rent for each temporary housing unit provided.

(2) REPAIRS.—

(A) IN GENERAL.—The President may provide financial assistance for—

(i) the repair of owner-occupied private residences, utilities, and residential infrastructure (such as a private access route) damaged by a major disaster to a safe and sanitary living or functioning condition; and

(ii) eligible hazard mitigation measures that reduce the likelihood of future damage to such residences, utilities, or infrastructure.

(B) RELATIONSHIP TO OTHER ASSISTANCE.—A recipient of assistance provided under this paragraph shall not be

required to show that the assistance can be met through other means, except insurance proceeds.

(3) REPLACEMENT.—

(A) IN GENERAL.—The President may provide financial assistance for the replacement of owner-occupied private residences damaged by a major disaster.

(B) APPLICABILITY OF FLOOD INSURANCE REQUIREMENT.—With respect to assistance provided under this paragraph, the President may not waive any provision of Federal law requiring the purchase of flood insurance as a condition of the receipt of Federal disaster assistance.

(4) PERMANENT HOUSING CONSTRUCTION.—The President may provide financial assistance or direct assistance to individuals or households to construct permanent or semi-permanent housing in insular areas outside the continental United States and in other locations in cases in which—

(A) no alternative housing resources are available; and

(B) the types of temporary housing assistance described in paragraph (1) are unavailable, infeasible, or not cost-effective.

(d) TERMS AND CONDITIONS RELATING TO HOUSING ASSISTANCE.—

(1) SITES.—

(A) IN GENERAL.—Any readily fabricated dwelling provided under this section shall, whenever practicable, be located on a site that—

(i) is complete with utilities;

(ii) meets the physical accessibility requirements for individuals with disabilities; and

(iii) is provided by the State or local government, by the owner of the site, or by the occupant who was displaced by the major disaster.

(B) SITES PROVIDED BY THE PRESIDENT.—A readily fabricated dwelling may be located on a site provided by the President if the President determines that such a site would be more economical or accessible.

(2) DISPOSAL OF UNITS.—

(A) SALE TO OCCUPANTS.—

(i) IN GENERAL.—Notwithstanding any other provision of law, a temporary housing unit purchased under this section by the President for the purpose of housing disaster victims may be sold directly to the individual or household who is occupying the unit if the individual or household lacks permanent housing.

(ii) SALE PRICE.—A sale of a temporary housing unit under clause (i) shall be at a price that is fair and equitable.

(iii) DEPOSIT OF PROCEEDS.—Notwithstanding any other provision of law, the proceeds of a sale under clause (i) shall be deposited in the appropriate Disaster Relief Fund account.

(iv) HAZARD AND FLOOD INSURANCE.—A sale of a temporary housing unit under clause (i) shall be made on the condition that the individual or household pur-

chasing the housing unit agrees to obtain and maintain hazard and flood insurance on the housing unit.

(v) USE OF GSA SERVICES.—The President may use the services of the General Services Administration to accomplish a sale under clause (i).

(B) OTHER METHODS OF DISPOSAL.—If not disposed of under subparagraph (A), a temporary housing unit purchased under this section by the President for the purpose of housing disaster victims—

(i) may be sold to any person; or

(ii) may be sold, transferred, donated, or otherwise made available directly to a State or other governmental entity or to a voluntary organization for the sole purpose of providing temporary housing to disaster victims in major disasters and emergencies if, as a condition of the sale, transfer, or donation, the State, other governmental agency, or voluntary organization agrees—

(I) to comply with the nondiscrimination provisions of section 308; and

(II) to obtain and maintain hazard and flood insurance on the housing unit.

(e) FINANCIAL ASSISTANCE TO ADDRESS OTHER NEEDS.—

(1) MEDICAL, DENTAL, CHILD CARE, AND FUNERAL EXPENSES.—The President, in consultation with the Governor of a State, may provide financial assistance under this section to an individual or household in the State who is adversely affected by a major disaster to meet disaster-related medical, dental, child care, and funeral expenses.

(2) PERSONAL PROPERTY, TRANSPORTATION, AND OTHER EXPENSES.—The President, in consultation with the Governor of a State, may provide financial assistance under this section to an individual or household described in paragraph (1) to address personal property, transportation, and other necessary expenses or serious needs resulting from the major disaster.

(f) STATE ROLE.—

(1) STATE- OR INDIAN TRIBAL GOVERNMENT-ADMINISTERED ASSISTANCE AND OTHER NEEDS ASSISTANCE.—

(A) GRANT TO STATE.—Subject to subsection (g), a Governor may request a grant from the President to provide assistance to individuals and households in the State under subsections (c)(1)(B), (c)(4), and (e) if the President and the State or Indian tribal government comply, as determined by the Administrator, with paragraph (3).

(B) ADMINISTRATIVE COSTS.—A State that receives a grant under subparagraph (A) may expend not more than 5 percent of the amount of the grant for the administrative costs of providing assistance to individuals and households in the State under subsections (c)(1)(B), (c)(4), and (e).

(2) ACCESS TO RECORDS.—In providing assistance to individuals and households under this section, the President shall provide for the substantial and ongoing involvement of the States in which the individuals and households are located, including by providing to the States access to the electronic

records of individuals and households receiving assistance under this section in order for the States to make available any additional State and local assistance to the individuals and households.

(3) REQUIREMENTS.—

(A) APPLICATION.—A State or Indian tribal government desiring to provide assistance under subsection (c)(1)(B), (c)(4), or (e) shall submit to the President an application for a grant to provide financial assistance under the program.

(B) CRITERIA.—The President, in consultation and coordination with State and Indian tribal governments, shall establish criteria for the approval of applications submitted under subparagraph (A). The criteria shall include, at a minimum—

(i) a requirement that the State or Indian tribal government submit a housing strategy under subparagraph (C);

(ii) the demonstrated ability of the State or Indian tribal government to manage the program under this section;

(iii) there being in effect a plan approved by the President as to how the State or Indian tribal government will comply with applicable Federal laws and regulations and how the State or Indian tribal government will provide assistance under its plan;

(iv) a requirement that the State or Indian tribal government comply with rules and regulations established pursuant to subsection (j); and

(v) a requirement that the President, or the designee of the President, comply with subsection (i).

(C) REQUIREMENT OF HOUSING STRATEGY.—

(i) IN GENERAL.—A State or Indian tribal government submitting an application under this paragraph shall have an approved housing strategy, which shall be developed and submitted to the President for approval.

(ii) REQUIREMENTS.—The housing strategy required under clause (i) shall—

(I) outline the approach of the State in working with Federal partners, Indian tribal governments, local communities, nongovernmental organizations, and individual disaster survivors to meet disaster-related sheltering and housing needs; and

(II) include the establishment of an activation plan for a State Disaster Housing Task Force, as outlined in the National Disaster Housing Strategy, to bring together State, tribal, local, Federal, nongovernmental, and private sector expertise to evaluate housing requirements, consider potential solutions, recognize special needs populations, and propose recommendations.

(D) **QUALITY ASSURANCE.**—Before approving an application submitted under this section, the President, or the designee of the President, shall institute adequate policies, procedures, and internal controls to prevent waste, fraud, abuse, and program mismanagement for this program and for programs under subsections (c)(1)(B), (c)(4), and (e). The President shall monitor and conduct quality assurance activities on a State or Indian tribal government’s implementation of programs under subsections (c)(1)(B), (c)(4), and (e). If, after approving an application of a State or Indian tribal government submitted under this paragraph, the President determines that the State or Indian tribal government is not administering the program established by this section in a manner satisfactory to the President, the President shall withdraw the approval.

(E) **AUDITS.**—The Inspector General of the Department of Homeland Security shall provide for periodic audits of the programs administered by States and Indian tribal governments under this subsection.

(F) **APPLICABLE LAWS.**—All Federal laws applicable to the management, administration, or contracting of the programs by the Federal Emergency Management Agency under this section shall be applicable to the management, administration, or contracting by a non-Federal entity under this section.

(G) **REPORT ON EFFECTIVENESS.**—Not later than 18 months after the date of enactment of this paragraph, the Inspector General of the Department of Homeland Security shall submit a report to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on the State or Indian tribal government’s role to provide assistance under this section. The report shall contain an assessment of the effectiveness of the State or Indian tribal government’s role in providing assistance under this section, including—

(i) whether the State or Indian tribal government’s role helped to improve the general speed of disaster recovery;

(ii) whether the State or Indian tribal government providing assistance under this section had the capacity to administer this section; and

(iii) recommendations for changes to improve the program if the State or Indian tribal government’s role to administer the programs should be continued.

(H) **REPORT ON INCENTIVES.**—Not later than 12 months after the date of enactment of this paragraph, the Administrator of the Federal Emergency Management Agency shall submit a report to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on a potential incentive structure for awards made under this section to encourage participation by eligible States and Indian tribal governments.

In developing this report, the Administrator of the Federal Emergency Management Agency shall consult with State, local, and Indian tribal entities to gain their input on any such incentive structure to encourage participation and shall include this information in the report. This report should address, among other options, potential adjustments to the cost-share requirement and management costs to State and Indian tribal governments.

(I) PROHIBITION.—The President may not condition the provision of Federal assistance under this Act on a State or Indian tribal government requesting a grant under this section.

(J) MISCELLANEOUS.—

(i) NOTICE AND COMMENT.—The Administrator of the Federal Emergency Management Agency may waive notice and comment rulemaking with respect to rules to carry out this section, if the Administrator determines doing so is necessary to expeditiously implement this section, and may carry out this section as a pilot program until such regulations are promulgated.

(ii) FINAL RULE.—Not later than 2 years after the date of enactment of this paragraph, the Administrator of the Federal Emergency Management Agency shall issue final regulations to implement this subsection as amended by the Disaster Recovery Reform Act of 2018.

(iii) WAIVER AND EXPIRATION.—The authority under clause (i) and any pilot program implemented pursuant to such clause shall expire 2 years after the date of enactment of this paragraph or upon issuance of final regulations pursuant to clause (ii), whichever occurs sooner.

(g) COST SHARING.—

(1) FEDERAL SHARE.—Except as provided in paragraph (2), the Federal share of the costs eligible to be paid using assistance provided under this section shall be 100 percent.

(2) FINANCIAL ASSISTANCE TO ADDRESS OTHER NEEDS.—In the case of financial assistance provided under subsection (e)—

(A) the Federal share shall be 75 percent; and

(B) the non-Federal share shall be paid from funds made available by the State.

(h) MAXIMUM AMOUNT OF ASSISTANCE.—

(1) IN GENERAL.—No individual or household shall receive financial assistance greater than \$25,000 under this section with respect to a single major disaster, excluding financial assistance to rent alternate housing accommodations under subsection (c)(1)(A)(i) and financial assistance to address other needs under subsection (e).

(2) OTHER NEEDS ASSISTANCE.—The maximum financial assistance any individual or household may receive under subsection (e) shall be equivalent to the amount set forth in paragraph (1) with respect to a single major disaster.

(3) ADJUSTMENT OF LIMIT.—The limit established under paragraphs (1) and (2) shall be adjusted annually to reflect

changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(4) EXCLUSION OF NECESSARY EXPENSES FOR INDIVIDUALS WITH DISABILITIES.—

(A) IN GENERAL.—The maximum amount of assistance established under paragraph (1) shall exclude expenses to repair or replace damaged accessibility-related improvements under paragraphs (2), (3), and (4) of subsection (c) for individuals with disabilities.

(B) OTHER NEEDS ASSISTANCE.—The maximum amount of assistance established under paragraph (2) shall exclude expenses to repair or replace accessibility-related personal property under subsection (e)(2) for individuals with disabilities.

(i) VERIFICATION MEASURES.—In carrying out this section, the President shall develop a system, including an electronic database, that shall allow the President, or the designee of the President, to—

(1) verify the identity and address of recipients of assistance under this section to provide reasonable assurance that payments are made only to an individual or household that is eligible for such assistance;

(2) minimize the risk of making duplicative payments or payments for fraudulent claims under this section;

(3) collect any duplicate payment on a claim under this section, or reduce the amount of subsequent payments to offset the amount of any such duplicate payment;

(4) provide instructions to recipients of assistance under this section regarding the proper use of any such assistance, regardless of how such assistance is distributed; and

(5) conduct an expedited and simplified review and appeal process for an individual or household whose application for assistance under this section is denied.

(j) RULES AND REGULATIONS.—The President shall prescribe rules and regulations to carry out this section, including criteria, standards, and procedures for determining eligibility for assistance.

【42 U.S.C. 5174】

【Sec. 409 repealed by section 104(c)(2) of Public Law 106–390 (114 Stat. 1559).】

#### UNEMPLOYMENT ASSISTANCE

SEC. 410. (a) The President is authorized to provide to any individual unemployed as a result of a major disaster such benefit assistance as he deems appropriate while such individual is unemployed for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation (as that term is defined in section 85(b) of the Internal Revenue Code of 1986) or waiting period credit. Such assistance as the President shall provide shall be available to an individual as long as the individual's unemployment caused by the major disaster continues or until the individual is reemployed in a suitable position, but no longer than 26 weeks after the major disaster is

declared. Such assistance for a week of unemployment shall not exceed the maximum weekly amount authorized under the unemployment compensation law of the State in which the disaster occurred. The President is directed to provide such assistance through agreements with States which, in his judgment, have an adequate system for administering such assistance through existing State agencies.

(b) REEMPLOYMENT ASSISTANCE.—

(1) STATE ASSISTANCE.—A State shall provide, without reimbursement from any funds provided under this Act, reemployment assistance services under any other law administered by the State to individuals receiving benefits under this section.

(2) FEDERAL ASSISTANCE.—The President may provide reemployment assistance services under other laws to individuals who are unemployed as a result of a major disaster and who reside in a State which does not provide such services.

(c) APPLICATION DEADLINE.—

(1) IN GENERAL.—With respect to a major disaster for which assistance is provided under this section and section 408, the application deadline for an individual seeking assistance under this section shall match the application deadline for individuals and households seeking assistance under section 408.

(2) EXTENSION.—The President may accept an application from an individual described in paragraph (1) that is submitted after the deadline described in paragraph (1) if—

(A) the individual has good cause for the late submission; and

(B) the individual submits the application before the date on which the period during which assistance is provided under this section for the applicable major disaster expires.

[42 U.S.C. 5177]

[Sec. 411 repealed by section 206(c) of Public Law 106–390 (114 Stat. 1571).]

#### BENEFITS AND DISTRIBUTION

SEC. 412. (a) Whenever the President determines that, as a result of a major disaster, low-income households are unable to purchase adequate amounts of nutritious food, he is authorized, under such terms and conditions as he may prescribe, to distribute through the Secretary of Agriculture or other appropriate agencies benefit allotments to such households pursuant to the provisions of the Food Stamp Act of 1964<sup>6</sup> (P.L. 91–671; 84 Stat. 2048) and to make surplus commodities available pursuant to the provisions of this Act.

<sup>6</sup>The reference to the “Food Stamp Act of 1964” probably should be a reference to the “Food Stamp Act of 2008”. The global amendment to the Robert T. Stafford Disaster Relief and Emergency Assistance Act made by section 4002(b)(1)(C) and (2)(DD) of Public Law 110–246 to strike “Food Stamp Act” and insert “Food and Nutrition Act of 2008” was not carried out.



(b) The President, through the Secretary of Agriculture or other appropriate agencies, is authorized to continue to make such benefit allotments and surplus commodities available to such households for so long as he determines necessary, taking into consideration such factors as he deems appropriate, including the consequences of the major disaster on the earning power of the households, to which assistance is made available under this section.

(c) Nothing in this section shall be construed as amending or otherwise changing the provisions of the Food Stamp Act of 1964<sup>6</sup> except as they relate to the availability of supplemental nutrition assistance program benefits in an area affected by a major disaster.

【42 U.S.C. 5179】

#### FOOD COMMODITIES

SEC. 413. (a) The President is authorized and directed to assure that adequate stocks of food will be ready and conveniently available for emergency mass feeding or distribution in any area of the United States which suffers a major disaster or emergency.

(b) The Secretary of Agriculture shall utilize funds appropriated under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), to purchase food commodities necessary to provide adequate supplies for use in any area of the United States in the event of a major disaster or emergency in such area.

【42 U.S.C. 5180】

#### RELOCATION ASSISTANCE

SEC. 414. Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.

【42 U.S.C. 5181】

#### LEGAL SERVICES

SEC. 415. Whenever the President determines that low-income individuals are unable to secure legal services adequate to meet their needs as a consequence of a major disaster, consistent with the goals of the programs authorized by this Act, the President shall assure that such programs are conducted with the advice and assistance of appropriate Federal agencies and State and local bar associations.

【42 U.S.C. 5182】

#### CRISIS COUNSELING ASSISTANCE AND TRAINING

SEC. 416. 【42 U.S.C. 5183】

(a) IN GENERAL.—The President is authorized to provide professional counseling services, including financial assistance to State or local agencies or private mental health organizations to provide such services or training of disaster workers, to victims of major

disasters in order to relieve mental health problems caused or aggravated by such major disaster or its aftermath.

(b) TRAINING.—Each State, local agency, or private mental health organization providing professional counseling services described in subsection (a) shall ensure that, any individual providing professional counseling services to victims of a major disaster as authorized under subsection (a), including individuals working for nonprofit partners and recovery organizations, is appropriately trained to address impacts from major disasters in communities, and to individuals, with socio-economically disadvantaged backgrounds.

#### COMMUNITY DISASTER LOANS

SEC. 417. (a) IN GENERAL.—The President is authorized to make loans to any local government which may suffer a substantial loss of tax and other revenues as a result of a major disaster, and has demonstrated a need for financial assistance in order to perform its governmental functions.

(b) AMOUNT.—The amount of any such loan shall be based on need, shall not exceed—

(1) 25 percent of the annual operating budget of that local government for the fiscal year in which the major disaster occurs, and shall not exceed \$5,000,000; or

(2) if the loss of tax and other revenues of the local government as a result of the major disaster is at least 75 percent of the annual operating budget of that local government for the fiscal year in which the major disaster occurs, 50 percent of the annual operating budget of that local government for the fiscal year in which the major disaster occurs, and shall not exceed \$5,000,000.

(c) REPAYMENT.—

(1) CANCELLATION.—Repayment of all or any part of such loan to the extent that revenues of the local government during the three full fiscal year period following the major disaster are insufficient to meet the operating budget of the local government, including additional disaster-related expenses of a municipal operation character shall be cancelled.

(2) CONDITION ON CONTINUING ELIGIBILITY.—A local government shall not be eligible for further assistance under this section during any period in which the local government is in arrears with respect to a required repayment of a loan under this section.

(d) EFFECT ON OTHER ASSISTANCE.—Any loans made under this section shall not reduce or otherwise affect any grants or other assistance under this Act.

[42 U.S.C. 5184]

#### EMERGENCY COMMUNICATIONS

SEC. 418. The President is authorized during, or in anticipation of, an emergency or major disaster to establish temporary communications systems and to make such communications available to State and local government officials and other persons as he deems appropriate.

[42 U.S.C. 5185]

## EMERGENCY PUBLIC TRANSPORTATION

SEC. 419. The President is authorized to provide temporary public transportation service in an area affected by a major disaster to meet emergency needs and to provide transportation to governmental offices, supply centers, stores, post offices, schools, major employment centers, and such other places as may be necessary in order to enable the community to resume its normal pattern of life as soon as possible.

[42 U.S.C. 5186]

**SEC. 420. FIRE MANAGEMENT ASSISTANCE.**

(a) **IN GENERAL.**—The President is authorized to provide assistance, including grants, equipment, supplies, and personnel, to any State or local government for the mitigation, management, and control of any fire on public or private forest land or grassland that threatens such destruction as would constitute a major disaster.

(b) **COORDINATION WITH STATE AND TRIBAL DEPARTMENTS OF FORESTRY.**—In providing assistance under this section, the President shall coordinate with State and tribal departments of forestry.

(c) **ESSENTIAL ASSISTANCE.**—In providing assistance under this section, the President may use the authority provided under section 403.

(d) **HAZARD MITIGATION ASSISTANCE.**—Whether or not a major disaster is declared, the President may provide hazard mitigation assistance in accordance with section 404 in any area affected by a fire for which assistance was provided under this section.

(e) **RULES AND REGULATIONS.**—The President shall prescribe such rules and regulations as are necessary to carry out this section.

[42 U.S.C. 5187]

## TIMBER SALE CONTRACTS

SEC. 421. (a) Where an existing timber sale contract between the Secretary of Agriculture or the Secretary of the Interior and a timber purchaser does not provide relief from major physical change not due to negligence of the purchaser prior to approval of construction of any section of specified road or of any other specified development facility and, as a result of a major disaster, a major physical change results in additional construction work in connection with such road or facility by such purchaser with an estimated cost, as determined by the appropriate Secretary, (1) of more than \$1,000 for sales under one million board feet, (2) of more than \$1 per thousand board feet for sales of one to three million board feet, or (3) of more than \$3,000 for sales over three million board feet, such increased construction cost shall be borne by the United States.

(b) If the appropriate Secretary determines that damages are so great that restoration, reconstruction, or construction is not practical under the cost-sharing arrangement authorized by subsection (a) of this section, he may allow cancellation of a contract

entered into by his Department notwithstanding contrary provisions therein.

(c) The Secretary of Agriculture is authorized to reduce to seven days the minimum period of advance public notice required by the first section of the Act of June 4, 1897 (16 U.S.C. 476), in connection with the sale of timber from national forests, whenever the Secretary determines that (1) the sale of such timber will assist in the construction of any area of a State damaged by a major disaster, (2) the sale of such timber will assist in sustaining the economy of such area, or (3) the sale of such timber is necessary to salvage the value of timber damaged in such major disaster or to protect undamaged timber.

(d) The President, when he determines it to be in the public interest, is authorized to make grants to any State or local government for the purpose of removing from privately owned lands timber damaged as a result of a major disaster, and such State or local government is authorized upon application, to make payments out of such grants to any person for reimbursement of expenses actually incurred by such person in the removal of damaged timber, not to exceed the amount that such expenses exceed the salvage value of such timber.

[42 U.S.C. 5188]

#### SEC. 422. SIMPLIFIED PROCEDURE.

(a) IN GENERAL.—If the Federal estimate of the cost of—

(1) repairing, restoring, reconstructing, or replacing under section 406 any damaged or destroyed public facility or private nonprofit facility,

(2) emergency assistance under section 403 or 502, or

(3) debris removed under section 407,

is less than \$1,000,000 (or, if the Administrator has established a threshold under subsection (b), the amount established under subsection (b)), the President (on application of the State or local government or the owner or operator of the private nonprofit facility) may make the contribution to such State or local government or owner or operator under section 403, 406, 407, or 502, as the case may be, on the basis of such Federal estimate. Such \$1,000,000 amount or, if applicable, the amount established under subsection (b), shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(b) THRESHOLD.—

(1) REPORT.—Not later than 1 year after the date of enactment of this subsection, the President, acting through the Administrator of the Federal Emergency Management Agency (in this section referred to as the “Administrator”), shall—

(A) complete an analysis to determine whether an increase in the threshold for eligibility under subsection (a) is appropriate, which shall include consideration of cost-effectiveness, speed of recovery, capacity of grantees, past performance, and accountability measures; and

(B) submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Homeland Security and Governmental Af-

fairs of the Senate a report regarding the analysis conducted under subparagraph (A).

(2) AMOUNT.—After the Administrator submits the report required under paragraph (1), the President shall direct the Administrator to—

(A) immediately establish a threshold for eligibility under this section in an appropriate amount, without regard to chapter 5 of title 5, United States Code; and

(B) adjust the threshold annually to reflect changes in the Consumer Price Index for all Urban Consumers published by the Department of Labor.

(3) REVIEW AND REPORT.—Not later than 3 years after the date on which the Administrator establishes a threshold under paragraph (2), and every 3 years thereafter, the President, acting through the Administrator, shall review the threshold for eligibility under this section and submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report regarding such review, including any recommendations developed pursuant to such review.

[42 U.S.C. 5189]

#### SEC. 423. APPEALS OF ASSISTANCE DECISIONS.

(a) RIGHT OF APPEAL.—Any decision regarding eligibility for, from, or amount of assistance under this title may be appealed within 60 days after the date on which the applicant for such assistance is notified of the award or denial of award of such assistance.

(b) PERIOD FOR DECISION.—A decision regarding an appeal under subsection (a) shall be rendered within 90 days after the date on which the Federal official designated to administer such appeals receives notice of such appeal.

(c) RULES.—The President shall issue rules which provide for the fair and impartial consideration of appeals under this section.

(d) RIGHT OF ARBITRATION.—

(1) IN GENERAL.—Notwithstanding this section, an applicant for assistance under this title may request arbitration to dispute the eligibility for assistance or repayment of assistance provided for a dispute of more than \$500,000 for any disaster that occurred after January 1, 2016. Such arbitration shall be conducted by the Civilian Board of Contract Appeals and the decision of such Board shall be binding.

(2) REVIEW.—The Civilian Board of Contract Appeals shall consider from the applicant all original and additional documentation, testimony, or other such evidence supporting the applicant's position at any time during arbitration.

(3) RURAL AREAS.—For an applicant for assistance in a rural area under this title, the assistance amount eligible for arbitration pursuant to this subsection shall be \$100,000.

(4) RURAL AREA DEFINED.—For the purposes of this subsection, the term “rural area” means an area with a population of less than 200,000 outside an urbanized area.

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(5) ELIGIBILITY.—To participate in arbitration under this subsection, an applicant—

(A) shall submit the dispute to the arbitration process established under the authority granted under section 601 of Public Law 111–5; and

(B) may submit a request for arbitration after the completion of the first appeal under subsection (a) at any time before the Administrator of the Federal Emergency Management Agency has issued a final agency determination or 180 days after the Administrator’s receipt of the appeal if the Administrator has not provided the applicant with a final determination on the appeal. The applicant’s request shall contain documentation from the administrative record for the first appeal and may contain additional documentation supporting the applicant’s position.

[42 U.S.C. 5189a]

**SEC. 424. DATE OF ELIGIBILITY; EXPENSES INCURRED BEFORE DATE OF DISASTER.**

Eligibility for Federal assistance under this title shall begin on the date of the occurrence of the event which results in a declaration by the President that a major disaster exists; except that reasonable expenses which are incurred in anticipation of and immediately preceding such event may be eligible for Federal assistance under this Act.

[42 U.S.C. 5189b]

**SEC. 425. TRANSPORTATION ASSISTANCE TO INDIVIDUALS AND HOUSEHOLDS.**

The President may provide transportation assistance to relocate individuals displaced from their predisaster primary residences as a result of an incident declared under this Act or otherwise transported from their predisaster primary residences under section 403(a)(3) or 502, to and from alternative locations for short or long-term accommodation or to return an individual or household to their predisaster primary residence or alternative location, as determined necessary by the President.

[42 U.S.C. 5189c]

**SEC. 426. CASE MANAGEMENT SERVICES.[42 U.S.C. 5189d]**

(a) IN GENERAL.—The President may provide case management services, including financial assistance, to State or local government agencies or qualified private organizations to provide such services, to victims of major disasters to identify and address unmet needs.

(b) TRAINING.—Each State, local government agency, or qualified private organization providing professional counseling services described in subsection (a) shall ensure that any individual providing case management services to victims of a major disaster as authorized under subsection (a), including individuals working for nonprofit partners and recovery organizations, is appropriately trained to address impacts from major disasters in communities, and to individuals, with socio-economically disadvantaged backgrounds.

**SEC. 427. ESSENTIAL SERVICE PROVIDERS.**

(a) **DEFINITION.**—In this section, the term “essential service provider” means an entity that—

- (1)(A) provides—
  - (i) wireline or mobile telephone service, Internet access service, radio or television broadcasting, cable service, or direct broadcast satellite service;
  - (ii) electrical power;
  - (iii) natural gas;
  - (iv) water and sewer services; or
  - (v) any other essential service, as determined by the President; or
- (B)<sup>7</sup> is a tower owner or operator;
- (2) is—
  - (A) a municipal entity;
  - (B) a nonprofit entity; or
  - (C) a private, for profit entity; and
- (3) is contributing to efforts to respond to an emergency or major disaster.

(b) **AUTHORIZATION FOR ACCESSIBILITY.**—Unless exceptional circumstances apply, in an emergency or major disaster, the head of a Federal agency, to the greatest extent practicable, shall not—

- (1) deny or impede access to the disaster site to an essential service provider whose access is necessary to restore and repair an essential service; or
- (2) impede the restoration or repair of the services described in subsection (a)(1).

(c) **IMPLEMENTATION.**—In implementing this section, the head of a Federal agency shall follow all applicable Federal laws, regulations, and policies.

[42 U.S.C. 5189e]

**SEC. 428. PUBLIC ASSISTANCE PROGRAM ALTERNATIVE PROCEDURES.**

(a) **APPROVAL OF PROJECTS.**—The President, acting through the Administrator of the Federal Emergency Management Agency, may approve projects under the alternative procedures adopted under this section for any major disaster or emergency declared on or after the date of enactment of this section<sup>8</sup>. The Administrator may also apply the alternate procedures adopted under this section to a major disaster or emergency declared before enactment of this Act<sup>8</sup> for which construction has not begun as of the date of enactment of this Act<sup>8</sup>.

(b) **ADOPTION.**—The Administrator, in coordination with States, tribal and local governments, and owners or operators of private nonprofit facilities, may adopt alternative procedures to administer assistance provided under sections 403(a)(3)(A), 406, 407, and 502(a)(5).

(c) **GOALS OF PROCEDURES.**—The alternative procedures adopted under subsection (a) shall further the goals of—

- (1) reducing the costs to the Federal Government of providing such assistance;

<sup>7</sup> Margin of subparagraph (B) is so in law.

<sup>8</sup> The date of enactment of P.L. 113–2 is January 29, 2013.

(2) increasing flexibility in the administration of such assistance;

(3) expediting the provision of such assistance to a State, tribal or local government, or owner or operator of a private nonprofit facility; and

(4) providing financial incentives and disincentives for a State, tribal or local government, or owner or operator of a private nonprofit facility for the timely and cost-effective completion of projects with such assistance.

(d) PARTICIPATION.—

(1) IN GENERAL.—Participation in the alternative procedures adopted under this section shall be at the election of a State, tribal or local government, or owner or operator of a private nonprofit facility consistent with procedures determined by the Administrator.

(2) NO CONDITIONS.—The President may not condition the provision of Federal assistance under this Act on the election by a State, local, or Indian tribal government, or owner or operator of a private nonprofit facility to participate in the alternative procedures adopted under this section.

(e) MINIMUM PROCEDURES.—The alternative procedures adopted under this section shall include the following:

(1) For repair, restoration, and replacement of damaged facilities under section 406—

(A) making grants on the basis of fixed estimates, if the State, tribal or local government, or owner or operator of the private nonprofit facility agrees to be responsible for any actual costs that exceed the estimate;

(B) providing an option for a State, tribal or local government, or owner or operator of a private nonprofit facility to elect to receive an in-lieu contribution, without reduction, on the basis of estimates of—

(i) the cost of repair, restoration, reconstruction, or replacement of a public facility owned or controlled by the State, tribal or local government or owner or operator of a private nonprofit facility; and

(ii) management expenses;

(C) consolidating, to the extent determined appropriate by the Administrator, the facilities of a State, tribal or local government, or owner or operator of a private nonprofit facility as a single project based upon the estimates adopted under the procedures;

(D) if the actual costs of a project completed under the procedures are less than the estimated costs thereof, the Administrator may permit a grantee or subgrantee to use all or part of the excess funds for—

(i) cost-effective activities that reduce the risk of future damage, hardship, or suffering from a major disaster; and

(ii) other activities to improve future Public Assistance operations or planning;

(E) in determining eligible costs under section 406, the Administrator shall make available, at an applicant's request and where the Administrator or the certified cost es-



estimate prepared by the applicant's professionally licensed engineers has estimated an eligible Federal share for a project of at least \$5,000,000, an independent expert panel to validate the estimated eligible cost consistent with applicable regulations and policies implementing this section;

(F) in determining eligible costs under section 406, the Administrator shall, at the applicant's request, consider properly conducted and certified cost estimates prepared by professionally licensed engineers (mutually agreed upon by the Administrator and the applicant), to the extent that such estimates comply with applicable regulations, policy, and guidance; and

(G) once certified by a professionally licensed engineer and accepted by the Administrator, the estimates on which grants made pursuant to this section are based shall be presumed to be reasonable and eligible costs, as long as there is no evidence of fraud.

(2) For debris removal under sections 403(a)(3)(A), 407, and 502(a)(5)—

(A) making grants on the basis of fixed estimates to provide financial incentives and disincentives for the timely or cost-effective completion if the State, tribal or local government, or owner or operator of the private nonprofit facility agrees to be responsible to pay for any actual costs that exceed the estimate;

(B) using a sliding scale for determining the Federal share for removal of debris and wreckage based on the time it takes to complete debris and wreckage removal;

(C) allowing use of program income from recycled debris without offset to the grant amount;

(D) reimbursing base and overtime wages for employees and extra hires of a State, tribal or local government, or owner or operator of a private nonprofit facility performing or administering debris and wreckage removal;

(E) providing incentives to a State or tribal or local government to have a debris management plan approved by the Administrator and have pre-qualified 1 or more debris and wreckage removal contractors before the date of declaration of the major disaster; and

(F) if the actual costs of projects under subparagraph (A) are less than the estimated costs of the project, the Administrator may permit a grantee or subgrantee to use all or part of the excess funds for—

(i) debris management planning;

(ii) acquisition of debris management equipment for current or future use; and

(iii) other activities to improve future debris removal operations, as determined by the Administrator.

(f) WAIVER AUTHORITY.—Until such time as the Administrator promulgates regulations to implement this section, the Administrator may—

(1) waive notice and comment rulemaking, if the Administrator determines the waiver is necessary to expeditiously implement this section; and

(2) carry out the alternative procedures under this section as a pilot program.

(g) OVERTIME PAYMENTS.—The guidelines for reimbursement for costs under subsection (e)(2)(D) shall ensure that no State or local government is denied reimbursement for overtime payments that are required pursuant to the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

(h) REPORT.—

(1) IN GENERAL.—Not earlier than 3 years, and not later than 5 years, after the date of enactment of this section, the Inspector General of the Department of Homeland Security shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the alternative procedures for the repair, restoration, and replacement of damaged facilities under section 406 authorized under this section.

(2) CONTENTS.—The report shall contain an assessment of the effectiveness of the alternative procedures, including—

(A) whether the alternative procedures helped to improve the general speed of disaster recovery;

(B) the accuracy of the estimates relied upon;

(C) whether the financial incentives and disincentives were effective;

(D) whether the alternative procedures were cost effective;

(E) whether the independent expert panel described in subsection (e)(1)(E) was effective; and

(F) recommendations for whether the alternative procedures should be continued and any recommendations for changes to the alternative procedures.

[42 U.S.C. 5189f]

#### SEC. 429. UNIFIED FEDERAL REVIEW.

(a) IN GENERAL.—Not later than 18 months after the date of enactment of this section, and in consultation with the Council on Environmental Quality and the Advisory Council on Historic Preservation, the President shall establish an expedited and unified interagency review process to ensure compliance with environmental and historic requirements under Federal law relating to disaster recovery projects, in order to expedite the recovery process, consistent with applicable law.

(b) CONTENTS.—The review process established under this section shall include mechanisms to expeditiously address delays that may occur during the recovery from a major disaster and be updated, as appropriate, consistent with applicable law.

[42 U.S.C. 5189g]

#### SEC. 430. [42 U.S.C. 5189h] AGENCY ACCOUNTABILITY.

(a) PUBLIC ASSISTANCE.—Not later than 5 days after an award of a public assistance grant is made under section 406 that is in excess of \$1,000,000, the Administrator of the Federal Emergency Management Agency shall publish on the website of the Federal

Emergency Management Agency the specifics of each such grant award, including—

- (1) identifying the Federal Emergency Management Agency Region;
- (2) the disaster or emergency declaration number;
- (3) the State, county, and applicant name;
- (4) if the applicant is a private nonprofit organization;
- (5) the damage category code;
- (6) the amount of the Federal share obligated; and
- (7) the date of the award.

(b) MISSION ASSIGNMENTS.—

(1) IN GENERAL.—Not later than 5 days after the issuance of a mission assignment or mission assignment task order, the Administrator of the Federal Emergency Management Agency shall publish on the website of the Federal Emergency Management Agency any mission assignment or mission assignment task order to another Federal department or agency regarding a major disaster in excess of \$1,000,000, including—

- (A) the name of the impacted State or Indian Tribe;
- (B) the disaster declaration for such State or Indian Tribe;
- (C) the assigned agency;
- (D) the assistance requested;
- (E) a description of the disaster;
- (F) the total cost estimate;
- (G) the amount obligated;
- (H) the State or Indian tribal government cost share, if applicable;
- (I) the authority under which the mission assignment or mission assignment task order was directed; and
- (J) if applicable, the date a State or Indian Tribe requested the mission assignment.

(2) RECORDING CHANGES.—Not later than 10 days after the last day of each month until a mission assignment or mission assignment task order described in paragraph (1) is completed and closed out, the Administrator of the Federal Emergency Management Agency shall update any changes to the total cost estimate and the amount obligated.

(c) DISASTER RELIEF MONTHLY REPORT.—Not later than 10 days after the first day of each month, the Administrator of the Federal Emergency Management Agency shall publish on the website of the Federal Emergency Management Agency reports, including a specific description of the methodology and the source data used in developing such reports, including—

- (1) an estimate of the amounts for the fiscal year covered by the President's most recent budget pursuant to section 1105(a) of title 31, United States Code, including—
  - (A) the unobligated balance of funds to be carried over from the prior fiscal year to the budget year;
  - (B) the unobligated balance of funds to be carried over from the budget year to the budget year plus 1;
  - (C) the amount of obligations for noncatastrophic events for the budget year;

(D) the amount of obligations for the budget year for catastrophic events delineated by event and by State;

(E) the total amount that has been previously obligated or will be required for catastrophic events delineated by event and by State for all prior years, the current fiscal year, the budget year, and each fiscal year thereafter;

(F) the amount of previously obligated funds that will be recovered for the budget year;

(G) the amount that will be required for obligations for emergencies, as described in section 102(1), major disasters, as described in section 102(2), fire management assistance grants, as described in section 420, surge activities, and disaster readiness and support activities; and

(H) the amount required for activities not covered under section 251(b)(2)(D)(iii) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(D)(iii)); and

(2) an estimate or actual amounts, if available, of the following for the current fiscal year, which shall be submitted not later than the fifth day of each month, published by the Administrator of the Federal Emergency Management Agency on the website of the Federal Emergency Management Agency not later than the fifth day of each month:

(A) A summary of the amount of appropriations made available by source, the transfers executed, the previously allocated funds recovered, and the commitments, allocations, and obligations made.

(B) A table of disaster relief activity delineated by month, including—

(i) the beginning and ending balances;

(ii) the total obligations to include amounts obligated for fire assistance, emergencies, surge, and disaster support activities;

(iii) the obligations for catastrophic events delineated by event and by State; and

(iv) the amount of previously obligated funds that are recovered.

(C) A summary of allocations, obligations, and expenditures for catastrophic events delineated by event.

(D) The cost of the following categories of spending:

(i) Public assistance.

(ii) Individual assistance.

(iii) Mitigation.

(iv) Administrative.

(v) Operations.

(vi) Any other relevant category (including emergency measures and disaster resources) delineated by disaster.

(E) The date on which funds appropriated will be exhausted.

(d) CONTRACTS.—

(1) INFORMATION.—Not later than 10 days after the first day of each month, the Administrator of the Federal Emergency Management Agency shall publish on the website of the

Federal Emergency Management Agency the specifics of each contract in excess of \$1,000,000 that the Federal Emergency Management Agency enters into, including—

- (A) the name of the party;
- (B) the date the contract was awarded;
- (C) the amount and scope of the contract;
- (D) if the contract was awarded through a competitive bidding process;
- (E) if no competitive bidding process was used, the reason why competitive bidding was not used; and
- (F) the authority used to bypass the competitive bidding process.

The information shall be delineated by disaster, if applicable, and specify the damage category code, if applicable.

(2) REPORT.—Not later than 10 days after the last day of the fiscal year, the Administrator of the Federal Emergency Management Agency shall provide a report to the appropriate committees of Congress summarizing the following information for the preceding fiscal year:

- (A) The number of contracts awarded without competitive bidding.
- (B) The reasons why a competitive bidding process was not used.
- (C) The total amount of contracts awarded with no competitive bidding.
- (D) The damage category codes, if applicable, for contracts awarded without competitive bidding.

(e) COLLECTION OF PUBLIC ASSISTANCE RECIPIENT AND SUB-RECIPIENT CONTRACTS.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Administrator of the Federal Emergency Management Agency shall initiate and maintain an effort to collect and store information, prior to the project close-out phase on any contract entered into by a public assistance recipient or subrecipient that through the base award, available options, or any subsequent modifications has an estimated value of more than \$1,000,000 and is funded through section 324, 403, 404, 406, 407, 428, or 502, including—

- (A) the disaster number, project worksheet number, and the category of work associated with each contract;
- (B) the name of each party;
- (C) the date the contract was awarded;
- (D) the amount of the contract;
- (E) the scope of the contract;
- (F) the period of performance for the contract; and
- (G) whether the contract was awarded through a competitive bidding process.

(2) AVAILABILITY OF INFORMATION COLLECTED.—The Administrator of the Federal Emergency Management Agency shall make the information collected and stored under paragraph (1) available to the Inspector General of the Department of Homeland Security, the Government Accountability Office, and appropriate committees of Congress, upon request.

(3) REPORT.—Not later than 365 days after the date of enactment of this subsection, the Administrator of the Federal Emergency Management Agency shall submit a report to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on the efforts of the Federal Emergency Management Agency to collect the information described in paragraph (1).

## TITLE V—EMERGENCY ASSISTANCE PROGRAMS

### SEC. 501. PROCEDURE FOR DECLARATION.

(a) REQUEST AND DECLARATION.—All requests for a declaration by the President that an emergency exists shall be made by the Governor of the affected State. Such a request shall be based on a finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As a part of such request, and as a prerequisite to emergency assistance under this Act, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. The Governor shall furnish information describing the State and local efforts and resources which have been or will be used to alleviate the emergency, and will define the type and extent of Federal aid required. Based upon such Governor's request, the President may declare that an emergency exists.

(b) CERTAIN EMERGENCIES INVOLVING FEDERAL PRIMARY RESPONSIBILITY.—The President may exercise any authority vested in him by section 502 or section 503 with respect to an emergency when he determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority. In determining whether or not such an emergency exists, the President shall consult the Governor of any affected State, if practicable. The President's determination may be made without regard to subsection (a).

(c) INDIAN TRIBAL GOVERNMENT REQUESTS.—

(1) IN GENERAL.—The Chief Executive of an affected Indian tribal government may submit a request for a declaration by the President that an emergency exists consistent with the requirements of subsection (a).

(2) REFERENCES.—In implementing assistance authorized by the President under this title in response to a request of the Chief Executive of an affected Indian tribal government for an emergency declaration, any reference in this title or title III (except sections 310 and 326) to a State or the Governor of a State is deemed to refer to an affected Indian tribal government or the Chief Executive of an affected Indian tribal government, as appropriate.

(3) SAVINGS PROVISION.—Nothing in this subsection shall prohibit an Indian tribal government from receiving assistance under this title through a declaration made by the President at the request of a State under subsection (a) if the President does not make a declaration under this subsection for the same incident.

【42 U.S.C. 5191】

**SEC. 502. FEDERAL EMERGENCY ASSISTANCE.**

(a) SPECIFIED.—In any emergency, the President may—

(1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical and advisory services) in support of State and local emergency assistance efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe, including precautionary evacuations;

(2) coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments;

(3) provide technical and advisory assistance to affected State and local governments for—

(A) the performance of essential community services;

(B) issuance of warnings of risks or hazards;

(C) public health and safety information, including dissemination of such information;

(D) provision of health and safety measures; and

(E) management, control, and reduction of immediate threats to public health and safety;

(4) provide emergency assistance through Federal agencies;

(5) remove debris in accordance with the terms and conditions of section 407;

(6) provide assistance in accordance with section 408 and section 416;

(7) assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance; and

(8) provide accelerated Federal assistance and Federal support where necessary to save lives, prevent human suffering, or mitigate severe damage, which may be provided in the absence of a specific request and in which case the President—

(A) shall, to the fullest extent practicable, promptly notify and coordinate with a State in which such assistance or support is provided; and

(B) shall not, in notifying and coordinating with a State under subparagraph (A), delay or impede the rapid deployment, use, and distribution of critical resources to victims of an emergency.

(b) GENERAL.—Whenever the Federal assistance provided under subsection (a) with respect to an emergency is inadequate, the President may also provide assistance with respect to efforts to save lives, protect property and public health and safety, and less-

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en or avert the threat of a catastrophe, including precautionary evacuations.

(c) **GUIDELINES.**—The President shall promulgate and maintain guidelines to assist Governors in requesting the declaration of an emergency in advance of a natural or man-made disaster (including for the purpose of seeking assistance with special needs and other evacuation efforts) under this section by defining the types of assistance available to affected States and the circumstances under which such requests are likely to be approved.

[42 U.S.C. 5192]

**SEC. 503. AMOUNT OF ASSISTANCE.**

(a) **FEDERAL SHARE.**—The Federal share for assistance provided under this title shall be equal to not less than 75 percent of the eligible costs.

(b) **LIMIT ON AMOUNT OF ASSISTANCE.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), total assistance provided under this title for a single emergency shall not exceed \$5,000,000.

(2) **ADDITIONAL ASSISTANCE.**—The limitation described in paragraph (1) may be exceeded when the President determines that—

(A) continued emergency assistance is immediately required;

(B) there is a continuing and immediate risk to lives, property, public health or safety; and

(C) necessary assistance will not otherwise be provided on a timely basis.

(3) **REPORT.**—Whenever the limitation described in paragraph (1) is exceeded, the President shall report to the Congress on the nature and extent of emergency assistance requirements and shall propose additional legislation if necessary.

[42 U.S.C. 5193]

**TITLE VI—EMERGENCY PREPAREDNESS****SEC. 601. DECLARATION OF POLICY.**

The purpose of this title is to provide a system of emergency preparedness for the protection of life and property in the United States from hazards and to vest responsibility for emergency preparedness jointly in the Federal Government and the States and their political subdivisions. The Congress recognizes that the organizational structure established jointly by the Federal Government and the States and their political subdivisions for emergency preparedness purposes can be effectively utilized to provide relief and assistance to people in areas of the United States struck by a hazard. The Federal Government shall provide necessary direction, coordination, and guidance, and shall provide necessary assistance, as authorized in this title so that a comprehensive emergency preparedness system exists for all hazards.

[42 U.S.C. 5195]



**SEC. 602. DEFINITIONS.**

(a) **DEFINITIONS.**—For purposes of this title only:

(1) **HAZARD.**—The term “hazard” means an emergency or disaster resulting from—

(A) a natural disaster; or

(B) an accidental or man-caused event.

(2) **NATURAL DISASTER.**—The term “natural disaster” means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, or other catastrophe in any part of the United States which causes, or which may cause, substantial damage or injury to civilian property or persons.

(3) **EMERGENCY PREPAREDNESS.**—The term “emergency preparedness” means all those activities and measures designed or undertaken to prepare for or minimize the effects of a hazard upon the civilian population, to deal with the immediate emergency conditions which would be created by the hazard, and to effectuate emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by the hazard. Such term includes the following:

(A) Measures to be undertaken in preparation for anticipated hazards (including the establishment of appropriate organizations, operational plans, and supporting agreements, the recruitment and training of personnel, the conduct of research, the procurement and stockpiling of necessary materials and supplies, the provision of suitable warning systems, the construction or preparation of shelters, shelter areas, and control centers, and, when appropriate, the non-military evacuation of the civilian population).

(B) Measures to be undertaken during a hazard (including the enforcement of passive defense regulations prescribed by duly established military or civil authorities, the evacuation of personnel to shelter areas, the control of traffic and panic, and the control and use of lighting and civil communications).

(C) Measures to be undertaken following a hazard (including activities for fire fighting, rescue, emergency medical, health and sanitation services, monitoring for specific dangers of special weapons, unexploded bomb reconnaissance, essential debris clearance, emergency welfare measures, and immediately essential emergency repair or restoration of damaged vital facilities).

(4) **ORGANIZATIONAL EQUIPMENT.**—The term “organizational equipment” means equipment determined by the Administrator to be necessary to an emergency preparedness organization, as distinguished from personal equipment, and of such a type or nature as to require it to be financed in whole or in part by the Federal Government. Such term does not include those items which the local community normally uses in combating local disasters, except when required in unusual quantities dictated by the requirements of the emergency preparedness plans.

(5) MATERIALS.—The term “materials” includes raw materials, supplies, medicines, equipment, component parts and technical information and processes necessary for emergency preparedness.

(6) FACILITIES.—The term “facilities”, except as otherwise provided in this title, includes buildings, shelters, utilities, and land.

(7) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Federal Emergency Management Agency.

(8) NEIGHBORING COUNTRIES.—The term “neighboring countries” includes Canada and Mexico.

(9) UNITED STATES AND STATES.—The terms “United States” and “States” includes<sup>9</sup> the several States, the District of Columbia, and territories and possessions of the United States.

(10) STATE.—The term “State” includes interstate emergency preparedness authorities established under section 611(h).

(b) CROSS REFERENCE.—The terms “national defense” and “defense,” as used in the Defense Production Act of 1950 (50 U.S.C. App. 2061 et seq.), includes<sup>9</sup> emergency preparedness activities conducted pursuant to this title.

【42 U.S.C. 5195a】

#### SEC. 603. ADMINISTRATION OF TITLE.

This title shall be carried out by the Administrator of the Federal Emergency Management Agency.

【42 U.S.C. 5195b】

## Subtitle A—Powers and Duties

#### SEC. 611. DETAILED FUNCTIONS OF ADMINISTRATION.

(a) IN GENERAL.—In order to carry out the policy described in section 601, the Administrator shall have the authorities provided in this section.

(b) FEDERAL EMERGENCY RESPONSE PLANS AND PROGRAMS.—The Administrator may prepare Federal response plans and programs for the emergency preparedness of the United States and sponsor and direct such plans and programs. To prepare such plans and programs and coordinate such plans and programs with State efforts, the Administrator may request such reports on State plans and operations for emergency preparedness as may be necessary to keep the President, Congress, and the States advised of the status of emergency preparedness in the United States.

(c) DELEGATION OF EMERGENCY PREPAREDNESS RESPONSIBILITIES.—With the approval of the President, the Administrator may delegate to other departments and agencies of the Federal Government appropriate emergency preparedness responsibilities and review and coordinate the emergency preparedness activities of the departments and agencies with each other and with the activities of the States and neighboring countries.

<sup>9</sup>The word “includes” in subsections (a)(9) and (b) probably should read “include”.

(d) **COMMUNICATIONS AND WARNINGS.**—The Administrator may make appropriate provision for necessary emergency preparedness communications and for dissemination of warnings to the civilian population of a hazard.

(e) **EMERGENCY PREPAREDNESS MEASURES.**—The Administrator may study and develop emergency preparedness measures designed to afford adequate protection of life and property, including—

(1) research and studies as to the best methods of treating the effects of hazards;

(2) developing shelter designs and materials for protective covering or construction;

(3) developing equipment or facilities and effecting the standardization thereof to meet emergency preparedness requirements; and

(4) plans that take into account the needs of individuals with pets and service animals prior to, during, and following a major disaster or emergency.

(f) **TRAINING PROGRAMS.**—(1) The Administrator may—

(A) conduct or arrange, by contract or otherwise, for training programs for the instruction of emergency preparedness officials and other persons in the organization, operation, and techniques of emergency preparedness;

(B) conduct or operate schools or including the payment of travel expenses, in accordance with subchapter I of chapter 57 of title 5, United States Code, and the Standardized Government Travel Regulations, and per diem allowances, in lieu of subsistence for trainees in attendance or the furnishing of subsistence and quarters for trainees and instructors on terms prescribed by the Administrator; and

(C) provide instructors and training aids as necessary.

(2) The terms prescribed by the Administrator for the payment of travel expenses and per diem allowances authorized by this subsection shall include a provision that such payment shall not exceed one-half of the total cost of such expenses.

(3) The Administrator may lease real property required for the purpose of carrying out this subsection, but may not acquire fee title to property unless specifically authorized by law.

(g) **PUBLIC DISSEMINATION OF EMERGENCY PREPAREDNESS INFORMATION.**—The Administrator may publicly disseminate appropriate emergency preparedness information by all appropriate means.

(h) **EMERGENCY PREPAREDNESS COMPACTS.**—(1) The Administrator shall establish a program supporting the development of emergency preparedness compacts for acts of terrorism, disasters, and emergencies throughout the Nation, by—

(A) identifying and cataloging existing emergency preparedness compacts for acts of terrorism, disasters, and emergencies at the State and local levels of government;

(B) disseminating to State and local governments examples of best practices in the development of emergency preparedness compacts and models of existing emergency preparedness compacts, including agreements involving interstate jurisdictions; and

(C) completing an inventory of Federal response capabilities for acts of terrorism, disasters, and emergencies, making such inventory available to appropriate Federal, State, and local government officials, and ensuring that such inventory is as current and accurate as practicable.

(2) The Administrator may—

(A) assist and encourage the States to negotiate and enter into interstate emergency preparedness compacts;

(B) review the terms and conditions of such proposed compacts in order to assist, to the extent feasible, in obtaining uniformity between such compacts and consistency with Federal emergency response plans and programs;

(C) assist and coordinate the activities under such compacts; and

(D) aid and assist in encouraging reciprocal emergency preparedness legislation by the States which will permit the furnishing of mutual aid for emergency preparedness purposes in the event of a hazard which cannot be adequately met or controlled by a State or political subdivision thereof threatened with or experiencing a hazard.

(3) A copy of each interstate emergency preparedness compact shall be transmitted promptly to the Senate and the House of Representatives. The consent of Congress is deemed to be granted to each such compact upon the expiration of the 60-day period beginning on the date on which the compact is transmitted to Congress.

(4) Nothing in this subsection shall be construed as preventing Congress from disapproving, or withdrawing at any time its consent to, any interstate emergency preparedness compact.

(i) MATERIALS AND FACILITIES.—(1) The Administrator may procure by condemnation or otherwise, construct, lease, transport, store, maintain, renovate or distribute materials and facilities for emergency preparedness, with the right to take immediate possession thereof.

(2) Facilities acquired by purchase, donation, or other means of transfer may be occupied, used, and improved for the purposes of this title before the approval of title by the Attorney General as required by section 355 of the Revised Statutes (40 U.S.C. 255).

(3) The Administrator may lease real property required for the purpose of carrying out the provisions of this subsection, but shall not acquire fee title to property unless specifically authorized by law.

(4) The Administrator may procure and maintain under this subsection radiological, chemical, bacteriological, and biological agent monitoring and decontamination devices and distribute such devices by loan or grant to the States for emergency preparedness purposes, under such terms and conditions as the Administrator shall prescribe.

(j) FINANCIAL CONTRIBUTIONS.—(1) The Administrator may make financial contributions, on the basis of programs or projects approved by the Administrator, to the States for emergency preparedness purposes, including the procurement, construction, leasing, or renovating of materials and facilities. Such contributions shall be made on such terms or conditions as the Administrator shall prescribe, including the method of purchase, the quantity,

quality, or specifications of the materials or facilities, and such other factors or care or treatment to assure the uniformity, availability, and good condition of such materials or facilities.

(2) The Administrator may make financial contributions, on the basis of programs or projects approved by the Administrator, to the States and local authorities for animal emergency preparedness purposes, including the procurement, construction, leasing, or renovating of emergency shelter facilities and materials that will accommodate people with pets and service animals.

(3) No contribution may be made under this subsection for the procurement of land or for the purchase of personal equipment for State or local emergency preparedness workers.

(4) The amounts authorized to be contributed by the Administrator to each State for organizational equipment shall be equally matched by such State from any source it determines is consistent with its laws.

(5) Financial contributions to the States for shelters and other protective facilities shall be determined by taking the amount of funds appropriated or available to the Administrator for such facilities in each fiscal year and apportioning such funds among the States in the ratio which the urban population of the critical target areas (as determined by the Administrator) in each State, at the time of the determination, bears to the total urban population of the critical target areas of all of the States.

(6) The amounts authorized to be contributed by the Administrator to each State for such shelters and protective facilities shall be equally matched by such State from any source it determines is consistent with its laws and, if not matched within a reasonable time, the Administrator may reallocate such amounts to other States under the formula described in paragraph (4). The value of any land contributed by any State or political subdivision thereof shall be excluded from the computation of the State share under this subsection.

(7) The amounts paid to any State under this subsection shall be expended solely in carrying out the purposes set forth herein and in accordance with State emergency preparedness programs or projects approved by the Administrator. The Administrator shall make no contribution toward the cost of any program or project for the procurement, construction, or leasing of any facility which (A) is intended for use, in whole or in part, for any purpose other than emergency preparedness, and (B) is of such kind that upon completion it will, in the judgment of the Administrator, be capable of producing sufficient revenue to provide reasonable assurance of the retirement or repayment of such cost; except that (subject to the preceding provisions of this subsection) the Administrator may make a contribution to any State toward that portion of the cost of the construction, reconstruction, or enlargement of any facility which the Administrator determines to be directly attributable to the incorporation in such facility of any feature of construction or design not necessary for the principal intended purpose thereof but which is, in the judgment of the Administrator necessary for the use of such facility for emergency preparedness purposes.

(8) The Administrator shall submit to Congress a report, at least annually, regarding all contributions made pursuant to this subsection.

(9) All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of any contribution of Federal funds made by the Administrator under this subsection shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (commonly known as the Davis-Bacon Act (40 U.S.C. 276a–276a–5)), and every such employee shall receive compensation at a rate not less than one and ½ times the basic rate of pay of the employee for all hours worked in any workweek in excess of eight hours in any workday or 40 hours in the workweek, as the case may be. The Administrator shall make no contribution of Federal funds without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App.) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276(c)).

(k) **SALE OR DISPOSAL OF CERTAIN MATERIALS AND FACILITIES.**—The Administrator may arrange for the sale or disposal of materials and facilities found by the Administrator to be unnecessary or unsuitable for emergency preparedness purposes in the same manner as provided for excess property under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.). Any funds received as proceeds from the sale or other disposition of such materials and facilities shall be deposited into the Treasury as miscellaneous receipts.

[42 U.S.C. 5196]

**SEC. 612. MUTUAL AID PACTS BETWEEN STATES AND NEIGHBORING COUNTRIES.**

The Administrator shall give all practicable assistance to States in arranging, through the Department of State, mutual emergency preparedness aid between the States and neighboring countries.

[42 U.S.C. 5196a]

**SEC. 613. CONTRIBUTIONS FOR PERSONNEL AND ADMINISTRATIVE EXPENSES.**

(a) **GENERAL AUTHORITY.**—To further assist in carrying out the purposes of this title, the Administrator may make financial contributions to the States (including interstate emergency preparedness authorities established pursuant to section 611(h)) for necessary and essential State and local emergency preparedness personnel and administrative expenses, on the basis of approved plans (which shall be consistent with the Federal emergency response plans for emergency preparedness) for the emergency preparedness of the States. The financial contributions to the States under this section may not exceed one-half of the total cost of such necessary and essential State and local emergency preparedness personnel and administrative expenses.

(b) **PLAN REQUIREMENTS.**—A plan submitted under this section shall—

(1) provide, pursuant to State law, that the plan shall be in effect in all political subdivisions of the State and be mandatory on them and be administered or supervised by a single State agency;

(2) provide that the State shall share the financial assistance with that provided by the Federal Government under this section from any source determined by it to be consistent with State law;

(3) provide for the development of State and local emergency preparedness operational plans, including a catastrophic incident annex, pursuant to standards approved by the Administrator;

(4) provide for the employment of a full-time emergency preparedness director, or deputy director, by the State;

(5) provide that the State shall make such reports in such form and content as the Administrator may require;

(6) make available to duly authorized representatives of the Administrator and the Comptroller General, books, records, and papers necessary to conduct audits for the purposes of this section; and

(7) include a plan for providing information to the public in a coordinated manner.

(c) **CATASTROPHIC INCIDENT ANNEX.**—

(1) **CONSISTENCY.**—A catastrophic incident annex submitted under subsection (b)(3) shall be—

(A) modeled after the catastrophic incident annex of the National Response Plan; and

(B) consistent with the national preparedness goal established under section 643 of the Post-Katrina Emergency Management Reform Act of 2006, the National Incident Management System, the National Response Plan, and other related plans and strategies.

(2) **CONSULTATION.**—In developing a catastrophic incident annex submitted under subsection (b)(3), a State shall consult with and seek appropriate comments from local governments, emergency response providers, locally governed multijurisdictional councils of government, and regional planning commissions.

(d) **TERMS AND CONDITIONS.**—The Administrator shall establish such other terms and conditions as the Administrator considers necessary and proper to carry out this section.

(e) **APPLICATION OF OTHER PROVISIONS.**—In carrying out this section, the provisions of section<sup>10</sup> 611(h) and 621(h) shall apply.

(f) **ALLOCATION OF FUNDS.**—For each fiscal year concerned, the Administrator shall allocate to each State, in accordance with regulations and the total sum appropriated under this title, amounts to be made available to the States for the purposes of this section. Regulations governing allocations to the States under this subsection shall give due regard to (1) the criticality of the areas which may be affected by hazards with respect to the development of the

<sup>10</sup>So in law. The word “section” in subsection (e) probably should read “sections”.

total emergency preparedness readiness of the United States, (2) the relative state of development of emergency preparedness readiness of the State, (3) population, and (4) such other factors as the Administrator shall prescribe. The Administrator may reallocate the excess of any allocation not used by a State in a plan submitted under this section. Amounts paid to any State or political subdivision under this section shall be expended solely for the purposes set forth in this section.

(g) **STANDARDS FOR STATE AND LOCAL EMERGENCY PREPAREDNESS OPERATIONAL PLANS.**—In approving standards for State and local emergency preparedness operational plans pursuant to subsection (b)(3), the Administrator shall ensure that such plans take into account the needs of individuals with household pets and service animals prior to, during, and following a major disaster or emergency.

(h) **SUBMISSION OF PLAN.**—If a State fails to submit a plan for approval as required by this section within 60 days after the Administrator notifies the States of the allocations under this section, the Administrator may reallocate such funds, or portions thereof, among the other States in such amounts as, in the judgment of the Administrator, will best assure the adequate development of the emergency preparedness capability of the United States.

(h)<sup>11</sup> **ANNUAL REPORTS.**—The Administrator shall report annually to the Congress all contributions made pursuant to this section.

[42 U.S.C. 5196b]

#### **SEC. 614. GRANTS FOR CONSTRUCTION OF EMERGENCY OPERATIONS CENTERS.**

(a) **GRANTS.**—The Administrator of the Federal Emergency Management Agency may make grants to States and Indian tribal governments under this title for equipping, upgrading, and constructing State, local, and Tribal emergency operations centers.

(b) **FEDERAL SHARE.**—Notwithstanding any other provision of this title, the Federal share of the cost of an activity carried out using amounts from grants made under this section shall not exceed 75 percent.

[42 U.S.C. 5196c]

#### **SEC. 615. USE OF FUNDS TO PREPARE FOR AND RESPOND TO HAZARDS.**

Funds made available to the States under this title may be used by the States for the purposes of preparing for hazards and providing emergency assistance in response to hazards. Regulations prescribed to carry out this section shall authorize the use of emergency preparedness personnel, materials, and facilities supported in whole or in part through contributions under this title for emergency preparedness activities and measures related to hazards.

[42 U.S.C. 5196d]

<sup>11</sup>So in law. Two subsections (h) have been enacted.



**SEC. 616. DISASTER RELATED INFORMATION SERVICES.**

(a) **IN GENERAL.**—Consistent with section 308(a), the Administrator of<sup>12</sup> Federal Emergency Management Agency shall—

(1) identify, in coordination with State and local governments, population groups with limited English proficiency and take into account such groups in planning for an emergency or major disaster;

(2) ensure that information made available to individuals affected by a major disaster or emergency is made available in formats that can be understood by—

(A) population groups identified under paragraph (1);

and

(B) individuals with disabilities or other special needs;

and

(3) develop and maintain an informational clearinghouse of model language assistance programs and best practices for State and local governments in providing services related to a major disaster or emergency.

(b) **GROUP SIZE.**—For purposes of subsection (a), the Administrator of Federal Emergency Management Agency shall define the size of a population group.

[42 U.S.C. 5196f]

## Subtitle B—General Provisions

**SEC. 621. ADMINISTRATIVE AUTHORITY.**

(a) **IN GENERAL.**—For the purpose of carrying out the powers and duties assigned to the Administrator under this title, the Administrator may exercise the administrative authorities provided under this section.

(b) **ADVISORY PERSONNEL.**—(1) The Administrator may employ not more than 100 part-time or temporary advisory personnel (including not to exceed 25 subjects of the United Kingdom or citizens of Canada) as the Administrator considers to be necessary in carrying out the provisions of this title.

(2) Persons holding other offices or positions under the United States for which they receive compensation, while serving as advisory personnel, shall receive no additional compensation for such service. Other part-time or temporary advisory personnel so employed may serve without compensation or may receive compensation at a rate not to exceed \$180 for each day of service, plus authorized subsistence and travel, as determined by the Administrator.

(c) **SERVICES OF OTHER AGENCY PERSONNEL AND VOLUNTEERS.**—The Administrator may—

(1) use the services of Federal agencies and, with the consent of any State or local government, accept and use the services of State and local agencies;

(2) establish and use such regional and other offices as may be necessary; and

<sup>12</sup>So in law. Probably should read “of the Federal”.

(3) use such voluntary and uncompensated services by individuals or organizations as may from time to time be needed.

(d) GIFTS.—Notwithstanding any other provision of law, the Administrator may accept gifts of supplies, equipment, and facilities and may use or distribute such gifts for emergency preparedness purposes in accordance with the provisions of this title.

(e) REIMBURSEMENT.—The Administrator may reimburse any Federal agency for any of its expenditures or for compensation of its personnel and use or consumption of its materials and facilities under this title to the extent funds are available.

(f) PRINTING.—The Administrator may purchase such printing, binding, and blank-book work from public, commercial, or private printing establishments or binderies as the Administrator considers necessary upon orders placed by the Public Printer or upon waivers issued in accordance with section 504 of title 44, United States Code.

(g) RULES AND REGULATIONS.—The Administrator may prescribe such rules and regulations as may be necessary and proper to carry out any of the provisions of this title and perform any of the powers and duties provided by this title. The Administrator may perform any of the powers and duties provided by this title through or with the aid of such officials of the Federal Emergency Management Agency as the Administrator may designate.

(h) FAILURE TO EXPEND CONTRIBUTIONS CORRECTLY.—(1) When, after reasonable notice and opportunity for hearing to the State or other person involved, the Administrator finds that there is a failure to expend funds in accordance with the regulations, terms, and conditions established under this title for approved emergency preparedness plans, programs, or projects, the Administrator may notify such State or person that further payments will not be made to the State or person from appropriations under this title (or from funds otherwise available for the purposes of this title for any approved plan, program, or project with respect to which there is such failure to comply) until the Administrator is satisfied that there will no longer be any such failure.

(2) Until so satisfied, the Administrator shall either withhold the payment of any financial contribution to such State or person or limit payments to those programs or projects with respect to which there is substantial compliance with the regulations, terms, and conditions governing plans, programs, or projects hereunder.

(3) As used in this subsection, the term “person” means the political subdivision of any State or combination or group thereof or any person, corporation, association, or other entity of any nature whatsoever, including instrumentalities of States and political subdivisions.

【42 U.S.C. 5197】

#### SEC. 622. SECURITY REGULATIONS.

(a) ESTABLISHMENT.—The Administrator shall establish such security requirements and safeguards, including restrictions with respect to access to information and property as the Administrator considers necessary.

(b) LIMITATIONS ON EMPLOYEE ACCESS TO INFORMATION.—No employee of the Federal Emergency Management Agency shall be

permitted to have access to information or property with respect to which access restrictions have been established under this section, until it shall have been determined that no information is contained in the files of the Federal Bureau of Investigation or any other investigative agency of the Government indicating that such employee is of questionable loyalty or reliability for security purposes, or if any such information is so disclosed, until the Federal Bureau of Investigation shall have conducted a full field investigation concerning such person and a report thereon shall have been evaluated in writing by the Administrator.

(c) NATIONAL SECURITY POSITIONS.—No employee of the Federal Emergency Management Agency shall occupy any position determined by the Administrator to be of critical importance from the standpoint of national security until a full field investigation concerning such employee shall have been conducted by the Director of the Office of Personnel Management and a report thereon shall have been evaluated in writing by the Administrator of the Federal Emergency Management Agency. In the event such full field investigation by the Director of the Office of Personnel Management develops any data reflecting that such applicant for a position of critical importance is of questionable loyalty or reliability for security purposes, or if the Administrator of the Federal Emergency Management Agency for any other reason considers it to be advisable, such investigation shall be discontinued and a report thereon shall be referred to the Administrator of the Federal Emergency Management Agency for evaluation in writing. Thereafter, the Administrator of the Federal Emergency Management Agency may refer the matter to the Federal Bureau of Investigation for the conduct of a full field investigation by such Bureau. The result of such latter investigation by such Bureau shall be furnished to the Administrator of the Federal Emergency Management Agency for action.

(d) EMPLOYEE OATHS.—Each Federal employee of the Federal Emergency Management Agency acting under the authority of this title, except the subjects of the United Kingdom and citizens of Canada specified in section 621(b), shall execute the loyalty oath or appointment affidavits prescribed by the Director of the Office of Personnel Management. Each person other than a Federal employee who is appointed to serve in a State or local organization for emergency preparedness shall before entering upon duties, take an oath in writing before a person authorized to administer oaths, which oath shall be substantially as follows:

“I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

“And I do further swear (or affirm) that I do not advocate, nor am I a member or an affiliate of any organization, group, or combination of persons that advocates the overthrow of the Government of the United States by force or violence; and that during such time as I am a member of \_\_\_\_\_ (name of emergency preparedness organization), I will not advocate nor

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become a member or an affiliate of any organization, group, or combination of persons that advocates the overthrow of the Government of the United States by force or violence.”

“After appointment and qualification for office, the director of emergency preparedness of any State, and any subordinate emergency preparedness officer within such State designated by the director in writing, shall be qualified to administer any such oath within such State under such regulations as the director shall prescribe. Any person who shall be found guilty of having falsely taken such oath shall be punished as provided in section 1621 of title 18, United States Code.”

[42 U.S.C. 5197a]

**SEC. 623. USE OF EXISTING FACILITIES.**

In performing duties under this title, the Administrator—

(1) shall cooperate with the various departments and agencies of the Federal Government;

(2) shall use, to the maximum extent, the existing facilities and resources of the Federal Government and, with their consent, the facilities and resources of the States and political subdivisions thereof, and of other organizations and agencies; and

(3) shall refrain from engaging in any form of activity which would duplicate or parallel activity of any other Federal department or agency unless the Administrator, with the written approval of the President, shall determine that such duplication is necessary to accomplish the purposes of this title.

[42 U.S.C. 5197b]

**SEC. 624. ANNUAL REPORT TO CONGRESS.**

The Administrator shall annually submit a written report to the President and Congress covering expenditures, contributions, work, and accomplishments of the Federal Emergency Management Agency pursuant to this title, accompanied by such recommendations as the Administrator considers appropriate.

[42 U.S.C. 5197c]

**SEC. 625. APPLICABILITY OF TITLE.**

The provisions of this title shall be applicable to the United States, its States, Territories and possessions, and the District of Columbia, and their political subdivisions.

[42 U.S.C. 5197d]

**SEC. 626. AUTHORIZATION OF APPROPRIATIONS AND TRANSFERS OF FUNDS.**

(a) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

(b) **TRANSFER AUTHORITY.**—Funds made available for the purposes of this title may be allocated or transferred for any of the purposes of this title, with the approval of the Director of the Office of Management and Budget, to any agency or government corporation designated to assist in carrying out this title. Each such allocation or transfer shall be reported in full detail to the Congress within 30 days after such allocation or transfer.

[42 U.S.C. 5197e]

**SEC. 627. RELATION TO ATOMIC ENERGY ACT OF 1954.**

Nothing in this title shall be construed to alter or modify the provisions of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

[42 U.S.C. 5197f]

**SEC. 628. FEDERAL BUREAU OF INVESTIGATION.**

Nothing in this title shall be construed to authorize investigations of espionage, sabotage, or subversive acts by any persons other than personnel of the Federal Bureau of Investigation.

[42 U.S.C. 5197g]

**SEC. 629. MINORITY EMERGENCY PREPAREDNESS DEMONSTRATION PROGRAM.**

(a) **IN GENERAL.**—The Administrator shall establish a minority emergency preparedness demonstration program to research and promote the capacity of minority communities to provide data, information, and awareness education by providing grants to or executing contracts or cooperative agreements with eligible nonprofit organizations to establish and conduct such programs.

(b) **ACTIVITIES SUPPORTED.**—An eligible nonprofit organization may use a grant, contract, or cooperative agreement awarded under this section—

(1) to conduct research into the status of emergency preparedness and disaster response awareness in African American and Hispanic households located in urban, suburban, and rural communities, particularly in those States and regions most impacted by natural and manmade disasters and emergencies; and

(2) to develop and promote awareness of emergency preparedness education programs within minority communities, including development and preparation of culturally competent educational and awareness materials that can be used to disseminate information to minority organizations and institutions.

(c) **ELIGIBLE ORGANIZATIONS.**—A nonprofit organization is eligible to be awarded a grant, contract, or cooperative agreement under this section with respect to a program if the organization is a nonprofit organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) and exempt from tax under section 501(a) of such Code, whose primary mission is to provide services to communities predominately populated by minority citizens, and that can demonstrate a partnership with a minority-owned business enterprise or minority business located in a HUBZone (as defined in section 3(p) of the Small Business Act (15 U.S.C. 632(p))) with respect to the program.

(d) **USE OF FUNDS.**—A recipient of a grant, contract, or cooperative agreement awarded under this section may only use the proceeds of the grant, contract, or agreement to—

(1) acquire expert professional services necessary to conduct research in communities predominately populated by mi-

nority citizens, with a primary emphasis on African American and Hispanic communities;

(2) develop and prepare informational materials to promote awareness among minority communities about emergency preparedness and how to protect their households and communities in advance of disasters;

(3) establish consortia with minority national organizations, minority institutions of higher education, and faith-based institutions to disseminate information about emergency preparedness to minority communities; and

(4) implement a joint project with a minority serving institution, including a part B institution (as defined in section 322(2) of the Higher Education Act of 1965 (20 U.S.C. 1061(2))), an institution described in subparagraph (A), (B), or (C) of section 326<sup>13</sup> of that Act (20 U.S.C. 1063b(e)(1)(A), (B), or (C)), and a Hispanic-serving institution (as defined in section 502(a)(5) of that Act (20 U.S.C. 1101a(a)(5))).

(e) APPLICATION AND REVIEW PROCEDURE.—To be eligible to receive a grant, contract, or cooperative agreement under this section, an organization must submit an application to the Administrator at such time, in such manner, and accompanied by such information as the Administrator may reasonably require. The Administrator shall establish a procedure by which to accept such applications.

(f) AUTHORIZATION OF APPROPRIATION.—There is authorized to be appropriated to carry out this section \$1,500,000 for fiscal year 2002 and such funds as may be necessary for fiscal years 2003 through 2007. Such sums shall remain available until expended.

[42 U.S.C. 5197h]

## TITLE VII—MISCELLANEOUS

### AUTHORITY TO PRESCRIBE RULES AND ACCEPT GIFTS

SEC. 701. (a)(1) The President may prescribe such rules and regulations as may be necessary and proper to carry out any of the provisions of this Act, and he may exercise any power or authority conferred on him by any section of this Act either directly or through such Federal agency or agencies as he may designate.

(2) DEADLINE FOR PAYMENT OF ASSISTANCE.—Rules and regulations authorized by paragraph (1) shall provide that payment of any assistance under this Act to a State shall be completed within 60 days after the date of approval of such assistance.

(b) In furtherance of the purposes of this Act, the President or his delegate may accept and use bequests, gifts, or donations of service, money, or property, real, personal, or mixed, tangible, or intangible. All sums received under this subsection shall be deposited in a separate fund on the books of the Treasury and shall be available for expenditure upon the certification of the President or his delegate. At the request of the President or his delegate, the Secretary of the Treasury may invest and reinvest excess monies in the fund. Such investments shall be in public debt securities with maturities suitable for the needs of the fund and shall bear

<sup>13</sup>So in law. Should read “section 326(e)(1)”.

interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The interest on such investments shall be credited to, and form a part of, the fund.

[42 U.S.C. 5201]

SEC. 702. [Amended various other Acts].

#### REPEAL OF EXISTING LAW

SEC. 703. The Disaster Relief Act of 1970, as amended (84 Stat. 1744), is hereby repealed, except sections 231, 233, 234, 235, 236, 237, 301, 302, 303, and 304. Notwithstanding such repeal the provisions of the Disaster Relief Act of 1970 shall continue in effect with respect to any major disaster declared prior to the enactment of this Act.

#### PRIOR ALLOCATION OF FUNDS

SEC. 704. Funds heretofore appropriated and available under Public Laws 91–606, as amended, and 92–385 shall continue to be available for the purpose of providing assistance under those Acts as well as for the purposes of this Act.

#### SEC. 705. DISASTER GRANT CLOSEOUT PROCEDURES.

(a) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Notwithstanding section 3716(e) of title 31, United States Code, and except as provided in paragraph (2), no administrative action to recover any payment made to a State or local government for disaster or emergency assistance under this Act shall be initiated in any forum after the date that is 3 years after the date of transmission of the final expenditure report for project completion as certified by the grantee.

(2) FRAUD EXCEPTION.—The limitation under paragraph (1) shall apply unless there is evidence of civil or criminal fraud.

(b) REBUTTAL OF PRESUMPTION OF RECORD MAINTENANCE.—

(1) IN GENERAL.—In any dispute arising under this section after the date that is 3 years after the date of transmission of the final expenditure report for project completion as certified by the grantee, there shall be a presumption that accounting records were maintained that adequately identify the source and application of funds provided for financially assisted activities.

(2) AFFIRMATIVE EVIDENCE.—The presumption described in paragraph (1) may be rebutted only on production of affirmative evidence that the State or local government did not maintain documentation described in that paragraph.

(3) INABILITY TO PRODUCE DOCUMENTATION.—The inability of the Federal, State, or local government to produce source documentation supporting expenditure reports later than 3 years after the date of transmission of the final expenditure report for project completion as certified by the grantee shall not constitute evidence to rebut the presumption described in paragraph (1).

(4) RIGHT OF ACCESS.—The period during which the Federal, State, or local government has the right to access source documentation shall not be limited to the required 3-year retention period referred to in paragraph (3), but shall last as long as the records are maintained.

(c) BINDING NATURE OF GRANT REQUIREMENTS.—A State or local government shall not be liable for reimbursement or any other penalty for any payment made under this Act if—

- (1) the payment was authorized by an approved agreement specifying the costs;
- (2) the costs were reasonable; and
- (3) the purpose of the grant was accomplished.

(d) FACILITATING CLOSEOUT.—

(1) INCENTIVES.—The Administrator of the Federal Emergency Management Agency may develop incentives and penalties that encourage State, local, or Indian tribal governments to close out expenditures and activities on a timely basis related to disaster or emergency assistance.

(2) AGENCY REQUIREMENTS.—The Federal Emergency Management Agency shall, consistent with applicable regulations and required procedures, meet its responsibilities to improve closeout practices and reduce the time to close disaster program awards.

[42 U.S.C. 5205]

#### SEC. 706. FIREARMS POLICIES.

(a) PROHIBITION ON CONFISCATION OF FIREARMS.—No officer or employee of the United States (including any member of the uniformed services), or person operating pursuant to or under color of Federal law, or receiving Federal funds, or under control of any Federal official, or providing services to such an officer, employee, or other person, while acting in support of relief from a major disaster or emergency, may—

(1) temporarily or permanently seize, or authorize seizure of, any firearm the possession of which is not prohibited under Federal, State, or local law, other than for forfeiture in compliance with Federal law or as evidence in a criminal investigation;

(2) require registration of any firearm for which registration is not required by Federal, State, or local law;

(3) prohibit possession of any firearm, or promulgate any rule, regulation, or order prohibiting possession of any firearm, in any place or by any person where such possession is not otherwise prohibited by Federal, State, or local law; or

(4) prohibit the carrying of firearms by any person otherwise authorized to carry firearms under Federal, State, or local law, solely because such person is operating under the direction, control, or supervision of a Federal agency in support of relief from the major disaster or emergency.

(b) LIMITATION.—Nothing in this section shall be construed to prohibit any person in subsection (a) from requiring the temporary surrender of a firearm as a condition for entry into any mode of transportation used for rescue or evacuation during a major disaster or emergency.



aster or emergency, provided that such temporarily surrendered firearm is returned at the completion of such rescue or evacuation.

(c) PRIVATE RIGHTS OF ACTION.—

(1) IN GENERAL.—Any individual aggrieved by a violation of this section may seek relief in an action at law, suit in equity, or other proper proceeding for redress against any person who subjects such individual, or causes such individual to be subjected, to the deprivation of any of the rights, privileges, or immunities secured by this section.

(2) REMEDIES.—In addition to any existing remedy in law or equity, under any law, an individual aggrieved by the seizure or confiscation of a firearm in violation of this section may bring an action for return of such firearm in the United States district court in the district in which that individual resides or in which such firearm may be found.

(3) ATTORNEY FEES.—In any action or proceeding to enforce this section, the court shall award the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

【42 U.S.C. 5207】



# Public Assistance

Debris Management Guide

*FEMA-325 / July 2007*



**FEMA**



## Foreword

The Federal Emergency Management Agency (FEMA) encourages State and local governments, tribal authorities, and private non-profit organizations to take a proactive approach to coordinating and managing debris removal operations as part of their overall emergency management plan. Communities with a debris management plan are better prepared to restore public services and ensure the public health and safety in the aftermath of a disaster, and they are better positioned to receive the full level of assistance available to them from FEMA and other participating entities.

The core components of a comprehensive debris management plan incorporate best practices in debris removal, reflect FEMA eligibility criteria, and are tailored to the specific needs and unique circumstances of each applicant. FEMA developed this guide to provide applicants with a programmatic and operational framework for structuring their own debris management plan or ensuring that their existing plan is consistent with FEMA's eligibility criteria. This framework:

1. Identifies and explains the debris removal eligibility criteria that applicants must meet in order to receive assistance under the FEMA Public Assistance (PA) Program
2. Provides a blueprint for assembling an effective and responsive plan for the entire debris management cycle
3. Outlines the FEMA Public Assistance debris removal organizational structure and strategy

We encourage local officials to review their community's vulnerability to a disaster and to consider how to manage large-scale debris clearance, removal, and disposal operations should the need arise. Your State emergency management agency and the FEMA regional office may provide additional technical assistance in your area.

An electronic version of this guide is available on FEMA's website at [fema.gov](http://fema.gov). **Because this document is not exhaustive and the provisions are subject to modification, consultation with the State and FEMA may be necessary.**



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## **PART I – PUBLIC ASSISTANCE ELIGIBILITY**

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# Part I – Public Assistance Eligibility

## Introduction

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. § 5121, et seq. (hereinafter referred to as the Stafford Act), authorizes the FEMA Public Assistance Program to award Federal funding to State and local governments, Federally recognized tribes, and eligible private non-profit organizations in order to assist them in their disaster response and recovery activities. Specifically, the Program provides assistance for debris removal, implementation of emergency protective measures, and permanent restoration of eligible facilities and infrastructure.

A fundamental goal of the Public Assistance Program is to ensure that everyone shares a common understanding of the Public Assistance Program policies and procedures. To support this goal, FEMA has undertaken an effort to provide its State, tribal, and local partners with more and better information about the Public Assistance Program. Part I describes the Public Assistance Program's basic debris eligibility criteria and is intended to be a reference for planning and recovery purposes.

This document provides a summary of the eligibility criteria specifically for debris removal operations. For a more comprehensive understanding of the Public Assistance Program, additional information regarding FEMA Public Assistance policies, Fact Sheets, and guidance materials, including *FEMA 321 – Public Assistance Policy Digest*, *FEMA 322 – Public Assistance Guide*, and *FEMA 323 – Public Assistance Applicant Handbook*, can be obtained online at [fema.gov](http://fema.gov).



# Chapter 1 – Public Assistance Debris Removal Eligibility

## Chapter Highlights

### Public Assistance Grant Program

#### General Eligibility Criteria

- Definition of Eligibility
- Grantee/Subgrantee
- Facility
- Work
- Public Interest
- Reasonable Cost

#### Environmental and Historic Preservation Special Considerations

- National Environmental Policy Act
- Executive Orders

#### Duplication of Benefits

- Other Federal Agencies
- Insurance Settlements
- Salvage Value

## Public Assistance Grant Program

The Federal government may provide grants through the Public Assistance Program to reimburse the response and recovery efforts of an applicant (State and local governments, and certain private non-profit organizations) for Presidentially declared disasters. To receive supplemental disaster assistance under the Public Assistance Program, applicants must meet FEMA eligibility criteria.

An applicant may conduct debris operations in any manner it deems appropriate. However, only costs associated with applicants, facilities, and work deemed eligible according to FEMA eligibility criteria and complying with special consideration requirements are reimbursed under the Public Assistance Program. Therefore, these eligibility criteria and special consideration requirements should be taken into consideration by the applicant when developing its debris management plan.

## General Eligibility Criteria

### *Definition of Eligibility*

**Eligible** means qualifying for and meeting the stipulated requirements of the Public Assistance grant. The term eligible can be applied to applicants, facilities, work, and costs.



**Eligibility** is based on a hierarchy of statute, regulations, policies, fact sheets, guidance documents, and disaster-specific documents:

- **Statute** is the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121 et seq. (Stafford Act), the authority governing the Public Assistance Program.
- **Regulations**, which are published in 44 Code of Federal Regulations (CFR), Parts 13 and 206, implement and interpret the statute.
- **Policies** are written to apply the statute and regulations to specific subjects and situations.
- **Fact Sheets, guidance documents, and disaster-specific documents** provide clarification and detailed explanations of issues and concerns.

The terms **ineligible** or **not eligible** are used to indicate the applicant, facility, work, or cost does not qualify for a Public Assistance grant.

### ***Grantee/Subgrantee***

**Grantee** means the government, usually the State, to which a grant is awarded by the Federal government and is accountable for the use of the funds provided.

**Subgrantee** (applicant) is the entity to which a subgrant is awarded and is accountable to the grantee for the use of the funds provided. Four types of subgrantees are eligible for Public Assistance grants:

1. State government agencies, such as:
  - State department of transportation
  - State environmental resources agency
  - State parks agency
2. Local governments, such as:
  - Towns, cities, counties, boroughs
  - Municipalities, townships
  - Local public authorities
3. Private Non-Profit (PNP) organizations or institutions that own or operate facilities that provide certain services otherwise performed by a government agency. Eligible facilities are limited to:
  - Educational
  - Emergency
  - Medical

- Utility
  - Custodial care
  - Irrigation
  - Other essential governmental services, which are open to the general public and do not fall into one of the categories described above include community centers, rehabilitation facilities, homeless shelters, libraries, museums, senior citizen centers, shelter workshops, zoos, performing arts facilities, community arts centers, and health and safety services of a governmental nature.
4. Federally recognized Indian Tribes or authorized tribal organizations and Alaskan Native village organizations. This does not include Alaska Native Corporations, which are owned by private individuals. Indian Tribal Governments may serve as a grantee instead of a subgrantee.

Since this document speaks specifically to debris issues, it is assumed the city, county, township, or other governing body will take responsibility for planning and implementing the debris operations. The terms “jurisdiction” and “governing body” are used to indicate the eligible applicant planning or implementing the debris management operation.

### ***Facility***

A facility is any publicly or privately owned building, works, system, or equipment, built or manufactured, or an improved and maintained natural feature. Land used for agricultural purposes is not an eligible facility. The eligible facility must be located in the designated disaster area and must be the legal responsibility of an eligible applicant.

### ***Work***

FEMA characterizes work eligible for Public Assistance grants as either emergency or permanent work. These are classified into seven different categories identified by letters A through G. This document discusses only emergency work, Category A – Debris Removal and Category B – Emergency Protective Measures. To be eligible, an item of work must meet all of the following:

- Be required as a result of the disaster event;
- Be located within a designated disaster area, except that sheltering and evacuation activities may be located outside of the designated disaster area; and
- Be the legal responsibility of an eligible applicant.

## **Public Interest**

Eligible debris work must be in the public interest, which is defined as work necessary to meet the following:

- Eliminate immediate threats to life, public health and safety;
- Eliminate immediate threats of significant damage to improved public or private property;
- Ensure economic recovery of the affected community to the benefit of the community-at-large; or
- Mitigate the risk to life and property by removing substantially damaged structures and associated appurtenances as needed to convert property acquired through a FEMA hazard mitigation program to uses compatible with open space, recreation, or wetlands management practices.

## **Reasonable Cost**

A reasonable cost is defined by the Office of Management and Budget (OMB) Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments* and Circular A-122, *Cost Principles for Non-Profit Organizations*, as a cost which in its nature and amount does not exceed that which would be incurred by a prudent person under the circumstance prevailing at the time the decision was made to incur the cost. Considerations include evaluating historical costs for similar work, analyzing costs for similar work in the region, reviewing published unit cost data for the work, or comparing costs with the FEMA Schedule of Equipment Rates and Cost Codes. The source of costs may include: the applicant's force account labor, equipment, and materials; contracted services; and mutual aid agreements. Costs are discussed further in Chapter 2, *Costs*.

## **Environmental and Historic Preservation Special Considerations**

*State and local regulations, laws, and ordinances need to be addressed and followed for all environmental and historic preservation issues.*

FEMA uses the term "special considerations" to describe issues other than basic program eligibility that affect the scope of work and funding for a project. Applicants have a critical role in identifying and resolving special considerations issues. The applicant should assist FEMA by identifying the issues as early as possible and providing the information necessary for review. A brief description of environmental and historic preservation special considerations that relate to debris operations are set forth below.

## **National Environmental Policy Act**

The National Environmental Policy Act (NEPA) requires every Federal agency to follow a specific planning process to ensure that agency decision-makers and applicants have considered and the general public is fully informed about, with the opportunity to comment on, the environmental consequences of a Federally funded action. This review and consultation process is used to evaluate the impact a project and its alternatives may have on the environment. The review process required by NEPA is usually the vehicle through which FEMA addresses other environmental laws and regulations; however, FEMA is provided with statutory exclusions under Section 316 of the Stafford Act. These exclusions exempt certain actions from the NEPA review process and generally include debris removal, clearance of roads, and demolition of unsafe structures. If an action is not statutorily excluded, the appropriate level of NEPA review must be determined. FEMA makes the statutory exclusion determinations.

It should be noted that compliance with other individual laws such as the Endangered Species Act, the National Historic Preservation Act, the Clean Air Act, and the Clean Water Act is still required, even when a project is statutorily excluded from NEPA review. Environmental laws and regulations that may impact debris operations are briefly described in the following sections.

### **Clean Water Act**

The Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States. It makes it unlawful for any person to discharge any pollutant from a specific source into navigable waters, unless a permit was obtained under its provisions. Through Section 404 of CWA, permits are required to discharge dredged and fill materials into waters of the United States, including wetlands.

Section 402 of CWA implements the National Pollutant Discharge Elimination System, which establishes a permit program controlling water pollution by regulating point sources that discharge pollutants into the waters of the United States.

Debris removal projects such as dredging, demolition, and construction and operation of sites used for debris management must comply with the requirements of CWA as administered by the Federal, State, or local regulatory agency.

### **Clean Air Act**

The Clean Air Act was established to protect the nation's air through the reduction of smog and atmospheric pollution. Several State and local governments have enacted similar legislation, either implementing Federal programs or implementing more stringent air quality requirements within their jurisdictions.

Projects that are funded under the Public Assistance Program such as debris clearance, removal, disposal, recycling, reduction, and demolition, must comply with the air quality standards required by the Federal, State, or local regulatory agencies.

### **Coastal Barrier Resources Act**

The Coastal Barrier Resources Act (CBRA) restricts Federal expenditures and financial assistance that encourage development of coastal barriers so that damage to property, fish, wildlife, and other natural resources associated with the coastal barrier is minimized. Coastal barriers are located along the Atlantic and Gulf Coasts and along the Great Lakes. They are identified on FEMA's Flood Insurance Rate Maps as Coastal Barrier Resources System (CBRS) units.

Costs for debris removal and emergency protective measures in designated CBRS units may be eligible for reimbursement under the Public Assistance Program provided the actions eliminate an immediate threat to lives, public health and safety, or protect improved property.

### **Resource Conservation and Recovery Act**

The Resource Conservation and Recovery Act (RCRA) requires safe disposal of waste materials, promotes the recycling of waste materials, and encourages cooperation with local agencies. It applies to disposal of disaster-generated debris and is of particular concern when hazardous materials may be present.

### **Endangered Species Act**

The Endangered Species Act (ESA) prohibits Federal actions that cause unnecessary harm to species listed as threatened or endangered, or the destruction or adverse modification of the habitat for these species. Endangered species include mammals, fish, birds, reptiles, and amphibians, as well as plants and insects. If a project involves the known habitat of a threatened or endangered species, FEMA must consult with the United States Fish and Wildlife Service and the National Marine Fisheries Service before approving funding for that project.

### **National Historic Preservation Act**

The National Historic Preservation Act (NHPA) requires Federal agencies to take into account the effects of their undertakings on historic properties. Federal agencies must consult with parties who have an interest in the effects of the undertaking in order to identify the affected historic properties, assess the effect of the undertaking on historic properties, and seek ways to avoid, minimize, or treat any adverse effects on historic properties. FEMA complies with NHPA and its implementing regulations in 36 CFR Part 800, either by executing Statewide programmatic agreements or by following standard regulatory procedures, commonly referred to as the Section 106 Process.

Historic properties include districts, buildings, structures, objects, landscapes, archaeological sites, and traditional cultural properties that are included in, or eligible for inclusion in, the National Register of Historic Places. These properties are not just old buildings or well-known historic sites, but places important in local, State, or national history. Facilities as diverse as bridges and water treatment plants may be considered historic. The National Register of Historic Places is a list of recognized historic properties. However, this list is not complete, and States may have additional properties with historic significance. Through the use of programmatic agreements, FEMA has delegated the identification and evaluation tasks to State Historic Preservation Officers (SHPO) in many States.

### **Coastal Zone Management Act**

The Coastal Zone Management Act (CZMA) encourages the management of coastal zone areas and provides grants to be used in maintaining coastal zone areas. It requires that Federal agencies be consistent in enforcing the policies of State coastal zone management programs when conducting or supporting activities that affect a coastal zone. It is intended to ensure that Federal activities are consistent with State programs for the protection and, where possible, enhancement of the nation's coastal zones.

### **Fish and Wildlife Coordination Act**

The Fish and Wildlife Coordination Act authorizes the United States Fish and Wildlife Service to administer programs for the planning, development, maintenance, and coordination of State wildlife resource conservation and rehabilitation. If a proposed project would destroy wildlife habitat or modify a natural stream or body of water, it requires an evaluation of that action's impact on fish and wildlife.

### **Wild and Scenic Rivers Act**

The Wild and Scenic Rivers Act (WSRA) was established by Congress to preserve selected rivers in its free-flowing condition in order to protect the water quality and fulfill other national conservation purposes. These rivers are considered protected, much like a national wildlife refuge. Federal agencies may not fund projects that would have a direct and adverse effect on the values for which a river was designated. If a proposed project is located on a river designated as wild and scenic, FEMA must review it for compliance with WSRA.

### ***Executive Orders***

In addition to the laws described above, several Executive Orders (EOs) issued by the President also affect Public Assistance Program projects. The EOs that most frequently affect the Public Assistance Program are the following:

**EO 11988** requires Federal agencies to undertake certain responsibilities for floodplain management. FEMA's procedures for complying with this EO are outlined in 44 CFR Part 9.

**EO 11990** outlines the protection of wetlands and requires a planning process that considers alternatives and evaluates impacts to wetlands. The process for complying with this EO is similar to that for complying with EO 11988 and is outlined in 44 CFR Part 9.

**EO 12898** requires Federal agencies to evaluate actions for disproportionately high and adverse effects on minority or low-income populations and to find ways to avoid or minimize these impacts where possible. Field personnel should identify any neighborhoods or communities with minority or low-income populations.

## **Duplication of Benefits**

In accordance with Section 312 of the Stafford Act, no applicant will receive assistance for any loss for which financial assistance has been received under any other program or from insurance or from any other source. Therefore, the use of Federal or State funds, insurance settlements, and other grants or cash donations granted for the same purpose constitutes a duplication of benefits.

### ***Other Federal Agencies***

If another Federal agency has the authority to provide an applicant with assistance for debris removal operations, FEMA cannot provide funds for that project. Applicants should pursue funding assistance offered through those agencies.

The Federal Highway Administration (FHWA), United States Army Corps of Engineers (USACE), National Resources Conservation Service (NRCS), Environmental Protection Agency (EPA), Department of Housing and Urban Development (HUD), and United States Coast Guard (USCG) may provide assistance to applicants for certain debris removal activities. Applicants must become aware of the agencies' roles, responsibilities, and jurisdictions to ensure a duplication of benefits does not occur between other Federal agencies and FEMA. Descriptions of other Federal agencies and their programs are found in Appendix G, *FEMA RP9580.202, Fact Sheet: Debris Removal - Authorities of Federal Agencies*.

### ***Insurance Settlements***

Insurance policies that include coverage for debris removal activities are potentially a duplication of benefits. The applicant should contact its insurance provider for a statement of loss to determine the amount of insurance settlement related to debris removal. The insurance settlement is reflected in the Public Assistance grant as a line-item credit against the eligible cost for the project.

Similarly, applicants should be aware that some residents within a declared disaster area may obtain funds for removing debris from their property through their homeowner insurance or

under the FEMA Individual Assistance (IA) Program. Should residents receive funds under the IA Program or insurance proceeds for the removal and disposal of debris from their properties, but also place debris at the curbside rights-of-way, the applicant should make a concerted effort to collect the proportionate cost of the curbside removal from those residents in an effort to comply with Section 312 of the Stafford Act.

While FEMA understands that this could become an arduous task, applicants can put in place protocols to inform residents that receiving a benefit for the same purpose from the Federal government or any other source is in violation of Federal law.

When applicants receive reimbursements from residents for the cost of curbside collection, applicants are required to report the total amount of proceeds collected from those residents to FEMA. The Federal share of the Public Assistance grant is calculated after the reimbursement proceeds are reduced from the total cost of the curbside collection.

### ***Salvage Value***

Applicants may choose to recover materials from disaster debris for beneficial uses. Applicants may sell materials such as metals, woody debris, concrete, masonry, or other types of debris to recyclers, to the construction or agricultural industry, or to energy generators. The salvage value for various recyclable or reusable debris materials depends on the regional recycling markets.

Applicants that sell disaster debris for a salvage value must offset the cost of the eligible debris removal work by the revenues received from the sale of the debris. Applicants must document and report to FEMA the revenues obtained through the sale of debris materials. Public Assistance grant funding is limited to the Federal share of the difference between the amount of revenue received and the cost of the debris removal.

Applicants that contract for debris removal may allow the contractor to take possession of the recoverable debris materials. This type of agreement must take into account the salvage value, and the applicant should negotiate a credit to reflect this value within the terms of the contract. The sale of the recoverable disaster debris materials should offset the cost of the contracted services.





## Chapter 2 – Costs

### Chapter Highlights

#### Applicant Resources

- Labor
- Equipment
- Documentation

#### Mutual Aid Agreements

#### Contract Services

- Competition
- Methods of Procurement
- Types of Contracts

#### Other Considerations

- Contract Scope of Work Recommendations
- Piggyback Contracts
- Prohibited Contracts

#### Additional Contract Requirements

### Applicant Resources

Eligible work accomplished with an applicant's own labor, equipment, and materials may be funded under the Public Assistance Program. An applicant's employees' labor and an applicant's equipment are called force account labor and force account equipment, respectively. It is important for the applicant's staff to document hours worked and equipment used to complete the eligible work.

#### **Labor**

For debris removal work, overtime labor costs (including benefits) are eligible for permanent employees, reassigned employees, and seasonal employees used during the season of anticipated employment. The cost of straight-time labor costs (including benefits) of an applicant's permanently employed personnel are not eligible in calculating the cost of eligible emergency work, which includes debris removal. Straight-time and overtime is determined in accordance with an applicant's pre-disaster policies, which should be applied consistently in both disaster and non-disaster situations.

Both straight-time and overtime labor costs are eligible for non-budgeted employees assigned specifically to perform emergency work.

Please refer to Appendix G, *FEMA RP9525.7, Labor Costs - Emergency Work* for specific eligibility guidance regarding labor costs for permanent, temporary, essential, reassigned, and seasonal employees.

## **Equipment**

Reimbursement for the use of force account equipment is limited to the time the equipment is actually in use. Standby and idle time are not eligible for Public Assistance grant funding.

Force account equipment may be reimbursed at an hourly rate. This hourly rate typically includes the operation, depreciation, maintenance, and fuel for that particular piece of equipment, but does not include operator labor cost. FEMA publishes a FEMA Schedule of Equipment Rates, which is available online at [fema.gov](http://fema.gov).

FEMA may recognize State equipment rates. Applicants that use rates established under State guidelines in their normal day-to-day operations may use State rates up to \$75 per hour upon Public Assistance Program approval of the cost development methodology. Rates over \$75 per hour may be approved by FEMA on a case-by-case basis.

FEMA may also recognize an applicant's use of rates developed by a local government in their normal day-to-day operations. Reimbursement is based either on the local rates or the FEMA Schedule of Equipment Rates, whichever is less. If the local rate is lower and the applicant certifies that the local rate does not reflect the actual cost, the FEMA Schedule of Equipment Rates may be used.

## **Documentation**

Appendix C, *FEMA Forms* are frequently used to document work completed with force account labor and equipment. The FEMA summary record forms provide the minimum information required for Public Assistance grant reimbursement consideration. These summary record forms are not required forms; the applicant may use its own forms or accounting summary, or alter the FEMA forms to fit its needs, as long as the minimum information required is provided.

Applicants are required to maintain source documentation such as timesheets, work logs, and equipment use sheets, that show the work was disaster-related and support the hours claimed on the force account summary forms submitted for the project.

## **Mutual Aid Agreements**

Applicants may have agreements with other jurisdictions and agencies for the provision of debris management services in the event of an emergency. The employees of the entity providing supplemental assistance are considered as extra hires or contract labor; therefore, both straight-time and overtime are eligible. FEMA will reimburse mutual aid costs provided that:

- The assistance is requested by the receiving applicant;

- The work performed is directly related to the disaster and is otherwise eligible for FEMA assistance;
- The entity that received the aid incurred a cost for that aid, i.e. the providing jurisdiction or agency bills the receiving applicant for the service;
- Provision of services under the agreement are not contingent upon declaration of a major disaster or emergency by FEMA; and
- The requesting and providing entities can provide documentation of rates and payment for services.

*FEMA RP9523.6, Mutual Aid Agreements for Public Assistance and Fire Management Assistance* contains additional information on mutual aid agreements and is available online at [fema.gov](http://fema.gov).

## **Contract Services**

An applicant may hire a contractor to perform such work as debris clearance, removal, disposal, reduction, recycling, and/or monitoring. Public Assistance grant funding is limited to the scope of work necessary to remove debris that is an immediate threat to life, public health and safety, or poses an immediate threat of significant damage to improved public or private property. Moreover, the costs must be reasonable for the respective scope of work in order to be eligible for Public Assistance grant reimbursement. The procurement of the contract is subject to all provisions of 44 CFR Part 13. The full text of 44 CFR Part 13 is available online through the United States Government Printing Office at [gpoaccess.gov](http://gpoaccess.gov).

Appendix G, *FEMA RP9580.4, Fact Sheet: Debris Operations - Clarification: Emergency Contracting vs. Emergency Work* should be reviewed by the applicant and taken into consideration when soliciting contractors.

Contracts must be of reasonable cost, generally must be competitively bid, and comply with Federal, State, and local procurement standards. FEMA will reimburse only fair and reasonable costs of any contract an applicant enters into. An applicant must consider costs, conflicts of interest, and all Federal, State, and local laws and regulations when hiring a contractor.

Compliance with local procurement practices and the procurement competition requirements specified in 44 CFR Part 13.36 are essential to successfully receiving Public Assistance grant funding. The Federal procurement regulations ensure that applicants procure contracts in a manner that provides full and open competition, and provide financial and record-keeping requirements. In addition, applicants should maintain a written code of standards for conduct governing the performance of employees, officers, or agents who select and award contracts.

It is important that applicants secure contracts with reputable and qualified licensed contractors. Applicants should conduct reference checks on a contractor's history of performance with the State's contractor licensing board and with the contractor's previous

clients before awarding contracts. Appendix G, *FEMA RP9580.201, Fact Sheet: Debris Removal - Applicant's Contracting Checklist* is provided as guidance to assist Public Assistance applicants in the procurement process.

### **Competition**

Pursuant to 44 CFR Part 13.36(c)(1), applicants may not restrict the bidding in order to disqualify a population of bidders. Some of the situations considered to be restrictive of competition include, but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify to do business
- Requiring unnecessary experience and excessive bonding
- Noncompetitive pricing practices between firms or between affiliated companies
- Noncompetitive awards to consultants that are on retainer contracts
- Organizational conflicts of interest
- Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance of other relevant requirements of the procurement
- Any arbitrary action in the procurement process

Applicants who have prequalified lists of persons, firms, or products must keep such lists current in order to ensure open and free competition during the bidding process, in accordance with 44 CFR Part 13.36(c)(4), which states:

*“Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.”*

### **Methods of Procurement**

An applicant may request that FEMA review its procurement process to determine whether the process meets the standards set forth in 44 CFR Part 13.36.

FEMA finds the following four methods of procurement acceptable:

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

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

**Competitive proposals** procurement, a method similar to sealed bid procurement in which contracts are awarded on the basis of contractor qualifications instead of on price. This method is often used for procuring architectural or engineering professional services. In addition, this method normally involves more than one source submitting an offer and is used when conditions are not appropriate for sealed bids.

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

- The item is available only from a single source
- There is an emergency requirement that does not permit a delay
- Solicitation from a number of sources has been attempted, and competition is determined to be inadequate

FEMA strongly discourages applicants from using a noncompetitive contract for debris removal operations. A contract may be regarded as noncompetitive if the applicant has only one responsive bidder. In this case the applicant is required to comply with 44 CFR Part 13.36(f), which states in part:

*“...A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.”*

Applicants are required by 44 CFR Part 13.36(f)(2) to negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. Consideration shall be given to the complexity of the work performed, risk borne to the contractor, contractor’s investment, amount of subcontracting, quality of the contractor’s record of past performance, and industry profit rates in the surrounding geographical area for similar work.

## ***Types of Contracts***

FEMA provides reimbursement for four types of contracts:

**Lump sum** contracts, for work within a prescribed boundary with a clearly defined scope and a total price

**Unit price** contracts, for work done on an item-by-item basis with cost determined per unit

**Cost-plus-fixed-fee** contracts, either lump sum or unit price contracts with a fixed contractor fee added into the price

**Time-and-materials** contracts, where the contractor bills the applicant for labor, equipment, materials, and overhead. These contracts should be avoided, but may be allowed for work that is necessary immediately after the disaster has occurred when a clear scope of work cannot be developed. Time-and-materials contracts are allowed in circumstances when they are more cost-effective and appropriate for the amount and type of eligible work to be performed. The costs must be reasonable for the type of work required. Applicants must engage in comprehensive active monitoring activities to ensure contractor efficiency. **Typically, FEMA will reimburse for only 70 hours of a time-and-materials contract.** If a time-and-materials contract is awarded, the applicants must:

- Monitor and document contractor expenses;
- Have a cost ceiling or “not to exceed” provision in the contract; and
- Contact the State to ensure proper guidelines are followed.

After 70 hours of work, the applicant should have sufficient information on the scope of work necessary to complete debris collection and disposal, and on a basis for estimating a reasonable cost for the contract work, to effectively solicit a lump sum or a unit price contract. For some types of debris work where time-and-materials contracts may be the most cost-effective and the most well-suited to the type of work, applicants should work closely with the State and FEMA when awarding the time-and-materials contracts to ensure eligibility requirements are met.

## **Other Considerations**

### ***Contract Scope of Work Recommendations***

The contract scope of work should reference “eligible work,” “work eligible under FEMA Public Assistance regulations, policies, and guidance,” “work performed on public property and/or public rights-of-way,” or other similar elements.

### **Piggyback Contracts**

FEMA does not favor “piggyback contracts.” Applicants have used piggyback contracts on occasion to have disaster-related work performed by another jurisdiction’s contractor. The variables associated with the scope of work and costs generally make this an option to be avoided. The competitive procurement requirements of 44 CFR Part 13 are also a prime concern. If FEMA encounters a request for reimbursement of costs derived from such a contract, the reimbursable costs for eligible work will be based on reasonableness.

### **Prohibited Contracts**

In accordance with 44 CFR Part 13.36(f)(4), cost plus percentage of cost contracts shall not be used. Use of such contracts may result in FEMA limiting the Public Assistance grant to an amount determined to be reasonable based on the eligible work performed.

Contracts that are awarded by an applicant to debarred contractors are prohibited pursuant to 44 CFR Part 13.35; thus, no Federal funding can be awarded for eligible work completed.

### **Additional Contract Requirements**

Contract payment provisions should address the obligations between parties to the contract only and not include any language that makes payment to the contractor contingent upon the applicant’s receipt of funding from FEMA.

All contracts in excess of \$10,000 must contain a provision for termination for cause and for convenience by the applicant, including the manner by which it will be effected and the basis for settlement, according to 44 CFR Part 13.36(i)(2).

For contracts over \$100,000 the applicant must have the following minimum bonding requirements, in accordance with 44 CFR Part 13.36(h):

- A bid guarantee from each bidder equivalent to five percent of the bid price;
- A performance bond on the part of the contractor for 100 percent of the contract price; and
- A payment bond on the part of the contractor for 100 percent of the contract price.

In accordance with 44 CFR Part 13.36(b)(8):

*“Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.”*



## Chapter 2 – Costs

Documentation requirements are specified in 44 CFR Part 13.36(b)(9) and include, but are not limited to, rationale for the procurement method, contract type, contractor selection or rejection, and the basis for contract price.

For additional contracting information, refer to Appendix G, *FEMA RP9580.201, Fact Sheet: Debris Removal - Applicant's Contracting Checklist*.

## Chapter 3 – Debris Removal from Public Property

### Chapter Highlights

Eligible Debris Removal  
Ineligible Debris Removal  
Debris Clearance and Removal Operations  
Field Eligibility Determinations

- Vegetative Debris Eligibility
- Construction and Demolition Debris
- Hazardous Waste
- White Goods
- Soil, Mud, and Sand
- Vehicles and Vessels
- Putrescent Debris
- Infectious Waste
- Chemical, Biological, Radiological, and Nuclear-Contaminated Debris
- Garbage

Monitoring Debris Removal Operations  
Disposal

This chapter discusses debris operations on public property and public rights-of-way. Applicants should document locations, conditions, and special circumstances of the debris prior to removal. This chapter includes preferred documentation information and requirements. Proper documentation enables an applicant to fully account for costs incurred in the event that Federal disaster assistance is made available.

### Eligible Debris Removal

Eligible debris removal work under the Public Assistance Program must meet the following criteria:

- The debris was generated by the major disaster event;
- The debris is located within a designated disaster area on an eligible applicant's improved property or rights-of-way; and
- The debris removal is the legal responsibility of the applicant.

## Ineligible Debris Removal

The following are not eligible for FEMA assistance under the Public Assistance Program:

- Any debris removal from an eligible applicant's unimproved property or undeveloped land;
- Any debris removal from a facility that is not eligible for funding under the Public Assistance Program, such as a PNP cemetery or PNP golf course; or
- Any debris removal from Federal lands or facilities that are the authority of another Federal agency or department, such as Federal-aid roads, USACE navigable waterways, and NRCS canals. See Chapter 16, *Other Federal Assistance*, for a description of these authorities.

## Debris Clearance and Removal Operations

Debris removal operations generally occur in two phases: (1) initial debris clearance activities necessary to eliminate life and safety threats; and (2) debris removal activities as a means to recovery. Whether the work was performed using an applicant's own resources or by contractors, documentation is necessary for Public Assistance grant consideration.

An applicant's initial response phase of the debris operation may begin during the disaster event. Crews may be activated to clear debris on emergency access roads; usually this is vegetative debris that is cut and tossed to the rights-of-way. The purpose is to eliminate an immediate threat to lives, and public health and safety. The transition period from initial clearance activities to debris removal depends on the magnitude of disaster impact. Typically, the debris removal recovery phase begins after the emergency access routes are cleared and police, firefighters, and other first responders have the necessary access.

Often residents begin clearing disaster debris from their properties and placing it on the public rights-of-way. If the property owners move the disaster-related debris to a public right-of-way, an applicant may be reimbursed for debris pickup, haul and disposal from the right-of-way for a limited period of time. If an applicant does not have the legal responsibility to maintain a right-of-way, then debris removal from that right-of-way is not eligible for reimbursement.

## Field Eligibility Determinations

To assist in implementation of the Public Assistance Program and the applicants' understanding of it, FEMA has established specific eligibility guidance for debris. This section addresses the most common eligibility issues for various types of debris and recommends documentation for Public Assistance grant consideration. Consultation with the State and FEMA is advised for scenarios not addressed within this section.

*Only FEMA has the authority to make eligibility determinations for Public Assistance grant funding; contractors cannot make eligibility determinations. Information on eligibility can be found in FEMA 321 – Public Assistance Policy Digest, FEMA 322 – Public Assistance Guide, FEMA 323 – Public Assistance Applicant Handbook, and this document.*

### **Vegetative Debris Eligibility**

Vegetative debris consists of whole trees, tree stumps, tree branches, tree trunks, and other leafy material. Depending on the size of the debris, the collection of vegetative debris may require the use of flat bed trucks, dump trucks, and grapple loaders.



Figure 3.1 - Typical Vegetative Debris on a Public Right-of-Way

Most vegetative debris consists of large piles of tree limbs and branches that are piled on the public rights-of-way by the residents. The collection of this type of debris is eligible for reimbursement if it is within public rights-of-way and collected by an eligible applicant. Applicants normally limit the number of times the debris is collected; for instance, the applicant may choose to make two passes throughout the jurisdiction before resuming its normal collection activities. The applicant should discuss with FEMA the number of passes that may be eligible.

Vegetative debris is bulky and consumes a significant volume of landfill space if buried. To minimize the use of landfill space, it is prudent to reduce the volume of vegetative debris before burying. Vegetative debris may be reduced by as much as 75 percent of its volume by mulching or grinding and as much as 90 percent of its volume through burning technologies. Costs to reduce vegetative debris are eligible for Public Assistance grant funding if found to be reasonable.

A hazardous tree or stump may be collected individually, while downed or fallen debris is collected from rights-of-way or at a designated collection center. Tree and stump collection prices are typically based on the size of the tree or stump and charged by unit. Other fallen or downed material is usually billed by weight (tons) or volume (cubic yards).

Determining eligibility for hazardous trees and stumps is challenging. FEMA has established criteria to assist in making these eligibility determinations, using objective information that can be collected in the field.

## Hazardous Trees

Removing a hazardous tree may be eligible for Public Assistance grant funding. A tree is considered hazardous if its condition was caused by the disaster; it is an immediate threat to lives, public health and safety, or improved property; it has a diameter breast height of six inches or greater; **and one or more of the following criteria are met:**

- It has more than 50 percent of the crown damaged or destroyed;
- It has a split trunk or broken branches that expose the heartwood;
- It has fallen or been uprooted within a public-use area; and/or
- It is leaning at an angle greater than 30 degrees.

Trees determined to be hazardous and that have **less than 50 percent of the root-ball exposed** should be cut flush at the ground level. Grinding of the resulting stump after the tree has been cut flush at the ground level is not eligible work. The cut portion of the tree is included with regular vegetative debris. The applicant should make an effort to cut the tree trunk as close to the ground as possible.

The eligible scope of work for a hazardous tree may include removing the leaning portion and cutting the stump at ground level. An example of an ineligible costing method for such work would be removing the tree and stump for two separate unit costs.

The Public Assistance Program may reimburse straightening and bracing if they are less costly than removal and disposal. Straightening and bracing are emergency protective measures if they eliminate an immediate threat to lives, public health and safety, or improved property. If an applicant chooses to straighten and brace a tree in lieu of removal, the tree would not be eligible for removal if it dies.

## Hazardous Limb Removal (Hangers)

Removing hanging limbs may be eligible for Public Assistance grant assistance. Limbs must be:

- Located on improved public property;
- Greater than two inches in diameter at the point of breakage; and
- Still hanging in a tree and threatening a public-use area, e.g. trails, sidewalks, golf cart paths.

Only the minimum amount of work necessary to remove the hazard is eligible. Pruning, maintenance trimming, and landscaping are not eligible. Work should be executed in an efficient manner. For example, all hazardous limbs in a tree should be cut at the same time, not in passes for particular sizes. Work to remove hanging limbs from a tree that has been determined to be a hazard and is scheduled for removal is not eligible. If this work is contracted out, it is typically done on a per tree basis.

An eligible scope of work may be to cut the branch at the closest main branch junction. Removing the entire branch back to the trunk may not be eligible.

If the canopy of a tree located on private property extends over a public right-of-way such as a sidewalk, removal of hazardous limbs on the tree that extend over the public right-of-way and meet the above criteria may be eligible. Limbs on the tree that do not extend over the public right-of-way are not eligible.

Documentation required for Public Assistance grant consideration:

- Describe the immediate threat, e.g. photos of hanging limbs or leaning trees;
- Clearly define the scope of work to remove the immediate threat;
- Specify the improved public property location by recording the nearest building address and/or GPS location; and
- Denote date, labor (force account or contract), and equipment used to perform the work.

### **Hazardous Tree Stumps**

A stump may be determined to be hazardous and eligible for Public Assistance grant funding as a per-unit cost for stump removal if it meets all of the following criteria:

- It has 50 percent or more of the root-ball exposed (less than 50 percent of the root-ball exposed should be flush cut);
- It is greater than 24 inches in diameter, as measured 24 inches above the ground;
- It is on improved public property or a public right-of-way; and
- It poses an immediate threat to life, and public health and safety.

If an uprooted stump must be removed **prior to FEMA's approval**, the applicant must submit the following information for Public Assistance grant consideration:

- Photographs and GPS coordinates that establish the location on public property;
- Specifics of the threat;
- Diameter of the stump 24 inches from the ground; and
- Quantity of material needed to fill the resultant hole.

FEMA may reimburse a reasonable cost to remove, transport, dispose of, and fill the hole from a stump of **more than 24 inches in diameter** if:

- The applicant and State agree the tree or stump is hazardous according to the above definition;
- Generally, FEMA approved the removal in advance; and

- A Hazardous Stump Worksheet is completed and submitted for FEMA approval. A copy of the Hazardous Stump Worksheet may be found in Appendix G, *FEMA DAP9523.11, Hazardous Stump Extraction and Removal Eligibility*.

In some instances, grinding of an uprooted stump and filling the resulting cavity may cost less than a complete extraction. In these cases, the applicant should present the cost comparison documentation to FEMA for consideration; however, the stump must have already been determined eligible for removal according to the above criteria.

Stumps measuring **24 inches in diameter or less** do not require special equipment for removal; therefore, reimbursement will be based on the reasonable unit cost per cubic yard, using the Stump Conversion Table found in Appendix G, *FEMA DAP9523.11, Hazardous Stump Extraction and Removal Eligibility*. The unit price for stump removal includes the extraction, transport, and disposal of the stump as well as filling the cavity that remains.

FEMA will reimburse the applicant at the unit cost rate (usually cubic yards) for normal debris removal for all stumps, regardless of size, placed on the public rights-of-way by others, i.e., contractors did not extract them from public property or property of eligible PNP organizations. In such instances, applicants do not incur additional costs to remove these stumps; the same equipment used to pick up vegetative debris can be used to pick up these stumps.

See Appendix G, *FEMA DAP9523.11, Hazardous Stump Extraction and Removal Eligibility* for more information on hazardous stumps.

### ***Construction and Demolition Debris***

The definition of construction and demolition debris may vary between States. Construction and demolition debris can be defined as damaged components of buildings and structures such as lumber and wood, gypsum wallboard, glass, metal, roofing material, tile, carpeting and floor coverings, window coverings, pipe, concrete, fully cured asphalt, equipment, furnishings, and fixtures. To be eligible, construction and demolition debris must be a result of a Federally declared disaster.

Certain types of construction and demolition debris are reusable or recyclable. To conserve landfill space, it is prudent to separate materials for reuse or recycling.

Some construction and demolition debris may be hazardous, such as asbestos roofing and floor tile, and lead pipes. Public Assistance grant eligibility is subject to all other Federal laws and regulations, including environmental and hazardous waste ordinances. Documentation of the debris origin, any processing (reduction or recycling), and the final disposition is required for Public Assistance grant consideration.



Figure 3.2 - Construction and Demolition Debris

Typically, removal of construction by-products generated by repairs or rebuilding is covered by insurance policies or included in the overall cost for reconstruction projects; therefore, it is not eligible for Public Assistance grant funding as emergency work under debris removal. It may, however, be reimbursed as part of the permanent work for the reconstruction of an eligible project.

### ***Hazardous Waste***

Hazardous waste is waste with properties that make it potentially harmful to human health or the environment. Hazardous waste is regulated under RCRA. In regulatory terms, a RCRA hazardous waste is a waste that appears on one of the four hazardous waste lists or exhibits at least one of the following four characteristics: ignitability, corrosivity, reactivity, or toxicity.

Public Assistance grant funding may be available for measures that address widespread hazardous materials contamination. The measures may include retrieval and proper disposal of orphan drums, pumping water contaminated with hazardous materials, control or stabilization of oil or other hazardous material releases, and cleanup and disposal of hazardous materials. Certified hazardous waste technicians should handle, capture, recycle, reuse, and dispose of hazardous waste. The applicant must comply with Federal, State, and local environmental requirements for handling hazardous waste.

Public Assistance grant funding is not available to test for mold or contaminants in water, air, or soil for the purposes of long-term cleanup actions. FEMA and EPA determine the specific activities that may be funded under the Public Assistance Program and those activities that are under the authority of EPA.





Figure 3.3 - Hazardous Waste

**Household Hazardous Waste (HHW)** refers to hazardous products and materials that are used and disposed of by residential, rather than commercial or industrial consumers. HHW includes some paints, stains, varnishes, solvents, pesticides, and other products or materials containing volatile chemicals that catch fire, react, or explode under certain circumstances, or that are corrosive or toxic.

**Electronic waste**, or e-waste, refers to electronics that contain hazardous materials such as cathode ray tubes. Examples include computer monitors and televisions.

### ***White Goods***

White goods are defined as discarded household appliances such as refrigerators, freezers, air conditioners, heat pumps, ovens, ranges, washing machines, clothes dryers, and water heaters.

Many white goods contain ozone-depleting refrigerants, mercury, or compressor oils. The Clean Air Act prohibits the release of refrigerants into the atmosphere, and requires that certified technicians extract refrigerants from white goods before they are disposed of or recycled. Some States also require certified technicians to extract compressor oils before disposing of or recycling white goods. Applicants should follow all Federal, State, and local requirements concerning ozone-depleting refrigerants, mercury, or oils. Documentation of proper disposal may be required for Public Assistance grant consideration.



Figure 3.4 - White Goods Stockpiled for Processing

### ***Soil, Mud, and Sand***

Floods, landslides, and storm surges often deposit soil, mud, and sand on improved public property and public rights-of-way. Facilities commonly impacted by this type of debris may include streets, sidewalks, storm and sanitary sewers, water treatment facilities, drainage canals and basins, parks, and swimming pools.

The removal of this type of debris from improved public property and public rights-of-way may be eligible for Public Assistance grant funding. For instance, removing soil, mud, and sand from a roadway or sidewalk, or clearing out mud and sand from sewer lines, may be eligible for Public Assistance grant funding if it is the legal responsibility of an eligible applicant. Natural streams and unimproved property are not considered eligible facilities.

The amount of Public Assistance grant funding for removal of soil, mud, and sand is based on the quantity that was deposited due to the disaster. In order to determine the disaster-related debris quantities, the applicant should provide regularly scheduled maintenance reports that indicate the pre-disaster soil, mud, and sand levels. Maintenance reports are commonly requested for soil, mud, and sand removal from sewers, water treatment facilities, and drainage channels.

The applicant is responsible for identifying the damage incurred due to the disaster. Public Assistance grants do not provide funds for random surveys to look for damage, such as TV inspection of sewer lines. However, if disaster-related damage is evident, a Public Assistance grant may cover inspections to determine the extent of the damage and method of repair.

Drainage channels and canals may be an element of a flood control work or water control facility. These types of facilities are often under the jurisdiction of the United States Army Corps of Engineers (USACE) or the Natural Resources Conservation Service (NRCS). If a flood control work or water control facility falls under another Federal jurisdiction, it is generally not eligible for Public Assistance grant funding. For additional information regarding USACE and NRCS facility eligibility, refer to Appendix G, *FEMA RP9524.3, Policy for Rehabilitation Assistance for Levees and Other Flood Control Works - Decision Tree*.

### ***Vehicles and Vessels***

For the removal of vehicles and vessels to be eligible, the applicant must demonstrate that:

- The vehicle or vessel presents a hazard or immediate threat that blocks ingress/egress in a public-use area;
- The vehicle or vessel is abandoned, e.g. the vehicle or vessel is not on the owner's property and ownership is undetermined;
- The applicant followed local ordinances and State law by securing ownership; and
- The applicant verified chain of custody, transport, and disposal of the vehicle or vessel.

All supporting documentation relating to removal of abandoned vehicles and vessels must be submitted to FEMA for Public Assistance grant consideration. For navigational vessels, applicants must follow their hazard abatement laws, coordinate with the requirements of the marine and harbor patrol agencies, and comply with local laws governing navigational vessels.

It is important for the applicant to follow its normal written procedures regardless of the circumstances. Any duplication of benefits issues should be addressed.

### ***Putrescent Debris***

Putrescent debris is any debris that will decompose or rot, such as animal carcasses and other fleshy organic matter. The cost of putrescent debris collection and disposal may be eligible. Disposal of putrescent debris must be in compliance with applicable Federal, State, and local requirements to be eligible for Public Assistance grant funding. NRCS has developed specific disposal guidelines for animal carcasses.

### ***Infectious Waste***

Infectious waste is waste capable of causing infections in humans, including contaminated animal waste, human blood and blood products, isolation waste, pathological waste, and discarded sharps (needles, scalpels, or broken medical instruments).

Clearance, removal, and disposal of infectious waste may be the authority of another Federal agency. Upon review of applicable Federal statutes, regulations, and policies governing infectious waste, FEMA will determine eligibility on a case-by-case basis and may develop disaster-specific guidance when appropriate.

### ***Chemical, Biological, Radiological, and Nuclear-Contaminated Debris***

Chemical, Biological, Radiological, and Nuclear (CBRN)-contaminated debris is debris contaminated by chemical, biological, radiological, or nuclear materials as a result of a natural or man-made disaster, such as a Weapon of Mass Destruction (WMD) event. Eligibility determinations on the clearance, removal, and disposal of CBRN-contaminated debris will be made by FEMA based on applicable Federal statutes, regulations, policies, and other guidance documents. Depending on the nature of the disaster and the debris it generates, FEMA may develop additional or disaster-specific eligibility guidance.

### ***Garbage***

Garbage is waste that is regularly picked up by an applicant. Common examples of garbage are food, packaging, plastics, and papers. In general, household food wastes can be collected through normal municipal waste collection methods and are not eligible.

## **Monitoring Debris Removal Operations**

Eligible applicants are required to monitor debris removal operations in order to document eligible quantities and reasonable expenses to ensure that the work is eligible for Public Assistance grant funding. Failure to do so properly may jeopardize funding.

In Federally declared disasters, FEMA personnel periodically validate the applicant's monitoring efforts to ensure eligible debris is being removed and processed efficiently. **Debris monitoring is primarily the responsibility of the applicant.** Applicants may use force account resources, temporary hires, and/or contractors to accomplish the monitoring.

Reasonable costs for applicant debris monitors with appropriate qualifications may be eligible. It is not necessary to have professional engineers and other certified professionals perform debris monitoring duties. In addition to the costs for the monitors, the applicant may claim as part of its monitoring activities reasonable costs for the provision of training, oversight, and data compilation to verify debris removal costs as required by the monitoring operation.

Overhead costs for architectural and engineering service are not eligible. Costs associated with attending meetings with FEMA or the State and costs associated with the administration of project worksheets are funded through the administrative allowance as stated in 44 CFR Part 206.228 and cannot be a direct charge to a Public Assistance grant.

Additional guidance on monitoring debris removal operations is located in Appendix G, *FEMA DAP9580.203, Fact Sheet: Debris Monitoring*.

## **Disposal**

Landfill tipping fees usually include fixed and variable costs along with some special taxes or fees assessed by the jurisdiction. Examples of variable costs include costs for labor, supplies, maintenance, utilities, and gas or recovery systems. Fixed costs generally include equipment, construction, permits, landfill closure, post closure, and amortized costs for ancillary landfill building structures.

Eligible landfill costs are limited to the variable and fixed costs that are directly related to landfill operations. Jurisdictions may incorporate special taxes or fees into the landfill tipping fee to fund government services or public infrastructure. When tipping fees include such costs, those costs are not eligible for Public Assistance grant funding.



## Chapter 4 – Private Property Debris Removal and Demolition of Private Structures

### Chapter Highlights

#### Private Property Debris Removal

- Approval for FEMA Assistance
- Documentation for PPDR
- Types of Eligible PPDR Work

#### Demolition of Private Structures

- Eligible Demolition Costs
- Documentation for Demolition

#### Commercial Property

#### Duplication of Benefits for PPDR and Demolition

*The FEMA policies on debris removal from private property and demolition of private structures can be found in Appendix G.*

### Private Property Debris Removal

Private property debris removal (PPDR) is generally not eligible for reimbursement under the Public Assistance Program because debris on private property does not typically present an immediate health and safety threat to the general public. Also, debris removal from private property is generally the responsibility of individual private property owners, and other sources of funding, such as insurance, are commonly available to property owners to cover the cost of work. However, if private property owners move disaster-generated debris to the public right-of-way, the costs associated with removing this debris from the right-of-way may be eligible under the Public Assistance Program.

When large-scale disaster events cause mass destruction and generate large quantities of debris over vast areas, debris on private property may sometimes pose health and safety threats to the public-at-large. If private property owners are not available because they have evacuated, the State or local government may need to enter private property to remove debris considered to be an immediate threat to the lives, health, and safety of its residents. In such situations, the Federal Coordinating Officer (FCO) is authorized to approve the provision of Public Assistance for the removal of debris from private property when it is considered to be in the public interest. The section below describes the process through which applicants may obtain approval for Public Assistance funding for the costs of performing PPDR.

### **Approval for FEMA Assistance**

FEMA will work with States affected by large-scale disasters to designate those areas where the debris is so widespread that removal of debris from private property is in the public interest on a case-by-case basis. Any applicant that intends to seek reimbursement to remove debris from private property within those designated areas will, prior to commencement of work, submit a written request to the FCO seeking approval for reimbursement. The applicant must provide documentation confirming that an immediate threat to the public exists as well as evidence of its legal responsibility to enter private property to eliminate the threat posed by the debris. Specifically, this includes:

#### **Immediate Threat Determination**

The applicant must provide documentation from the applicant's public health authority or other public entity with legal authority stating that disaster-generated debris on private property in the designated area constitutes an immediate threat to life, public health, and safety.

The applicant may also provide documentation stating that the debris poses an immediate threat to improved property and that its removal is cost effective. The cost to remove the debris should be less than the cost of the potential damage to the improved property in order for the debris removal to be eligible.

#### **Documentation of Legal Responsibility**

The applicant must demonstrate its authority and legal responsibility to enter private property to remove debris. The legal basis for this responsibility must be established by law, ordinance, or code at the time of the disaster and must be relevant to the post-disaster condition representing an immediate threat to life, public health, and safety, and not merely define the applicant's uniform level of services. Typically, solid waste disposal ordinances are considered part of an applicant's uniform level of services.

Applicants ordinarily rely on condemnation and/or nuisance abatement authorities to obtain legal responsibility prior to the commencement of debris removal work. There may be circumstances where the applicant determines that ordinary condemnation and/or nuisance abatement procedures are too time consuming to address an immediate public health and safety threat. Applicants do not have to precisely follow their nuisance abatement procedures, or other ordinances, that would prevent the applicant from taking emergency protective measures to protect public health and safety.

In addition to providing documentation detailing an applicant's immediate threat determination and legal responsibility to remove debris from private property, the applicant must confirm that a legally authorized official has ordered the exercise of public authority to enter private property to perform PPDR. The applicant must also submit in its request

indemnification to the Federal government and its employees, agents, and contractors from any claims arising from the removal of debris from private property.

The FCO will approve or disapprove in writing each applicant's request for Public Assistance to perform PPDR. If approval is granted, applicants should immediately begin identifying properties for PPDR work and establishing specific scopes of work on each of these properties.

Additional information on the applicant approval process for PPDR may be found in Appendix G, *FEMA DAP9523.13, Debris Removal from Private Property*.

### **Documentation for PPDR**

If PPDR is authorized and considered for Public Assistance grant funding, applicants are required to properly document all legal processes used to gain access to private property, as well as document applicable scopes of work, and compliance with Federal, State, and local environmental and historic preservation review requirements. Applicants should work with the Public Assistance staff prior to the commencement of any PPDR work to ensure that all legal, environmental, historic, and scope of work considerations are addressed.

The following documents are necessary for Public Assistance funding for PPDR work:

1. **Right-of-Entry.** A right-of-entry signed by the property owner should include a hold harmless agreement and indemnification applicable to the project's scope-of-work. FEMA's Office of Chief Counsel (OCC) should review the right-of-entry form and the language of the hold harmless agreement and indemnification. The right-of-entry form may also include space for the private property owner's insurance information (policy number) for verification purposes, if applicable.
2. **Photos** are strongly encouraged to show the condition of the property prior to the beginning of the work. Generally, pictures are used to confirm the address and identified scope-of-work on the property.
3. A **PPDR Assessment** is a property-specific assessment which establishes the scope of eligible work. This may be a map which serves as a guide indicating the location of the eligible items of work that present an immediate threat relative to improved property or ingress and egress routes. These maps may incorporate symbols and a legend to identify structures, property lines, and eligible items of work. This assessment may also be a work order or may be covered in the right-of-entry form, as long as the scope of work can be clearly identified.



4. **Documentation of Environmental and Historic Review.** Debris removal work from private property must satisfy compliance review requirements as established by 44 CFR Parts 9 and 10 and all other applicable Federal environmental and historic preservation requirements.

Additional documentation may be required by Public Assistance staff on a case-by-case basis to demonstrate eligible work performed and compliance with applicable Federal, State, and local laws and regulations.

### ***Types of Eligible PPDR Work***

**Eligible** debris removal work from private property includes removal of:

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

**Ineligible** debris removal work on private property includes the removal of:

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

## **Demolition of Private Structures**

State and local governments may need to enter private property to demolish private structures made unsafe by disasters to eliminate immediate threats to life, public health, and safety. In some cases, the costs of performing demolition of private structures may be eligible for Public Assistance grant funding. Typically, the demolition of private structures to eliminate immediate threats is authorized under Section 403(a)(3)(E) of the Stafford Act.

FEMA will consider alternative measures to eliminate threats to life, public health, and safety posed by disaster-damaged unsafe structures, including fencing off unsafe structures and restricting access, when evaluating requests for Public Assistance grant funding for demolition work. The Public Assistance staff must also concur that the demolition of unsafe structures and removal of demolition debris are in the public interest.

The demolition of unsafe privately owned structures and subsequent removal of demolition debris may be eligible when the following conditions are met:

- The structures were damaged and made unsafe by the declared disaster, and are located in the area of the disaster declaration;
- The applicant certifies that the structures are determined to be unsafe and pose an immediate threat to the public. An unsafe structure is a non-commercial or non-industrial structure that threatens the life, health or safety of the public because the structure is so damaged or structurally unsafe that partial or complete collapse is imminent. This certification may be made by the State or local government's building inspector and may be based on a structural assessment in accordance with local ordinances and building codes;
- The applicant has demonstrated that it has legal responsibility to perform the demolition. Similar to private property debris removal, the applicant must demonstrate its authority and legal responsibility to enter private property to perform demolition of unsafe structures. The legal basis for this responsibility must be established by law, ordinance, or code at the time of the disaster and must be relevant to the post-disaster

condition representing an immediate threat to life, public health, and safety, and not merely define the applicant’s uniform level of services;

- A legally authorized official has ordered the demolition of unsafe structures and removal of demolition debris;
- The applicant has indemnified the Federal government and its employees, agents, and contractors from any claims arising from the demolition work; and
- The demolition work is completed within the completion deadlines outlined in 44 CFR §206.204 for emergency work.

Additional information on the general eligibility of demolition of private structures may be found in Appendix G, *FEMA DAP9523.4, Demolition of Private Structures*.

### ***Eligible Demolition Costs***

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

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

**Ineligible** costs associated with the demolition of private structures include:

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

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

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

### ***Documentation for Demolition***

In order to receive reimbursement of eligible demolition costs, applicants should provide documentation of applicable legal processes and scopes of work performed, similar to the private property debris removal process described above. Specifically, this includes:

- Rights-of-entries;
- Photos of the structures;
- Structural assessments, or other certifications that the structures are determined to be unsafe or pose an immediate threat to the public, based on local ordinances or building codes;
- Notices of demolition; and
- Documentation of environmental and historic review.

All documentation should be consistent with the requirements of applicable Federal, State, and local laws and regulations governing demolition of private structures. Similar to PPDR work, additional documentation may be required by Public Assistance staff on a case-by-case basis to demonstrate eligible work performed and compliance with applicable Federal, State, and local laws and regulations.

### **Commercial Property**

The removal of debris from commercial property and the demolition of commercial structures are generally not eligible for Public Assistance grant funding. It is assumed and expected that these commercial enterprises retain insurance that can and will cover the cost of debris removal and/or demolition. However, in some cases as determined by the FCO, the removal of debris from private commercial property and/or the demolition of private commercial structures by a State or local government may be eligible for FEMA reimbursement only when such removal is in the public interest.

Industrial parks, private golf courses, commercial cemeteries, apartments, condominiums, and mobile homes in commercial trailer parks are generally considered commercial property.

### **Duplication of Benefits for PPDR and Demolition**

FEMA is prohibited from approving funds for work that is covered by any other source of funding. Therefore, State and local governments must take reasonable steps to prevent such an occurrence, and verify that insurance coverage or any other source of funding does not exist for

PPDR work and the demolition of private structures. Typically, the rights-of-entries used for PPDR and demolition of private structure have a clause that states that a private property owner will re-pay an applicant the amount of insurance proceeds received for any PPDR or demolition work performed. The right-of-entry form being used by the applicant may also include space for the private property owner to list insurance information (policy number) for verification purposes.

When PPDR and demolition of private structures is covered by an insurance policy, the insurance proceeds must be used as the first source of funding. Public Assistance grant funding may be eligible for the remainder of the cost of the eligible work after insurance proceeds are recouped from the property owner. If it is discovered that a duplication of benefits has occurred, FEMA will de-obligate funds from the Grantee in the amount that such assistance duplicates funding the property owners received from other sources.

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**PART II – DEBRIS MANAGEMENT PLANNING  
CONCEPTS**

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## Part II – Debris Management Planning Concepts

### Introduction

Applicants are encouraged to review their community's vulnerability to a disaster and to consider their response and recovery activities, specifically in handling debris issues.

Debris removal operations can be time-consuming and costly. Over the last five years, debris removal operations accounted for approximately 27 percent of the disaster recovery costs. FEMA urges applicants to develop a debris management plan that considers large-scale debris removal and disposal operations. By developing a debris management plan, communities will be better prepared to address disaster-related debris in a time-efficient manner, expediting the recovery process. Additionally, a sound and properly executed debris management plan may better position an applicant for Public Assistance grant assistance.

Part II, Debris Management Planning Concepts, provides applicants with guidance in planning, organizing, mobilizing, and controlling a debris removal and disposal operation. Chapter 5, *Applicant Roles and Responsibilities*, outlines the staff who will develop a debris management plan. The remaining chapters of Part II describe the major elements of a debris management plan, the considerations applicants need to address, and information that may be required for Public Assistance grant assistance consideration.

Helpful tools within these chapters include the "Questions to Consider" and "To Do Checklist" at the end of the chapters. The "Questions to Consider" are intended to assist the planning team in applying the information within each chapter to the specific needs of their jurisdiction. The "To Do Checklist" is provided as a reminder of important issues and considerations to include within the debris management plan.

It is important to note that all or portions of Part II may be used depending on the size of the debris removal operation. The "Questions to Consider" at the end of each chapter may be used to help determine if a specific debris planning element is applicable for the specific jurisdiction.





## Chapter 5 – Applicant Roles and Responsibilities

### Chapter Highlights

Debris Management Staff Organization and Structure  
Debris Management Staff Responsibilities

- Debris Project Manager
- Debris Management Planning Sections

Questions to Consider  
To Do Checklist

The success of a debris management plan is dependent upon the commitment of an applicant to researching, planning, implementing, and evaluating the plan effectively and efficiently. Proper planning by management and employee training provides an applicant with a foundation for a quick and successful recovery.

The following text discusses the personnel that are necessary to plan and develop the debris management plan. A sample outline for a debris management plan is supplied for use and reference in Appendix A, *Debris Management Plan Outline*. During a disaster event, the same staff members would be expected to implement the plan. The organization of departments and management staff may vary between applicants, but roles and tasks do not change.

### Debris Management Staff Organization and Structure

The size and composition of a staff organized to manage debris clearance, removal, and disposal issues depends on the magnitude of the disaster and the size of the jurisdiction. A pre-disaster debris planning staff may be quite small; however, following a major disaster, additional staff members may be required.

Successful debris operations require collaborative efforts between departments within the applicant and with specific external agencies that have regulatory authority over debris operations. It is essential that prospective staff members have as much training as possible and interface with other agencies responsible for debris clearance, removal, and disposal activities, such as the National Guard, the State department of transportation, the State police, and the State emergency management office, prior to any event.

To implement debris operations quickly, it is important for emergency response and recovery personnel to have a clear understanding of how their normal job responsibilities and functions apply to debris operations. The applicant's debris planning staff should be comprised of full-time personnel supplemented with personnel from other staffs and agencies. The planning process should include a review of individual departmental functions and responsibilities for implementing debris operations.

Immediately following a disaster event, the planning process should establish a disaster debris management team, which convenes as a working group to facilitate successful coordination following a disaster event. Team members should consist of personnel from departments within the applicant and representatives from external agencies, such as regional waste management, joint power authorities, sanitation districts, State and Federal environmental offices, and other agencies which have shared responsibilities for solid waste issues. Each member of the team is responsible for implementing debris operations in accordance with the planned goals and objectives, and in compliance with Federal, State, and local laws.

## **Debris Management Staff Responsibilities**

No two jurisdictions have the same department or section designations; therefore, this document refers to each department or section according to its function rather than a specific department designation. The following discussion gives the function of each department and a brief description of the tasks each performs in developing the debris management plan

Each department is responsible for specific elements of the debris management plan. Those general duties are explained in the remainder of this chapter. Department responsibilities often overlap, making coordination and communication critical to the success of the debris management plan. In many instances, a particular department is involved in numerous elements of the debris management plan.

These overlapping responsibilities illustrate the need for one primary coordinator or Debris Project Manager. The Debris Project Manager's role and responsibilities are paramount in coordinating efforts and ensuring communication between planning and implementation sections.

### ***Debris Project Manager***

The primary decision maker is the Debris Project Manager. The Debris Project Manager should be knowledgeable of the applicant's processes, procedures, personnel, resources, and limitations. It is important for the Debris Project Manager to keep communication and coordination efforts between departments a priority.

The Debris Project Manager has overall responsibility for the operations, planning, logistics, and cost of the debris management operations. The Debris Project Manager assigns tasks to team members and tracks the completion of tasks to ensure quick implementation of the debris removal operations.

## ***Debris Management Planning Sections***

### **Administration**

The Administration department typically includes the finance, personnel, and public information sections within a governing body. It is important for this department to establish a records management system in order to collect and keep all the documentation that may be required for the Public Assistance grants. Documentation may include, but is not limited to:

- Personnel policies.
- Labor and equipment timesheets and summaries.
- Safety procedures.
- Contract procurement procedures.
- Contracts.
- Billing and invoices, including debris hauler load tickets.
- Environmental permits.
- Right of entry and hold harmless agreements for private property debris removal and demolition, when applicable.
- Public information announcements.
- Debris salvage value information.

The finance section is usually responsible for developing an emergency response and recovery budget, tracking expenses, and ensuring funds are available for personnel, equipment, supplies, and contract service costs.

The Administration department should include a public information officer to distribute information and educate citizens about the debris operations. Planning components of the public information strategy should include the use of various types of information vehicles (print, radio, internet, etc.) and the pre-scripted information that will be distributed concerning topics such as:

- Debris pick-up schedules.
- Disposal methods and ongoing actions to comply with Federal, State, and local environmental regulations.
- Disposal procedures for self-help and independent contractors.
- Restrictions and penalties for creating illegal dumps.

- Curbside debris segregation instructions.
- Public drop-off locations for all debris types.
- Process for answering the public’s questions concerning debris removal.

Chapter 14, *Public Information Strategy* further discusses the types of information and how it may be distributed.

## **Contracting and Procurement**

The primary role of the Contracting and Procurement department is to have debris contracts in draft form ready for advertisement or have pre-qualified contractors in place prior to the event. This portion of the plan needs to be updated as the jurisdiction’s procurement procedures and contracts may expire and change over time. Contracting and Procurement planning includes the following tasks:

- Develop contract requirements.
- Establish contractor qualifications.
- Distribute instructions to bidders.
- Advertise bids.
- Establish a pre-disaster list of pre-qualified contractors.
- Manage the contract scope of work.
- Establish a post-disaster contracting procedure if necessary.

## **Legal**

The applicant’s Legal staff leads the review process for all legal matters in the debris management planning process. In addition to advising the debris management planning staff, the following tasks should also be performed by the legal department:

- Review all contracts.
- Review and/or establish a land acquisition process for temporary debris management sites.
- Review all insurance policies.
- Ensure environmental and historic preservation compliance before, during, and after operations.
- Ensure that site restoration and closure requirements are fulfilled.
- Review and/or establish a building condemnation processes.

- Review and/or establish a legal process for private property demolition and debris removal.
- Review right-of-entry and hold harmless agreements.

## **Operations**

The Operations staff is responsible for the supervision of government and contract resources and overall project implementation. The Operations department is responsible for implementing the entire debris removal operation. Planning tasks include:

- Position equipment and resources for the response and recovery debris removal operations.
- Develop staff schedules and strategies.
- Provide communication, facilities, services, equipment, and materials to support the response and recovery activities.
- Monitor and direct force account and contract labor.
- Distribute response and recovery resources.
- Operate and manage the collection, debris management site, and disposal strategies.
- Create a demolition strategy for structures, if necessary.
- Report progress for distribution to the debris management planning staff.

## **Engineering/Planning**

The Engineering staff supports all other debris management sections in a technical role. The Engineering department provides debris quantity assumptions, economic analysis, and feasible solutions for the debris operations. The following are tasks that may be completed by the Engineering staff:

- Forecast debris volume based on assumed disaster type.
- Develop an estimating strategy for post-disaster debris quantities.
- Strategize and map debris haul routes.
- Select debris management sites and design the site layout.
- Determine reduction and recycling means and methods.
- Identify and coordinate environmental issues.
- Assess available landfill space and determine if additional space is needed.
- Develop the debris collection strategy.
- Write contract scopes of work, conditions, and specifications.

- Coordinate with other local and State jurisdictions for road clearance and operations.
  - Establish a process for building damage assessment and condemnation (including public and private properties).
  - Issue permits.
- 



## Questions to Consider

1. What departments within your agency are responsible for:
  - Debris removal?
  - Solid waste removal?
  - Demolition?
  - Public information?
  - Contract services?
2. What departments within your agency should participate in the development of a debris management plan?
3. Who will be the Debris Project Manager for your jurisdiction?
4. What staff positions within your agency or department should be designated to coordinate State and Federal assistance for debris management activities?
5. What local ordinances that have been adopted in your community apply to debris management activities?
6. What Federal and State environmental regulations apply to debris removal activities?
7. Which staff member will be responsible for coordinating efforts with FEMA and the State during a Presidentially declared disaster?



## To Do Checklist

1. Assign management personnel to a debris management team for planning and implementation of the debris management plan. Assignments include management and planners for:
  - Administration
  - Contracting/Procurement
  - Legal
  - Operations
  - Engineering/Planning
2. Establish an organization chart with names and contact numbers for distribution to the planning staff.
3. Assign a primary coordinator, and additional staff if necessary, to coordinate State and Federal assistance for debris management activities.
4. Assemble any local ordinances that have been adopted in the jurisdiction that apply to debris management activities.





## Chapter 6 – Debris Forecasting for a Design Event

### Chapter Highlights

- Design Disaster Event
- Disaster Characteristics
- Land Use and Geography
- Forecasting Methods
  - Buildings
  - Vegetation
  - Volume – Weight Conversion Factors
  - Other Forecasting Methods
- Questions to Consider
- To Do Checklist

Please see Chapter 1, *Public Assistance Debris Removal Eligibility*, and Chapter 3, *Debris Removal from Public Property*, for eligibility issues to consider in developing the debris management plan.

Quantifying the amount of debris after the disaster is known as “estimating.” Predicting the amount and type of debris prior to a disaster event is known as “forecasting.”

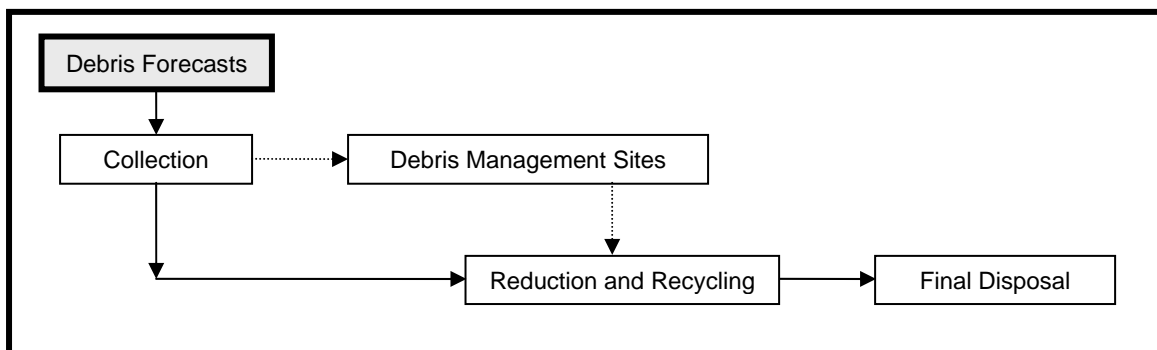


Figure 6.1 – Debris Management Forecasting Component

Forecasting the type and quantity of debris begins the debris planning process. By forecasting the type and quantity of debris, the planning staff can better define the scope of work of the debris management operations. Debris forecasts can be used to determine the required response and recovery resources, the number and size of storage and reduction sites, and the final disposition of the disaster-related debris.

Staff can reasonably forecast debris by becoming familiar with the impacts that result from various types of disasters. Realistic debris forecasts depend on the type and size of disaster an applicant anticipates their community will encounter.

## **Design Disaster Event**

The type of disaster and the debris that is generated may be similar for an entire region of the country, but the size and extent of the affected areas is specific to an applicant's jurisdiction. The more information gathered during the planning process, the more realistic the projected debris quantities will be for future disasters. For planning purposes, an applicant should consider a "design event" to calculate and forecast the amount of debris that will be generated. Planning staff needs to determine the size and extent of a potential disaster.

Historical data is most often used to determine the design event for hurricanes, tornadoes, ice storms, wildfires, and floods. The design disaster event must be within reason and take into account historic events and any additional altered criteria that may affect the disaster scenario. For example, a flood event may not impact as many single-family homes as a previous event, due to a change in a river channel or revised zoning laws that prohibit building in a flood-prone area.

Earthquake design events should be analyzed for reasonableness and practicality. For instance, an applicant may only need to plan with the assumption that a portion of its structures will be damaged or destroyed during a disaster event, rather than all of its structures, if more stringent seismic building codes and better construction practices have been adopted since a previous event of the same nature.

Terrorist events have limited historical data; information from natural disasters and/or analyzing vulnerabilities of a particular applicant's jurisdiction may provide useful insight into the challenges an applicant could anticipate.

## **Disaster Characteristics**

The following are general descriptions of natural and manmade disasters and the associated debris that each generates.

### **Hurricanes and Typhoons**

The terms "hurricane" and "typhoon" are two regional names for the same phenomenon. The damaging forces of hurricanes and tropical storms include high velocity winds (up to 150 miles per hour or higher in gusts), storm surge, and wave action. The most severe damage frequently occurs in the shore lands adjacent to the ocean. The resultant debris consists primarily of vegetative matter, construction materials from damaged or destroyed structures, personal property, marine vessels, and sediment. The greatest concentration of debris is located along the shoreline. Flooding and tornadoes spawned by hurricanes can cause damage and leave extensive amounts of natural and manmade debris far inland.

It is important to consider the mix of debris that may be generated, though there is no standard composition data that can be applied for all hurricanes. For example, the composition of debris from Hurricane Andrew (1992) in Florida was generally 30 percent clean, woody debris and 70 percent construction and demolition debris. After Hurricane Fran (1996) in North Carolina, the mix was exactly the opposite. Considering the land-use types and existing infrastructure (types of structures) will assist in making forecasts for planning purposes.

### **Tsunamis**

A tsunami is a wave train, or series of waves, generated in a body of water by an impulsive disturbance that vertically displaces the water. Earthquakes, landslides, volcanic eruptions, explosions, and even the impact of cosmic bodies, such as meteorites, can generate tsunamis. Tsunamis can savagely attack coastlines, causing devastating property damage and loss of life. They are capable of inundating and flooding areas hundreds of yards inland past the typical high water level. The fast-moving water associated with the inundating tsunami can crush homes and other coastal structures. Debris from tsunamis may consist of construction and demolition debris, vegetative debris, dead mammals, fish, and other marine forms. Tsunamis can be very deadly, and a community could expect to have a high loss of life.

### **Tornadoes**

Damage from tornadoes is caused by high-velocity rotating winds. The severity of the damage depends on the velocity of the tornado funnel and the length of time the funnel is on the ground. Damage is generally confined to a narrow path, which can be up to one-half mile wide and from 100 yards to several miles long. Tornado debris consists primarily of vegetative debris, construction materials from damaged or destroyed structures, and personal property.

### **Floods**

Severe rainstorms, hurricanes, tsunamis, or reservoir failure can cause flooding. Damage to structures from flooding is caused either by inundation or high-velocity water flow. Structural damage is usually limited to the floodway and the floodplain area immediately adjacent to the waterway. Heavy structural damage may result from high-velocity waters in mountainous areas or failure of a flood control project, such as a dam or levee. Flood debris may consist of sediment, wreckage, personal property, and sometimes hazardous materials deposited on public and private property. Additionally, heavy rains and floods may produce landslides; in such cases, debris consists primarily of soil, gravel, rock, and some construction materials.

## **Earthquakes**

Seismic forces along fault lines generate shock waves that cause ground shaking, surface ruptures, liquefaction, landslides, mudflows, and earth cracking. Damage may be localized at the epicenter or widespread across adjoining areas. Secondary effects of earthquakes such as aftershocks, fires, explosions, and landslides cause further damage. Debris from an earthquake generally consists of damaged personal property, structural building materials, charred material, concrete, and asphalt.

## **Fires**

Wildfires or urban fires can destroy or partially damage building structures, vehicles, public infrastructure, and vegetation. The loss of vegetative growth on hillsides may result in mudslides and subsequently cause further structural damage. Debris from fires consists of burnt personal property, burnt metals, charred wood, ash, asbestos, and other hazardous wastes.

## **Ice Storms or Snowstorms**

Debris from ice storms or snowstorms consists of significant amounts of vegetative debris and overhead utility service components.

## **Acts of Terrorism**

Terrorism includes the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives. Since terrorism is regarded as a criminal act, it involves coordination with law enforcement authorities, the coroner's office, and health officials before debris is handled or disposed.

Debris generated as a result of an act of terrorism is highly variable in both quantity and type, depending upon the specific means utilized by the terrorists. An act of terrorism could generate little to no debris at all, or could result in large quantities of multiple types of debris, potentially requiring highly specialized personnel, procedures, and equipment for its removal and disposal.

## Disaster Debris Streams

Typically, disasters generate a mix of different types of debris. Figure 6.2 summarizes the typical types of debris for each type of disaster.

|                    |                       | Typical Debris Streams |                                 |                                    |                 |                                 |             |                    |                      |            |
|--------------------|-----------------------|------------------------|---------------------------------|------------------------------------|-----------------|---------------------------------|-------------|--------------------|----------------------|------------|
|                    |                       | Vegetative             | Construction & Demolition (C&D) | Personal Property/ Household Items | Hazardous Waste | Household Hazardous Waste (HHW) | White Goods | Soil, Mud and Sand | Vehicles and Vessels | Putrescent |
| Types of Disasters | Hurricanes / Typhoons | X                      | X                               | X                                  | X               | X                               | X           | X                  | X                    | X          |
|                    | Tsunamis              | X                      | X                               | X                                  | X               | X                               | X           | X                  | X                    | X          |
|                    | Tornadoes             | X                      | X                               | X                                  | X               | X                               | X           |                    | X                    | X          |
|                    | Floods                | X                      | X                               | X                                  | X               | X                               | X           | X                  | X                    | X          |
|                    | Earthquakes           |                        | X                               | X                                  |                 | X                               | X           | X                  |                      |            |
|                    | Wildfires             | X                      |                                 | X                                  |                 | X                               | X           | X                  |                      |            |
|                    | Ice Storms            | X                      |                                 |                                    |                 | X                               |             |                    |                      |            |

Figure 6.2 – Typical Debris Streams for Different Types of Disasters

Different handling and disposal methods are required for particular debris types and impact the scope of work of the debris management plan. Managing debris containing hazardous, household hazardous, medical, and infectious materials requires various specialized handling and disposal methods. Planning Staff should consider the proper handling and disposal methods for each type of debris that could be generated during each design disaster event when preparing debris management plans. Refer to Chapter 3, *Debris Removal from Public Property*, for discussion on typical debris streams.

## Land Use and Geography

The planning staff should take into consideration land use, terrain, and accessibility of areas located within the applicant's geographic boundaries to determine the types of debris that will be generated and to establish effective debris collection programs.

Understanding the local land use provides information as to the types of debris that will be generated and offers insight as to the type of handling that would be necessary to safely manage the debris. For example, rural areas may have more vegetative debris; whereas, urban residential areas may have more construction and demolition debris. Industrial parks may have

special environmental concerns compared to park areas. Planning staff may find it useful to divide the jurisdiction into sectors in order to keep the forecasting manageable.

Evaluating accessibility and terrain of various locations within a jurisdiction is critical to determining the types of debris collection programs that should be undertaken. Remote areas may require the planners to safely store the debris until accessibility is established. Usually, finding debris contractors, recyclers, or disposal facilities in remote areas is a challenge. To promote expedient recovery efforts, planners should identify and maintain lists of available debris contractors, recyclers, and disposal facilities.

## **Forecasting Methods**

After the disaster parameters and geographic extent is established, specific debris volumes can be quantified by using historical information or forecasting models.

Historical records provide a basis for forecasting disaster-generated debris and can be used for planning purposes. Previous contracts for debris removal, recycling activities, volume-reduction processing, and landfill disposal records should be reviewed thoroughly to determine the quantity of disaster debris that was generated for a particular disaster event.

If previous disaster data is not available, assumptions may be made from neighboring jurisdictions' experience, or from USACE modeling. USACE emergency management staff has developed a modeling methodology designed to forecast potential amounts of hurricane-generated debris. Based on data from Hurricanes Frederic (1979), Hugo (1989) and Andrew (1992), the methodology has a predicted accuracy of plus/minus 30 percent. USACE mathematical modeling forecasts the quantity of debris specifically generated by hurricanes and is available in Appendix B, *USACE Hurricane Debris Estimating Model*.

### ***Buildings***

Several basic techniques have been established to forecast destroyed building debris quantities. These techniques can be used to forecast debris quantities prior to an event or estimate quantities after a disaster.

#### **Residential buildings**

A formula for estimating the debris quantities from a demolished single-family home and associated debris is:

$$L' \times W' \times S \times 0.20 \times VCM = \text{___ cubic yards of debris (cy)}$$

Where:

L = length of building in feet

W = width of building in feet

S = height of building expressed in stories

VCM = Vegetative Cover Multiplier

The vegetative cover multiplier is a measure of the amount of debris within a subdivision or neighborhood. The descriptions and multipliers are described as:

- **Light** (1.1 multiplier) includes new home developments where more ground is visible than trees. These areas will have sparse canopy cover.
- **Medium** (1.3 multiplier) generally has a uniform pattern of open space and tree canopy cover. This is the most common description for vegetative cover.
- **Heavy** (1.5 multiplier) is found in mature neighborhoods and woodlots where the ground or houses cannot be seen due to the tree canopy cover.

The table below can be used to forecast debris quantities for totally destroyed single-family, single-story homes in the applicable vegetative cover category.

| Typical House<br>(square feet) | Vegetative Cover Multiplier |                |                 |                |
|--------------------------------|-----------------------------|----------------|-----------------|----------------|
|                                | None                        | Light<br>(1.1) | Medium<br>(1.3) | Heavy<br>(1.5) |
| 1000 sf                        | 200 cy                      | 220 cy         | 260 cy          | 300 cy         |
| 1200 sf                        | 240 cy                      | 264 cy         | 312 cy          | 360 cy         |
| 1400 sf                        | 280 cy                      | 308 cy         | 364 cy          | 420 cy         |
| 1600 sf                        | 320 cy                      | 352 cy         | 416 cy          | 480 cy         |
| 1800 sf                        | 360 cy                      | 396 cy         | 468 cy          | 540 cy         |
| 2000 sf                        | 400 cy                      | 440 cy         | 520 cy          | 600 cy         |
| 2200 sf                        | 440 cy                      | 484 cy         | 572 cy          | 660 cy         |
| 2400 sf                        | 480 cy                      | 528 cy         | 624 cy          | 720 cy         |
| 2600 sf                        | 520 cy                      | 572 cy         | 676 cy          | 780 cy         |

Figure 6.3 – Debris Forecasting Table for Totally Destroyed Homes

The amount of personal property within an average flooded single-family home has been found to be:

- 25-30 cy for homes without a basement
- 45-50 cy for homes with a basement

Mobile homes have less wasted space due to their construction and use. The walls are narrower, and the units contain more storage space. Therefore, the typical mobile home generates more debris by volume than a single-family home. Historically, the volume of debris from mobile homes has been found to be:



- 290 cy of debris for a single-wide mobile home
- 415 cy of debris for a double-wide mobile home

### **Outbuildings**

All other building volumes may be calculated by using the following formula:

$$\frac{L' \times W' \times H' \times 0.33}{27} = \text{___ cubic yards of debris}$$

Where:

L = length of building in feet

W = width of building in feet

H = height of building expressed in feet

0.33 is a constant to account for the “air space” in the building

27 is the conversion factor from cubic feet to cubic yards

### **Vegetation**

Vegetation is the most difficult to estimate due to the random sizes and shapes of trees and shrubbery. Based on historical events, USACE has established a few rules of thumb in forecasting and estimating vegetative debris.

- Treat debris piles as a cube, not a cone, when estimating
- 15 trees, 8 inches in diameter = 40 cy (average)
- One acre of debris, 3.33 yards high = 16,117 cy

### **Volume – Weight Conversion Factors**

These factors to convert woody debris from cubic yards to tons are considered reasonable and were developed by USACE.

|              |                       |
|--------------|-----------------------|
| Softwoods    | 6 cubic yards = 1 ton |
| Hardwoods    | 4 cubic yards = 1 ton |
| Mixed debris | 4 cubic yards = 1 ton |
| C&D          | 2 cubic yards = 1 ton |

To verify these conversion factors in the field, several truckloads may be tested. Trucks should be well loaded, contain woody debris typical of that being removed, and truck capacities should be verified. It is recommended that testing be performed with all affected parties present.

## **Other Forecasting Methods**

### **Remote Sensing**

The use of remote sensing information (aerial photographs, satellite data, etc.), either alone or in combination with field surveys, may be of significant use in forecasting the amount, mix, and extent of debris. Geographic Information System (GIS) maps should be considered early in the planning process. Depending upon the area, it is usually possible to quickly obtain GIS maps of landfills, Superfund sites, transportation routes, etc. As data on debris is obtained, plotting it on GIS maps should be considered.

### **Forecasting Models in Development**

The private sector is currently developing other debris estimating models for tornadoes and hurricanes. These models are based on GIS or phone book data and on the USACE model. The Federal government and private industry are also working on a model to determine earthquake debris. The model takes into consideration various characteristics of an earthquake to anticipate the quantity of debris that could be generated by an earthquake.

Other debris forecasting methodologies and computer models may be available through other private vendors or other public sources.

Note that FEMA does not specifically endorse a particular product; however, such products may assist in forecasting disaster-generated debris and may be utilized for planning purposes.



### **Questions to Consider**

1. Describe the types of disasters and debris streams that place your jurisdiction at risk.
2. Historically, what type of disaster generated:
  - The most amount of debris (quantity)?
  - The most varied types of debris?
3. Who will be responsible for:
  - Forecasting the debris quantities prior to the disaster?
  - Estimating the post-disaster debris quantities?



## To Do Checklist

1. Establish a design disaster event. This may be based on historical events.
2. Forecast the type and quantity of debris for the design event. This can be based on historical data, recent neighboring community damage, or modeling methods.
3. Consider jurisdictional geography when forecasting and divide the jurisdiction into sectors if necessary.

# Chapter 7 – Debris Collection Strategy

**Chapter Highlights**

- Developing a Collection Strategy
  - Response Operations
  - Recovery Operations
- Types of Collection Methods
  - Curbside Collection
  - Collection Centers
- Collecting Hazardous Waste and White Goods
  - Household Hazardous Waste
  - White Goods
- Questions to Consider
- To Do Checklist

Please see Chapter 1, *Public Assistance Debris Removal Eligibility* and Chapter 4, *Private Property Debris Removal and Demolition of Private Structures*, for eligibility issues to consider in developing the debris management plan.

The next step after determining the design event and debris forecasting is to develop a debris collection strategy.

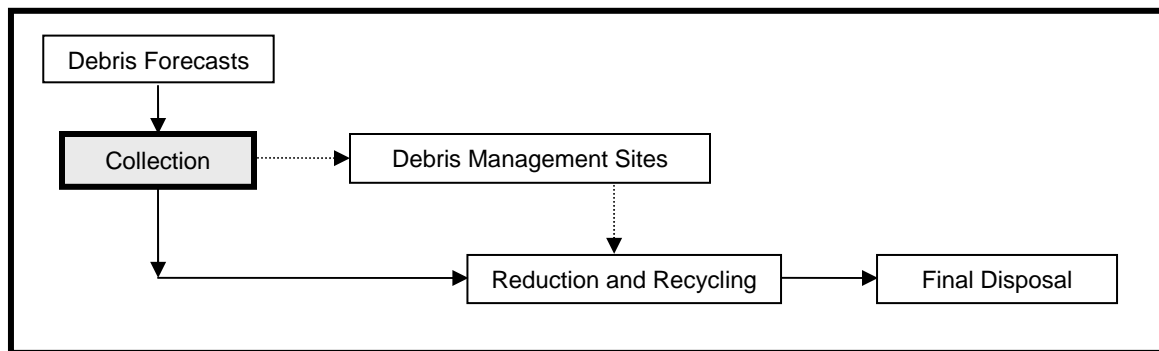


Figure 7.1 – Debris Collection Component

Collection operations are normally broken into two phases: response and recovery. An efficient debris management plan includes collection activities for response and recovery debris strategies. Response occurs sometimes during and always immediately after an event in order to clear emergency access routes. The recovery operation usually begins after the emergency access routes are cleared and the residents return to their homes and begin to bring debris to the public rights-of-way.

## Developing a Collection Strategy

To develop a strategy, the planning staff must consider several variables, which include:

- Amount and type of forecasted debris
- Employee labor resources
- Available equipment
- Urgency of the debris operations
- Damage to priority infrastructure
- Limitations of forces and skills for specialized debris issues

### ***Response Operations***

Debris removal activities during the response phase include immediate actions for the removal of debris to facilitate search and rescue efforts, to allow access to critical facilities, and to prevent flooding. Actions required during the response phase are usually completed within a matter of days following a disaster event.

Applicants often use their own labor force and equipment to remove debris during this phase. In circumstances when the existing labor force is not sufficient, or when specialized services are required, applicants may supplement their work efforts by activating mutual aid agreements or by awarding short-term debris removal contracts for specific work.

Response operations primarily focus on the emergency access routes and main arterials. The planning staff should identify which roads and streets are essential to emergency operations so they can manage and direct local resources. The planning staff should identify and target areas for possible State and mutual aid assistance to augment their efforts.

Prior to and immediately following the event, extricating people and providing access to health care facilities are the top priorities; therefore, the major arterial routes are given priority for the emergency services staff such as police, fire, and ambulance service. Emergency operations infrastructure, such as the emergency operations center and supply distribution centers, normally are the next priority.

Other infrastructure, such as water, wastewater, and utilities, is typically given the third priority. Priorities for all other routes are established by the applicant based on its particular situation. The following is an example priority list:

1. Fire, police, and ambulance service routes
2. Access routes to trauma centers, hospitals, critical care units, and jails
3. Major arterial routes
4. Roads and streets to the debris management center and emergency operations center
5. Supply routes to emergency supply distribution centers

6. Roads and streets to government facilities
7. Communication towers and systems access
8. Utility access routes
9. Routes to shelters

Maps showing specific streets, roads, buildings, hospitals, and addresses, along with specific labor assignments are necessary for emergency staff to understand their roles. All other roads and streets are normally cleared once the emergency and major access routes are opened and the jurisdiction transitions to the recovery operations.

### ***Recovery Operations***

The recovery phase focuses on collecting the remaining debris, reducing or recycling, and final disposal. Development and management of a debris management site is considered a recovery activity as well. Depending on the quantity and the complexity of the debris removal actions, debris removal activities could continue for several months. Applicants can use a combination of force account and contractor services for debris removal activities during this phase.

### **Types of Collection Methods**

The fundamental component of a disaster debris management strategy is the collection of debris. The public expects to have debris removed from neighborhoods immediately after a disaster event. The implementation of disaster debris collection immediately after the disaster event assures the public that recovery efforts are in progress and that the community will return to normal quickly. Developing an approach to collect debris during the planning process will assist applicants to begin collecting debris immediately following a disaster event.

The debris type, amount, and urgency determines which collection method is used. The two main methods of debris collection are curbside collection and collection centers.

The planning staff may tailor the collection operation using curbside collection, collection centers, or a combination of both depending on the specific jurisdiction, quantities, and types of debris.

#### ***Curbside Collection***

Curbside collection parallels an applicant's normal garbage and trash collection operations. Debris is placed at the curb or public rights-of-way by the residents for the applicant's collection. The only difference between the subcategories discussed below is the separation of the types of debris at the point of collection.

### **Mixed Debris Collection**

Collecting mixed debris by the applicant allows for residents to place all debris types in one specified area, usually along the public right-of-way in front of their residence. While this is the most convenient for the public, it does not facilitate effective recycling and reduction efforts, as the debris will need to be handled multiple times. Therefore, this method prolongs recycling and reduction efforts and increases operational costs.

### **Source-Segregated Debris Collection**

Residents are directed to sort the debris by material type and place it at the curb in separate piles. Trucks designated for a particular debris type collect the assigned debris and deliver it to a temporary staging area, or debris management site, reduction, recycling, or disposal facility. The disadvantage of this method is that it requires more trucks to collect the different types of debris; however, this increased equipment cost may be offset by avoiding the labor cost and time to separate the debris by hand. Source-segregated debris collection offers the potential of high salvage value and efficient recycling/reduction processing. This method is important when collecting hazardous and environmentally sensitive debris, such as household hazardous waste and white goods. Both types of debris are discussed at the end of the Collection Methods section.

### **Collection Centers**

The second type of collection method is to have the residents transport their debris to a common location. Large roll-off bins may be placed on public rights-of-way or public property for the residents to bring their debris for collection. This is well suited for rural, sparsely populated areas or logistically difficult conditions (i.e., hilly neighborhoods) where curbside collection is not practical. Separate bins can be designated for particular types of debris. The associated costs are generally low since the public essentially accomplishes the material collection and separation themselves.

The planning staff should assign employees to manage the development of the site and oversee the operations of the collection center. The planning staff needs to design the circulation for proper ingress, egress, and collection bin exchanges. Employees need to be stationed at the centers during the collection period in order to have empty bins brought in when the current ones are full, to ensure that debris materials are placed in the correct bins, and to ensure a collection center does not become a dumping ground for non-disaster-related debris.

The planning staff's legal counsel should investigate the liability issues that the site may present, especially if debris is being brought in and handled by the jurisdiction's residents.

## **Collecting Hazardous Waste and White Goods**

The two most common types of debris that will need special handling are hazardous waste and white goods. Regardless of which collection method is used, the planning staff needs to understand the effects this collection can have on the overall debris clearance, removal, and disposal mission.

### ***Household Hazardous Waste***

HHW mixed with other debris types will contaminate the entire load, which necessitates special disposal methods such as storage in a particular part of a landfill. Typically, the landfill requires special liners and a more intense permit standard due to the hazardous waste. The disposal cost of HHW is generally higher than the disposal of other waste; therefore, the overall cost of debris disposal can escalate quickly if the HHW collection and disposal is not planned and executed with care.

Local governments, in coordination with the State and county, often host HHW collection center events, or “round-ups,” several times during the year. The round-ups are planned scheduled events for residents to legally dispose of unused HHW. The applicants should host a HHW round-up following a disaster event, in order to avoid the commingling of the hazardous waste with other disaster-related debris. This limits the amount of contaminated waste, thereby reducing the overall disposal cost of the debris.

Pre-disaster planning should include training for hazardous waste response teams to collect, sort, store, and dispose of excessive quantities of HHW. The planning staff may consider having emergency hazardous waste removal/disposal contracts in place or pre-qualifying contractors to perform the work. The planning staff may prepare generic scopes of work that can be fine tuned with minimal effort, in order to begin recovery operations as soon as possible.

### ***White Goods***

The planning staff needs to take special care in finding certified recycling centers that are permitted to take white goods. Refrigerants and other machine fluids are normally regulated by the State environmental agency and can only be reclaimed by certified technicians and disposed of at a permitted facility. To avoid releases of refrigerants or oils, the collection of white goods should be accomplished carefully by manually placing the appliance on trucks or by using lifting equipment that will not damage the elements that contain the refrigerants or oils.

Having contracts or agreements in place prior to a disaster expedites the recovery efforts.



Recycling scrap metals and parts from white goods presents an opportunity for applicants to offset the collection and disposal costs. This also reduces the amount of waste going to a landfill.

The State environmental office and EPA provide first response functions in cases of commercial, agricultural, industrial, and toxic waste spills. The debris management plan should include the contact information for both parties in case of a large contamination issue.

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## Questions to Consider

1. What facilities will be critical for establishing clearance or removal priorities in the debris management plan?
  - Emergency (police, fire, hospitals)
  - Utilities (electrical, water, sewer, communications)
  - Other
2. Who will conduct response and recovery activities? Force account labor? Contractors?
3. How will debris be collected throughout the jurisdiction?
4. How will the collection activities handle HHW and white goods?
5. Have the necessary environmental controls for hazardous waste been designed for the collection centers, such as liners and berms?
6. Have the appropriate State and local regulatory agencies been involved in the selection of collection center sites, to ensure they are not placed in environmentally sensitive areas?



## To Do Checklist

1. Establish priorities for debris clearance and removal during response and recovery operations.
2. Identify which collection method best suits the jurisdiction.
3. If collection centers are used:
  - a. Identify appropriate locations for collection centers
  - b. Identify if hazardous waste or HHW will be collected
  - c. Identify how the collection centers will be monitored
  - d. Identify how long the collection centers will be in place
4. If using curbside collection, identify the work force that will collect the debris:
  - a. If Force account, assignments for:
    - Labor
    - Equipment
    - Sector or section of the applicant's jurisdiction
  - b. If Contractors, assignments for:
    - Labor
    - Equipment
    - Sector or section of the applicant's jurisdiction
    - Monitor assignments for contractor activities
5. Establish a process for handling HHW and white goods.
6. Train staff and emphasize the need for documenting key debris eligibility requirements for Public Assistance grant consideration:
  - a. Hours worked
  - b. Hours the equipment was operating
  - c. Location of work performed
  - d. Amount of debris removed
  - e. Type of debris



## Chapter 8 – Debris Management Sites

### Chapter Highlights

Advantages and Disadvantages

Identifying Debris Management Sites

- Ownership
- Size
- Location
- Environmental and Historic Preservation Concerns

Baseline Data Collection

Environmental Monitoring Program

Permits

Establishment and Operations Planning

- Site Design
- Site Management
- Site Closure

Questions to Consider

To Do Checklist

Please see Chapter 1, *Public Assistance Debris Removal Eligibility*, for eligibility issues to consider in developing the debris management plan.

Debris Management Sites (DMS) are established when applicants are unable to take debris directly from the collection point to the final disposition location.

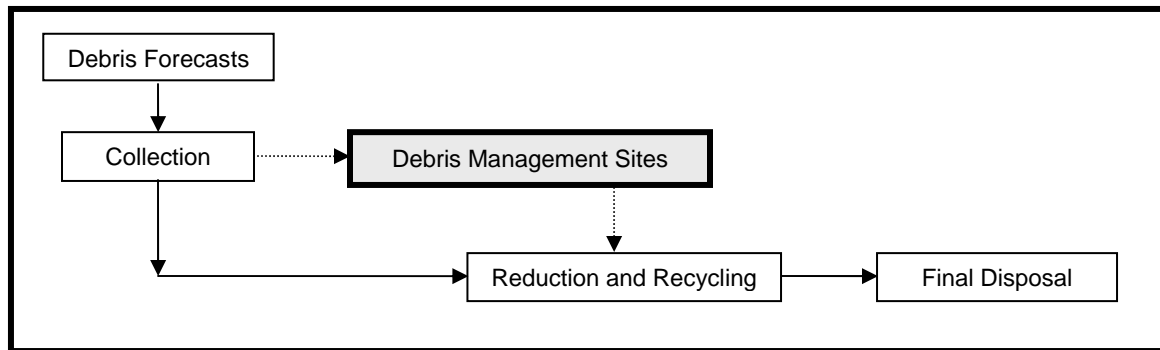


Figure 8.1 – Debris Management Site Component

A DMS is a location for applicants to temporarily store, reduce, segregate, and/or process debris before it is hauled to its final disposition. It is frequently used to increase the operational flexibility when landfill space is limited or when the landfill is not in close proximity to the debris removal area.

By employing a DMS, the debris can be collected from the rights-of-way and public properties in order to expedite permanent recovery operations. Locations for temporary debris storage and processing facilities should be identified during the planning process, and a listing of the locations should be included in the debris management plan.

## **Advantages and Disadvantages**

The advantages and disadvantages of a DMS are:

Advantages:

- Flexibility of operations. The DMS may also include a collection center for the public's use.
- Facilitation of recycling and reduction of debris. Specific reduction, recycling, or segregation needs can be designed into the site.
- Expedition of debris collection. Having a site for temporary storage and reduction allows time for local landfill site preparation before final disposal. The DMS may also be established at a location central to the disaster event, thereby reducing travel time from the disaster area to the disposal site.

Disadvantages:

- Additional cost to handle the debris twice. Once to the DMS and the second time to final disposition.
- If applicant-owned land is not available, leasing land is expensive.
- Additional costs for proper planning, engineering, and permitting.
- Considerable time and effort required to complete environmental and historic preservation compliance reviews prior to establishing the site.
- Environmental review and potentially extensive site cleanup may be necessary to properly close the site.
- DMS requires dedicated site management and staff for efficient operations, safety, and documentation considerations.

## **Identifying Debris Management Sites**

Identifying potential sites before a major natural disaster expedites debris removal and subsequent volume reduction and disposal actions. The designated Debris Project Manager and staff should work closely with other local, tribal, and State officials to develop and maintain

current listings of potential debris storage and reduction sites in areas prone to natural disasters. Site selection should be based on the following criteria:

- Ownership
- Size
- Location
- Environmental and historic concerns (baseline study findings)

### **Ownership**

The planning staff should consider public lands first in order to avoid costly land leases. Existing disposal or recycling facilities that are in close proximity to the disaster area are ideal locations for DMS. Nearby landfill and recycling center capacities need to be evaluated for site feasibility. Applicant-owned sites that will not require extensive repair costs, such as parks, vacant lots, or sports fields, should be considered as well. State-to-State or county-to-county agreements may present possible solutions for public land use.

When this is not possible, the planning staff should develop criteria for identifying potential private property locations for the DMS. Private land leases need to be reviewed by the legal staff in order to avoid extensive damage claims upon site closeout.

### **Land Lease Agreements**

The duration of the land lease agreement should be inclusive of all the time the applicant will be present at the site, beginning with the baseline environmental study and ending once the property owner takes back legal ownership.

The agreement should include a requirement to conduct a baseline environmental evaluation of the site before the site is occupied and an environmental evaluation before returning the property back to the owner. Both documents may become an annex to the land lease agreement.

The land lease agreement should be for a specific time frame with the ability to extend the lease if debris removal and processing activities are not completed.

### **Size**

The size of the site is dependant on the quantity of debris that is stored and processed. The site should be large enough to safely accommodate processing of various debris materials, storing heavy equipment, and maneuvering trucks and large processing equipment. Historic disasters have shown that it takes 100 acres of land to process one million cubic yards of debris. USACE has found that approximately 60 percent of the area will be used for roads, buffers, burn pits, HHW disposal areas, etc.

## ***Location***

The DMS should be established in an area that does not impede the flow of traffic along major transportation corridors, disrupt local business operations, or cause dangerous conditions in residential neighborhoods or schools. Whenever possible, avoid locating a DMS near residential areas, schools, churches, hospitals, and other such sensitive areas.

The DMS requires good ingress/egress to accommodate heavy truck traffic. The planning staff should consider adjusting traffic signals to accommodate projected truck traffic on critical haul routes. The DMS selection criteria should consider access to major routes to allow for trucks to transport material to final disposition locations.

The planning staff needs to consider public acceptability when selecting a potential DMS. It is largely dependent upon the activities planned for the site. Smoke from burning, around-the-clock light and noise from equipment operation, dust, and traffic are generally tolerated early in a disaster recovery operation, but may have to be curtailed later. The planning staff is strongly encouraged to notify citizens early about planned site activities and possible ramifications.

## ***Environmental and Historic Preservation Concerns***

When selecting public or private sites, pre-existing conditions should be considered because the sites will have to be restored upon site closeout. Proper management of the site allows the site to be closed with manageable efforts. For site closure reasons, planning staff should refrain from aggravating an existing environmental issue during the debris management operations.

Therefore, a DMS should not be established in an environmentally or historically sensitive area such as wetlands, critical animal and plant habitats, sole source aquifers, freshwater well fields, historic districts, or archeological sites. This applies specifically to any Superfund site or area within a 100-year floodplain. DMS selection criteria should also take into consideration any disproportionately high or adverse impacts on minority or low-income populations, in accordance with EO 12898. Adverse impacts should be avoided or minimized where possible. If an environmental or historic preservation concern is found during the baseline data collection process (described below), the potential site should be ranked lower than others. However, if use of such areas is unavoidable, the State and local environmental and historic preservation requirements must be followed. Compliance with environmental and historic preservation requirements is still required.

By conducting a baseline data collection study, the planning staff is able to further establish the feasibility of potential sites, document the existing site, and vet potential environmental issues. Data collection needs to be completed prior to establishing the site and continued throughout the operations. The final evaluation should include the same documentation in order to avoid disagreements on the condition of the site prior to the operations and the condition to which it was returned.

## Baseline Data Collection

Baseline data collection is essential to documenting the condition of the land before it is used as a DMS. Private and public land used as a DMS needs to be returned to its original condition following the end of all debris operations. As soon as a potential site is selected, the designated Debris Project Manager and staff should work closely with local, tribal, and State officials to develop baseline data criteria. The following actions are suggested to document the baseline data on all sites:

1. **Videotape and/or Photograph the Site.** Thoroughly videotape and/or photograph (ground or aerial) each site before beginning any activities. Periodically update video and photographic documentation to track site evolution.
2. **Document Physical Features.** Note existing structures, fences, culverts, irrigation systems, and landscaping that can help evaluate possible damage claims made later.
3. **Investigation of Historic Significance.** Research the past use and ownership of the property to document any issues regarding the existence of historic structures or archeological sites. The SHPO may have information about the property.
4. **Sample Soil and Water.** Soil and groundwater samples should be collected prior to use of the site. Advance planning with community and State environmental agencies can establish requirements, chain of custody, acceptable sampling methods, certified laboratories, and testing parameters. If in-house assets are not available, the planning staff may consider establishing a contract with an environmental consulting firm that can respond rapidly. Planned HHW, ash, and fuel storage areas should be sampled prior to site setup.

## Environmental Monitoring Program

As operations proceed additional data should be collected throughout the operations for closeout and quality assurance reasons. The data can be compared to the previously established information in order to determine any remediation that may be necessary.

1. **Sketch Site Operation Layout.** DMS operations may grow, shrink, or shift on the site. It is important to track reduction, hazardous waste collection, fuel, and equipment storage in order to sample soil and water for contaminants. Periodically map or sketch activity locations so that areas of concern can be pinpointed later for additional sampling and testing.



2. **Document Quality Assurance Issues.** Document operations that will have a bearing on site closeout, such as petroleum spills at fueling sites, hydraulic fluid spills at equipment breakdowns, installation of water wells for stock pile cooling or dust control, discovery of HHW, and commercial, agricultural, or industrial hazardous and toxic waste storage and disposal.
3. **Restoration of Site.** Final restoration of the landscape must be acceptable to the landowner, but within reasonable expectations. Therefore, plan the landscape restoration as early as possible, preferably incorporating provisions within the lease.

## Permits

Environmental permits and land-use variances may be required to establish a temporary DMS. Several agencies may be involved in issuing permits and granting land-use approvals. The planning process should identify the potential permits that will be required to establish a facility. A listing of the permits should be part of the debris management plan and may include:

- Waste processing and recycling operations permit
- Temporary land-use permits
- Land-use variances
- Traffic circulation strategies
- Air quality permits
- Water quality permits
- Coastal commission land-use permits
- HHW permits
- Fire department permits

## Establishment and Operations Planning

### *Site Design*

The information gathered during the baseline data collection becomes important to the design of the site. Additional concerns, such as site operations and closure criteria, need to be taken into consideration when the site is designed. Many of these issues will be addressed in planning, but will be implemented after the debris-generating event occurs.

### **Site Preparation**

The topography and soil/substrate conditions should be evaluated to determine the best site layout. When planning site preparation, the designer should consider ways to make site closure and restoration easier. For example, if the local soils are very thin, the topsoil can be scraped to bedrock and stockpiled in perimeter berms. Upon site closeout, the uncontaminated soil can be

re-spread to preserve the integrity of the tillable soils. Operations that modify the landscape, such as substrate compaction and over-excavation of soils when loading debris for final disposal, adversely affect landscape restoration.

### Site Layout

The efficiency and the overall success of the DMS operations is determined by how the site is designed. Debris should be constantly flowing to incinerators and grinders, or recycled with the residue and mixed construction and demolition materials going to a landfill. Significant accumulation of debris should not be allowed to occur at temporary storage sites, due to environmental and safety concerns, such as the risk of fire. Moreover, permits for such sites usually impose maximum capacity restrictions. Additional debris management sites may be required if the actual debris quantities flowing into the site are greater than the site storage and processing capacity.



Figure 8.2 - DMS With Undesired Debris Accumulation



Figure 8.3 - DMS With Little Debris Accumulation

## Operational Boundaries

Operational boundaries are the boundaries or areas that clearly define the difference in use areas at the DMS. In establishing the operational boundaries, the DMS design staff may consider using earthen berms, temporary barriers, or any other physical restriction. This aids traffic circulation and helps keep debris amassing at the DMS to a minimum.

Common operational uses are:

- Reduction
- Recycling
- Tipping areas (unloading)
- Loading areas for processed debris to go to its final disposition
- Drop-off centers for the general public (this may include vegetative, recycling, or construction and demolition debris)
- HHW storage
- Monitoring tower locations at both the ingress and egress points
- Equipment, fuel, and water storage

The separation between all of the areas listed above needs to be clearly delineated and defined. As operations proceed, the lines may be moved to accommodate either growing demand for space or a reduction in preparation for closure.

The reduction, recycling, tipping, and loading areas need ample room for large equipment operations. The design should take into consideration the possibility of multiple pieces of equipment being in the same activity area at one time. Depending on the scale of operations, each debris stream may have its own tipping area and should be designed accordingly. Reduction activity considerations are discussed in Chapter 9, *Debris Reduction/Recycling Methods and Disposal*.

General public drop-off areas for recycling, reduction, and construction and demolition debris may be included within a DMS. These public use areas should be carefully designed for passenger vehicle traffic and public safety.

HHW storage should be close to the public drop-off center yet restricted so that qualified personnel may process the waste appropriately. The design staff may consider constructing an impermeable lining and earthen berms in order to contain spills and prevent surface water runoff from leaving the area.

Monitoring towers should be located at ingress and egress points. Monitoring towers should be constructed of durable structural materials. The structures should be designed to withstand active and static loads. A stepladder is not an acceptable monitoring tower. Additional monitoring concerns and issues are discussed in Chapter 11, *Monitoring Debris Removal*.

Equipment and fuel should have a designated storage area and signs posted appropriately. The fuel storage areas need to be designed to contain spills. Water should be readily available at all times. Water storage areas should be strategically positioned throughout the site and identified appropriately.

**Traffic Patterns**

The traffic circulation needs to be well defined throughout the entire site. Although traffic signs and barricades aid in directing traffic, the planning staff may consider flag personnel to help direct traffic. Drivers unfamiliar with the new environments, routes, and rules will need assistance in order to safely navigate through the DMS.

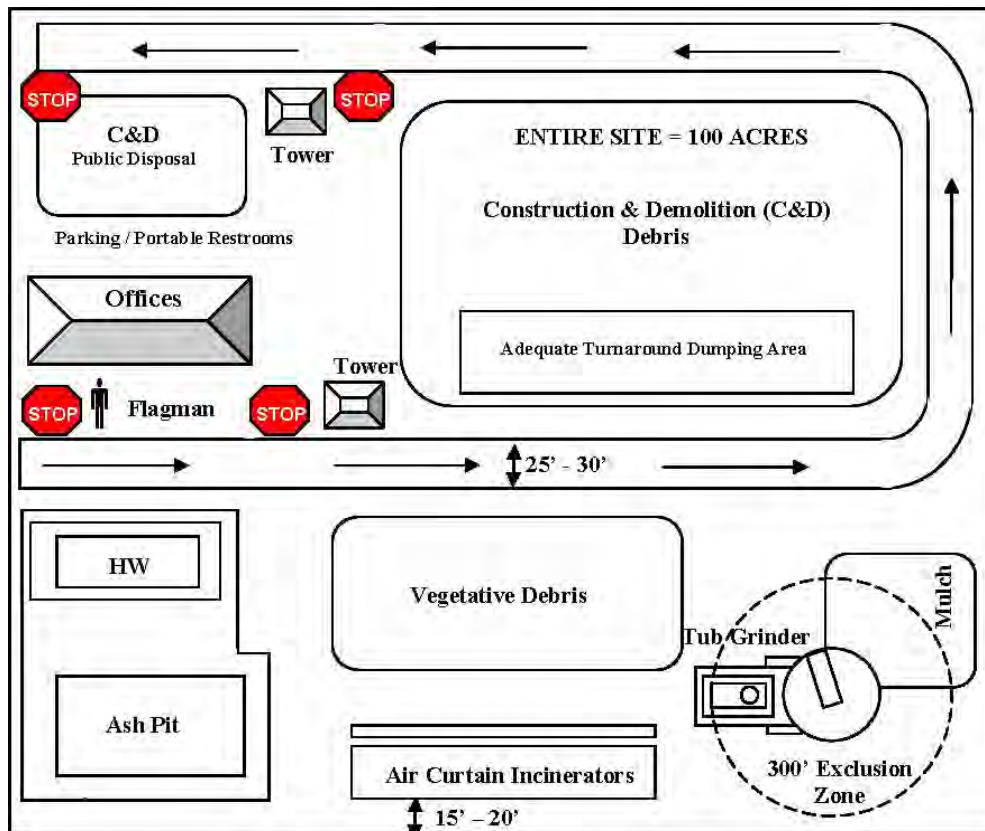


Figure 8.4 - Sample DMS Layout

Optimally, the designed traffic pattern should allow trucks to enter and exit through different access points, as long as each is monitored. Haulers are typically paid by the volume of a load. The load is evaluated when entering the site as a percentage of the full capacity of the truck. Stationing monitors at ingress and egress points ensures every truck releases the entire load prior to leaving the site. This avoids debris left in a truck from a previous load from being counted again in a subsequent load.

The empty trucks that enter the site to remove the processed (reduced) debris should enter and exit through an access point other than that of all other traffic. This reduces the site management and debris monitor confusion regarding debris being deposited or leaving the site.

### **Site Management**

To meet overall debris management strategy goals and to ensure that the site operates efficiently, the management of the site should be under the direction of the applicant.

Applicants could use in-house personnel or contracted services to manage the site. In either situation, a site manager, debris monitors, and safety personnel are needed to ensure safe and efficient operations.

### **Site Manager**

The site manager is responsible for supervising the overall day-to-day operations, maintaining daily logs, preparing site progress reports, and enforcing safety and permitting requirements during site operations. The site manager is also responsible for scheduling the environmental monitoring and updating the site layout. The site manager has oversight for monitoring the activities of the debris removal contractors and the onsite debris processing contractors to ensure they comply with the terms of their contracts.

### **Debris Monitors**

Applicant's monitors (whether force account or contractors) should be placed at ingress and egress points in order to quantify debris loads, issue load tickets, inspect and validate truck capacities, check loads for hazardous waste, and perform quality control checks. The specific duties of the monitors are dependent on how debris is collected. Chapter 11, *Monitoring Debris Removal*, includes additional information concerning monitoring roles and responsibilities.

### **Safety Personnel**

Safety personnel are responsible for traffic control and ensuring that site operations are in compliance with State and Federal occupational safety regulations.

## Site Closure

When the site operations are complete, the property must be restored to its original condition before returning the site to the property owner. Restoration of a site involves removing all traces of the operations and possible remediation of any contamination that may have taken place during the operations. The site, either applicant owned or leased, must be brought back to its environmental state, prior to it being returned to the owner.

Debris, processing equipment, storage tanks, protection berms, and other structures built on the site should be removed from the site upon completion of all debris removal and processing operations.

The final environmental site evaluation is an extension of the environmental monitoring program. Similar testing as completed in the baseline study will be conducted to confirm that the site has been returned to its pre-activity state. Test samples should be taken at the same locations as those of the initial assessment and monitoring program. However, if warranted, additional test samples may need to be taken at other locations on or adjacent to the site.

Based on the results of the testing, additional remediation may be required before the owner takes final acceptance of the site. The lease agreement should have provisions to release the applicant from future damages when the site is returned in its original condition or final acceptance is received from the owner.



### Questions to Consider

1. What are the remaining capacities of your landfills? How would you acquire this information?
2. Are there any restrictions to the types of materials that can be taken to your landfills?
3. Does the governing jurisdiction have available property that can be used as a DMS? If not, who would have the responsibility to locate a potential DMS and prepare legal lease agreements?
4. Who in your staff could manage the DMS? What staff is available to work at the DMS?
5. Will contracting additional labor and equipment be necessary to operate the DMS?



## To Do Checklist

1. Identify landfills within the jurisdiction that can be used for a DMS, final disposal, or both. If landfill space is not available, what are the alternatives?
2. If it is determined that a DMS is necessary:
  - a. Perform the baseline data collection
  - b. Have the legal staff review and obtain a lease (if private property)
  - c. Identify any outstanding environmental concerns with the site
  - d. Obtain all permits from the governing authority or agencies
3. Identify the jurisdictional staff member(s) that will be responsible for the DMS operations.
4. Identify the types of operations that will be taking place at the DMS.
5. Design the DMS layout.
6. Identify how the DMS activities will be performed:
  - Force account labor and equipment
  - Contract labor and equipment.
7. Develop an ongoing environmental monitoring strategy for while the DMS is operating. Document appropriately for potential site closure remediation.
8. Perform a final environmental data collection to ensure the property is returned as it was accepted.
9. If the DMS is leased, ensure the property is returned and accepted by the owner without future action due to environmental contamination.

## Chapter 9 – Debris Reduction/Recycling Methods and Disposal

### Chapter Highlights

#### Methods of Reduction

- Incineration
- Chipping and Grinding
- Recycling

#### Final Disposition Operations

#### Questions to Consider

#### To Do Checklist

Please see Chapter 1, *Public Assistance Debris Removal Eligibility* and Chapter 2, *Costs*, for eligibility issues to consider in developing the debris management plan.

Based on the debris forecasting, the planning staff will have a concept of the amount and types of debris that will be collected and disposed of. During this period, the staff may consider reduction and recycling methods to lower the overall cost of a debris removal operation.

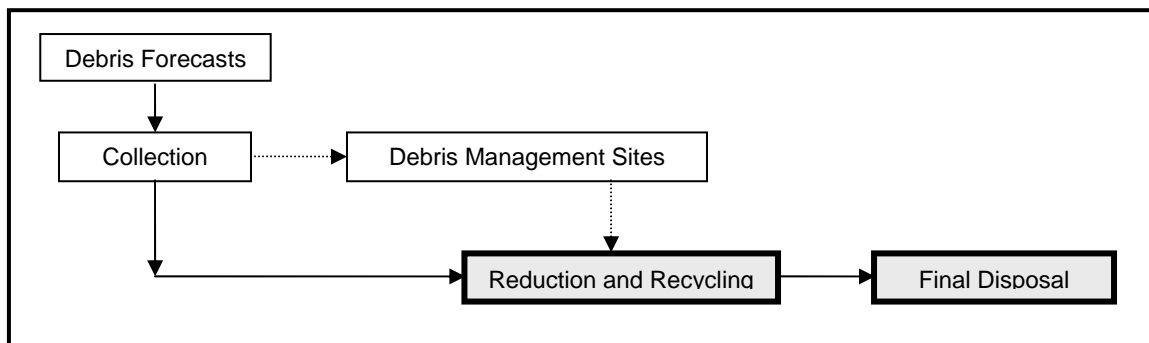


Figure 9.1 – Debris Reduction/Recycling and Final Disposal Component

Reducing and/or recycling disaster-related debris has financial and environmental advantages. These operations can decrease the overall cost of a debris removal operation by reducing the amount of material that is taken to a landfill. This diminishes the cost of final disposition in the form of tipping fees. In the case of recycling, potential end-use products for specific markets may offset the cost of operations even more. In many communities, recycling operations are an important component of the community public policy and are a priority. The staff should evaluate the types of reduction methods appropriate for the anticipated debris based on different disaster scenario events.



## Methods of Reduction

The planning staff has three main types of reduction methods to consider and use during the operations: incineration, chipping/grinding, and recycling.

One method or a combination of methods may be utilized as appropriate depending on the type and anticipated volume of debris. The applicant must ensure all Federal, State, county, and local laws are followed before any reduction activities begin.

### ***Incineration***

Burning vegetative debris is a popular reduction method since it has up to a 95 percent reduction rate. Local agricultural extension personnel should be consulted to determine if the resulting ash can be recycled as a soil additive. This option should be terminated if mixed debris enters the waste stream.

The incineration process requires a minimum of three steps, to include:

1. Unloading the debris.
2. Moving the debris into an incinerator.
3. Removing the ash from the incinerator to final disposition. Final disposition may be an appropriately constructed area at the DMS or a landfill.

This process is illustrated in the following figure.

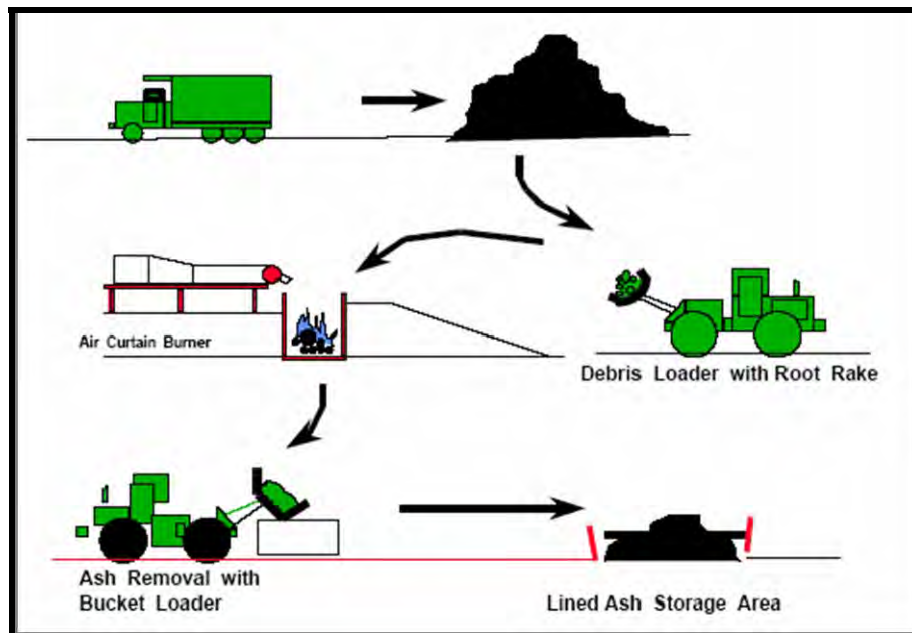


Figure 9.2 – Flow Diagram for a Burning Operation

There are several incineration methods available for volume reduction.

**Uncontrolled Open-Air Incineration** is reducing debris with no control over how much or how quickly it is allowed to burn. It is the least desirable method of volume reduction because it lacks any type of environmental control. Applicants may employ this method early in a disaster to make progress quickly. However, if circumstances dictate that open-air burning is the only option for managing debris, the applicant should conduct environmental evaluations to include air quality monitoring and implement control measures to limit impacts to humans and the environment. This reduction method should be closely monitored to ensure that only clean woody debris is incinerated.

**Controlled Open-Air Incineration** carefully reduces vegetative debris by burning debris within a contained fixed area. The reduction of clean woody debris presents little environmental damage and is cost-effective.

**Air Curtain Pit Incineration** offers an effective means to expedite the volume reduction process while substantially reducing the environmental concerns caused by open-air incineration. The air curtain incineration method uses a pit constructed by digging below grade or building above grade (if a high water table exists) and using a blower unit. The blower unit and pit comprise an engineered system that must be precisely configured to function properly.

The burning chamber is usually no more than 8 feet wide and 9 to 14 feet deep. The length of the pit varies depending on site size, environmental permitting, and labor/equipment limitations. The designs of successful air curtain incinerators used in past disasters are presented in the following figures, for reference and planning use only.

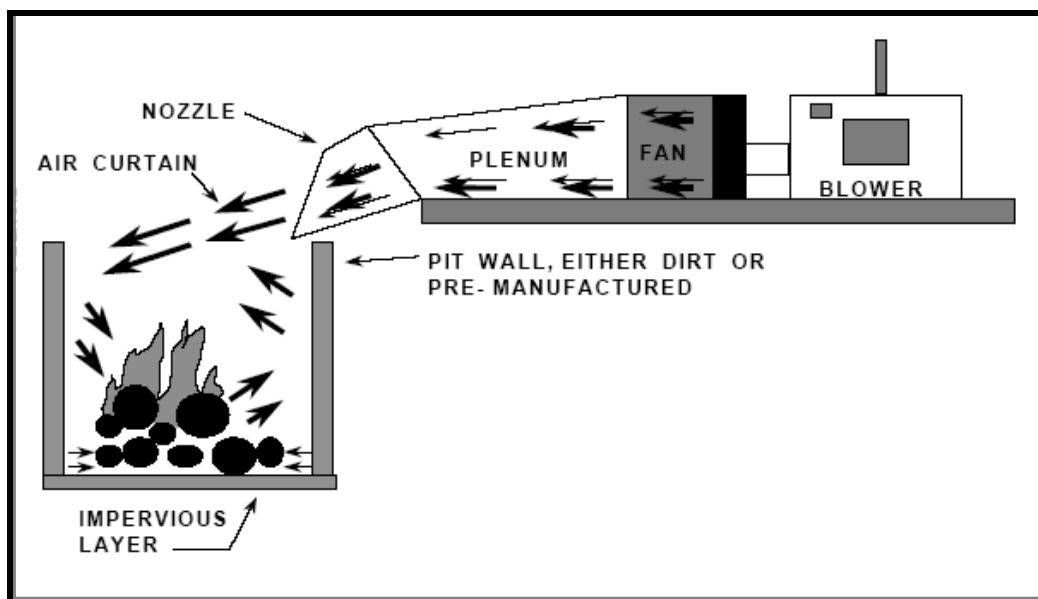


Figure 9.3 - Below-Grade Air Curtain Operation

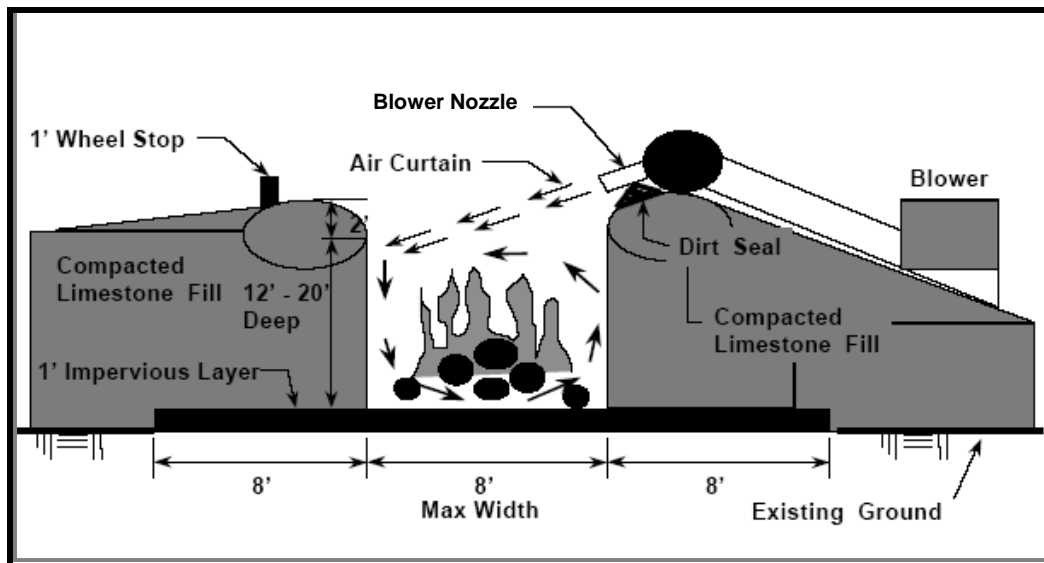


Figure 9.4 - Above-Grade Air Curtain Operation

It is important to note that there are no industry standards for air curtain pit design. The applicant should seek knowledgeable personnel who are experienced with air curtain pit incinerator design and operating procedures when soliciting expertise to perform incineration services. The planning staff should research and solicit qualified personnel to properly train all staff that may be operating or maintaining this process.

**Portable Air Curtain Incinerators** use the same methods as air curtain pit incinerator systems, except that the portable incinerators use a pre-manufactured pit rather than an onsite constructed earth/limestone pit. Portable air curtain incinerators are the most efficient incineration systems available because the pre-manufactured pit is engineered to precise dimensions to complement the blower system. The pre-manufactured pit requires little or no maintenance as compared to earth or limestone constructed pits, which are susceptible to erosion. Portable air curtain units are ideal for areas with high water tables and sandy soils as well as areas where smoke capacity must be kept to a minimum.

### Environmental and Safety Concerns

With all of the incineration methods, environmental compliance and safety concerns need to be addressed within the plan. The planning staff must check with appropriate State agencies for State-specific requirements. Setback, permitting, and public information suggestions should be included in the plan.

Setbacks and buffer zones need to be established within and around the reduction sites not only for the public safety but also for the safety of the debris operations. A setback of at least 100 feet should be maintained between the debris piles and the incineration area. It is often suggested that 1,000 feet be allowed between the incineration area and the nearest building in order to create a generous buffer zone for emergency vehicles, if needed. The fire should be

extinguished two hours before anticipated removal of the ash mound. The ash mound should be removed before it reaches two feet below the lip of the incineration pit. To prevent explosions, hazardous or contaminated flammable material should not be placed in the pit. Finally, fencing and signage are simple and effective means to keep the public away from the incineration area.

Smoke generated by any of the above incineration methods is often interpreted by the general public as having an environmental impact. Therefore, it is important to also address smoke as part of the air monitoring guidelines. The governing State environmental or forestry agency will have guidelines that need to be met in order to acquire and retain a burn permit.

Planners should take the initiative in keeping the public informed. Applicant staff, environmental groups, and residents should be thoroughly briefed on the incineration methods being used, how the systems work, environmental standards, health issues, and the risks associated with each type of incineration. A proactive public information strategy should be included in any operation that uses incineration as a primary means of volume reduction. Please see Chapter 14, *Public Information Strategy* for additional information.

### ***Chipping and Grinding***

The second most common type of reduction method is to chip or grind disaster-related debris. Vegetative debris is the most common material reduced by using this method. The planning staff may also employ chipping and grinding methods in reducing rubber and some metals prior to being shipped to the recycling facility. The planning staff will have to investigate the opportunities, economics, and equipment in order to determine if this reduction method is appropriate for its jurisdiction.

There are significant differences in volume reduction between chipping and grinding and incineration. Incineration reduces the volume by approximately 95 percent, leaving only ash residue for disposal. Chipping and grinding reduces the volume by 75 percent. Since 25 percent of the volume remains from chipping and grinding, the benefit of this reduction method can be increased by identifying alternate uses of the residual material. The ability to use recycled wood chips as mulch for agricultural purposes, fuel for industrial heating, or in a cogeneration plant helps to offset the cost of the chipping and grinding operation.

If the grinding operation is strictly for volume reduction, the size of the mulch is not important; however, mulch to be used for agricultural purposes must be of a certain size and virtually free of paper, plastic, and dirt. Because of shallow topsoil conditions in some locations, mulch is a desirable product. In other locations, however, the mulch may become nothing more than a landfill product. The designated debris manager and planning staff should work closely with local environmental and agricultural groups to determine if there is a market for mulch.

Plastics should be eliminated completely. To help eliminate contaminants, root rake loaders should be used to feed or crowd materials to the chipper or grinder. Hand laborers should remove contaminants prior to feeding the chippers and grinders.

Bucket-loaders tend to scoop up earth, causing excessive wear to the grinder or chipper. Shaker screens should be used when processing stumps with root-balls or when large amounts of soil are present in the woody debris. The separated soil may be recycled back to the agricultural community.

### **Equipment**

Grinders are ideal for use at debris storage and reduction sites because of their high-volume reduction capacity. However, a large area is needed to hold the resulting mulch. Chips or mulch should be stored in piles no higher than 15 feet and located so as not to hinder hauling operations. Properly locating the grinders is critical for noise and public safety considerations.

There are numerous makes and models of grinders and chippers on the market. Tub-grinders have production rates ranging from 160 to 340 cubic yards per hour for brush and yard waste. Manufacturer-published grinder production logs can be misleading because they reflect only the engine hours and ideal rate of production. These production logs do not take into account personnel monitoring or consider varying debris conditions. Production rates should be verified by monitoring operations.

The reduced debris production output should average 100 to 150 cubic yards per hour when debris is moderately contaminated with plastic and dirt and feeding operations are slow. When the debris is relatively clean, the production rates can increase up to 250 cubic yards per hour.

Brush chippers can be hauled or towed to the site of the downed vegetation and are ideal for use in residential areas. Damaged and uprooted trees present significant problems if they are pushed to the rights-of-way to wait for eventual pick-up and transport to storage and reduction sites. The brush chippers allow the downed trees and limbs to be reduced in place. The use of onsite chippers also allows the material to be used as mulch in the area where it is chipped, thereby saving the cost of transporting it.

### **Recycling**

Based on the debris management goals and objectives, the decision to recycle disaster debris should be made during the planning process. The planning staff may find that marketing and selling the reduced debris is more financially attractive than hauling the unreduced debris to a local landfill.

Processing disaster debris through grinding, shredding, or any other means without an understanding of the end uses and market specifications may result in the products becoming

unusable for their intended purposes, necessitating disposal of the debris. For that reason, it is incumbent upon applicants to thoroughly research the market opportunities and establish criteria to assist emergency personnel in making decisions to recycle certain types of debris.

Debris management plans should include a list of the types of debris materials that can be recycled. The plans should determine end-use products that can be made from disaster debris, determine the market demand for each product, identify the product buyers, and when feasible, secure the sales of those products prior to an event.

The debris management plan needs to detail the implementation of the appropriate processing technique to achieve the desired end product. If the applicant uses contracted services to process debris, the contract agreements should include the processing specifications so that the contractor uses the correct types of equipment to achieve that specification.

Hurricanes and earthquakes may present opportunities to contract large-scale recycling operations and achieve an economic return from some of the contractors who exercise their initiative to segregate and recycle debris as it arrives at the DMS or landfill.

Specialized contractors should be available to bid on disposal of debris by recycling, if it is well sorted. Contracts and monitoring procedures should be developed to ensure that the recycling contractors comply with local, tribal, State, and Federal environmental regulations.

### **Common Recyclable Materials**

**Metals** - Hurricanes and tornadoes can cause extensive damage to mobile homes, sun porches, and green houses. Most of the nonferrous and ferrous metal debris is suitable for recycling. Metal maulers and shredders can be used to shred trailer frames, trailer parts, appliances, and other metal items. Ferrous and nonferrous metals are separated using an electromagnet and then sold to metal recycling firms.

**Soil** - Debris removal operations may include transporting large amounts of soil to the DMS. At the DMS, it may be combined with other organic materials that will decompose over time. This procedure can produce significant amounts of soil that can be sold, recycled back into the agricultural community, or stored onsite to be used as cover.

In agricultural areas where chemical fertilizers are used heavily, recovered soil may be too contaminated for use on residential or existing agricultural land. It may be necessary to monitor and test the soil to ensure that it is not contaminated with chemicals. If the soil is not suitable for any agricultural or residential use, it may ultimately have to be disposed of at a permitted landfill.

**Concrete, Asphalt, and Masonry Debris** - Concrete, asphalt, and masonry products can be crushed and used as base material for certain road construction products or as a trench backfill. Debris targeted for base materials needs to meet certain size specifications as determined by the end user.

## Final Disposition Operations

The planning staff will need to identify the final disposition site of whole, reduced, or recycled debris. The most cost-efficient measure is usually to make use of the applicant's own or normally utilized landfills. The available space often determines the most appropriate type of reduction method to employ. If local landfills are not adequate, the staff should conduct a search of landfills close to the disaster area for disposal.

County-to-county agreements are sometimes used in order to achieve an equitable solution. Some county landfills do not accept waste from other areas and may have stringent rules regarding what can be brought into the landfill.

Landfill tipping fee cost structures become important to the planning staff, especially if debris is being taken to a neighboring county. Tipping fee cost structures include operating and maintenance costs, permitting fees, capital improvement costs, and taxes. The capital improvement costs may be directly related to the landfill itself or may be for projects within the county.

Some fees and taxes may be waived for a neighboring governing body. The planning staff should investigate and compare the fees that are truly applicable for its debris disposal strategy.



### Questions to Consider

1. Do you have a strategy for reduction?
2. Do you currently have a recycling strategy? Is the jurisdiction considering a recycling strategy?
3. Which agency within your jurisdiction would be responsible for developing and implementing a recycling strategy?
4. What departments within the State, county, or your organization would be responsible for permitting burning or incineration operations?
5. What is your strategy for final disposition?



## To Do Checklist

1. Identify potential end use of the reduced or recycled materials. Identify if the end-use materials may represent potential income to offset processing, or entail no cost for disposal.
2. Identify reduction and recycling methods that will be used at the DMS.
3. Identify how the reduction and recycling activities will be performed:
  - a. Force account labor and equipment
  - b. Contract labor and equipment
4. Determine final disposition locations.





## Chapter 10 – Contracted Services

### Chapter Highlights

Common Misconceptions  
Procurement Considerations  
General Contract Provisions  
Types of Contracts  
– Unit Price Contract  
– Lump Sum Contract  
– Time-and-Materials Contract  
– Prohibited Contracts  
– Contract Matrix  
Questions to Consider

Please see Chapter 2, *Costs*, for eligibility issues to consider in developing the debris management plan. This chapter also references information in Chapter 11, *Monitoring Debris Removal*.

The planning staff may find it necessary to contract for debris removal services if the magnitude of the disaster is beyond the capabilities of its force account resources, State resources, mutual aid agreements, and volunteer labor. Possible contracted services include:

- Collection, including clearance during response phase
- Reduction or recycling
- Hazardous waste handling, processing, and disposal
- Hauling to final disposition
- DMS activities
- Demolition
- Monitoring
- Environmental studies
- Project management

The applicant's contracting/procurement and legal staff has a major role in this planning component of the debris management plan. The staff should use the debris management plan development as an opportunity to familiarize themselves with their contracting procedures, particularly with regard to emergency procurements. In procuring and awarding contracts, the applicant should follow its established procurement and contracting procedures.

## Common Misconceptions

Contracts written by contractors often use the FEMA name to gain credibility and give the appearance that the work to be performed would be eligible for Public Assistance grant funding. Applicants should be aware of the common phrases used by contractors and why the statements are false. Three of the most common phrases are:

1. **“FEMA-approved contract and rates.”** FEMA does not certify, credential, or recommend contractors.
2. **“FEMA eligibility determinations.”** Debris contractors do not have the authority to make eligibility determinations. Only FEMA can make an eligibility determination.
3. **“FEMA training in eligibility, documentation, and Project Worksheet development provided.”** These services often have a fee attached. Most of the training and information offered by a contractor is available free from FEMA or the State.

Applicants may enter into any contractual arrangements they wish. However, it should be noted that FEMA is not bound to applicant contractual obligations because it is not a party to those contracts. Applicants are strongly encouraged to work with State emergency management staff and FEMA to ensure compliance with the provisions of the Public Assistance Program, as well as other applicable statutes and regulations, if the applicant intends to seek Public Assistance grant assistance. The applicant is responsible for payment of its contracted services regardless of whether such services are eligible for Public Assistance grant funding. If a contract is in place prior to the applicant’s meeting with FEMA Public Assistance staff, the terms of the contract need to be reviewed to ensure compliance with the Federal procurement regulations and with the Public Assistance Program eligibility criteria. By doing so, it becomes easier for the applicant to provide FEMA with pertinent documentation to receive Public Assistance grant funding.

Additional information on developing contracts that comply with Public Assistance Program requirements is provided in Appendix G, *FEMA RP9580.201, Fact Sheet: Debris Removal – Applicant’s Contracting Checklist*.

There are two main areas of contracting that the applicant’s staff should review in the contract development planning process. These include procurement procedures and general contract provisions. Other provisions and terms are determined by the type of contract being employed for a specific service.

## Procurement Considerations

The applicant's legal staff needs to review the applicant's procedures for compliance with 44 CFR Part 13 requirements, outlined in Chapter 2, *Costs* and available online through the United States Government Printing Office at [gpoaccess.gov](http://gpoaccess.gov).

In the past, some applicants risked losing Public Assistance Program funding when procurement procedures were overlooked in the interest of time. There are methods by which applicants can expedite the procurement process without jeopardizing potential grant funding. An applicant may use one or more of the following methods to best serve its jurisdiction.

- **Pre-drafted contracts** – Applicants may draft a contract prior to a disaster event. Once the extent of the disaster is known, the contract can then be finalized with the appropriate scope of work and advertised in a timely manner.
- **Pre-qualified contractors** – Typically, contractors must meet minimum requirements, such as insurance, bonding, and licensing, prior to being awarded a contract by an applicant. Applicants may advertise a Request for Qualifications (RFQ) for contractors to establish their company as a credible candidate for a contract award. The pre-qualified contractors on the list are invited to bid on a contract. The pre-qualified contractors can then focus on developing costs rather than assembling documentation in order to qualify for bidding.
- **Pre-event contracts** – The applicant may choose to solicit bids and award contracts in non-disaster times. This allows time for a deliberate procurement process and gives applicants flexibility in mobilizing the appropriate resources in anticipation of an event.

The applicant may expedite procurement procedures for purpose of public exigency; this does not mean that competitive proposals are not required. In many cases, an expedited process allows for shorter time frames for receiving competitive bid proposals. Appendix G, *FEMA RP9580.4, Fact Sheet: Debris Operations – Clarification: Emergency Contracting vs. Emergency Work*, explains the emergency contracting procedures provided in 44 CFR Part 13.36(d)(4)(i)(B).

When soliciting competitive bid proposals, the applicant should be the entity that develops the engineering estimate and scope of work for the contract bid solicitation.

## General Contract Provisions

To protect the applicant's interests, specific items should be included in the contract to minimize potential conflicts with the contractor. These items include the basis of payment, the duration of the contract, the performance measures, an agreement to restore collateral damage, a termination for convenience, and a conflict resolution process.

The basis of payment and the payment process should be clearly outlined in the contract. Contractor payments should be based on verification of completed work, and the required information for the payment request should be included within the provisions of the contract. Weight to volume conversion factors should be published in order to further clarify possible differences between invoices and payment.

Basis of payment is usually based on the volume and/or weight of the contractor's loads. If the contract payment is based on volume, specific contract provisions are required to substantiate invoices and payment. These contract provisions need to provide a truck certification process, which includes determining the volume of the truck and how it will be identified during the recovery operation. Recertification of a truck is usually required if the physical truck identification becomes damaged or the volume capacity becomes suspect during operations. Additional information regarding truck certification is included in Chapter 11, *Monitoring Debris Removal*.

Applicants should consider using a progress payment method for contract services. This requires specific documentation from the contractor to verify and validate the completed work, support the contractor's invoices, and receive reimbursement under the Public Assistance Program. Typical documentation includes debris monitor reports, truck certification lists, and load tickets. This documentation is discussed in Chapter 11, *Monitoring Debris Removal*.

To ensure that debris removal is conducted expeditiously, the contract should include specific timelines for work to be completed. The duration of contract should be clearly stated. By doing so, the applicant sets clear expectations for the contractor. Moreover, the contractor can effectively manage resources and schedule work to meet the applicant's expectations.

Debris removal activities may impart damage to the local infrastructure, such as broken curbs, crushed sidewalks, and broken water meters. A contract provision should include a requirement that the contractor is to restore and/or repair, at the contractors cost, all damaged infrastructure back to its pre-existing condition if the damage was caused by their activities.

The contract should also include contract language for performance measures and a termination for convenience and default. A termination clause allows the applicant the ability to terminate the contract if the contractor does not deliver services in the manner delineated in the contract. The contract language clauses should be specific as to how performance will be evaluated and what would be considered reasons for termination.

The conflict resolution process should be well defined within the contract. The process should also include alternatives for mediation should an issue prove difficult to resolve.

To ensure that the contracts are in accordance with the Federal, State, and local procurement laws the planning staff should seek guidance from their legal counsel.

## Types of Contracts

There are several types of contracts that can be used for debris operations. The most common types of contracts are unit price, lump sum, and time-and-materials. Due to the use and structure of a specific type of contract, there are specific provisions and documentation considerations that should be included to keep costs reasonable and to protect the applicant's interests. Descriptions of the different types of contracts, specific contract provisions, monitoring efforts, and documentation requirements are described in this discussion and are summarized in a matrix at the end of this chapter.

### ***Unit Price Contract***

#### **Use and Structure**

The schedule of payment of unit price contracts is based on a set cost for a specific task.

For example:

Remove, haul, and dispose of vegetative debris = \$X / cubic yard

or

Remove and dispose of refrigerant = \$Y / appliance.

Unit price contracts are used when the individual work tasks are known but the total amount of work cannot be quantified. The quantities of work to be completed are estimated by the applicant and included in the applicant's bid solicitation package. The contractor uses the estimated quantities to establish a total contract price. Units of work can be measured in terms of weight, volume, or any other quantifiable measure.

The estimated quantity of work described in the bid solicitation can be adjusted to reflect a more accurate quantity when debris operations are under way and the true extent of the disaster is realized. To keep the price of the contract reasonable, the applicant can eliminate as many variables as possible by incorporating detailed specifications in the contract and monitoring the contract operations.

#### **Contract Provisions**

Developing specifications for unit price contracts requires a full understanding of all the particular tasks that are required to complete the work to the applicant's satisfaction. Applicants should clearly define the individual tasks and activities that are required to accomplish the scope of work when soliciting bids. These may include the collection, transportation, and incineration of vegetative debris; extraction of refrigerants; grinding of debris; or special handling of hazardous wastes.

The estimated quantities of each type of debris that will be collected and clear descriptions of how each is to be handled or processed should be included in the specifications. The solicitation should incorporate special sections for hazardous and special wastes, if applicable. If the applicant intends to market processed debris for certain end uses, the bid specifications should describe the end user's product specifications in detail.

The applicant's bid solicitation and the final contract documents should include details on how the applicant will monitor the contractor's work and how the applicant's monitoring information will be used to verify the contractor's costs and payment.

### ***Lump Sum Contract***

#### **Use and Structure**

Lump sum contracts are used when the scope of work can be easily identified and quantified. These bid requests include a set of specifications that have a well-defined scope of work for a finite amount of time. For example:

Haul 250 tons of mulched debris from 1000 N Debris Road to applicant landfill at 3450 S Main Street = \$XX,YYY.

Two common uses of a lump sum contract define how the debris is to be collected, by geographical area or by "passes."

The **area method** defines the geographical boundary in which the debris is to be collected. By providing geographical boundaries, the quantity of debris may be forecasted or estimated based on topography and land use.

The **pass method** describes the number of times debris will be collected from the curbside within a specified geographical boundary. Limiting the number of passes for an area keeps the scope of work known.

The advantage of a lump sum contract is that the total price for the specified work is known at the time the bids are opened.

#### **Contract Provisions**

Although contractors usually present one total price in their bids, applicants should request a breakdown of costs for each item of work activity in the bid specifications so that if additional work is necessary during the term of the contract, the applicant can easily determine the cost for that work based on the unit cost. By requesting unit costs, the applicant can determine whether the contractor included costs for contingencies in the fixed price and if all costs are reasonable.

The bid specifications for a lump sum contract take more effort to write in comparison with other methods, but may reduce change orders during contract execution. The specifications should include every work activity that will be required, the exact quantity of debris to be removed, or the specific number of passes that will be required, to collect all debris.

If recycling is part of the scope of work, the bid specifications should include a list of debris materials that are expected to be recycled. The contract should also specify who owns the recycled materials and how the revenue from the sale of the recycled materials affects the contract cost.

### ***Time-and-Materials Contract***

#### **Use and Structure**

Time-and-materials contracts are used when the scope of work necessary to achieve an outcome is unknown.

A typical use of time-and-materials contracts for debris is during the response phase of the debris removal operations when an applicant needs additional labor and equipment resources to clear emergency routes. A time-and-materials contract establishes hourly rates for labor and equipment that will be used to perform specific tasks. For example: backhoe, with loader, 1 cy bucket, with operator = \$50 / hour.

The contractor is paid based on the actual time spent to perform the specified tasks and for the usage of equipment. The contractor is also paid for the actual cost of materials that are used during operations.

#### **Contract Provisions**

Solicitation for a time-and-materials contract should include descriptions of the types of work items that would be required inclusive of debris removal, debris processing, and recycling.

Normally, a time-and-materials contract identifies the classification of each worker and a skill level. The equipment rate schedule lists the type of equipment and the hourly rate. The hourly rates for equipment should include the operator, fuel, and maintenance costs. A provision should state that the applicant only pays for the time the equipment is in operation. Mobilization and standby costs should not be invoiced at the hourly equipment rate. Public Assistance grants do not fund standby or idle-time costs.

Applicants should establish the maximum number of hours the contractor can work or set a ceiling for the contract to control costs when using a time-and-materials contract. FEMA generally limits the Public Assistance grant reimbursement cost of a time-and-materials contract to 70 hours of actual work. FEMA may provide a Public Assistance grant for a time-and-



materials contract that has been extended for a short period of time, but only under extreme extenuating circumstances.

Intense monitoring of time-and-materials contracts is extremely important. Work inspection reports should be prepared each day. These reports clearly state the amount of work accomplished that day in quantitative terms, such as the number of cubic yards of debris hauled, the type and number of trucks used, and the number of hours worked.

Load tickets may be used if debris is being hauled based on cubic yards under a time-and-materials contract as a way of checking contractor efficiency.

Applicant personnel should verify the certification of work performed and copies of the inspection reports should be furnished to the contractor to expedite the submittal of invoices for payment.

Time-and-materials contracts are usually terminated once the maximum number of hours or price cap is reached. Contract provisions should include the applicant's right to terminate a contract at its discretion. An applicant should terminate the time-and-materials contract when a more cost-effective contract is awarded for the remainder of the debris removal operations.

Time-and-materials contracts are the least preferred among contracts, and they are typically used only for initial emergency work or when there are complex life-saving activities that are dependent on the removal of debris. Again, FEMA generally limits reimbursement of time-and-materials contracts to the first 70 hours of actual work. The use of a time-and-materials contract for longer than 70 hours may impact the amount of reimbursement the applicant receives.

### ***Prohibited Contracts***

In accordance with 44 CFR Part 13.36(f)(4), cost plus percentage of cost contracts shall not be used. Use of such contracts may result in FEMA limiting the grant to an amount determined to be reasonable based on the eligible work performed.

Contracts that are awarded by an applicant to debarred contractors are prohibited pursuant to 44 CFR 13.35; thus, no Federal funding can be awarded for eligible work completed.

### ***Contract Matrix***

A summary of the aforementioned contracts and their associated characteristics is provided as a reference in the following matrix.

| Unit Price Contract Summary Matrix |  |  |   |   |                        |  |
|------------------------------------|--|--|---|---|------------------------|--|
| Type of Contract                   | Structure and Use  | Required Provisions  | Advantages  | Disadvantages   | Monitoring             | Documentation  |
| <b>UNIT PRICE</b>                  | <p>Uses units of measure (cubic yards, tons, each) and prices to develop line item costs and total contract costs</p> <p>Used when scope of work is difficult to quantify. The bid proposals are based on applicant-estimated quantities and units of work</p> | <p>Specific documentation requirements, based on quantifiable units, such as load tickets, and payment</p> | <p>Scope of work may be adjusted easily at a known cost</p> <p>Accurate account of actual quantities when work is complete</p> <p>Simplicity of contract encourages competition</p> <p>Low risk for contractors</p> | <p>Possibility of contractor fraud if operations are not closely monitored</p> <p>Trucks require measurement and loads accurately documented</p> <p>Segregated curbside collection may complicate the scope of work</p> | <p>Labor intensive</p> | <p>Load ticket system</p> <p>Monitors at collection points and where the debris is unloaded (DMS or final disposition)</p> |

Figure 10.1 – Unit Price Contract Summary Matrix

| Lump Sum Contract Summary Matrix |                                 |   |  |  |  |  |
|----------------------------------|---------------------------------|---|--|--|--|--|
| Type of Contract                 | Structure and Use               | Required Provisions   | Advantages   | Disadvantages  | Monitoring   | Documentation  |
| <b>LUMP SUM</b>                  | <b>All Lump Sum</b>             | <p>Establishes a fixed contract based on the applicant scope of work specified in the bid solicitation</p> <p>Used when the scope of work is clearly defined by the applicant, including quantity, type, and location of debris</p> | <p>Specific process for a change order request, exact quantity of debris, and types of debris.</p> <p>Provision to cover if the collection or unloading location changes after the contract is awarded</p> | <p>Cost is established at the bid opening</p> <p>Easy to determine when the work is complete</p>                     | <p>Scope of work must be very specific to avoid change orders</p> <p>Often difficult to quantify debris and identify the types of debris requiring collection</p>  | <p>Minimum</p> <p>Amount of debris collected, reduced/ recycled, and disposed will be required to establish reasonable price</p> |
|                                  | <b>Collection - Area Method</b> | <p>Used when a well defined area can be provided for bidding purposes</p>   | <p>Specific process for a change order request, exact quantity of debris, and types of debris.</p> <p>Provision to cover if the collection or unloading location changes after the contract is awarded</p> | <p>High probability of change orders if estimates are based on speculation</p>                                       | <p>Scope of work has to be accurately quantified to minimize change orders</p> <p>Estimating the amount of debris to be brought to the rights-of-way difficult to determine</p>  | <p>Minimum</p> <p>Amount of debris collected, reduced/ recycled, and disposed will be required to establish reasonable price</p> |
|                                  | <b>Collection - Pass Method</b> | <p>Defines how many times a curbside collection will be completed on a particular street or through a well defined area</p>   | <p>Specific process for a change order request, exact quantity of debris, and types of debris.</p> <p>Provision to cover if the collection or unloading location changes after the contract is awarded</p> | <p>Possibility of fewer change orders since the scope of work is better defined</p> <p>Average management duties</p> | <p>Up-to-date street information and plans to be included in the scope of work</p> <p>Requires cooperation of the public to place only eligible debris at the curb and participate in segregating materials</p> <p>Intense public information campaign</p> | <p>Minimum</p> <p>Amount of debris collected, reduced/ recycled, and disposed will be required to establish reasonable price</p> |

Figure 10.2 – Lump Sum Contract Summary Matrix

| Time-and-Materials Contract Summary Matrix |   |   |   |  |                 |   |
|--|---|---|---|--|-----------------|---|
| Type of Contract                           | Structure and Use   | Required Provisions   | Advantages  | Disadvantages  | Monitoring      | Documentation   |
| TIME-AND-MATERIALS                         | <p>Paid on an hourly rate for labor, materials, and equipment</p> <p>A known quantity of work is not established prior to the contractor beginning work</p> | <p>Capped by the period of performance and/or monetary ceiling</p> <p>Price for equipment applies only when the equipment is in use</p> <p>Hourly rate for equipment includes fuel, maintenance, and repair</p> <p>Bids should include all overhead costs</p> <p>Specific hours the contractor is to perform work (to ensure monitoring staff is present to document activity)</p> <p>No guarantee of a minimum number of hours</p> <p>If multiple contracts are awarded, the period of performance should run concurrently rather than consecutively</p> | <p>Good for response activities</p> <p>Extremely flexible; not limited by a specific scope of work</p> <p>Range of uses; appropriate clearance of major access routes or roads to critical facilities</p> | <p>Requires close contractor oversight and direction as to work to be performed</p> <p>Requires documentation of actual hours worked by equipment and operators</p> <p>Reasonable hourly rates may be difficult to establish if not competitively bid</p> <p>Equipment specifications may have to be generalized in order to encourage competition</p> <p>Requires full-time trained monitors to document work completed and verify hours worked</p> | Labor Intensive | <p>Intense</p> <p>Actual labor and equipment must be accounted for during entire performance period</p> |

Figure 10.3 – Time-and-Materials Contract Summary Matrix

To assist applicants in identifying and contacting contractor resources, an online debris contractor registry tool is available on FEMA’s website, [fema.gov](http://fema.gov). The information provided in the registry is maintained by contractors and their representatives. FEMA does not verify and takes no responsibility for the accuracy of any of the information submitted. FEMA does not endorse, approve, or recommend any contractors, including those in the registry. Applicants should perform all appropriate due diligence prior to entering into a contract. Contracting with any of the entities listed in the registry does not assure an applicant of reimbursement under a Federal grant. Applicants should follow their competitive procurement procedures when selecting a contractor.

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### **Questions to Consider**

1. Do you have in-place debris contracts prepared?
2. Do you have a list of local pre-qualified contractors?
3. Can you use components of existing contracts, such as garbage collection or roadway time-and-materials contracts for disaster debris clearance, removal, or disposal?
4. What departments within your agency would be required to prepare the debris management bid documents and contracts?

## Chapter 11 – Monitoring Debris Removal

### Chapter Highlights

Debris Monitoring Staff

- Force Account Resources
- Outsourcing Monitoring Duties

Debris Monitor Roles

Monitoring Methods for Debris Removal

- Debris Monitor Reports
- Truck Certification List
- Load Ticket System

Special Monitoring Issues

- Equipment
- Monitoring Tips

Questions to Consider

To Do Checklist

Please see Chapter 1, *Public Assistance Debris Removal Eligibility*, Chapter 2, *Costs*, Chapter 3, *Debris Removal from Public Property*, and Chapter 4, *Private Property Debris Removal and Demolition of Private Structures*, for eligibility issues to consider in developing the debris management plan.

Debris monitoring procedures should be established and included in the debris management plan for the applicant's financial interest, especially if the applicant has contracted for any component of the debris removal operation. Monitoring debris removal operations achieves two objectives:

- Verifying that the work completed by the contractor is within the contract scope of work
- Providing the required documentation for Public Assistance grant reimbursement

Failure to document eligible work and costs may jeopardize Public Assistance grants. In Federally declared disasters, FEMA periodically validates the applicant's monitoring efforts to ensure that eligible debris is being removed and processed efficiently.

*Only FEMA has the authority to make eligibility decisions; contractors cannot make eligibility determinations. Information on eligibility can be found in this document, FEMA 321 – Public Assistance Policy Digest, FEMA 322 – Public Assistance Guide, and FEMA 323 – Public Assistance Applicant Handbook.*

## **Debris Monitoring Staff**

Applicants can use force account resources, contractors, or a combination of both to monitor debris removal operations.

### ***Force Account Resources***

Applicants are encouraged to use their own employees to monitor debris removal operations. The applicant's employees are the most familiar with the jurisdiction and know the priorities of the applicant's debris management plan. Force account employee costs are reimbursed based on the Public Assistance Program's labor cost policies for emergency work.

### ***Outsourcing Monitoring Duties***

In some cases the monitoring task is outsourced to a contractor. As with any contractual arrangement, the applicant must ensure that the contractor is meeting the performance requirements of the contract. If a contractor is hired to perform a monitoring task, the applicant is required to ensure that the hired contractor performs satisfactorily.

If the applicant outsources a monitoring task, the contract must be awarded to a contractor who has no vested interest in the debris removal contract or contractor. There must be no conflict of interest between the monitoring contractor and the debris removal contractor.

When soliciting for debris monitoring contracts, the advertisement should outline the required qualifications of the debris monitors. The qualifications should be appropriate for the individual responsibilities and duties. Debris monitors should have experience working on construction sites and be familiar with safety regulations, but it is not necessary to have professional engineers and other certified professionals perform these duties. Primarily, debris monitors should be able to estimate debris quantities, differentiate between debris types, properly fill out load tickets, and follow all site safety procedures.

The specifications should outline possible monitoring locations and reporting requirements to document eligible debris quantities.

Monitoring contracts are typically time-and-materials and should contain a not-to-exceed clause per the requirements of 44 CFR Part 13. The applicant should ensure the level of monitoring and overhead claimed is consistent with the level of effort required to effectively monitor the debris removal operations.

It is important that the debris monitoring contract provide for submission of reports and payment estimates to help promote efficiency and effectiveness in the overall debris removal operations. By continuously monitoring the debris removal operations, an applicant can track

progress toward completion and determine the financial status of the monitoring and debris removal contracts.

Applicants should require debris monitors to submit the following reports:

- Debris collected from curbside and/or collection centers
- Debris accepted at the DMS and/or final disposition
- Debris recycled/reduced at the DMS and taken to final disposition
- Any operational or safety issues

If FEMA provides funding for the debris monitoring contract, a sample of the reporting requirements outlined in the contract in order to substantiate eligible costs is required. The sample must be adequate to demonstrate that sufficient measures were taken to ensure that eligible and accurate quantities were reported as part of the grant. If the monitoring contract is time-and-materials, the applicant must supply labor, equipment, and materials records to the Public Assistance Program staff in order to substantiate the actual costs of the grant.

## **Debris Monitor Roles**

Monitoring operations are meant to ensure that the debris removal contractor is performing the scope of work required by the contract, and to document the debris removal operations. The primary role for debris monitors is to document the location and amount of debris collected.

The key elements of information that are needed to verify the contractor's scope of work and determine eligibility are the:

- Type of debris collected
- Amount of debris collected
- Original collection location

From this information the applicant can document eligible location and work completed.

The debris monitor's roles and responsibilities in the field include:

- Measure and certify truck capacities (recertify on a regular basis).
- Complete and physically control load tickets (in monitoring towers and the field).
- Validate hazardous trees, including hangers, leaners, and stumps (use appropriate documentation forms).
- Ensure that trucks are accurately credited for their load.
- Ensure that trucks are not artificially loaded to maximize reimbursement (e.g., debris is wetted, debris is fluffed - not compacted).



- Ensure that hazardous waste is not mixed in with loads.
- Ensure that all debris is removed from trucks at the DMS.
- Report to project manager if improper equipment is mobilized and used.
- Report to project manager if contractor personnel safety standards are not followed.
- Report to project manager if general public safety standards are not followed.
- Report to project manager if completion schedules are not on target.
- Ensure that only debris specified in the scope of work is collected and identify work as potentially eligible or ineligible.
- Monitor site development and restoration of the DMS.
- Ensure daily loads meet permit requirements.
- Ensure that work stops immediately in an area where human remains or potential archeological deposits are discovered.
- Report to project manager if debris removal work does not comply with all local ordinances as well as State and Federal regulations.

The applicant is responsible for ensuring that applicant-managed debris removal work (either force account or contract) being funded under the Public Assistance Program is eligible in accordance with Public Assistance Program criteria.

Applicants may request State/FEMA assistance with debris monitoring or monitor training.

## **Monitoring Methods for Debris Removal**

Additional documentation requirements depend on how the debris is collected and processed. The following describes methods and systems to monitor and document work completed by force account resources and/or contractors.

The planning staff should develop tools for their documentation duties. It is suggested that all three of the following tools be used to document all types of debris removal contracts – unit cost, lump sum, and time-and-materials contracts.

### ***Debris Monitor Reports***

Applicants should develop a debris monitoring report to make all reporting documents consistent regardless of who performs the work. An example of a debris monitor's report is supplied in Appendix D, *Sample Monitoring Forms*. Applicants are not required to use this report; however, they should have a reporting document that captures the types of information if seeking Public Assistance reimbursement.

The debris monitoring report is important for monitoring time-and-materials contracts that may be used during the response phase of the operations. Monitoring documentation for time-and-materials contracts includes:

- Actual labor hours worked
- Actual equipment hours operated
- Type and specification of equipment used

The labor and equipment summary records provided in Appendix C, *FEMA Forms*, are often used by applicants as a starting point for their specific documentation needs and contract requirements.

### ***Truck Certification List***

A truck certification list allows the monitor to identify the truck itself and its hauling capacity in a standardized manner. It is important to know the truck hauling capacity since debris, specifically vegetative debris, is often hauled and billed by volume. The standard list of requirements includes:

- Size of hauling bed in cubic yards
- License plate number
- Truck identification number assigned by the owner
- Short physical description of the truck

Monitors may need to be trained to measure truck capacities for certification purposes. Recertification of the hauling trucks on a random and periodic basis should be implemented for contract compliance and reimbursement considerations. See Appendix D, *Sample Monitoring Forms*, for an example truck certification worksheet.

### ***Load Ticket System***

The term “load ticket” refers to the primary debris-tracking document. A load ticket system tracks the debris from the original collection point to the DMS or landfill. By positioning debris monitors at each point of the operations (collection, DMS, and/or final disposition), the eligible scope of work can be properly documented. This is how the applicant documents and tracks the debris from the initial collection location to the DMS and final disposal location. If the applicant uses a contract hauler, this ticket often verifies hauling activities and is used for billing purposes.

Traditionally, load tickets have been carbon paper tickets with at least four copies generated for one load of debris. More advanced tracking tools have been developed and used in the field to reduce human error and expedite funding. These computer-based systems often include the same information as a traditional load ticket.

Each monitor is responsible for populating specific areas of the load ticket. The following table lists the load ticket information and the portions of the ticket to be completed by the respective monitor.

| Load Ticket Information                                   | Monitor Ticket Responsibilities                 |                         |
|---|---|-------------------------|
|   | Collection Point Monitor                        | DMS or Landfill Monitor |
| Preprinted ticket number                                  | NOT APPLICABLE                                  |                         |
| Contract number   | Contracts may be identified by a number or name |                         |
| Prime contractor's name                                   |   |                         |
| Date  | X   |                         |
| Truck number  | X   |                         |
| Truck driver's name                                       | X   |                         |
| Vegetation  | X   |                         |
| Construction & Demolition                                 | X   |                         |
| White Goods   | X   |                         |
| Household Hazardous Waste                                 | X   |                         |
| Other (required to be described applicable)               | X   |                         |
| Load Location   | GPS or address preferred                        |                         |
| Loading date/time (departure from collection location)    | X   |                         |
| Loading Site Monitor name/signature                       | X   |                         |
| Truck capacity in cubic yards or tons                     |   | X                       |
| Load Size, either cubic yards (percent of actual) or tons |   | X                       |
| Unloading location  |   | X                       |
| Unloading date/time (arrival at disposal site)            |   | X                       |
| Unloading site monitor name/signature                     |   | X                       |

Figure 11.1 – Debris Monitor Responsibilities for Load Tickets

Each monitor keeps a copy of the load ticket, and the driver/contractor keeps two copies for billing purposes.

In computer-based systems, the collection monitor gathers the same information as in a traditional paper load ticket system and inputs this information into a handheld digital device. The collection monitor gives the hauler the information in a digital format (card or small driver). The monitor, stationed at the DMS or landfill, downloads the information, and completes the transaction in a manner similar to the traditional method. The monitor, stationed at the DMS or landfill, can then print a ticket for the hauler's billing purposes.

## Special Monitoring Issues

The issues described below highlight the need for an applicant to closely monitor large contracted debris clearance, removal, and disposal activities. The issues focus on some of the problems associated with major debris disposal contracts and justify the need to monitor activities at local debris management and final disposal sites. It is essential that applicant's staff work to ensure that the debris removal contractors perform the required services at a reasonable cost.

### ***Equipment***

The most typical unit measurement for vegetative and construction and demolition debris is the cubic yard. Debris trucks are evaluated for capacity at the DMS or final disposal sites. Applicants should require contractors to use appropriate equipment to load debris efficiently so that the maximum level of compaction can be achieved to facilitate expeditious removal of debris from the public rights-of-way.

The photos below illustrate the capacities to which a truck may be loaded.



Figure 11.2 - 100% Loaded Truck



Figure 11.3 - Less Than 100% Loaded Truck

Equipment limitations impact the maximum loading capacity of some vehicles. The following is a list of truck conditions and the eligible capacities.

**Hand-loaded trucks and trailers** cannot achieve compaction levels comparable to mechanically-loaded vehicles. This effectively reduces the capacity of the hand-loaded truck or trailer in comparison to a truck or trailer that is loaded mechanically. Therefore, FEMA only reimburses 50 percent of the debris monitor's observed capacity percentage for a hand-loaded truck or trailer.

Example: If a hand-loaded truck or trailer appears to be 100 percent full and would normally be recorded at 100 percent, that load should be recorded at 50 percent.



Figure 11.4 – Hand-Loaded Trailer

**A truck with no tailgate or no solid tailgate** cannot be compacted to its full capacity; therefore, FEMA only considers a maximum of 85 percent of the certified truck capacity for reimbursement purposes.



Figure 11.5 – Truck With No Tailgate



Figure 11.6 – Truck With No Solid Tailgate

Also, hand loading debris in trucks or trailers does not achieve maximum compaction and as a result debris removal operations take longer to complete. A hand-loaded truck hauls less debris by weight per cubic yard than a mechanically loaded truck.

Applicants should be aware of the differences between hand loading and mechanical loading when negotiating unit costs and should establish standard conversion factors in the contract agreements to address those differences. Refer to Appendix G, *FEMA RP9523.12, Debris Operations - Hand-Loaded Trucks and Trailers*, for additional information about hand-loaded trucks and trailers.

## **Monitoring Tips**

Monitors should be aware of situations that could impact an applicant's reimbursement under the Public Assistance Program. They should be on the lookout for:

**Inaccurate Truck Capacities** - Trucks should be measured before operations and load capacities should be documented by truck number. Periodically, trucks should be pulled out of operation and re-measured by the applicant.

**Trucks Not Fully Loaded** - Do not accept the contention that loads are higher in the middle and if leveled would fill the truck. Monitors may check to see if that statement is valid.

**Trucks Lightly Loaded** - Trucks arrive loaded with treetops (or a treetop) with extensive voids in the load. Trucks need to be loaded to their full capacity with front end loaders or other similar equipment.

**Trucks Overloaded** - Trucks cannot receive credit for more than the measured capacity of the truck or trailer bed even if material is above the sideboards. If a truck is measured to carry 18 cubic yards, it cannot receive credit for more than 18 cubic yards. However, it can receive credit for less if not fully loaded or lightly loaded as described above.

**Changing Truck Numbers** - Normally, trucks are listed by an assigned vehicle number and capacity. There have been occasions where truck or trailer numbers with a smaller carrying capacity have been changed to one with a larger capacity. For instance, a 20-cubic-yard truck may have a number for a truck that can carry 30 cubic yards. This can be detected if the applicant periodically re-measures the trucks or records actual State license plate numbers in addition to a description of the truck. Maintaining truck and trailer certifications with attached photos at the DMS tower can assist in mitigating such activities.

**Reduced Truck Capacity or Increased Truck Weight** - There have been occasions where trucks have had heavy steel grating welded two to three feet above the bed after being measured, thus reducing the capacity or inflating the weight of a load. This can be detected by periodically re-measuring the truck bed or recertifying the truck tare weight.

**Wet Debris When Paid by Weight** - Excessive water added to debris will increase the weight of the load. When the contractual unit cost is based on weight, this increases the cost to the applicant. Contractors have added excessive water to debris loads to increase the weight when being paid by the ton. This can be detected during monitoring if there is excessive water dripping from the truck bed or by inspecting the truck bed immediately after unloading. The applicant should periodically recertify the truck tare weight.

**Multiple Counting of the Same Load** - Trucks have been reported driving through the disposal site without unloading, then re-entering with the same load. This can be detected by observing

the time of departure and time of arrival recorded on the driver's load ticket. This may also indicate problems with the applicant's debris monitors at the loading or unloading site. The debris monitors at the unloading area must ensure the truck is empty before it leaves the DMS.

**Picking up Ineligible Debris** - This is difficult to detect unless debris monitors are watching the pick-up process. Monitors should have a good understanding of eligible debris and any time limits imposed on picking up specific types of debris. Examples (from actual occurrences) include sweeping areas for abandoned cars and white goods, cleaning up illegal dump sites, removing cut trees from subdivisions under development, and removing/cutting trees from off the rights-of-way in rural areas.



### Questions to Consider

1. Do you have a process or a strategy for hiring and training debris monitors? If not, who should develop this strategy?
2. Do you have access to a local labor force qualified to perform these functions?
3. What jurisdictional department will coordinate these efforts?
4. Do you have monitoring report procedures and forms established?



### To Do Checklist

1. Evaluate and identify staff that will lead the monitoring operations.
2. Identify if additional labor will be required for the monitoring operations and how they will be trained.
3. Establish a record management system to be implemented during a disaster event. The record management system will include:
  - a. Labor and equipment timesheets
  - b. Labor and benefit rates
  - c. Personnel pay policy

- d. Invoices
- e. Load tickets
- f. Load ticket summaries
- g. All other field documentation that may be required for eligibility considerations.
- h. Staff to organize labor and equipment timesheet





## Chapter 12 – Planning for Private Property Debris Removal and Demolition

### Chapter Highlights

Labor Resources  
Condemnation Criteria and Procedures

- Legal Documentation for Demolition
- Demolition Permitting
- Inspections

Special Use Areas

- Mobile Home Park Procedures
- Navigation Hazard Removal

Questions to Consider  
To Do Checklist

Private property debris removal (PPDR) and/or demolition is not common. Public jurisdictions may undertake PPDR and demolition in extreme cases where public health, life, safety, and the economic recovery of the community-at-large are at risk. The planning staff should establish procedures for this type of work in the event this becomes necessary. The planning effort for PPDR and demolition includes the following:

- Criteria for implementing PPDR and demolition operations
- Documentation requirements and procedures
- Inspection and demolition procedures

Throughout the planning process, the staff needs to establish how the private property owner will be included in decisions and operations.

Appendix G, *FEMA DAP9523.13, Debris Removal from Private Property*, and *FEMA DAP9523.4, Demolition of Private Structures*, set forth the FEMA eligibility criteria and requirements that the planning staff should consider when developing the PPDR and demolition strategy.

### Labor Resources

Demolition and debris removal from private property is an extremely document- and labor-intensive operation. The planning staff is responsible for assigning tasks to the appropriate departments and labor forces.

Typically, the building safety or inspection section takes the lead during these operations, with the administrative staff collecting and logging all of the required documents. The planning staff may consider employing temporary personnel or contractors for any portion of the operation.

## Condemnation Criteria and Procedures

When an applicant assumes the responsibility to demolish structures, it must comply with its normal condemnation procedures. This normally requires a building safety official to contact the homeowner and assess and determine building structural integrity.

The applicant's normal building safety assessment should be used for the disaster condemnation criteria as well. Typically, any building or structure may be condemned if the building official determines that it represents a hazard to the health and safety of the public or poses a threat to public rights-of-way. Following that determination, the applicant would then initiate condemnation proceedings.

Usually, owner notification and condemnation hearings are held in order to give the property owner time to correct the threat without government action. In some cases, liens are secured in order for jurisdictions to enforce the condemnation order. In this case, if the applicant performs the work, executing liens against the property allows the applicant to recoup the costs of demolition and debris removal from the property owner.

The applicant's normal procedures that require multiple notices to property owners, condemnation hearings, and liens may be expedited in the event of a catastrophic disaster that causes a high concentration of debris on private property over a widespread area presenting an immediate health and safety hazard.

In the event of a disaster, it is helpful to have the applicant's laws, regulations, legal notices, and forms within the debris management plan, for reference and use. The planning staff should review the condemnation criteria and procedures for the benefit of the debris management plan.

### ***Legal Documentation for Demolition***

An applicant usually has standard procedures that apply to its condemnation process. During the planning process, the applicant may have its legal counsel review and update any documents for inclusion within the plan.

The following is a general list of documents that may be included in the plan.

- **Verification of ownership** ensures that the proper site and owner are identified and the owner is aware of nature of the scheduled building assessment.
- **A right-of-entry form** is signed by the homeowner and allows the building official to enter the property to complete the assessment. It often contains a hold harmless agreement that documents the property owner's promise that he or she will not bring legal action against the applicant if there is damage or harm done to the property.

- **Building official assessment** is the documentation of the damage to the structure and the description of the threat to public health and safety. This assessment often contains the building official's determination as to whether the structure should be condemned and whether it should be repaired or demolished. This may be an official structural assessment.
- **Verification of insurance information** allows the applicant to pursue financial compensation if the property owner's homeowner insurance policy covers demolition and debris removal.
- **Archeological review** outlines the archeological low-impact stipulations for demolition and debris removal activities and highlights the implications for the applicant if they fail to comply with the guidelines.
- **Environmental review** ensures that adverse impacts to protected environmental resources are minimized or avoided when removing debris from the proposed site. These reviews should be acceptable to the appropriate resource agency. Wetlands and other water resources, hazardous materials, and endangered species habitats are among the resources of most frequent concern. Some jurisdictions may also have State or local requirements for the evaluation or assessment of impacts to natural resources.
- **SHPO review** confirms that SHPO has been notified and correspondence has been received absolving the area of any historic significance.
- **Photos** that show the disaster-damaged condition of the property prior to the beginning of the demolition work. This is generally one or more labeled pictures that confirm the address and identified scope of work on the property.

If it is determined that a structure needs to be demolished, additional documentation may be required, not only for the applicant's legal protection, but also for the public's health and safety during the demolition and debris removal operations.

- **Letter or notice of condemnation** is a document signed by the building official that outlines the specific threat to public safety and health.
- **Notice of demolition** is issued to inform the property owner when the demolition will begin; notices shall be posted so as to provide a reasonable period of time in order for personal property to be removed. The applicant should attempt to notify the property owner, if not already contacted, through direct mail and local media.
- **Notice of intent to demolish** is normally for the public health and safety of the neighboring residents. This notice is conspicuously posted on the structure to be demolished.

## ***Demolition Permitting***

Applicants may have a demolition permitting process in place. The planning staff may want to use those demolition permit requirements during a disaster-related demolition project.

Common requirements for obtaining a demolition permit include a demolition plan, public notification, inspection requirements, and a hazardous waste report.

The demolition strategy may require the following information:

1. **Site map**, to scale, showing the site with all structures and other features of interest.
2. **Site ingress and egress** showing the fronting streets and planned route for the project. This may also include a movement of traffic strategy. Normal traffic will need to be diverted into other lanes.
3. **Site preparation documents** illustrate any pre-demolition work that may be required. Examples include erosion control, vegetation removal, or utility pole adjustments.
4. **Staging strategies** show the sequence of events prior to, during, and after demolition of the structure.
5. **Hazardous waste handling requirements** detail if contents of the structure require dust suppression or wet demolition. These provisions also describe how hazardous waste or environmentally sensitive materials will be handled or disposed. This includes HHW and white goods. Asbestos requires specialized removal, handling, and disposal personnel and permits.

Special documents or strategies may be required if the demolition of the building involves shoring, stabilizing structures, or any other special circumstances that may jeopardize another structure or the public's health and safety.

Once it has been established that the building is to be demolished and the required processes are underway, a notification to demolish notice is posted on the building.

## ***Inspections***

The applicant normally conducts regular inspections of demolition sites a few days prior to, the day of, during (occasionally), and upon completion of the operations. Inspectors generally take photographs at each site visit for their records. These inspections and verifications generally include the following:

1. **Water and sewer/septic tank inspection** to verify the utilities have been terminated and isolated from the proposed sphere of influence during the demolition operations. The inspector normally verifies that all other utilities have been terminated during the same visit.

2. **Occupancy inspection** is conducted immediately prior to demolition to ensure that no one is physically in the building.
3. **Open void inspection** is performed if the structure has a basement that is to be filled. This inspection will be conducted once the above-grade structure is gone and the inspector can visually see the entire below-grade excavation.
4. **Post-demolition inspection** is completed once the structure is demolished, the debris is removed, and the site graded.

The applicant usually requires that a hazardous materials report be submitted to the State environmental protection agency. This report normally includes a description of any hazardous material that was found in the building, the means and measures to collect it, and the final disposal location of the hazardous waste.

A checklist that may be used for demolition activities is available in Appendix F, *Demolition Checklist*.

## **Special Use Areas**

The discussion so far has pertained to fairly low density situations, such as single-family homes or businesses on individual sites. Planning staff may need to consider specific areas of their jurisdiction that require additional planning and coordination for debris operations. Mobile home parks and navigation hazards present intense and sometimes complicated obstacles for the debris operations.

### ***Mobile Home Park Procedures***

Higher density situations, specifically mobile home parks, create an extensive amount of mixed debris in a relatively small area. The planning staff may consider the same procedures for individual sites as a basis to be used in mobile home parks but should expect a more intense operation in all accounts of the operation.

The most complex aspect of the operation may be documenting legal responsibility within the parks. Sometimes the mobile home park site is owned, operated, and maintained by one or more parties. The individual homes may be owned by one of those same parties or by the individuals that occupy the structures.

As part of the planning exercise, the planning staff may investigate the legal responsibility for debris issues within the mobile home parks within its jurisdiction. The applicant should coordinate the potential PPDR and demolition operations with the park owners in order to expedite recovery after an event. Agreements need to be made with respect to the debris collection, location, separation of materials, and the amount of debris expected to be handled.

### ***Navigation Hazard Removal***

Damage to publicly-owned marinas caused by a major disaster can include abandoned sunken boats and other debris that may impede navigation. The procedures used for individual sites may be modified for this situation.

The applicant should coordinate with USCG, the State marine patrol, local government agencies, legal counsel, marine salvage contractors, commercial divers, and certified surveyors to ensure that navigation hazards are removed safely and efficiently.

The two main challenges with navigation hazards are locating the debris and finding legal owners. Marinas can be inspected visually by a helicopter or boat. Sonar or dive teams may need to be employed for submerged vessels. A location or flotation marker may be helpful in order to keep vessel positions documented. The legal owner's information may be obtained by using the vessel's registration number and marina records.



#### **Questions to Consider**

1. How do your laws, codes, and ordinances address entering and condemning private property?
2. What are your emergency police powers as they relate to demolishing private property?
3. Who is responsible for enforcing the existing laws, codes, and ordinances with regard to private property?
4. How do you (the applicant) protect yourself from legal action when taking action on private property?



#### **To Do Checklist**

1. Review, assess, and revise laws, codes, and ordinances to address emergency demolition activities.
2. Assign a primary point of contact to manage the demolition and private property debris removal operations.

## Chapter 13 – Health and Safety Strategy

Applicants should include a health and safety strategy in the overall debris management plan. This enables applicants and their contractors to avoid accidents during debris recovery operations and to protect workers from exposure to hazardous materials. The health and safety strategy should establish minimum safety standards for the applicant and contractor personnel to follow.

To facilitate cooperation between applicant and contractor employees, the health and safety strategy should specify how the applicant will disseminate safety information to all emergency workers and how the applicant will monitor compliance with the minimum safety standards. The strategy should also include specific corrective actions to be taken if workers do not comply with the minimum safety standards.

The health and safety strategy should identify potential hazards at debris loading areas and DMS. Debris operations involve the use of heavy equipment to move and process various types of debris. Many of these actions can pose safety hazards to emergency response and recovery personnel and the public. In addition to those safety hazards, exposure to certain types of debris, such as building materials that contain asbestos and mixed debris that contains hazardous materials, can pose potential health risks to emergency workers.

The health and safety strategy should provide emergency workers with information on how to identify hazardous conditions and specific guidelines on the appropriate and proper use of personal protective equipment.





## Chapter 14 – Public Information Strategy

### Chapter Highlights

Assignment of Tasks

Information to be Included

- Collection
- Debris Management Sites

Distribution Strategy

- Update and Redistribution
- Debris Information Center

To Do Checklist

After a disaster, residents want answers regarding recovery operations. The goal of the public information strategy is to ensure that the residents are given accurate and timely information for their use and own individual planning purposes. If information is not distributed quickly, rumors and misinformation spread and erode confidence in applicant management of the recovery operations.

### Assignment of Tasks

The public information strategy should assign staff the following tasks:

- Prepare information to be distributed.
- Process to distribute the information.
- Process to update, correct, revise, and redistribute information as operations progress.
- Establish a debris information center or a venue to address all concerns, questions, and complaints.

### Information to be Included

The information should include the parameters, rules, and guidelines of debris operations so residents can begin their personal recovery activities. The staff responsible for developing and writing the information must present the information in a clear, direct, and organized manner. The language used must be simple and easy for all residents to understand. Jargon and acronyms only lead to confusion and are ineffective. Information may have to be distributed in more than one language for it to be understood by non-English-speaking populations and neighborhoods.

The public information campaign answers the same questions addressed during the debris management planning process. The following is a list of topics that should be included within the campaign.

### **Collection**

How will the debris be collected?

If curbside collection:

- Will applicant employees or a contractor collect the debris?
- What are the schedules and the routes for collection?
- What is the final collection date for streets, sectors, or subdivisions?
- What type of debris will be collected?

If collection centers:

- Where are the collection centers?
- What are the daily collection center hours?
- Is debris to be segregated at the collection centers?
- What types of debris will be accepted at the centers?
- How long will the collection centers accept disaster-related debris?

### **Debris Management Sites**

A collection center and a DMS may be the same site. If so, the same information for the collection centers above applies to the DMS, along with:

- Where can a resident find a site map of the DMS for public debris drop off of HHW, construction and demolition debris, etc? Are these areas segregated and well marked for vehicular traffic?
- Will residents be charged a fee to use the DMS?
- Will residents be restricted as to how much disaster-related debris can be dropped off at the DMS?
- Will the DMS have burning, chipping, or grinding operations? If so, during which hours will these activities take place? Address any environmental concerns the public may have as well.
- How long will residents be able to bring their disaster-related debris to the DMS?
- How long will the DMS be open to process (reduce/recycle) debris?
- Are there traffic changes that will impact the general public due to the location or operation of the DMS?

## **Distribution Strategy**

The public information strategy should include its methods to disseminate the prepared information to the general public. This can be accomplished in a number of ways. The following are suggested vehicles for distributing the information:

- **Media** – Local television, radio, newspapers, or community newsletters.
- **Internet Site** – Applicant website and debris information flyers for printing.
- **Public Forums** – Interactive meetings at town hall or shopping mall kiosks.
- **Direct Mail Products** – Door hangers, direct mail, fact sheets, flyers within billings, and billboards.

The public information staff must take advantage of every information vehicle available if power, utilities, and other infrastructure have been damaged. Many times the best carriers of information are the responders in the field. The general public recognizes their role and frequently asks questions regarding the operations. Stocking the equipment and trucks with flyers, pamphlets, and other print media allows responders to perform their duties while also satisfying the public's need for information.

### ***Update and Redistribution***

Residents hold community leaders responsible for misinformation and slow progress if information is not routinely updated to remain current and accurate. The planning staff must consider how the public information strategy addresses changes and revisions as the debris removal operations progress. The changes in operations directly affect how often information to the general public is distributed.

During the early stages of the operations, the applicants may rely on the immediate transmission of the information, such as through radio and television, to update the general public regarding the debris removal operations. Once the operations become more routine and predictable, the information can be distributed through the print media, such as newspapers, mailings, and flyers.

### ***Debris Information Center***

Applicants should establish a temporary debris information center to address concerns and complaints, and answer questions that are not included in the public information campaign at-large. The platform for the debris information center may be personal interactions at city hall, a telephone hotline, internet site, or a specific post office box. Regardless of the venue, it is important for applicants to address the residents' concerns, complaints, and questions in a timely and efficient manner.

The feedback from the information center gives the management staff an indication of how effective and efficient the operations are progressing. The management staff may use this information to adjust operations appropriately.

The debris information center may also be utilized to report fraud. Disaster victims want a full and quick recovery and have little tolerance of being taken advantage of during an already trying time. The ability to report fraud and crime is important to the public's feeling of safety and well being when the applicant's law and code enforcement agencies are stretched thin. Applicants should take advantage of residents' eyes and ears after a disaster event and provide an outlet for reporting crime and fraud within the recovery operations.



### **To Do Checklist**

Assign staff to:

1. Prepare debris removal operations information.
2. Establish a process and strategy to distribute the information.
3. Update, correct, revise, and redistribute information as operations progress.
4. Establish and staff a debris information center.

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## **PART III – FEDERAL GOVERNMENT OPERATIONS**

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## Part III – Federal Government Operations

### Introduction

Part III describes the Public Assistance staff organization and the other Federal agencies' debris-related roles and responsibilities for disaster events.

FEMA's Public Assistance staff will assemble a debris management team for the size and scope of the disaster. This team is responsible for providing debris-related technical assistance to applicants and managing the Public Assistance grant process. Chapter 15, *FEMA Public Assistance Operations*, describes the staff organizational structure and the roles and responsibilities of each staff member.

Chapter 16, *Other Federal Assistance*, provides an overview of additional Federal agencies' roles and responsibilities for disaster-related debris activities. This chapter also describes FEMA Mission Assignments that may be tasked to other Federal agencies.





## Chapter 15 – FEMA Public Assistance Operations

### Chapter Highlights

Public Assistance Organizational Structure

Public Assistance Staff Roles and Responsibilities

- Infrastructure Branch Director
- Public Assistance Group Supervisor
- Public Assistance Debris Task Force Leader
- Public Assistance Coordinator Crew Leader
- Public Assistance Debris Technical Specialist
- Public Assistance Debris Monitoring Specialist
- Additional Support for the Public Assistance Organization

Debris Operations Strategy

FEMA’s Public Assistance Program goal during recovery operations is to supply staff and technical support to the applicants for the timely, efficient, and accurate production of Public Assistance grants. This is accomplished by the Public Assistance staff fulfilling their established roles and responsibilities and following the disaster-specific Debris Operations Strategy.

This chapter gives an overview of the organizational structure used by the Public Assistance organization, a summary of roles and responsibilities for the Public Assistance debris staff, and a general outline of the Debris Operations Strategy that will be developed by the debris management team.

### Public Assistance Organizational Structure

FEMA Public Assistance follows a staffing organization called Incident Command System (ICS) that allows the Public Assistance organization to expand and contract depending on need. ICS defines the nomenclature, roles, and responsibilities of the staff members in order to ensure consistency across disasters. The following organization chart illustrates one example of staff organization under ICS.

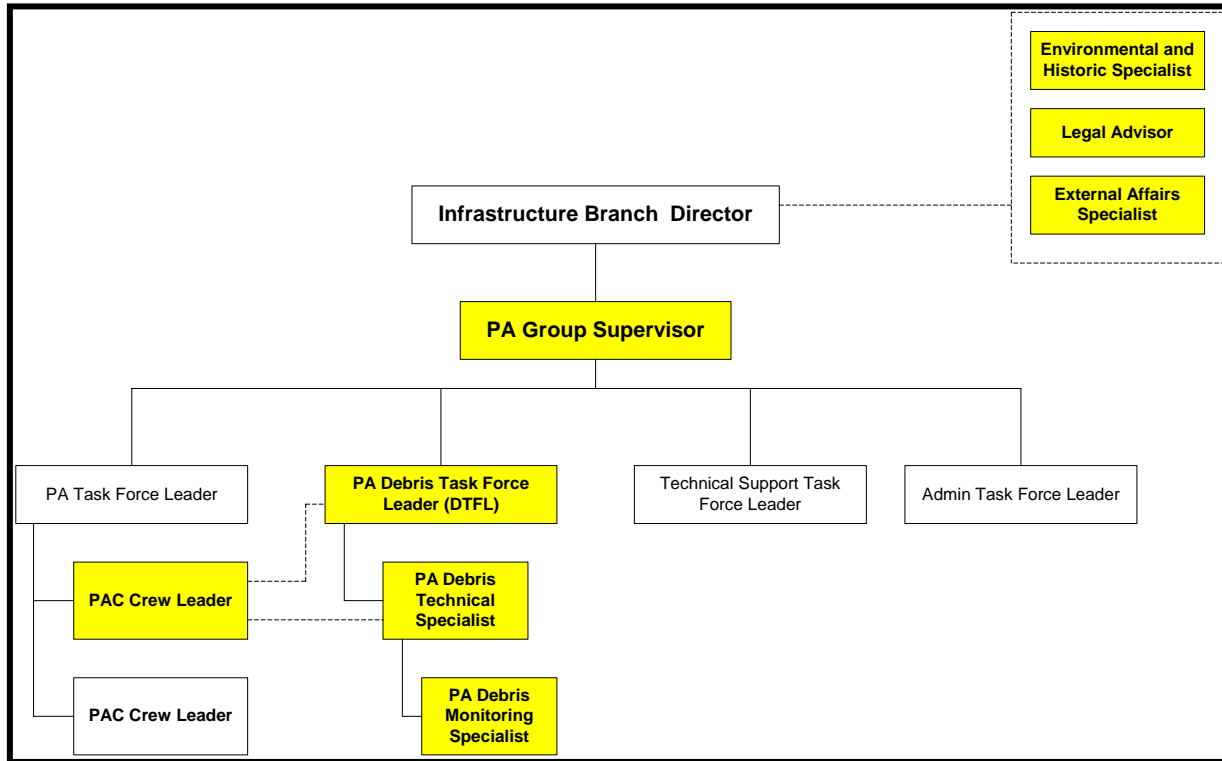


Figure 15.1 – Example Public Assistance Organization Chart

## Public Assistance Staff Roles and Responsibilities

The amount of staff depends on the size and severity of the disaster. The Public Assistance staff roles and responsibilities are outlined in the descriptions below.

### ***Infrastructure Branch Director***

The Infrastructure Branch Director coordinates the restoration of essential public services and administers the Public Assistance Program. The Infrastructure Branch Director is responsible for:

- Identifying cross-programmatic issues and facilitating coordinated problem solving among the Program areas
- Requesting assistance outside of the Public Assistance Program to include supplemental Federal assistance in the form of Mission Assignments, to be completed by supporting Federal agencies

### ***Public Assistance Group Supervisor***

The Public Assistance Group Supervisor manages the overall Public Assistance Program. The Public Assistance Group Supervisor is responsible for:

- Identifying major debris issues and applicants with potential debris problems based on the Preliminary Damage Assessment (PDA) and in coordination with the State Public Assistance Group Supervisor
- Ensuring and approving the development of a Public Assistance Debris Operations Strategy
- Obtaining staffing resources to assist in managing debris operations (e.g. a Public Assistance Debris Task Force Leader and an appropriate number of Public Assistance Debris Technical Specialists and Public Assistance Debris Monitoring Specialists)
- Providing the Debris Task Force Leader with guidance and direction on problems, procedures, and policies pertaining to debris operations
- Coordinating debris-related Mission Assignments
- Advising the Infrastructure Branch Director on potential debris issues
- Allocating and approving the proper funding levels

### ***Public Assistance Debris Task Force Leader***

It is the responsibility of the Public Assistance Debris Task Force Leader (DTFL) to manage the debris operations under the direction of the Public Assistance Group Supervisor. The DTFL is responsible for:

- Ensuring that a Debris Operations Strategy is developed and implemented
- Providing applicants with technical assistance by conducting technical reviews of debris management plans and contracts to document compliance with the requirements of the Public Assistance Program eligibility criteria
- Assigning personnel to assist the applicant in developing the eligible debris scope of work for Public Assistance grants
- Coordinating with the Legal Advisor to review proposed debris-related contracts provided by applicants
- Managing all debris field staff
- Ensuring all of the debris field staff are properly trained
- Providing Public Assistance Coordinator Crew Leaders with information concerning procedures and policies pertaining to debris operations
- Coordinating debris-related Mission Assignments

- Reporting all potential debris issues to the Public Assistance Group Supervisor
- Compiling and submitting reports on debris operations to the Public Assistance Group Supervisor and the Infrastructure Branch Director

### ***Public Assistance Coordinator Crew Leader***

A Public Assistance Coordinator (PAC) Crew Leader is a customer service manager who works with the applicants to ensure that all applicants' Public Assistance grants are processed as efficiently as possible. The DTFL and Public Assistance Debris Technical Specialist keep the PAC Crew Leader informed of debris eligibility concerns. The PAC Crew Leader is responsible for:

- Serving as an applicant's single point of contact concerning eligibility considerations and Public Assistance grant status
- Coordinating and communicating with the Public Assistance Debris Technical Specialist and DTFL for the assigned applicants' debris issues
- Identifying debris issues during the Kickoff Meeting
- Educating the applicant on the availability of Public Assistance grants for debris operations
- Assisting the applicant in establishing priorities
- Managing resources and coordinating with debris staff on Public Assistance Program issues

### ***Public Assistance Debris Technical Specialist***

The Public Assistance Debris Technical Specialist provides applicants technical assistance and support for debris management issues and for the applicants' debris Public Assistance grants. The Public Assistance Debris Technical Specialist is responsible for:

- Estimating quantities of debris
- Collecting monitoring information from the Public Assistance Debris Monitoring Specialists in the field
- Formulating, developing, and writing the Public Assistance grants
- Recommending eligibility of debris projects within the Public Assistance grants
- Managing the Public Assistance Debris Monitoring Specialists
- Informing the PAC Crew Leader and DTFL of potential debris issues
- Supplying debris-related reports and progress updates to the DTFL

### ***Public Assistance Debris Monitoring Specialist***

The Public Assistance Debris Monitoring Specialist is responsible for monitoring and documenting debris removal activities in accordance with the debris monitoring strategy, and issues that may impact compliance with the rules and regulations that pertain to FEMA-funded activities. The Public Assistance Debris Monitoring Specialist is specifically responsible for:

- Recording quantities of debris accurately on load tickets and other documentation that may be outlined in the Debris Operations Strategy
- Completing reports such as daily logs, load tickets, incident reports, periodic reports, photographs, and sketches
- Coordinating with the applicant and contractor on daily operations
- Supplying completed paperwork
- Requesting necessary resources from the Public Assistance Debris Technical Specialist

### ***Additional Support for the Public Assistance Organization***

Other support may be available to assist the Public Assistance Group Supervisor and DTFM with technical, legal, and information issues.

- **Environmental and Historic Specialists** provide technical assistance to Public Assistance staff, management, and the applicant on environmental and historic preservation considerations for debris operations. These specialists research environmental and historic preservation compliance regulations and requirements for Public Assistance staff and applicant briefings. They coordinate with the PAC Crew Leader and Public Assistance Debris Technical Specialist to conduct site visits in order to identify potential environmental and historic preservation site considerations. Additional tasks include recommending eligibility determinations and supplying cost estimates for environmental and historic preservation compliance. Environmental and Historic Specialists provide documentation, comments, and recommendations for any Public Assistance grant that may have environmental and/or historical preservation issues that could impact the grant funding.
- **Legal Advisors** provide legal review and recommendations on issues that may impact the Public Assistance grant process, along with interpretation of Public Assistance regulations and policies. They review proposed and active debris contracts, right of entry permits, and hold harmless agreements. The legal advisors also provide counsel to the Public Assistance staff on such issues as land acquisition, condemnations, insurance requirements, liability, duplication of benefits, and environmental and historic preservation.

- **External Affairs Specialists** are responsible for all of the Public Assistance communications to outside media outlets including newspapers, radio, television, and the internet. The External Affairs Specialists coordinate with the Infrastructure Branch Director, Public Assistance Group Supervisor, and DTFL to clearly communicate debris policy, decisions, and initiatives.

## Debris Operations Strategy

The most common tool used to accomplish FEMA’s Public Assistance debris operations goal is the development and implementation of a Debris Operations Strategy. The Debris Operations Strategy is used to identify issues, assign the appropriate amount of staff, and report progress throughout the recovery efforts. It is a dynamic document meant to be updated to reflect the ongoing progress of the recovery operation and document debris-related decisions.

The DTFL is responsible to ensure the Debris Operations Strategy is written and implemented accordingly. The size and severity of the disaster dictates how detailed the strategy should be. Most strategies include the following key elements:

1. Situational analysis
2. Estimated quantities of debris, which may include specific types of debris
3. Specific debris-related eligibility issues, to include identification and resolutions
4. Concept of operations, to include staffing, goals, and reporting
5. Outline of Public Assistance grant development and routing process within the Public Assistance field office
6. Mission Assignment reporting and any other interagency coordination processes (if applicable)
7. Safety strategy for debris operations. Appendix E, *Debris Collection and Management Site Hazard Analysis*, contains information on safety considerations.

## Chapter 16 – Other Federal Assistance

### Chapter Highlights

#### Authorities of Federal Agencies

- United States Army Corps of Engineers
- United States Coast Guard
- United States Department of Agriculture’s Natural Resources Conservation Service
- Environmental Protection Agency
- Federal Highway Administration

#### FEMA Mission Assignments

- Federal Agencies that Perform Mission Assignments
- Requirements
- Process
- Types of Mission Assignments
- Scope of Work
- Costs

Federal assistance may be available from other Federal agencies and departments in two different ways:

1. Another Federal agency is invested with the authority to address various aspects of debris-related work;
2. FEMA tasks another Federal agency or department with a debris-related Mission Assignment to accomplish the work.

These two types of assistance are distinct and separate. For example, the USCG has the authority to coordinate the removal of navigational hazards within their jurisdictional boundaries; therefore, the USCG would not be issued a FEMA Mission Assignment to complete the same work.

This chapter provides a general description of some of the Federal agencies and departments that provide debris-related work and provides a summary of Mission Assignments.

### Authorities of Federal Agencies

There are Federal agencies and departments, other than FEMA, that have the authority to remove debris and/or coordinate and manage debris-related activities for their specific jurisdiction.



The following describes several Federal agencies' normal responsibilities and their debris-related authority and/or jurisdiction.

### ***United States Army Corps of Engineers***

USACE's mission is to provide design and management services for the construction of military facilities for the army and air force; design and construction management support for other defense and Federal agencies; and planning, design, construction, and operation of water resource and other civil works projects. USACE's authorities for debris-related activities include:

- Developing projects for the collection and removal of drift and debris from publicly maintained commercial harbors and from land and water areas immediately adjacent thereto.
- Continuing debris collection programs for five specific harbors of the United States.
- Removing sunken vessels or other obstructions from navigable waterways under emergency conditions.

Please see Appendix G, *FEMA RP9524.3, Policy for Rehabilitation Assistance for Levees and Other Flood Control Works - Decision Tree*, for further information.

### ***United States Coast Guard***

USCG is a military, multi-mission, maritime service within the Department of Homeland Security and one of the nation's five armed services. USCG has five fundamental roles: maritime safety, maritime security, maritime mobility, national defense, and protection of natural resources.

USCG is tasked to conduct the following debris-related activities in coordination with EPA:

- Conduct emergency removal of oil and hazardous materials from coastal zones.
- Coordinate removal of navigational hazards.
- Provide technical assistance on contaminated debris in coastal zones.

### ***United States Department of Agriculture's Natural Resources Conservation Service***

NRCS, formerly called the Soil Conservation Service, provides technical and financial assistance to private land owners, land users, communities, and units of State and local governments in planning and implementing conservation systems in an effort to conserve soil, water, and other natural resources.

NRCS is limited in its authority in that debris-related activities are limited to either runoff retardation or soil erosion prevention in response to a sudden impairment in the watershed which creates an imminent threat to life or property. Typically, this includes debris within, or close proximity to, a channel.

### ***Environmental Protection Agency***

EPA's role is to establish minimum regulatory standards that are, in most cases, implemented by the State, and to provide technical assistance. EPA administers other laws as well that may impact the management of debris.

EPA's primary authorities related to debris removal fall into two categories:

- Cleaning up debris that is mixed with or contains oil or hazardous materials in coordination with the USCG.
- Establishing a standard for proper management of debris.

### ***Federal Highway Administration***

FHWA provides Federal financial resources and technical assistance to State and local governments for constructing, preserving, and improving the National Highway System. FHWA has an Emergency Relief (ER) Program to support the repair or reconstruction of Federal-aid highways and roads on Federal lands which have suffered damage as a result of natural disasters or catastrophic failures from an external cause.

FHWA's authority for debris-related activities is limited to debris removal and disposal within their jurisdiction when the ER Program is activated.

Please see Appendix G, *FEMA RP9580.202, Fact Sheet: Debris Removal – Authorities of Federal Agencies*, for additional information.

## **FEMA Mission Assignments**

When an impacted State or local government does not have the capability required to respond to a Presidentially declared disaster, a request for Technical or Direct Federal Assistance may be made. The approved request is called a Mission Assignment. A Mission Assignment is a work order issued by FEMA to another Federal agency directing completion of a specific assignment in anticipation of, or response to, a Presidential declaration of a major disaster or emergency.

### ***Federal Agencies that Perform Mission Assignments***

FEMA-issued Mission Assignments are performed by teams established by the National Response Plan (NRP). The NRP is a structured strategy that aligns Federal agencies and

departments to respond to disasters. These Federal teams are called Emergency Support Functions (ESF).

There are two ESFs that perform debris-related activities under FEMA Mission Assignments:

- **ESF #3 – Public Works and Engineering** is responsible for infrastructure protection, emergency repair, and restoration. This group provides engineering services and construction management, and serves as a critical infrastructure liaison. USACE is the lead agency for ESF #3.
- **ESF #10 – Oil and Hazardous Material Response** is responsible for responding to oil and hazardous material issues, environmental safety, and short- and long-term cleanup. The two most commonly deployed agencies that deal with these debris-related activities are EPA and USCG.

### ***Requirements***

All Mission Assignments have the following requirements:

- The Mission Assignment must be requested by the State.
- The community must demonstrate that the required disaster-related efforts exceed State and local resources.
- The scope of work must include specific quantifiable measurable tasks.
- FEMA issues mission assignments.

### ***Process***

The process to request and utilize Mission Assignments is as follows:

- The community demonstrates the work is beyond its capabilities.
- The State makes a formal request to FEMA for the Mission Assignment.
- FEMA reviews the request, and if approved, assigns it to a Federal agency.
- FEMA assigns qualified staff to coordinate and monitor the Mission Assignment activities.
- The assigned agency performs the scope of work included within the Mission Assignment.
- The assigned agency submits a bill to FEMA upon completion.
- FEMA informs the State of the required cost share.

## ***Types of Mission Assignments***

There are two types of Mission Assignments related to debris operations: Technical Assistance and Direct Federal Assistance.

### **Technical Assistance**

Technical Assistance Mission Assignments are available when the State, tribe, or local community lacks technical knowledge or expertise to accomplish an eligible task. Technical assistance may be authorized in anticipation of a declaration of a major disaster or emergency. Eligible debris-related assistance provided through Technical Assistance includes assisting the State and/or applicants in the development of its overall debris management plan, and may include developing DMS plans, monitoring strategies, load ticket processes, and contracting guidelines. Technical Assistance is provided at 100 percent Federal share.

### **Direct Federal Assistance**

Direct Federal Assistance Mission Assignments allow a Federal agency to perform debris activities on behalf of the State or applicant. Direct Federal Assistance Mission Assignments apply only to Emergency Work (debris removal and emergency protective measures) and must meet the general FEMA eligibility criteria for Emergency Work. Federal agencies must comply with all applicable regulations, laws, policies, requirements, and procedures.

An additional requirement for Direct Federal Assistance is that the State must provide a letter giving the Federal agency debris removal authority.

### ***Scope of Work***

In order to prepare the scope of work for a Mission Assignment, the community must provide information to the State about the specific geographic locations or easily definable areas where debris is located as well as estimated types and volumes of debris. The scope of work should be defined for FEMA's consideration.

Eligible debris-related activities provided by Direct Federal Assistance include:

- Removing debris from critical roadways and facilities.
- Removing debris from curbsides or from eligible facilities and hauling it to either temporary or permanent disposal sites.
- Identifying, designing, operating, and closing DMS.
- Monitoring debris removal operations.
- Demolishing and/or removing disaster-damaged structures and facilities in accordance with FEMA regulations and policies.

The duration of Mission Assignments for debris removal is limited to 60 days from the disaster declaration date. The time frame may be extended only under extenuating circumstances pursuant to 44 CFR Part 206.208(d).

### **Costs**

Direct Federal Assistance Mission Assignments are subject to the cost-sharing provisions applicable to the disaster. The State will agree in advance to reimburse FEMA for the appropriate non-Federal share of the work including the overhead of the Federal agency assigned the Mission Assignment.

### **100 Percent Funding for Direct Federal Assistance**

In some cases, the President may authorize 100 percent Federal funding for emergency work or debris removal.

FEMA will provide at 100 percent Federal share the cost of actual debris clearance and/or removal accomplished, not **Mission Assignment task orders** initiated, during the designated period. This includes debris clearance, pickup, hauling, processing, and disposal activities FEMA authorizes during the designated period. If further Federal assistance is necessary for debris clearance or removal after the designated period, the prevailing cost-share rate for that particular disaster applies.

See *FEMA RP9523.9, 100% Funding for Direct Federal Assistance and Grant Assistance*, for additional information.

## Acronyms

|       |   |
|-------|---|
| C&D   | Construction and Demolition                     |
| CBRA  | Coastal Barrier Resources Act                   |
| CBRN  | Chemical, Biological, Radiological, and Nuclear |
| CBRS  | Coastal Barrier Resources System                |
| CFR   | Code of Federal Regulations                     |
| CWA   | Clean Water Act                                 |
| CZMA  | Coastal Zone Management Act                     |
| DMS   | Debris Management Site                          |
| DOT   | Department of Transportation                    |
| DPW   | Department of Public Works                      |
| DRM   | Disaster Recovery Manager                       |
| DTFL  | Debris Task Force Leader                        |
| EO    | Executive Order                                 |
| EPA   | Environmental Protection Agency                 |
| ER    | Emergency Relief                                |
| ESA   | Endangered Species Act                          |
| ESF   | Emergency Support Function                      |
| FEMA  | Federal Emergency Management Agency             |
| FHWA  | Federal Highway Administration                  |
| GIS   | Geographic Information System                   |
| GPS   | Global Positioning System                       |
| HHW   | Household Hazardous Waste                       |
| HUD   | Department of Housing and Urban Development     |
| IA    | Individual Assistance                           |
| ICS   | Incident Command System                         |
| JFO   | Joint Field Office                              |
| NEPA  | National Environmental Policy Act               |
| NHPA  | National Historic Preservation Act              |
| NRCS  | Natural Resources Conservation Service          |
| NRP   | National Response Plan                          |
| OCC   | Office of Chief Counsel                         |
| PA    | Public Assistance                               |
| PDA   | Preliminary Damage Assessment                   |
| PNP   | Private Non-Profit                              |
| PPDR  | Private Property Debris Removal                 |
| PW    | Project Worksheet                               |
| RCRA  | Resource Conservation and Recovery Act          |
| RFQ   | Request for Qualifications                      |
| SHPO  | State Historic Preservation Officer             |
| SWM   | Solid Waste Management                          |
| USACE | United States Army Corps of Engineers           |

|      |   |
|------|---|
| USCG | United States Coast Guard               |
| USDA | United States Department of Agriculture |
| WMD  | Weapon of Mass Destruction              |
| WSRA | Wild and Scenic Rivers Act              |

## Terms Used in This Document

**Chipping or Mulching** - The process of reducing woody material, such as lumber and vegetative debris, by mechanical means into small pieces to be used as mulch or fuel. Woody debris can be reduced in volume by approximately 75 percent, based on data obtained during reduction operations. The terms “chipping” and “mulching” are often used interchangeably.

**Construction and Demolition Debris (C&D)** - The definition of construction and demolition debris may vary between States. Construction and demolition debris can be defined as damaged components of buildings and structures such as lumber and wood, gypsum wallboard, glass, metal, roofing material, tile, carpeting and floor coverings, window coverings, pipe, concrete, fully cured asphalt, equipment, furnishings, and fixtures.

**Debris** - Items and materials broken, destroyed, or displaced by a natural or man-made Federally declared disaster. Examples of debris include, but are not limited to, trees, construction and demolition material, and personal property.

**Debris Clearance** - Clearing roads by pushing debris to the roadside to accommodate emergency traffic.

**Debris Management Site (DMS)** - A location where debris is sorted, processed, reduced in volume, and/or disposed of (if debris management activities take place at a permanent disposal site).

**Debris Removal** - Picking up debris and taking it to a debris management site, composting facility, recycling facility, permanent landfill, or other reuse or end-use facility.

**Demolition** - The act or process of reducing a structure, as defined by State or local code, to a collapsed state. It contrasts with deconstruction, which is the taking down of a building while carefully preserving valuable elements for reuse.

**Force Account Labor** - Labor performed by the applicant’s permanent, full time, or temporary employees.

**Garbage** - Waste that is regularly picked up by an applicant. Common examples of garbage are food, packaging, plastics, and papers.

**Hazardous Waste** - Waste with properties that make it potentially harmful to human health or the environment. Hazardous waste is regulated under the Resource Conservation and Recovery Act (RCRA). In regulatory terms, a RCRA hazardous waste is a waste that appears on one of the four hazardous wastes lists or exhibits at least one of the following four characteristics: ignitability, corrosivity, reactivity, or toxicity.



**Hold Harmless** - Generally, a contractual arrangement whereby one party agrees to hold the other party without responsibility for damage or other liability incurred as a result of a particular action or transaction.

**Household Hazardous Waste (HHW)** - Used or leftover contents of consumer products that contain chemicals defined in regulatory terms under the Resource Conservation and Recovery Act as appearing on one of the four hazardous waste lists or exhibiting one of the following characteristics: ignitability, corrosivity, reactivity, or toxicity. Examples of household hazardous waste include small quantities of normal household cleaning and maintenance products, latex and oil based paint, cleaning solvents, gasoline, oils, swimming pool chemicals, pesticides, and propane gas cylinders.

**Infectious Waste** - Waste capable of causing infections in humans, including contaminated animal waste, human blood and blood products, isolation waste, pathological waste, and discarded sharps (needles, scalpels, or broken medical instruments).

**Legal Responsibility** - In the context of debris management, a statute, formally adopted legal code, or ordinance that gives local government officials responsibility to perform work on public and/or private property.

**Debris Monitoring** - Actions taken by applicants in order to document eligible quantities and reasonable expenses during debris activities to ensure that the work complies with the contract scope-of-work and/or is eligible for Public Assistance grant reimbursement.

**Mutual Aid Agreement** - A written understanding between communities and States obligating assistance during a disaster. See *FEMA RP9523.6, Mutual Aid Agreements for Public Assistance and Fire Management Assistance*.

**National Response Plan (NRP)** - A plan developed to facilitate the delivery of all types of Federal assistance to States following a disaster. It outlines the planning assumptions, policies, concept of operations, organizational structures, and specific assignments and agencies involved in Federal assistance to supplement State, tribal, and local efforts.

**Outbuilding** - Any structure secondary to a house such as a barn, shed, or outhouse separated from the main structure.

**Piggyback Contract** - Term used to describe a type of goods or services procurement. A piggyback contract is a contract let by a government entity which is adopted and extended for use by another government entity.

**Recycling** - Activities by which discarded materials are collected, sorted, processed, and converted into raw materials and are then used in the production of new products.

**Right of Entry** - As used by FEMA, the document by which a property owner confers to an eligible applicant or its contractor or the United States Army Corps of Engineers the right to enter onto private property for a specific purpose without committing trespass.

**Right-of-Way** - The portions of land over which facilities such as highways, railroads, or power lines are built. It includes land on both sides of the facility up to the private property line.

**Scale/Weigh Station** - A scale used to weigh trucks as they enter and leave a landfill. The difference in weight determines the tonnage dumped, and a tipping fee is charged accordingly. It also may be used to determine the quantity of debris picked up and hauled.

**Tipping Fee** - A fee based on weight or volume of debris dumped that is charged by landfills or other waste management facilities to cover their operating and maintenance costs. The fee also may include amounts to cover the cost of closing the current facility and/or opening a new facility.

**United States Army Corps of Engineers (USACE)** - A component of the United States Army responsible for constructing and maintaining military installations and other government-owned and controlled facilities. The USACE may be used by FEMA when direct Federal assistance, issued through a mission assignment, is needed.

**White Goods** - White goods are defined as discarded household appliances such as refrigerators, freezers, air conditioners, heat pumps, ovens, ranges, washing machines, clothes dryers, and water heaters.



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## **APPENDICES**



# Appendices

## Appendix A – Debris Management Plan Outline

## Appendix B – USACE Hurricane Debris Estimating Model

## Appendix C – FEMA Forms

|          |  |
|----------|--|
| FF90-123 | Force Account Labor Summary Record         |
| FF90-128 | Applicant's Benefits Calculation Worksheet |
| FF90-127 | Force Account Equipment Summary Record     |
| FF90-125 | Rented Equipment Summary Record            |
| FF90-126 | Contract Work Summary Record               |
| FF90-124 | Materials Summary Record                   |
| FF90-91D | Project Worksheet – Photo Sheet            |

## Appendix D – Sample Monitoring Forms

|                          |
|--------------------------|
| Load Ticket              |
| Tower Monitor Log        |
| Roving Monitor Report    |
| Daily Issue Log          |
| Truck Certification Form |

## Appendix E – Debris Collection and Management Site Hazard Analysis

## Appendix F – Demolition Checklist

## Appendix G – FEMA Policies and Fact Sheets

|                  |   |
|------------------|---|
| FEMA DAP9523.4   | Demolition of Private Structures  |
| FEMA DAP9523.11  | Hazardous Stump Extraction and Removal Eligibility  |
| FEMA RP9523.12   | Debris Operations - Hand-Loaded Trucks and Trailers   |
| FEMA DAP9523.13  | Debris Removal from Private Property  |
| FEMA RP9524.3    | Policy for Rehabilitation Assistance for Levees and Other Flood Control Works - Decision Tree |
| FEMA RP9525.7    | Labor Costs – Emergency Work  |
| FEMA RP9580.4    | Fact Sheet: Debris Operations – Clarification: Emergency Contracting vs. Emergency Work       |
| FEMA RP9580.201  | Fact Sheet: Debris Removal – Applicant's Contracting Checklist                                |
| FEMA RP9580.202  | Fact Sheet: Debris Removal – Authorities of Federal Agencies                                  |
| FEMA DAP9580.203 | Fact Sheet: Debris Monitoring   |



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**APPENDIX A – DEBRIS MANAGEMENT  
PLAN OUTLINE**

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# **Debris Management Plan Outline**

## **I. Staff Roles and Responsibilities**

- A. Staffing Organizational Chart
- B. Roles and Responsibilities
  - 1. Staffing Assignments and Duties
  - 2. Administration
  - 3. Contracting and Procurement
  - 4. Legal
  - 5. Operations
  - 6. Engineering
- C. Emergency Communications Strategy
- D. Health and Safety Strategy and Procedures
- E. Training Schedule

## **II. Situation and Assumptions**

- A. Design Disaster Event
- B. Forecasted Debris
  - 1. Forecasted Types
  - 2. Forecasted Locations

## **III. Debris Collection Plan**

- A. List Priorities
- B. Response Operations
- C. Recovery Operations

# Debris Management Plan Outline

1. Estimating Staff, Procedures and Assignments
2. Collection Method
  - a) Curbside Collection
  - b) Collection Centers
3. Collecting Hazardous Waste and White Goods
4. Monitoring Staff and Assignments

## IV. Debris Management Sites

- A. Site Management
  1. Site Manager
  2. Monitoring Staff and Assignments
  3. Safety Personnel
  
- B. Establishment and Operations Planning
  1. Permits
  2. Locations
    - a) Baseline Data for Each Location
    - b) Ingress/egress for Sites
  3. Site Layouts
  4. Site Preparation
  5. Site Layout
  6. Volume Reduction Methods
    - a) Incineration
    - b) Grinding and Chipping
  7. Recycling
  8. Environmental Monitoring Program
  9. Site Closure

## V. Contracted Services

- A. Emergency Contracting/Procurement Procedures
  
- B. Debris Operations to be Outsourced
  
- C. General Contract Provisions

# **Debris Management Plan Outline**

- D. Qualification Requirements
- E. Solicitation of Contractors

## **VI. Private Property Demolition and Debris Removal**

- A. Condemnation Criteria and Procedures
  - 1. Legal Documentation
  - 2. Demolition Permitting
  - 3. Inspections
- B. Mobile Home Park Procedures
- C. Navigation Hazard Removal Procedures

## **VII. Public Information Strategy**

- A. Public Information Officer
- B. Pre-scripted Information
- C. Distribution Strategy

## **Appendices**

- Maps of jurisdiction and priorities
- Staffing assignment maps
- Load Ticket
- Debris Monitor Reports
- Truck Certification List
- Load Ticket System



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**APPENDIX B – USACE HURRICANE DEBRIS  
ESTIMATING MODEL**

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# USACE HURRICANE DEBRIS ESTIMATING MODEL

## U.S. Army Corps of Engineers Hurricane Debris Estimating Model

### Background

- The U.S. Army Corps of Engineers (USACE) Emergency Management staff has developed a modeling methodology designed to forecast potential amounts of hurricane generated debris.
- Based on actual data from Hurricanes Frederic, Hugo and Andrew.
- The estimated quantities produced by the model have a predicted accuracy of  $\pm 30\%$ .
- The primary factor used by the model is the number of households in a developed urban/suburban area.
- Other factors utilized are:
  - Cubic yards of debris generated per household per storm category.
  - Vegetative cover.
  - Commercial density.
  - Precipitation.
- Household debris includes damage to the house, contents and surrounding shrubs/trees.
- Vegetative cover includes all trees and shrubbery located along public rights-of-way, parks and residential areas.
- Commercial density includes debris generated by damage to businesses and industrial facilities.
- Private contractors will remove the majority of commercial related debris; however, disposal/reduction space is still required.
- Very wet storms will cause ground saturation, increasing tree fall.

### Initial Planning Data

- For planning purposes, the worst case scenario should be used for the subject area.
- The most accurate process is to determine the defined areas by using Doppler Radar (National Weather Service Broadcasts) and Geographical Information Systems (GIS).
- Doppler radar will define the storm's intensity and the exact track of the eye of the storm in relation to the affected area.
- Track the storm and plot the eye path and 5-mile wide bands out from the eye to define areas and estimate wind speeds.
- The wind speed of the eye wall normally determines the reported storm category with the outward or 5-mile bands being a lesser category.



## USACE HURRICANE DEBRIS ESTIMATING MODEL

- Track the storm inland until the wind speeds dissipate below hurricane strength.
- Divide outlined areas by storm category.
- Enter coordinates into a GIS database to determine areas and demographic information, such as:
  - Population.
  - Schools.
  - Businesses.

### STEP 1—ESTIMATING DEBRIS QUANTITIES

The formula used in this model will generate debris quantity as an absolute value based on a known/estimated population or a debris quantity per square mile based upon population density per square mile.

- Determine population (P) in the affected area.
- For example, 1990 census data for Harrison County, MS, is 165,500.
- $P = 165,500$ .
- The assumption of 3 persons per household (H) is used for this model.
- Known/estimated population (P) for a jurisdiction may be used to determine a value for H or  $H=P/3$ .

#### Example

A category 4 storm passes through Harrison County, MS. The area is primarily single family dwellings with some apartment complexes, schools, and shopping centers. Vegetation characteristic is heavy because of the proliferation of residential landscape shrubbery and trees throughout the area. The storm is very wet, with rain before and continuing for a few days after the hurricane.

**Formula:**  $Q= H(C)(V)(B)(S)$

**H=  $P/3= 165,500/3 = 55,167$  (3 persons/household)**

**C= 50 (Factor for a Category 4 storm)**

**V= 1.5 (Multiplier for heavy vegetation)**

**B= 1.3 (Multiplier for heavy commercial due to schools/stores/apartments)**

**S= 1.3 (Multiplier for wet storm event)**

**Then  $Q = 55,167 \times 50 \times 1.5 \times 1.3 \times 1.3 = 6,992,374$  cubic yards of debris or 7 million cy**

## USACE HURRICANE DEBRIS ESTIMATING MODEL

**The Model Formula:**  $Q = H(C)(V)(B)(S)$  where:

**Q** is the quantity of debris in cubic yards.

**H** is the number of households.

**C** is the storm category factor in cubic yards.

**V** is the vegetation characteristic multiplier.

**B** is the commercial/business/industrial use multiplier.

**S** is the storm precipitation characteristic multiplier.

**C** is the storm category factor as shown below. It expresses debris quantity in cubic yards (cy) per household by hurricane category and includes the house and its contents, and land foliage.

| HURRICANE<br>CATEGORY | VALUE OF "C"<br>FACTOR |
|-----------------------|------------------------|
| 1                     | 2 cy                   |
| 2                     | 8 cy                   |
| 3                     | 26 cy                  |
| ✓4                    | ✓50 cy                 |
| 5                     | 80 cy                  |

**V** is the vegetation multiplier as shown below. It acts to increase the quantity of debris by adding vegetation, including shrubbery and trees, on public rights-of-way.

| VEGETATIVE<br>COVER | VALUE OF "V"<br>MULTIPLIER |
|---------------------|----------------------------|
| LIGHT               | 1.1                        |
| MEDIUM              | 1.3                        |
| ✓HEAVY              | ✓1.5                       |

**B** is the multiplier that takes into account areas that are not solely single-family residential, but includes small retail stores, schools, apartments, shopping centers, and light industrial/manufacturing facilities. Built into this multiplier is the offsetting commercial insurance requirement for owner/operator salvage operations.

| COMMERCIAL<br>DENSITY | VALUE OF "B"<br>MULTIPLIER |
|-----------------------|----------------------------|
| LIGHT                 | 1.0                        |
| MEDIUM                | 1.2                        |
| ✓HEAVY                | ✓1.3                       |

## USACE HURRICANE DEBRIS ESTIMATING MODEL

S is the precipitation multiplier that takes into account either a "wet" or "dry" storm event. A "wet" storm for category 3 or greater storms will generate more vegetative debris due to the uprooting of complete trees.

| PRECIPITATION<br>CHARACTERISTIC | VALUE OF "S"<br>MULTIPLIER |
|---------------------------------|----------------------------|
| NONE TO LIGHT                   | 1.0                        |
| ✓MEDIUM TO HEAVY                | ✓1.3                       |

**NOTE:** Steps 2 and 3 of this model can also be applied to other debris generating events once an estimated quantity of debris is established.

### STEP 2—DEBRIS STORAGE SITE REQUIREMENTS

- Estimate debris pile stack height of 10-feet.
- 60% usage of land area to provide for roads, safety buffers, burn pits and household hazardous waste areas.

1 acre (ac) = 4,840 square yards (sy)  
 10 foot stack height = 3.33 yards(y)  
 total volume per acre = 4,840 sy/ac x 3.33 y = 16,117 cy/ac

- From the example above, the acreage required for debris reduction sites is:

$7,000,000 / 16,117 \text{ cy/ac} = 434 \text{ acres}$  (required for debris storage only, no buffers, etc.)

- To provide for roads and buffers, the acreage must be increased by a factor of 1.66.

$434 \text{ ac} \times 1.66 = 720 \text{ acres}$  or, since one square mile (sm) = 640 acres  $720\text{ac}/640\text{as/sm}=1.12 \text{ sm.}$

- If you assume a 100 acre storage site can be cycled every 45 to 60 days or one time during the recovery period, then  $720/2 = 360 \text{ ac}$  or four 100 acre sites would be required.
- The number of sites varies with:
  - Size.
  - Distance from source.
  - Speed of reduction (mixed debris is slower than clean woody debris).
  - Removal urgency.
- The USACE commonly removes approximately 70% of the total volume generated with local governments, volunteer groups, and private individuals removing the remainder.

**If 7 million cy were estimated, the USACE would estimate removing approximately 4.9 million cy of debris.**

# USACE HURRICANE DEBRIS ESTIMATING MODEL

## STEP 3—CATEGORIES OF DEBRIS

Debris removed will consist of two broad categories:

- Clean wood debris.
- Construction and demolition (C&D) debris.
- The clean debris will come early in the removal process as residents and local governments clear yards and rights-of-way.
- The debris removal mission can be facilitated if debris is segregated as much as possible at the origin along the right-of-way, according to type.
- The public should be informed regarding debris segregation as soon as possible after the storm.
- Time periods should be set for removal, the first 7-10 days clean woody debris only, then followed by other debris, with the metals segregated from non-metals.
- Most common hurricane-generated debris will consist of the following:
  - 30% Clean woody debris
  - 70% Mixed C&D
- Of the 70% mixed C&D:
  - 42% Burnable but requires sorting
  - 5% Soil
  - 15% Metals
  - 38% Landfilled
- Based upon the above, 7,000,000 cy of debris would break down as follows:
  - 2,100,000 cy Clean woody debris
  - 4,900,000 cy Mixed C&D
- Of the 4,900,000 cy of mixed C&D, 2,058,000 cy is burnable but requires sorting, 245,000 cy is soil, 735,000 cy is metals, and 1,862,000 cy is landfilled.
- Burning will produce about 95% volume reduction.
- Chipping and grinding reduce the debris volume on a 4-to-1 ratio (4 cy is reduced to 1 cy) or by 75%.
- The rate of burning is basically equal to the rate of chipping/grinding, about 200 cy/hr. However, chipping requires on-site storage and disposal of the chips/mulch.



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## APPENDIX C – FEMA FORMS

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- ***FF90-123 Force Account Labor Summary Record***
- ***FF90-128 Applicant's Benefits Calculation Worksheet***
- ***FF90-127 Force Account Equipment Summary Record***
- ***FF90-125 Rented Equipment Summary Record***
- ***FF90-126 Contract Work Summary Record***
- ***FF90-124 Materials Summary Record***
- ***FF90-91D Project Worksheet – Photo Sheet***



DEPARTMENT OF HOMELAND SECURITY  
 FEDERAL EMERGENCY MANAGEMENT AGENCY  
**FORCE ACCOUNT LABOR SUMMARY RECORD**

O.M.B. No. 1660-0017  
Expires October 31, 2008

PAGE \_\_\_ OF \_\_\_

|               |          |                 |          |
|---------------|----------|-----------------|----------|
| APPLICANT     | PAID NO. | PROJECT NO.     | DISASTER |
| LOCATION/SITE | CATEGORY | PERIOD COVERING |          |

DESCRIPTION OF WORK PERFORMED

| NAME      | DATES AND HOURS WORKED EACH WEEK |  |  |  |  |  |  | COSTS       |             |                 |                   |             |
|-----------|----------------------------------|--|--|--|--|--|--|-------------|-------------|-----------------|-------------------|-------------|
|           | DATE                             |  |  |  |  |  |  | TOTAL HOURS | HOURLY RATE | BENEFIT RATE/HR | TOTAL HOURLY RATE | TOTAL COSTS |
| JOB TITLE | REG.                             |  |  |  |  |  |  |             |             |                 |                   |             |
| NAME      | O. T.                            |  |  |  |  |  |  |             |             |                 |                   |             |
| JOB TITLE | REG.                             |  |  |  |  |  |  |             |             |                 |                   |             |
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| JOB TITLE | REG.                             |  |  |  |  |  |  |             |             |                 |                   |             |
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| JOB TITLE | REG.                             |  |  |  |  |  |  |             |             |                 |                   |             |
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TOTAL COST FOR FORCE ACCOUNT LABOR REGULAR TIME      \$ →

TOTAL COST FOR FORCE ACCOUNT LABOR OVERTIME      \$ →

I CERTIFY THAT THE ABOVE INFORMATION WAS OBTAINED FROM PAYROLL RECORDS, INVOICES, OR OTHER DOCUMENTS THAT ARE AVAILABLE FOR AUDIT.

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| CERTIFIED | DATE |
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DEPARTMENT OF HOMELAND SECURITY  
 FEDERAL EMERGENCY MANAGEMENT AGENCY  
**APPLICANT'S BENEFITS CALCULATION WORKSHEET**

PAGE \_\_\_\_ OF \_\_\_\_

*O.M.B. No. 1660-0017  
 Expires October 31, 2008*

|           |           |
|-----------|-----------|
| APPLICANT | PA ID NO. |
|-----------|-----------|

|          |             |
|----------|-------------|
| DISASTER | PROJECT NO. |
|----------|-------------|

| FRINGE BENEFITS (by %)             | REGULAR TIME | OVERTIME |
|------------------------------------|--------------|----------|
| HOLIDAYS                           |              |          |
| VACATION LEAVE                     |              |          |
| SICK LEAVE                         |              |          |
| SOCIAL SECURITY                    |              |          |
| MEDICARE                           |              |          |
| UNEMPLOYMENT                       |              |          |
| WORKER'S COMP.                     |              |          |
| RETIREMENT                         |              |          |
| HEALTH BENEFITS                    |              |          |
| LIFE INS. BENEFITS                 |              |          |
| OTHER                              |              |          |
| <b>TOTAL in % of annual salary</b> |              |          |

COMMENTS

I CERTIFY THAT THE INFORMATION ABOVE WAS TRANSCRIBED FROM PAYROLL RECORDS OR OTHER DOCUMENTS WHICH ARE AVAILABLE

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| CERTIFIED BY | TITLE | DATE |
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DEPARTMENT OF HOMELAND SECURITY  
 FEDERAL EMERGENCY MANAGEMENT AGENCY  
**FORCE ACCOUNT EQUIPMENT SUMMARY RECORD**

O.M.B. No. 1660-0017  
 Expires October 31, 2008

PAGE \_\_\_\_\_ OF \_\_\_\_\_

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| APPLICANT     | PA ID NO. | PROJECT NO.     | DISASTER |
| LOCATION/SITE | CATEGORY  | PERIOD COVERING |          |

DESCRIPTION OF WORK PERFORMED

| TYPE OF EQUIPMENT<br><br>INDICATE SIZE, CAPACITY, HORSEPOWER,<br>MAKE AND MODEL AS APPROPRIATE | EQUIPMENT<br>CODE<br>NUMBER | OPERATOR'S<br>NAME | DATES AND HOURS USED EACH DAY |       |       |       |       |       |       | COSTS |                |                   |               |  |
|--|-----------------------------|--------------------|-------------------------------|-------|-------|-------|-------|-------|-------|-------|----------------|-------------------|---------------|--|
|  |                             |                    | DATE                          | HOURS | HOURS | HOURS | HOURS | HOURS | HOURS | HOURS | TOTAL<br>HOURS | EQUIPMENT<br>RATE | TOTAL<br>COST |  |
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| <b>GRAND TOTALS</b>  |                             |                    |                               |       |       |       |       |       |       |       |                |                   |               |  |

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| CERTIFIED | TITLE | DATE |
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APPLICANT \_\_\_\_\_ PA ID NO. \_\_\_\_\_ PROJECT NO. \_\_\_\_\_ DISASTER \_\_\_\_\_

LOCATION/SITE \_\_\_\_\_ CATEGORY \_\_\_\_\_ PERIOD COVERING \_\_\_\_\_

DESCRIPTION OF WORK PERFORMED \_\_\_\_\_

| TYPE OF EQUIPMENT<br><small>Indicate size, Capacity, Horsepower,<br/>Make and Model as Appropriate</small> | DATES AND<br>HOURS USED | RATE PER HOUR |              | TOTAL<br>COST | VENDOR | INVOICE<br>NO. | DATE AND<br>AMOUNT PAID | CHECK NO. |
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I CERTIFY THAT THE ABOVE INFORMATION WAS OBTAINED FROM PAYROLL RECORDS, INVOICES, OR OTHER DOCUMENTS THAT ARE AVAILABLE FOR AUDIT.

CERTIFIED \_\_\_\_\_ TITLE \_\_\_\_\_ DATE \_\_\_\_\_

DEPARTMENT OF HOMELAND SECURITY  
 FEDERAL EMERGENCY MANAGEMENT AGENCY  
**CONTRACT WORK SUMMARY RECORD**

O.M.B. No. 1660-0017  
 Expires October 31, 2008

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|               |           |             |                 |
|---------------|-----------|-------------|-----------------|
| APPLICANT     | PA ID NO. | PROJECT NO. | DISASTER        |
| LOCATION/SITE |           | CATEGORY    | PERIOD COVERING |

| DATES WORKED | CONTRACTOR | BILLING/INVOICE NUMBER | AMOUNT | COMMENTS - SCOPE |
|--------------|------------|------------------------|--------|------------------|
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**GRAND TOTAL**

I CERTIFY THAT THE ABOVE INFORMATION WAS OBTAINED FROM PAYROLL RECORDS, INVOICES, OR OTHER DOCUMENTS THAT ARE AVAILABLE FOR AUDIT.

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| CERTIFIED | TITLE | DATE |
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DEPARTMENT OF HOMELAND SECURITY  
 FEDERAL EMERGENCY MANAGEMENT AGENCY  
**MATERIALS SUMMARY RECORD**

O.M.B. No. 1660-0017  
 Expires October 31, 2008

PAGE \_\_\_\_\_ OF \_\_\_\_\_

|               |           |                 |          |
|---------------|-----------|-----------------|----------|
| APPLICANT     | PA ID NO. | PROJECT NO.     | DISASTER |
| LOCATION/SITE | CATEGORY  | PERIOD COVERING |          |

| DESCRIPTION OF WORK PERFORMED |  | VENDOR | DESCRIPTION | QUAN. | UNIT PRICE | TOTAL PRICE | DATE PURCHASED | DATE USED | INFO FROM (CHECK ONE) |       |
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|                               |  |        |             |       |            |             |                |           | INVOICE               | STOCK |
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I CERTIFY THAT THE ABOVE INFORMATION WAS OBTAINED FROM PAYROLL RECORDS, INVOICES, OR OTHER DOCUMENTS THAT ARE AVAILABLE FOR AUDIT.

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| CERTIFIED | TITLE | DATE |
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DEPARTMENT OF HOMELAND SECURITY  
FEDERAL EMERGENCY MANAGEMENT AGENCY  
**PROJECT WORKSHEET - Photo Sheet**

O.M.B. No. 1660-0017  
Expires October 31, 2008

DISASTER

PROJECT NO.

PA ID NO.

DATE

CATEGORY

FEMA-\_\_\_\_\_ -DR-\_\_\_\_

APPLICANT

COUNTY

PHOTO

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DESCRIPTION

DESCRIPTION



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## **APPENDIX D – SAMPLE MONITORING FORMS**

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- *Load Ticket*
- *Tower Monitor Log*
- *Roving Monitor Report*
- *Daily Issue Log*
- *Truck Certification Form*





|  |      |  |                   |
|--|------|--|-------------------|
| <b>Load Ticket</b>   |      | Ticket No. <b>0012345</b>  |                   |
| Municipality (Applicant)   |      | Prime Contractor   |                   |
|  |      | Sub-Contractor   |                   |
| <b>Truck Information</b>   |      |  |                   |
| Truck No   |      | Capacity   |                   |
| Truck Driver (print legibly)   |      |  |                   |
| <b>Loading Information</b>   |      |  |                   |
| <b>Loading</b>   | Time | Date   | Inspector/Monitor |
|  |      |  |                   |
| Location (Address or Cross Streets)  |      |  |                   |
| <b>When Using GPS Coordinates use Decimal Degrees (N xx.xxxxx)</b>   |      |  |                   |
| <b>N</b>   |      | <b>W</b>   |                   |
| <b>Unloading Information</b>   |      |  |                   |
| Debris Classification  |      | Estimated %, CYs, or Actual Weight   |                   |
| <input type="checkbox"/> Vegetation<br><input type="checkbox"/> C&D<br><input type="checkbox"/> White Goods<br><input type="checkbox"/> HHW<br><input type="checkbox"/> Other* See Below |      |  |                   |
| <b>Unloading</b>   | Time | Date   | Inspector/Monitor |
|  |      |  |                   |
| DMS Name and Location  |      |  |                   |
| *Other Debris Explanation  |      | Original:            Applicant<br>Copy 1:            _____<br>Copy 2:            _____<br>Copy 3:            _____ |                   |

TOWER MONITOR LOG

Date: \_\_\_\_\_

Monitor: \_\_\_\_\_

Applicant Monitor: \_\_\_\_\_

| Time | Truck No. | Load Ticket | Capacity | Vol. or Weight | Pick-Up Location | Photo/Disc | Comments |
|------|-----------|-------------|----------|----------------|------------------|------------|----------|
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Applicant: \_\_\_\_\_

Page \_\_\_\_\_

Tower Site: \_\_\_\_\_

Monitor: \_\_\_\_\_

**ROVING MONITOR REPORT**

Date: \_\_\_\_\_

| Time | Truck No. | Load Ticket | Capacity | Vol. or Weight | Pick-Up Location | Photo/Disc | Comments |
|------|-----------|-------------|----------|----------------|------------------|------------|----------|
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Applicant: \_\_\_\_\_

Page \_\_\_\_\_

Monitor: \_\_\_\_\_

**DAILY ISSUE LOG**

Date: \_\_\_\_\_

| Issue No. | Truck No. | Load Ticket | Pick-Up Location | Contractor/<br>Sub-Contractor | Applicant Monitor | Photo/<br>Disc | Issue/Resolution |
|-----------|-----------|-------------|------------------|-------------------------------|-------------------|----------------|------------------|
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Applicant: \_\_\_\_\_ Page \_\_\_\_\_

**TRUCK CERTIFICATION FORM**

**General Information**

**Applicant:** \_\_\_\_\_ **Monitor:** \_\_\_\_\_  
**Contractor:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
**Measurement Location:** \_\_\_\_\_ **County:** \_\_\_\_\_  
**Declaration Number:** \_\_\_\_\_

**Truck Information**

| <b>Make</b> | <b>Year</b> | <b>Color</b> | <b>License</b> |
|-------------|-------------|--------------|----------------|
|             |             |              |                |

**Truck Measurements**

**Performed By:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
**Volume Calculated By:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
**Both Checked by:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Driver Information**

**Name:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Phone Number:** \_\_\_\_\_

**Owner Information**

**Name:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Phone Number:** \_\_\_\_\_



**Truck Identification**



**Truck Capacity**



**Photo**

(See reverse for calculation worksheet)

## TRUCK CERTIFICATION FORM

### DUMP TRUCK

**Measurements**

Truck Measurements      Length (L) =       Width (W) ft =       Height (H) ft =

Hoist Measurement      Length<sub>1</sub> (L<sub>1</sub>) ft =       Width<sub>H</sub> (W<sub>H</sub>) ft =       Height<sub>H</sub> (H<sub>H</sub>) ft =

   Length<sub>2</sub> (L<sub>2</sub>) ft =

Radius      Radius ft =       Height (H) =

**Calculations**

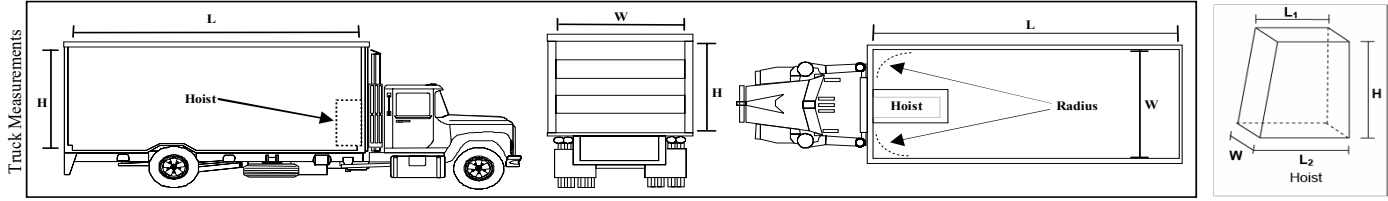
Bed Volume (Basic)       $(L \times W \times H) / 27 =$   cyd

Hoist Volume       $((L_1 + L_2 / 2) \times W_H \times H_H) / 27 =$   cyd

Radius Volume       $(3.14 \times R^2 \times H) / 27 =$   cyd

**Total =**  cyd

Cubic Yards



### EXTRA TRAILER

**Measurements**

Truck Measurements (Basic)      Length (L) =       Width (W) ft =       Height (H) ft =

Hoist Measurement      Length<sub>1</sub> (L<sub>1</sub>) ft =       Width<sub>H</sub> (W<sub>H</sub>) ft =       Height<sub>H</sub> (H<sub>H</sub>) ft =

   Length<sub>2</sub> (L<sub>2</sub>) ft =

Radius      Radius ft =       Height (H) =

**Calculations**

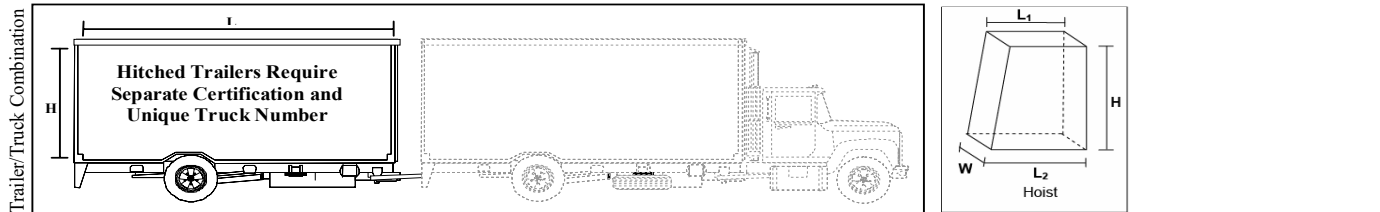
Bed Volume (Basic)       $(L \times W \times H) / 27 =$   cyd

Hoist Volume       $((L_1 + L_2 / 2) \times W_H \times H_H) =$   cyd

Radius Volume       $(3.14 \times R^2 \times H) / 27 =$   cyd

**Total =**  cyd

Cubic Yards



### ROUND BOTTOM TRUCK

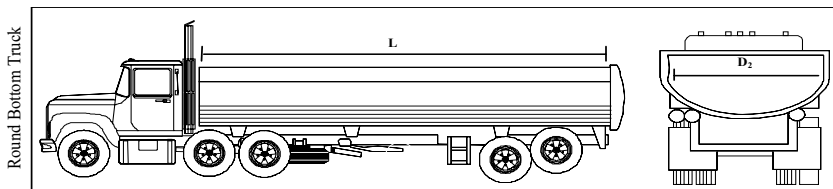
**Measurements**

Truck Measurements      Length (L) ft =       Diameter (D) ft =

**Calculations**

Approx. Volume  $(3.14 \times (D/2)^2 \times L) / 27 =$   cyd (round bottom portion only)

Cubic Yards



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**APPENDIX E – DEBRIS COLLECTION AND  
MANAGEMENT SITE HAZARD ANALYSIS**

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# DEBRIS COLLECTION and MANAGEMENT SITE HAZARD ANALYSIS

Disaster debris collection and management sites pose a multitude of health and safety concerns. Hazards and exposures are a function of the unstable nature of the site, the potential of hazardous substances being present, and the type of work being performed. This hazard analysis serves as general guidance only. Each site will have its own unique hazards, all of which cannot be anticipated.

The listed hazards, risks, and accompanying general recommendations represent suggested site hazard assessment and therefore will not represent actual field hazards present at all debris collection and management sites. It is incumbent upon the responsible entity (e.g. – State, local government, private contractor, etc.) chosen to perform and/or manage this work to assure a comprehensive site specific hazard analysis is performed and that resulting recommendations are implemented.

## SITE SAFETY CHECKLIST

- Conduct a job hazard analysis to identify hazards prior to beginning site work.
- Assign key personnel and alternates responsible for site safety.
- Describe risks associated with each operation conducted.
- Confirm that personnel are adequately trained to perform jobs.
- Describe the protective clothing and equipment to be worn by personnel during site operations.
- Describe needed air monitoring, personnel monitoring, and environmental sampling.
- Describe actions to be taken to mitigate existing hazards to make work environment less hazardous.

## POTENTIAL HAZARDS AND GENERAL RECOMMENDATIONS

### HAZARD 1: Massive piles of woody debris and other types of debris; unstable work surfaces

**Risks:** Traumatic, serious, or fatal injuries or illnesses can occur due to slips, trips, falls, or collapsing materials.

- **General Recommendations:**

- Ensure that surfaces are as stable as possible.
- Ensure scaffolding is erected on a stable surface; anchor scaffolding to a structure capable of withstanding the lateral forces generated.
- Ensure workers have ANSI approved safety footwear with slip resistant soles. Consider drop and roll over hazards as well as puncture hazards.
- Site personnel to be observant of changes in walking surfaces.

### HAZARD 2: Hazardous noise

**Risks:** Communication and possible noise induced hearing loss.

- **General Recommendations:**

- Monitor noise levels. If 8-hour time-weighted average exposures are 85 decibels (dB) or more, a Hearing Conservation Plan is needed.
- Try engineering out workplace noise by isolating the equipment, reduce the equipment vibration, or installing sound barriers.
- Consider hearing protection devices are used whenever noisy equipment (e.g., large trucks, grinding equipment, loaders, generators, large motors, etc.) is used.

### HAZARD 3: Breathing dust containing fine airborne particles and gases generated through diesel exhaust fumes, smoke, ash, and road dust

**Risks:** Irritation of eye, nose, throat, and lung.

- **General Recommendations:**

- Workers should be protected from breathing airborne contaminants as determined through the site's analysis of respiratory hazards.
- Respiratory protection: determine respirator type, as needed, through site specific hazard analysis.
- Respirators must fit properly to protect workers.

- Dust concentrations in the air should be appropriately monitored.
- Stay upwind of dust generating activities.
- Maintain low speeds on construction equipment to keep dust down.
- Airborne dust may be suppressed by application of water based mist.

**HAZARD 4: Heat stress from working in a hot, humid climate**

**Risks:** Significant fluid loss can progress to clinical dehydration, raised core body temperature, impaired judgment, disorientation, fatigue, muscle cramping, resulting in heat stroke.

● **General Recommendations:**

- Adjust work schedules, rotate personnel, and add additional personnel if needed.
- Replenish fluids (e.g. – water, electrolytes) as needed.
- Consider personnel and environmental monitoring plans.
- Know the warning signs of heat related illnesses.
- Provide shelter for personnel in shaded areas.
- Where possible, block out sun or other direct sources of heat from fixed work locations.
- Prevent sun related overexposure to skin by using a sunscreen lotion with a significant sun protection factor (SPF) of 15 or greater.

**HAZARD 5: Cold stress from working in a cold, wet climate**

**Risks:** This allows exposed skin and the extremities to cool rapidly and increases the risk of frostbite and hypothermia.

● **General Recommendations:**

- Get into heated shelter as necessary to maintain body temperature.
- Replace wet clothing immediately.
- Drink warm fluids often.
- Wear adequate clothing to reduce threat of cold stress.
- Know the signs of cold stress.

**HAZARD 6: Carbon monoxide risk from heaters, gasoline or propane-powered generators, or heavy machinery**

**Risks:** Headache, dizziness, drowsiness, or nausea. This may progress to vomiting, loss of consciousness, and collapse. Coma or death may occur under prolonged or high exposures.

● **General Recommendations:**

- Use CO warning sensors when using or working around combustion sources since CO has no warning properties. CO is a colorless and odorless gas.
- Shut off equipment or machinery immediately if symptoms of exposure appear and immediately go to a fresh air source or location.

**Warning!** Do not use gasoline generators or portable heaters in confined spaces or poorly ventilated areas.

**HAZARD 7: Work zone traffic hazards**

**Risks:** Traumatic or fatal injuries due to failure of or improper use of equipment or workers being struck by moving equipment.

● **General Recommendations:**

- Establish a traffic control plan for motorists and pedestrians.
- Use standard highway signs and control devices to instruct drivers.
- Use barriers (concrete, water, sand, collapsible barriers, crash cushions, and truck-mounted attenuators) to limit motorist intrusion into the work zone.
- High visibility safety garments should be provided for those providing temporary traffic control (class 2 or 3) and workers on foot (class 1, 2, or 3).
- Seat belts and rollover protection should be used on equipment and vehicles as stated by the manufacturer.
- Workers on foot, equipment operators, and drivers in internal work zones need to know the routes construction vehicles will use.
- Be mindful of limited visibility (e.g. – blind spots) which heavy machine operators have while driving machines at the work site.
- Maintain safe driving distances, avoid using cell phones while driving, and obey all traffic laws.

#### **HAZARD 8: Eye, face, hand, and head injuries from flying debris; wood particles**

**Risks:** Traumatic injuries, ranging from minor injuries requiring first aid to serious eye injuries, even disabling or fatal traumatic injuries.

- **General Recommendations:**

- Only use protective eyewear, face shields, and protective head wear that are ANSI approved.
- Educate workers regarding safe work procedures before beginning work.
- Provide workers with a full array of personal protective equipment, including hard hats, safety shoes, eyeglasses, and work gloves.
- Ensure that workers do not walk under or through areas where cranes and other heavy equipment are being used to lift objects.
- Proper eye protection (e.g. - goggles or safety glasses).
- As a minimum requirement use safety glasses with side shields by all site workers. Faceshields are not a substitute for safety glasses.
- Use safety goggles for protection from fine dust particles rather than using regular prescription eyeglasses.
- Choose hand protection to fit the hazards determined through the hazard analysis (e.g. – laceration hazards, need for gripping, need for dexterity, etc.).
- Stay outside the 300 foot safety zone while a chipper is in operation.
- Check the kick-back device on chainsaws before use.

#### **HAZARD 9: Use of various types of heavy equipment, including cranes, bucket trucks, skid-steer loaders, etc.**

**Risks:** Traumatic injury, including serious and fatal injuries, due to failure of improper use of equipment, or workers being struck by moving equipment.

- **General Recommendations:**

- Wear safety vests. Safety orange vests with reflective stripes are recommended.
- Ensure operators are aware of the activities around them to protect workers on foot from being struck by moving equipment.
- Ensure that workers do not walk under or through areas where cranes and other heavy equipment are being used to lift objects.
- Ensure that workers do not climb onto or ride loads being lifted or moved.
- Ensure that all equipment warning devices are working (flashers, strobes, back-up alarms).
- Machinery is to be inspected by a qualified worker before each use, per OSHA requirements.
- Stay at least 20 feet beyond maximum equipment swing radius or movement areas. Assign spotters as needed.
- Do not exceed the load capacity of cranes and other lifting equipment.

#### **HAZARD 10: Chemicals, flammables and combustibles**

**Risks:** Traumatic, serious, or fatal injuries or illnesses can occur due to inhalational, dermal, and fire hazards.

- **General Recommendations:**

- Ensure that hazardous waste (batteries, PVC piping, solvents, pesticides, and compressed gas cylinders, etc.) are properly separated from “burnable” trash.
- Utilize GFCI for any extension cords or power tools.
- Store gasoline in an approved container not to exceed 5-gallon capacity.
- Allow gasoline power tools to cool down prior to refueling.
- Ensure containers are bonded and grounded during dispensing.
- Ensure adequate fire extinguishers are available at work sites and on work vehicles.
- Maintain a fire watch during all fire-related activities until material has been extinguished and cooled.
- If possible, avoid establishing debris management sites where there is a limited public water supply, lack of 911 service, or delays in fire department response time.

#### HAZARD 11: Isolated work areas and sanitation

**Risks:** Remote locations delay response times from emergency providers. Precaution can reduce the severity of the event.

- **General Recommendations:**

- Water-borne disease:
  - Always wash your hands.
  - Use hand sanitizers frequently.
  - Exercise good housekeeping.
  - Only drink from proven potable water sources.
- Blood-borne disease:
  - Use latex or similar type gloves when handling remains.
  - Replace gloves if punctured or torn.
  - Receive appropriate vaccinations (Hepatitis A, B, Tetanus, Diphtheria, etc).
  - Avoid standing water.
  - Observe universal precautions.
- Food-borne disease:
  - Identify and dispose of food that may not be safe to eat.
  - Handle food properly.
  - Keep a supply of water and food on hand.
  - Rest when off duty.
- Emergencies:
  - Know location and phone numbers of nearest hospital, doctor, and police.
  - Carry a first-aid kit.
  - Know the address or nearest cross-road of work site to notify emergency responders.

#### HAZARD 12: Insects, animals, reptiles, and plants

**Risks:** Traumatic, serious, or fatal injuries or illnesses can occur due to insect or animal bites.

- **General Recommendations:**

- Protection from plants:
  - Be alert of poisonous plants.
  - Use barrier creams if available.
  - Wash affected area after contact.
- Protection from wild or stray animals:
  - Avoid animal habitats (infested areas, rodent burrows, and nests).
  - Do not attempt to take custody of animals unless properly trained.
  - Avoid wild or stray animals. Assume all animals are rabid. Call local authorities to handle animals.
  - Dispose of animal carcasses according to local guidelines.
- Protection from insects (mosquitoes, bees, spiders, fire ants, etc):
  - Wear appropriate clothing (long pants, socks, long sleeved shirts, etc).
  - Avoid infested areas.
  - Use insect repellents that contain DEET or Picaridin, when necessary.
- Protection from snakes:
  - Assume all snakes are poisonous. Be on alert for snakes that may be hiding in unusual places after flooding.
  - Seek immediate medical attention if you are bitten.
  - Try to identify the snake so that if it is poisonous you can be given the correct anti-venom.

#### HAZARD 13: Power lines and gas lines

**Risks:** Traumatic, serious, or fatal injuries or illnesses can occur due to electrocution.

- **General Recommendations:**

- Treat all power lines and cables as energized until proven otherwise. De-energized lines can be energized by a secondary power sources such as a backup generator.
- Use appropriately grounded low voltage equipment.
- Do not approach detected gas leaks.

- Contact utilities (e.g. – utility locate service) for buried power line location.
- Stay at least 10 feet away from live overhead power lines.
- Get the owner or operator of the lines to de-energize and ground lines when working near them.
- Use non-conductive wood or fiberglass ladders when working near power lines.
- Keep area burn piles, observation areas, and areas where heavy equipment is used away from power lines and other electrical equipment.

#### **HAZARD 14: Debris towers**

**Risks:** Traumatic, serious, or fatal injuries or illnesses can occur due to falls from elevated surfaces.

- **General Recommendations:**

- Inspect scaffolds and scaffold components for defects before each work shift and after any incident which could affect structural integrity.
- Provide adequate buffer zones around the tower.
- Anchor the scaffold to prevent displacement from wind with guide wires
- Do not exceed load capacity of the scaffold.
- Footing of the tower must be level, sound, rigid, and capable of supporting the load without settling or displacement.
- A standard guardrail (top, mid, toe) and handrail system must be installed along all open sides.
- Provide appropriate ventilation if a heating system is present.
- No smoking.
- Use established construction guidance (e.g. – US Army Corps of Engineers).

#### **HAZARD 15: Aerial lifts and scissor lifts**

**Risks:** Traumatic, serious, or fatal injuries or illnesses can occur due to falls, tip-overs, and pinch points.

- **General Recommendations:**

- Only trained and authorized people may operate the lift.
- Check for overhead objects before use.
- Stay far from debris piles, drop-offs, and floor openings.
- Never use equipment near electric lines unless the lines are de-energized or adequate clearance is maintained.
- Refuel tanks only when the machine is off.
- Elevate the lift only when it is on a firm and level surface.
- Never drive the lift when in the extended position.

#### **HAZARD 16: Severe weather**

**Risks:** Traumatic, serious, or fatal injuries or illnesses can occur due to hypothermia, hyperthermia, and lightning strikes.

- **General Recommendations:**

- Monitor local weather conditions regularly.
- Recognize the signs of an oncoming thunder and lightning storm and seek shelter.
- Avoid small sheds, wooded areas, metal fences and open areas.

You can help prevent workplace injuries and illnesses by looking at your workplace operations, establishing proper job procedures, and ensuring that all employees are trained properly. One of the best ways to determine and establish proper work procedures is to conduct a job hazard analysis. A job hazard analysis is a technique that focuses on job tasks as a way to identify hazards before they occur. It focuses on the relationship between the worker, the task, the tools, and the work environment. Ideally, after you identify uncontrolled hazards, you will take steps to eliminate or reduce them to an acceptable risk level.

A job hazard analysis can be conducted on many jobs in your workplace. Priority should go to the following types of jobs:

- Jobs with the highest injury or illness rates;
- Jobs with the potential to cause severe or disabling injuries or illness, even if there is no history of previous accidents;
- Jobs in which one simple human error could lead to a severe accident or injury;
- Jobs that are new to your operation or have undergone changes in processes and procedures;
- Jobs that are complex enough to require written instructions.



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## **APPENDIX F – DEMOLITION CHECKLIST**

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## Demolition Checklist

**Property Address:** \_\_\_\_\_

|                       |
|-----------------------|
| <b>Pre-Demolition</b> |
|-----------------------|

|    | Action   | Initial | Date | Notes |
|----|--|---------|------|-------|
| 1  | Establish property management file for each parcel of private property. One (1) copy each for local and State records management |         |      |       |
| 2  | Provide notice of condemnation   |         |      |       |
| 3  | Complete environmental and historic preservation reviews   |         |      |       |
| 4  | Obtain right of entry and hold harmless agreements   |         |      |       |
| 5  | Verify property description and ownership (i.e., tax assessment, legal description)  |         |      |       |
| 6  | Document property owner's insurance coverage for future recovery   |         |      |       |
| 7  | Notify lien holder(s) of intent to demolish as needed  |         |      |       |
| 8  | Conduct building inspection as needed  |         |      |       |
| 9  | Conduct public health inspection as needed   |         |      |       |
| 10 | Conduct fire inspection as needed  |         |      |       |
| 11 | Provide public notification of condemnation/demolition   |         |      |       |
| 12 | Verify personal property removal   |         |      |       |

|                   |
|-------------------|
| <b>Demolition</b> |
|-------------------|

|    |   |  |  |  |
|----|---|--|--|--|
| 13 | Verify structure is unoccupied  |  |  |  |
| 14 | Cap well, water, sewer, and septic lines. Disconnect electrical service. Remove propane tanks.                                      |  |  |  |
| 15 | Mark easements and underground utilities  |  |  |  |
| 16 | Identify/remove/dispose of asbestos, lead-based paint and other hazardous materials per State environmental agency/EPA requirements |  |  |  |
| 17 | Identify/remove/dispose of all HHW per State environmental agency/EPA requirements  |  |  |  |
| 18 | Record GPS coordinates. Photograph site before and after demolition.  |  |  |  |
| 19 | Document actual demolition and removal of debris  |  |  |  |

Complete documentation is compiled within the project file for each individual structure/property.

I, the authorized applicant official, certify that all processes and documentation referred to in this checklist are complete (except Item 19) prior to the demolition of the referenced structure.

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Name (Print) Title Signature Date



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## **APPENDIX G – FEMA POLICIES AND FACT SHEETS**

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- ***FEMA DAP9523.4 – Demolition of Private Structures***
- ***FEMA DAP9523.11 – Hazardous Stump Extraction and Removal Eligibility***
- ***FEMA RP9523.12 – Debris Operations - Hand-Loaded Trucks and Trailers***
- ***FEMA DAP9523.13 – Debris Removal from Private Property***
- ***FEMA RP9524.3 – Policy for Rehabilitation Assistance for Levees and Other Flood Control Works - Decision Tree***
- ***FEMA RP9525.7 – Labor Costs – Emergency Work***
- ***FEMA RP9580.4 – Fact Sheet: Debris Operations – Clarification: Emergency Contracting vs. Emergency Work***
- ***FEMA RP9580.201 – Fact Sheet: Debris Removal – Applicant’s Contracting Checklist***
- ***FEMA RP9580.202 – Fact Sheet: Debris Removal – Authorities of Federal Agencies***
- ***FEMA DAP9580.203 – Fact Sheet: Debris Monitoring***





# FEMA

## DISASTER ASSISTANCE POLICY

DAP9523.4

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

**II. DATE: JUL 18 2007**

**III. PURPOSE:**

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

**IV. SCOPE AND AUDIENCE:**

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

**V. AUTHORITY:**

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

**VI. BACKGROUND:**

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

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



# FEMA

## DISASTER ASSISTANCE POLICY

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### VII. POLICY:

#### A. Definitions.

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

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

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

#### C. Eligibility of Demolition of Private Structures.

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



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## DISASTER ASSISTANCE POLICY

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

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

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

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

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

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





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

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

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

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

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

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

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



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

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

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

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

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

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



# FEMA

## DISASTER ASSISTANCE POLICY

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

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

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

A handwritten signature in red ink, appearing to read "C. Castillo", written over a horizontal line.

Carlos J. Castillo  
Assistant Administrator  
Disaster Assistance Directorate



# FEMA

## DISASTER ASSISTANCE POLICY

DAP9523.11

**I. TITLE: Hazardous Stump Extraction and Removal Eligibility**

**II. DATE: MAY 15 2007**

**III. PURPOSE:**

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

**IV. SCOPE AND AUDIENCE:**

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

**V. AUTHORITY:**

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

**VI. BACKGROUND:**

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

**VII. POLICY:**

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



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## DISASTER ASSISTANCE POLICY

DAP9523.11

advance by FEMA, using the attached Hazardous Stump Worksheet.

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

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

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

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

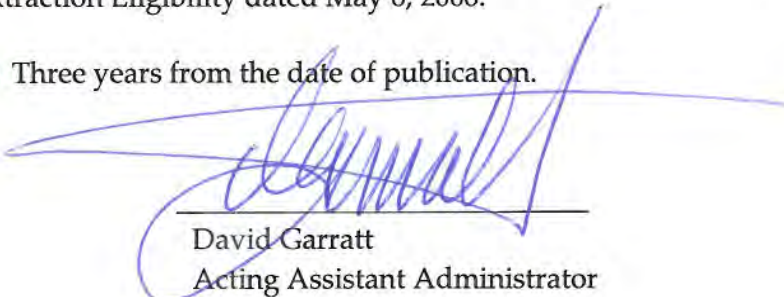
5. Stumps with less than 50% of their root ball exposed should be cut flush at ground level and the cut portion included with regular vegetative debris.

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

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

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

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



David Garratt  
Acting Assistant Administrator  
Disaster Assistance Directorate



# Stump Conversion Table

## Diameter to Volume Capacity

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

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

0.7854 is one-fourth Pi and is a constant.

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

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

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

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



# FEMA

## RECOVERY POLICY - RP9523.12

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

**II. DATE:** May 1, 2006

**III. PURPOSE:**

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

**IV. SCOPE AND AUDIENCE:**

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

**V. AUTHORITY:**

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

**VI. BACKGROUND:**

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

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





# FEMA

## RECOVERY POLICY - RP9523.12

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

### VII. POLICY:

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

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

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

IX. SUPERSESION: Not applicable.

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

A handwritten signature in black ink, appearing to read "David Garratt", written over a horizontal line.

David Garratt  
Acting Director of Recovery  
Federal Emergency Management Agency



# FEMA

## DISASTER ASSISTANCE POLICY

DAP9523.13

**I. TITLE: Debris Removal from Private Property**

**II. DATE: JUL 18 2007**

**III. PURPOSE:**

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

**IV. SCOPE AND AUDIENCE:**

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

**V. AUTHORITY:**

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

**VI. BACKGROUND:**

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

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

1. eliminate immediate threats to life, public health, and safety; or
2. eliminate immediate threats of significant damage to improved public or private property; or



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

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

### VII. POLICY:

#### A. Definitions.

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

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

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

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

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



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## DISASTER ASSISTANCE POLICY

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

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

a. Public Interest Determination (44 CFR 206.224(a)):

i. Immediate Threat to Life, Public Health, and Safety Determination. The basis of a determination by the State, county or municipal government's public health authority or other public entity that has legal authority to make such a determination that disaster-generated debris on private property in the designated area constitutes an immediate threat to life, public health, and safety; or

ii. Immediate Threat to Improved Property Determination. The basis of the determination by the State, county, or municipal government that the removal of disaster-generated debris is cost effective. The cost to remove the debris should be less than the cost of potential damage to the improved property in order for the debris removal to be eligible; or

iii. Ensure Economic Recovery of the Affected Community to the Benefit of the Community at Large Determination. The basis of the determination by the State, county, or municipal government that the removal of debris from commercial properties will expedite economic recovery of the community-at-large. Generally, commercial enterprises are not eligible for debris removal.

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

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

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



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

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

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

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

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

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

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



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## DISASTER ASSISTANCE POLICY

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

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

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

1. Eligible debris removal work from private property includes removal of:

a. Large piles of disaster-generated debris in the living, recreational, and working areas of properties in urban, suburban, and rural areas, including large lots.

b. Disaster-generated debris obstructing primary ingress and egress routes to improved property.

c. Disaster-damaged limbs and leaning trees in danger of falling on improved property, primary ingress or egress routes, or public rights-of-way.

i. Hazardous tree removal is eligible only if the tree is greater than six inches in diameter (measured at diameter breast height) and meets any of the following criterion: more than 50% of the crown is damaged or destroyed; the trunk is split or broken branches expose the heartwood; or the tree is leaning at an angle greater than 30 degrees and shows evidence of ground disturbance.

ii. Hazardous limb removal is eligible only if the limb is greater than two inches in diameter measured at the point of break.

d. Debris created by the removal of disaster-damaged interior and exterior materials from improved property.

e. Household hazardous wastes (such as household cleaning supplies, insecticides, herbicides, etc.)

f. Disaster-generated debris on private roads, including debris originating from private property and placed at the curb of public or private rights-of-way, provided that the



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

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

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

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

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

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



# FEMA

## DISASTER ASSISTANCE POLICY

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

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

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

A handwritten signature in black ink, appearing to read "C. Castillo", written over a horizontal line.

Carlos J. Castillo  
Assistant Administrator  
Disaster Assistance Directorate







Federal Emergency Management Agency



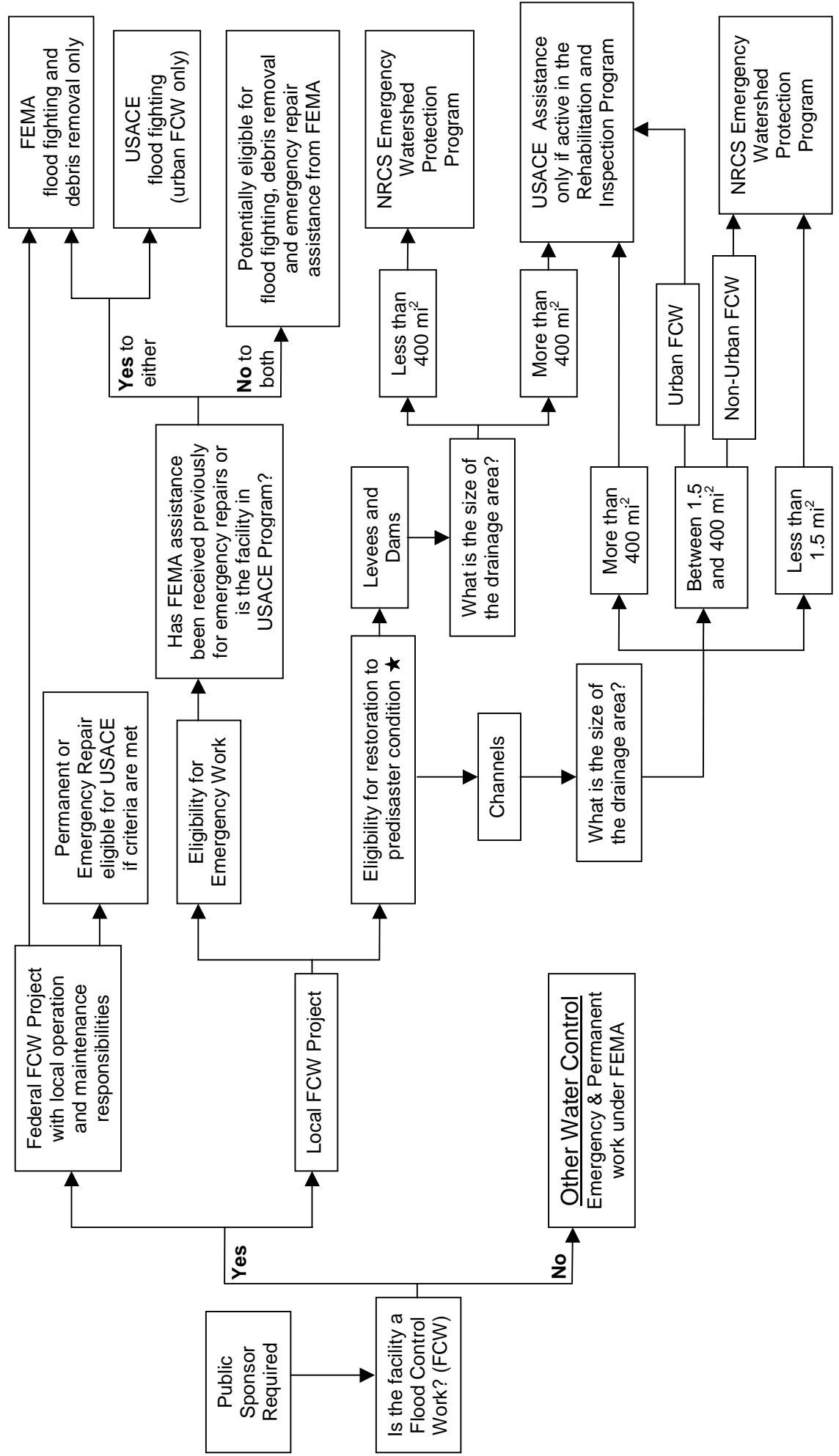
US Army Corps of Engineers



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





# FEMA

## RECOVERY POLICY – RP9525.7

### I. TITLE: **Labor Costs - Emergency Work**

II. DATE: **November 16, 2006**

### III. PURPOSE:

Provide guidance on the eligibility of labor costs for an applicant's permanent, temporary, and contract employees who perform emergency work under Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121-5206, as amended.

### IV. SCOPE AND AUDIENCE:

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

### V. AUTHORITY:

Sections 403, 407, 420 and 502 of the Stafford Act and 44 Code of Federal Regulations (CFR) §204.42, §206.224 and §206.225.

### VI. BACKGROUND:

A. On October 14, 1993, FEMA published a regulation that made the force account labor straight-time salary for work under Section 403 and 407 ineligible under the Public Assistance Program. The 1993 regulation did not include emergency work accomplished under Section 502 (Federal Emergency Assistance) of the Stafford Act. The ineligibility of straight-time salaries for emergency work under Section 502 is included as a provision of the FEMA-State Agreement.

B. Labor (straight-time, overtime, and fringe benefits to the extent the benefits were being paid before the disaster) performed under Section 406 (permanent work) of the Stafford Act remains eligible for reimbursement.

### VII. POLICY:

A. Under Sections 403, 407, and 502 of the Stafford Act, eligible emergency work labor costs are those costs incurred by an eligible applicant while performing eligible work. The cost of straight-time salaries and benefits of an applicant's permanently employed personnel is not eligible in calculating the cost of eligible emergency work. The FEMA-State Agreement will



# FEMA

## RECOVERY POLICY – RP9525.7

stipulate the ineligibility of straight-time salaries and benefits of an applicant's permanently employed personnel performing emergency work (Categories A and B). For the purpose of this policy, "permanently employed personnel" will refer to those employees whose positions are already included in the applicant's budget.

B. Fixed-term employees, such as seasonally employed personnel, when covered under existing budgets and used for a disaster during the season of employment, are considered permanently employed for the purpose of cost eligibility.

C. Straight-time and overtime will be determined in accordance with the applicant's pre-disaster policies, which should be applied consistently in both disaster and non-disaster situations. For example, one applicant may define labor exceeding 8 hours a day as overtime, while another might define labor exceeding 40 hours a week as overtime. However, all costs, including premium pay, must be reasonable and equitable for the type of work being performed.

D. The actual costs of salaries and benefits for individuals sent home or told not to report due to emergency conditions are not eligible for reimbursement. Extraordinary costs for essential employees who are called back to duty during administrative leave to perform disaster-related emergency work are eligible if the costs were provided for in written policy prior to the disaster.

E. The costs for contract labor, mutual aid in accordance with an existing agreement, or temporary hires needed to accomplish emergency work are eligible for reimbursement. However, straight-time salary and benefits of force account labor overseeing contractors performing emergency work are not eligible in calculating the cost of eligible emergency work.

F. The reimbursement of force account or temporary labor to backfill regular staff who are performing eligible emergency work may be eligible. Backfill cost is defined as the straight-time salary and benefits and overtime of replacement personnel who perform the regular duties of other personnel while they are performing eligible emergency work under the Public Assistance Program. There are several circumstances which affect the eligibility of the backfill employee.

1. If the backfill employee is a contract or extra hire, the cost of this extra person represents an extra cost to the applicant. Regular and overtime are eligible. If the employee is permanently employed, straight time is not eligible. Only overtime costs are eligible.



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## RECOVERY POLICY – RP9525.7

2. The cost of straight-time salaries and benefits of an applicant's permanently employed personnel, of any department, regardless of any inter-departmental agreements, are not eligible.

3. If the backfill employee is a regular employee who is called in on his/her day off (weekend or other off day), there may be an extra cost to the applicant. Regular and overtime costs may be eligible.

4. If the backfill employee is called in from scheduled leave, there should be no extra cost as the leave can be rescheduled. Only the overtime is eligible.

5. Generally, exempt employees (i.e. those who are exempt from minimum wage and overtime provisions of the Fair Labor Standards Act) are not eligible for overtime, unless specified in an applicant's pre-disaster policy.

G. Permanent employees who are funded from an external source (e.g., by a grant from a Federal agency, statutorily dedicated funds, rate-payers, etc.) to work on specific non-disaster tasks may be paid for emergency work. However, the FEMA Region is to consult with FEMA headquarters before approving payment.

H. Reimbursement of labor costs for employees performing emergency work is limited to actual time worked, even when the applicant is contractually obligated to pay for 24 hour shifts. It is not reasonable for a person to work more than 48 hours continuously without an extended rest period. Therefore, FEMA will reimburse up to 24 hours for each of the first two days, and up to 16 hours for each of the following days for emergency work. All requested hours must be for actual time worked. Standby time is not eligible under the Public Assistance Program or Fire Management Assistance Grant Program. Pre-positioning under the Fire Management Assistance Grant Program is eligible if the resources were actually used to suppress a declared fire.

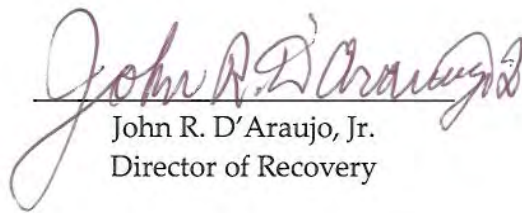
I. The value of volunteers accomplishing eligible emergency work can be credited toward the non-Federal cost share of the applicant's emergency work in accordance with Donated Resources Policy #9525.2.



# FEMA

## RECOVERY POLICY – RP9525.7

- VIII. **ORIGINATING OFFICE:** Recovery Division (Public Assistance Branch).
- IX. **SUPERSESSON:** This policy updates and replaces all relevant provisions of previous Public Assistance policy documents or guidance on this subject.
- X. **REVIEW DATE:** Three years from date of publication.

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



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**PUBLIC ASSISTANCE PROGRAM**

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**FACT SHEET  
DEBRIS OPERATIONS - CLARIFICATION  
EMERGENCY CONTRACTING VS. EMERGENCY WORK**

**SUMMARY:** Contracting for debris operations, even though it is “emergency work” in FEMA operations, does not necessarily mean the contracts can be awarded without competitive bidding. Applicants should comply with State laws and regulations, but should be aware that non-competitive contracting is acceptable ONLY in rare circumstances where there can be no delay in meeting a requirement. In general, contracting for debris work requires competitive bidding. The definition of “emergency” in contracting procedures is not the same as FEMA’s definition of “emergency work”.

**DISCUSSION:** There appears to be some confusion regarding the awarding of some contracts, especially for debris, without competitive bidding. The reason cited for such actions is that the contract is for emergency work, and competitive bidding is not required.

Part 13 of 44 CFR is entitled “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments”. These requirements apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or regulations authorized in accordance with the exception provisions of Section 13.6. In essence, these regulations apply to all Federal grants awarded to State, tribal and local governments.

Non-competitive proposals awarded under emergency requirements are addressed as follows:

“Procurement by non-competitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and one of the following circumstances applies:

(A) .....

(B) The public exigency or emergency of the requirement will not permit a delay resulting from competitive solicitation.” (44 CFR Part 13.36(d)(4)(1)(B)).”

Staff of the Office of General Counsel and the Office of the Inspector General have expressed concern that contracts are being awarded under this section without an understanding of the requirement. Simply stated, non-competitive contracts can be awarded only if the emergency is such that the contract award **cannot be delayed by the amount of time required to obtain competitive bidding.**



FEMA's division of disaster work into "emergency" and "permanent" is generally based on the period of time during which the work is to be performed, and not on the urgency of that work. Therefore, the award of non-competitive contracts cannot be justified on the basis of "emergency work", as defined by FEMA.

In some situations, such as clearing road for emergency access (moving debris off the driving surface to the shoulders or rights-of-way), or removal of debris at a specific site, awarding a non-competitive contract for site-specific work may be warranted; however, normally, non-competitive bid awards should not be made several days (or weeks) after the disaster or for long-term debris removal. Obviously, the latter situations do not address a public exigency or emergency which "will not permit a delay resulting from competitive solicitation".

Regarding competitive solicitations, applicants can use an expedited process for obtaining competitive bids. In the past, applicants have developed a scope-of-work, identified contractors that can do the work, made telephone invitations for bids, and received excellent competitive bids. Again, applicants must comply with State and local bidding requirements.

Please remind applicants that no contractor has the authority to make determinations as to eligibility, determinations of acceptable emergency contracting procedures, or definitions of emergency work. Such determinations are to be made by FEMA.



FEMA

# RECOVERY DIVISION FACT SHEET

RP9580.201

## DEBRIS REMOVAL APPLICANT'S CONTRACTING CHECKLIST

### Overview

To be eligible for reimbursement under the Public Assistance Program, contracts for debris removal must meet rules for Federal grants, as provided for in 44 CFR Part 13.36 *Procurement* ([http://www.access.gpo.gov/nara/cfr/waisidx\\_04/44cfr13\\_04.html](http://www.access.gpo.gov/nara/cfr/waisidx_04/44cfr13_04.html)). Public Assistance applicants should comply with their own procurement procedures in accordance with applicable State and local laws and regulations, provided that they conform to applicable Federal laws and standards identified in Part 13. The following guidance is provided to assist Public Assistance applicants in the procurement process.

### Contracting Process Checklist

- Use competitive bidding procedures. Complete and document a cost analysis to demonstrate price reasonableness on any contract or contract modification where adequate price competition is lacking, as detailed in 44 CFR 13.36(f).
- Provide a clear and definitive scope of work and monitoring requirements in the request for proposals/bids. Use acceptable emergency contracting procedures that include an expedited competitive bid process only if time does not allow for more stringent procedures.
- Require bidders to provide copies of references, licenses, financial records, and proof of insurance and bonding.
- Obtain review from your legal representative of your procurement process and any contract to be awarded to ensure they are in compliance with all Federal, State, and local requirements.
- Document procedures used to obtain/award contracts (procurement information, bid requests and tabulations, etc).
- Use load ticket requirement to record with specificity (e.g., street address) where debris is picked up and the amount picked up, hauled, reduced and disposed of.

*FEMA will, when requested by applicants, assist in the review of debris removal contracts. However, such a review does not constitute approval.*



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# RECOVERY DIVISION FACT SHEET

RP9580.201

## DEBRIS REMOVAL APPLICANT'S CONTRACTING CHECKLIST

### Contract Provisions Checklist

**All contracts must contain/reflect the following provisions:**

- All payment provisions must be based on unit prices.
- No payments may be based on time and material costs unless limited to work performed during the first 70 hours of actual work following a disaster event.
- That payment will be made only for debris that FEMA determines eligible, referencing FEMA regulations and Public Assistance guides and fact sheets. (This is an optional provision to protect the applicant, and is used only following a major disaster declaration.)
- An invoice provision requiring contractors to submit invoices regularly and for no more than 30-day periods.
- A "Termination for Convenience" clause allowing contract termination at any time for any reason.
- A reasonable limit on the period of performance for the work to be done.
- A subcontract plan including a clear description of the percentage of the work the contractor may subcontract out and limiting use of subcontractors to only those you approve.
- The preference that the contractor use mechanical equipment to load and reasonably compact debris into the trucks and trailers.
- The requirement that the contractor provide a safe working environment, including properly constructed monitoring towers.
- Option of a unit price for extracting from ground and removing FEMA-eligible stumps (only for stumps with diameters larger than 24 inches, measured 24 inches above the ground, and with 50% or more of the root ball exposed), or including all stumps in the unit price.



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# RECOVERY DIVISION FACT SHEET

RP9580.201

## DEBRIS REMOVAL APPLICANT'S CONTRACTING CHECKLIST

### Contract Provisions Checklist - Continued

**All contracts must contain/reflect the following provisions:**

- Requirement that all contract amendments and modifications be in writing.
- Requirement that contractor obtain adequate payment and performance bonds and insurance coverage.

### Pre-Disaster and Stand-By Contracts Checklist

- It is recommended that you pre-qualify contractors prior to an event and solicit bid prices from this list of contractors once an event has occurred.
- The solicitation for pre-qualifying contractors must adequately define in the proposed scope of work all the potential types of debris, typical haul distances, and size of events for which a contract may be activated.
- To ensure reasonable debris removal costs, award debris removal contracts based on unit prices (volume or weight).
- If the contract is awarded on a time and material basis, it should be limited to no more than 70 hours of actual clearance and removal operations.
- After the initial 70-hour period, payment should be on a unit price basis (volume or weight).



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# RECOVERY DIVISION FACT SHEET

RP9580.201

## DEBRIS REMOVAL APPLICANT'S CONTRACTING CHECKLIST

### Avoidance Checklist

- DO NOT:** Award a debris removal contract on a sole-source basis.
- DO NOT:** Sign a contract (including one provided by a contractor) until it has been thoroughly reviewed by your legal representative.
- DO NOT:** Allow any contractor to make eligibility determinations, since only FEMA has that authority.
- DO NOT:** Accept any contractor's claim that it is "FEMA certified." FEMA does not certify, credential, or recommend debris contractors.
- DO NOT:** Award a contract to develop and manage debris processing sites unless you know it is necessary, and have contacted the State for technical assistance concerning the need for such operations. Temporary debris storage and reduction sites are not always necessary.
- DO NOT:** Allow separate line item payment for stumps 24 inches and smaller in diameter; these should be treated as normal debris.
- DO NOT:** "Piggyback" or utilize a contract awarded by another entity. Piggybacking may be legal under applicable state law; however, the use of such a contract may jeopardize FEMA funding.
- DO NOT:** Award pre-disaster/stand-by contracts with mobilization costs or unit costs that are significantly higher than what they would be if the contract were awarded post-disaster. Such contracts should have variable mobilization costs depending upon the size of the debris work that may be encountered.



FEMA

RECOVERY DIVISION

# FACT SHEET

9580.202

## DEBRIS REMOVAL AUTHORITIES OF FEDERAL AGENCIES

### Overview

This fact sheet identifies and describes the authorities of federal departments and agencies in support of debris operations following a presidential emergency or major disaster declaration. The following nine Federal agencies and departments are invested with authorities (described in detail below) addressing various aspects of debris management.

- Department of Homeland Security
  - *Federal Emergency Management Agency*
  - *United States Coast Guard*
- Department of Defense: *U.S. Army Corps of Engineers*
- Department of Agriculture
  - *Natural Resources and Conservation Service*
  - *Farm Service Agency*
  - *Animal Plant and Health Inspection Service*
- Department of Transportation: *Federal Highway Administration*
- Department of Commerce: *National Oceanic and Atmospheric Administration*
- Environmental Protection Agency

### Department of Homeland Security

#### **Federal Emergency Management Agency (FEMA)**

- FEMA is authorized in Sections 403, 407 and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act to provide assistance to eligible applicants to remove debris from public and private property following a Presidential disaster declaration, when in the public interest.
- Removal must be necessary to eliminate immediate threats to lives, public health and safety; eliminate immediate threats of significant damage to improved public or private property; or ensure

## DEBRIS REMOVAL AUTHORITIES OF FEDERAL AGENCIES

the economic recovery of the affected community to the benefit of the community-at-large. The debris must be the direct result of the disaster and located in the disaster area, and the applicant must have the legal responsibility to remove the debris.

- FEMA will (1) reimburse applicants to remove eligible debris, or (2) through a mission assignment to another Federal agency (and upon request of the State) - provide *direct Federal assistance* when it has been demonstrated that the State and local government lack the capability to perform or contract for the requested work.
- Assistance will be cost-shared (at no less than 75% Federal and 25% non-Federal). In extreme circumstances, FEMA will provide up to 100% funding for a limited period of time.

### **United States Coast Guard (USCG)**

- Under the National Contingency Plan (NCP), the USCG and Environmental Protection Agency (EPA) are responsible for providing pre-designated Federal On-Scene Coordinators (FOSCs) to conduct emergency removals of oil and hazardous materials.
- USCG is responsible for the coastal zone, and the EPA is responsible for the inland zone. The delineation between coastal and inland zones is by mutual agreement between the USCG and the EPA, and the geographic limits are indicated in Area Contingency Plans.
- Under the Comprehensive Environmental Response, Compensation, and Liability Act, or CERCLA (also known as Superfund), and the Clean Water Act, USCG has the authority to respond to actual or potential discharges of oil and actual or potential releases of hazardous substances, pollutants and contaminants that may endanger public health or the environment.
- Response actions may include containment, stabilization, decontamination, collection (e.g., orphan drums tanks and drums), and final disposal. Debris may be mixed with, or contain, oil or hazardous materials that are subject to USCG response authorities. Oil removal is funded from the Oil Spill Liability Trust Fund, while hazardous materials removal is conducted using CERCLA funds.
- USCG, under the Ports and Waterways Safety Act (33 U.S.C. §§1221), is responsible for keeping waterways safe and open. While there is no specific language stating that the USCG is responsible for debris removal from waterways, the USCG has been tasked - in the past - to assist in waterway and marine transportation system recovery.

## DEBRIS REMOVAL AUTHORITIES OF FEDERAL AGENCIES

### Department of Defense

#### United States Army Corps of Engineers (USACE)

- USACE is authorized by Section 202 of Water Resources Development Act (WRDA) of 1976 (PL 94-587) to develop projects for the collection and removal of drift and debris from publicly maintained commercial harbors, and from land and water areas immediately adjacent thereto.
- Specific and limited local programs for continuing debris collection and disposal have been authorized (on an individual basis, with the authorized work carried out at each locality as a separate, distinct project) by Congress for:
  - New York Harbor
  - Baltimore Harbor
  - Norfolk Harbor
  - Potomac and Anacostia Rivers, in the Washington, D.C. Metropolitan area
  - San Francisco Harbor/Bay, California.
- Sections 15, 19, and 20 of the River and Harbor Act of 1899, as amended, authorize USACE to remove sunken vessels or other obstructions from navigable waterways under emergency conditions. A navigable waterway is one that has been authorized by Congress, and which USACE operates and maintains for general (including commercial and recreational) navigation. Funding for operation and maintenance of these "Federal" waterways is through USACE's annual Operations and Maintenance General Appropriation. USACE's policy is to oversee removal of sunken vessels by an identifiable owner, operator or lessee if the sunken vessel is in or likely to be moved into a Federal navigation channel. USACE will remove a vessel using its emergency authorities only if the owner, operator, or lessee cannot be identified or they cannot effect removal in a timely and safe manner.
- USACE is also authorized, under Flood Control and Coastal Emergencies (PL 84-99), to provide assistance for debris removal from flood control works, i.e., structures designed and constructed to have appreciable and dependable effects in preventing damage by irregular and unusual rises in water level. Under this authority, USACE requires that an applicant, to be eligible for assistance, be an active participant in its PL 84-99 Rehabilitation and Inspection Program at the time of the disaster.



## DEBRIS REMOVAL AUTHORITIES OF FEDERAL AGENCIES

### United States Department of Agriculture

#### Natural Resources Conservation Service (NRCS)

- NRCS' Emergency Watershed Protection Program (EWP) is authorized by Section 216 of the Flood Control Act of 1950, PL 81-516, 33 U.S.C. 701b-1; and Section 403 of the Agricultural Credit Act of 1978, PL 95-334, as amended by Section 382, of the Federal Agriculture Improvement and Reform Act of 1996, PL 104-127, 16 U.S.C. 2203.
- Debris clean up must be for either runoff retardation or soil erosion prevention that is causing a sudden impairment in the watershed creating an imminent threat to life or property. Typically, this includes debris within channels but could also include debris in close proximity to a channel or situated where the next event could create an imminent threat to life or property. There is no size limit to the watershed except that EWP assistance is not eligible for coastal erosion restoration.
- The EWP is funded through specific Congressional appropriations.
- Public and private landowners are eligible for assistance but must be represented by a project sponsor (a state or political subdivision thereof, qualified Indian tribe or tribal organization, or unit of local government).
- Work can be done either through Federal or local contracts. Sponsors are responsible for the 75% local cost share.
- NRCS can provide assistance when the President declares an area to be a major disaster area or when an NRCS State Conservationist determines that a watershed impairment exists.
- NRCS will not provide funding for activities undertaken by a sponsor prior to the signing of an agreement between NRCS and the sponsor.

#### Farm Service Agency (FSA)

- Emergency Conservation Program (ECP) is authorized by Sections 401 - 406 of the Agricultural Credit Act of 1978, PL 95-334, and provides emergency assistance for debris removal from privately-owned land following a natural disaster. It is funded through Congressional supplemental appropriations.

# DEBRIS REMOVAL AUTHORITIES OF FEDERAL AGENCIES

- The damage must be so costly that Federal assistance is or will be required to return the land to productive agricultural use or to provide emergency water for livestock.
- The ECP provides emergency cost share funding (up to 75% federal share) and technical assistance for farmers and ranchers to remove debris (other than animal carcasses).

### Animal, Plant and Health Inspection Service (APHIS)

- APHIS has two programs under which it can provide debris removal assistance:
  - Veterinary Services (VS) program authorized by Animal Health Protection Act (7 U.S.C. 8301–8317) which provides for removal and burial of diseased animal carcasses.
  - Plant Protection and Quarantine (PPQ) program authorized by Plant Protection Act (Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772). This program manages issues related to the health of plant resources. Primary objective is to regulate and monitor in order to reduce the risk of introduction and spread of invasive species, including planning, surveillance, quick detection, containment, and eradication.
- Both public and private lands are eligible under these programs which provide assistance to Federal, State, tribes, local jurisdictions, and private landowners to manage animal and plant health by collecting and providing information, conducting or supporting treatments, providing technical assistance for planning and program implementation (removal).

### Environmental Protection Agency (EPA)

- EPA's primary authorities related to debris removal fall into two categories: (1) authorities related to cleaning up debris that is mixed with or contains oil or hazardous materials; and (2) authorities related to establishing standards for proper management of debris (hazardous and non-hazardous). EPA generally does not remove non-hazardous debris after emergencies/disasters.
- Under the Comprehensive Environmental Response, Compensation, and Liability Act, or CERCLA (also known as Superfund), and the Clean Water Act, EPA and the United States Coast Guard (USCG) have the authority to respond to actual or potential discharges of oil and actual or potential discharges of hazardous substances, and to actual or potential discharges of pollutants and contaminants that may present an imminent and substantial danger to the public health or welfare.

# DEBRIS REMOVAL AUTHORITIES OF FEDERAL AGENCIES

- EPA has responsibility for responses in the inland zone and USCG has responsibility for responses in the coastal zone. The delineation between the inland and coastal zone is determined by mutual agreement by the EPA and USCG, and the geographic boundaries are indicated in Area Contingency Plans.
- EPA and USCG carry out these responsibilities under implementing regulations known as the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA and USCG pre-designate Federal On-Scene Coordinators (FOSCs) to direct and coordinate response actions.
- Response actions may include containment, stabilization, decontamination, collection (e.g., orphan tanks and drums), and disposal. Debris may be mixed with, or contain, oil or hazardous materials that are subject to these response authorities.
- CERCLA requires that the State in which the site is located fund 10% of remedial action costs, with the other 90% drawn from the Superfund. However, where the potentially responsible party is a political subdivision of a State, the State must agree to fund 50% of the remedial action costs, with the other 50% drawn from the Superfund.
- The Resource Conservation and Recovery Act established a framework for Federal, State, and local cooperation in controlling the management of hazardous and non-hazardous solid waste. The EPA role is to establish minimum regulatory standards that are, in most cases, implemented by the States and to provide technical assistance. EPA administers other laws as well that may impact the management of debris (e.g., Clean Air Act requirements that apply to asbestos-containing debris). Again, some of these programs may be delegated to the States.
- FEMA may mission assign the EPA through the United States Army Corps of Engineers to dispose of household hazardous waste following a major disaster declaration from the President.

## Department of Transportation

### Federal Highway Administration (FHWA)

- The Emergency Relief (or ER) program is authorized in Title 23, United States Code, Section 125, from the Highway Trust Fund, and supports repair or reconstruction of Federal-aid highways and roads on Federal lands which have suffered serious damage as a result of natural disasters or catastrophic failures from an external cause.
- Debris removal from Federal-aid roads is eligible for 100% reimbursement during the first 180 days following an emergency event that qualifies and is approved for the ER program.

## DEBRIS REMOVAL AUTHORITIES OF FEDERAL AGENCIES

- The ER program is funded \$100 million in annual authorizations. If the annual authorization is expended, FHWA will reimburse eligible costs when ER funds become available.
- The State must incur a cost of at least \$700,000 statewide to qualify for ER assistance. The cost of individual projects (sites) must be \$5,000.
- It is the responsibility of individual States to request ER funds for assistance in the cost of necessary repair of Federal-aid highways damaged by natural disasters or catastrophic failures.

### Department of Commerce

#### National Oceanic and Atmospheric Administration (NOAA)

- The Coastal and Geodetic Survey Act of 1947 and the Hydrographic Services Improvement Acts of 1998, 2002, authorize NOAA to be directly involved in programs to assess and remove hazards and debris. NOAA does not fund debris removal.
- NOAA's Office of Coastal Survey is responsible for surveying and charting the nation's waters and coast, and has been heavily involved in hydro-surveying using side-scan and multi-beam sonar to identify hazards and debris and dangers to navigation along the Gulf Coast for the last three years.

  
\_\_\_\_\_  
David Garratt  
Acting Director of Recovery  
Federal Emergency Management Agency

1/27/07  
Date





FEMA

DISASTER ASSISTANCE  
DIRECTORATE

FACT SHEET

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## DEBRIS MONITORING

### Overview

When a disaster event occurs that produces large amounts of debris, effective coordination is required between the Public Assistance applicant, State, and FEMA to ensure that debris removal operations are efficient, effective, and eligible for FEMA Public Assistance grant funding. Eligible Public Assistance applicants are encouraged to monitor debris removal operations and document eligible quantities and reasonable expenses to ensure that the work is eligible for Public Assistance grant funding. Failure to do so properly may jeopardize this funding.

Public Assistance applicants can use force account resources or contractors to monitor debris removal operations, or a combination of both. Regardless of the method, the applicant is responsible for ensuring that applicant-managed debris removal work (either force account or contract) being funded through Public Assistance grants is eligible in accordance with Public Assistance guidelines. This Fact Sheet provides Public Assistance applicants with information on how to properly monitor applicant-managed debris removal operations to ensure compliance with these guidelines. It also provides information on debris monitoring responsibilities and duties that apply to both force account and contractor operations; however, some information provided only applies to debris operations performed under contract.

### Debris Monitoring Roles and Responsibilities

Monitoring debris removal operations requires comprehensive observation and documentation by the Public Assistance applicant of debris removal work performed from the point of debris collection to final disposal. Monitoring debris removal work involves constant observation of crews to ensure that workers are performing eligible work in accordance with Public Assistance guidelines, and helps to verify compliance with all applicable Federal, State, and local regulations.

A number of different entities play a role in monitoring debris removal operations to ensure that they are efficient, effective and eligible for FEMA Public Assistance funding. It is important that these entities work together to communicate and resolve issues in the field so that reimbursement funding for debris removal operations is not jeopardized. Below is a table which addresses the general monitoring responsibilities and tasks of different partners in the debris removal operation. The table is followed by specific monitoring responsibilities and duties for both force account and contractor debris monitors in the field.

## DEBRIS MONITORING

| Entity   | Responsibilities   | Tasks   |
|--|--|---|
| <b>Debris Removal Contractor</b>                         | Conduct debris removal operations per the terms of the contract.   | <ul style="list-style-type: none"> <li>▪ Monitor its own day-to-day operations to ensure its contractual obligations are being met.</li> </ul>  |
| <b>Public Assistance Applicant Monitoring Contractor</b> | Works for Applicant to monitor debris contractor's day-to-day operations to ensure the applicants expectations and contractual requirements are being met.   | <ul style="list-style-type: none"> <li>▪ Provide debris monitoring personnel who are trained in eligibility.</li> <li>▪ Monitor operations in accordance with the contract requirements.</li> <li>▪ Provide all monitoring documents as required in the monitoring contract.</li> </ul>   |
| <b>Public Assistance Applicant (subgrantee)</b>          | Provide oversight and quality assurance of both the debris removal contract and the monitoring contract (if applicable). Request PA funds for eligible work. Ensure performance measures are met and eligible work is documented. Understand eligibility requirements and ensure work performed under the contract meets these requirements. | <ul style="list-style-type: none"> <li>▪ Designate project manager.</li> </ul> <p><i>If debris removal is performed by force account labor:</i></p> <ul style="list-style-type: none"> <li>▪ Provide documentation to substantiate eligible debris quantities.</li> <li>▪ Ensure compliance with subgrant requirements.</li> </ul> <p><i>If debris removal is performed under contract:</i></p> <ul style="list-style-type: none"> <li>▪ Ensure that debris removal contractors and monitoring contractors (if applicable) understand eligibility requirements for the debris removal operations.</li> <li>▪ Ensure that only eligible debris quantities are being claimed for Public Assistance.</li> <li>▪ Resolve issues or discrepancies associated with the contract.</li> </ul> |
| <b>State (Grantee)</b>                                   | Ensure grant requirements outlined in the 44 CFR are being met and that PA applicants are receiving funds for eligible costs. Responsible for monitoring the grant and subgrant to ensure compliance with Federal, State and local laws and regulations.   | <ul style="list-style-type: none"> <li>▪ Monitor the grant and subgrant requirements.</li> <li>▪ Ensure that the applicant is sufficiently monitoring the debris removal operation (FEMA \Grantee effort).</li> <li>▪ Conduct random monitoring at load sites and disposal sites to ensure compliance with grant requirements (FEMA \Grantee effort).</li> <li>▪ Notify subgrantee of compliance issues and outline corrective actions (FEMA \Grantee effort).</li> </ul>   |
| <b>FEMA</b>  | Ensure grant requirements outlined in 44 CFR are being met. Fund eligible work. Responsible for the preparation of large project worksheets, development of the scope of work and the obligation of funds. Responsible for monitoring the grant to ensure compliance with Federal, State and local laws and regulations.                     | <ul style="list-style-type: none"> <li>▪ Develop large project worksheets in coordination with the Grantee and subgrantee.</li> <li>▪ Utilize monitors to ensure that the applicant is sufficiently monitoring the debris removal operation. (FEMA \Grantee effort)</li> <li>▪ Conduct random monitoring at load sites and disposal sites to ensure compliance with grant requirements. (FEMA \Grantee effort).</li> <li>▪ Notify Grantee/subgrantee of compliance issues and outline corrective actions (FEMA \Grantee effort).</li> <li>▪ Increase or decrease monitoring efforts as necessary to ensure corrective actions are in place and operations are being effectively monitored.</li> </ul>   |

## DEBRIS MONITORING

The specific responsibilities and duties of individual debris monitors in the field are the same for both force account and contracted debris monitoring operations. They are:

- Report issues to their direct supervisor which require action (such as safety concerns, contractor non-compliance and equipment use)
- Accurately measure and certify truck capacities (recertify on a regular basis)
- Properly and accurately complete and physically control load tickets (in tower and field)
- Ensure that trucks are accurately credited for their load
- Ensure that trucks are not artificially loaded (ex: debris is wetted, debris is fluffed—not compacted)
- Validate hazardous trees, including hangers, leaners, and stumps
- Ensure that hazardous wastes are not mixed in loads
- Ensure that all debris is removed from trucks at Debris Management Sites (DMS)
- Report if improper equipment is mobilized and used
- Report if contractor personnel safety standards are not followed
- Report if general public safety standards are not followed
- Report if completion schedules are not on target
- Ensure that only debris specified in the contract is collected (and is identified as eligible or ineligible)
- Assure that force account labor and/or debris contractor work is within the assigned scope of work
- Monitor site development and restoration of DMSs
- Report to supervisor if debris removal work does not comply with all local ordinances as well as State and Federal regulations (i.e., proper disposal of hazardous wastes)
- Record the types of equipment used (Time & Materials contract)
- Record the hours equipment was used, include downtime of each piece of equipment by day (Time & Materials contract)

Applicants may request FEMA/State assistance with debris monitoring or monitor training.

*Only FEMA has the authority to make eligibility decisions; contractors cannot make eligibility determinations. Information on eligibility can be found in the Public Assistance Debris Management Guide FEMA 325, the Public Assistance Policy Digest FEMA 321, the Public Assistance Applicant Handbook FEMA 323, and the Public Assistance Guide FEMA 322.*

### Monitoring Requirements by Type of Contract

Unlike other categories of work eligible for Public Assistance grants, initial debris removal project worksheets typically do not have a defined scope of work, since precise quantities of debris are difficult to attain. Therefore, unit price contracts which pay by debris volume or weight removed are typically implemented. Unit price contracts require extensive monitoring to determine accurate quantities of eligible debris removed and disposed. As load tickets are compiled and accurate quantities are determined through monitoring, the scope of work for the project worksheet, or version, is established.



## DEBRIS MONITORING

In some cases, time and materials contracts may be more cost effective and appropriate for the amount and type of eligible work to be performed. For both time and materials and lump sum contracts, debris monitors must still document and quantify eligible debris amounts in order to determine reasonableness of costs.

The table below includes a breakdown of monitoring requirements by contract type.

| Type of Contract   | Project Worksheet Scope of Work  | Subgrantee Monitoring Required |           |      |                |       | Comments   |
|--------------------|--|--------------------------------|-----------|------|----------------|-------|--|
|                    |  | Crew Efficiency                | Load site | DMSs | Disposal sites | Fraud |  |
| Lump Sum           | Defined debris quantities and reasonable costs. Estimate is basis for contract costs.                      |                                | √         |      | √              |       | Quantities are still required to determine reasonable costs.   |
| Unit Price - CY    | Based on eligible debris listed on load tickets  | √                              | √         | √    | √              | √     |  |
| Unit Price - Ton   | Based on actual weight measurements of eligible debris listed on load tickets.                             |                                | √         |      | √              | √     |  |
| Time and Materials | Based on labor, equipment and materials records. Reasonable costs evaluated by determining costs per unit. | √                              | √         |      | √              | √     | Typically used for road clearance. If used for debris removal, quantities are still required to determine reasonable costs. Eligible costs are restricted to up to 70 hours. |

### Monitoring Contracts

The request for proposal (RFP) for debris monitoring contracts should outline the qualification of debris monitors. The qualifications should be appropriate for the individual responsibilities and duties listed above, and debris monitors should have experience working on construction sites and be familiar with safety regulations. It is not necessary to have professional engineers and other certified professionals perform these duties. Debris monitors primarily should have the ability to estimate debris quantities, differentiate between debris types, properly fill out load tickets, and follow all site safety procedures.

The RFP should also outline possible locations to be monitored and reporting requirements to document eligible debris quantities.

## DEBRIS MONITORING

Monitoring contracts are typically time and materials and must contain a *not-to-exceed* clause per the requirements of Part 13 of 44 CFR. The subgrantee should ensure the level of monitoring and overhead claimed is commensurate with the level of effort required to effectively monitor the debris removal and monitoring operation. In addition to the costs for the monitors, the subgrantee can claim as part of its monitoring project worksheet reasonable costs for the debris monitoring contractor to provide training, oversight, and data compilation as required by the terms of the contract. Architectural and engineering service overhead should not be claimed. Additional information on costs that are eligible can be found in the *Public Assistance Debris Management Guide FEMA 325*.

The monitoring contractor costs associated with compiling data to verify costs invoiced by the debris removal contractor can be an eligible expense. Costs associated with attending meetings with FEMA and/or the Grantee and compiling documentation for the production of project worksheets are funded through the administrative allowance as stated in 44 CFR, Part 206.228 and cannot be a direct charge to a Public Assistance grant.

### Reporting Requirements & Performance Measures

If FEMA is providing grant assistance for the applicant's monitoring contract, a sample of the reporting requirements outlined in the contract will be required to substantiate the eligible costs. This sample must be adequate to demonstrate that sufficient measures were taken to ensure eligibility and accurate quantities are being reported as part of the grant. Applicants should require debris monitors to submit daily reports on load quantities, debris management site operations, and operational and safety issues in the field. Regular reporting helps to promote quality assurance and provides the applicant with a consistent accounting of operations in the field.

If a time and materials monitoring contract is used, the contractor will have to supply labor, equipment and material records to the subgrantee in order to substantiate the actual costs in the project worksheet.

Continuous monitoring of all activities of a debris contractor can help promote efficiency and effectiveness in the debris removal operation. In evaluating a contractor's performance, primary interest is in the progress toward completion of the services called for and the financial status of the contract. It is important that the contract provide for submission of reports and payment estimates to aid in evaluating the contractor's progress.

Applicant debris monitoring responsibilities may include tracking performance measures used to assess the progress of debris removal operations in the field. Specific debris contract performance measures may include:

- Percentage completion tracking
- Adherence to contract time schedules
- Adherence to contract cost schedules

## DEBRIS MONITORING

### Contract Procurement Requirements

To be eligible for reimbursement under the Public Assistance Program, contracts for debris monitoring must meet rules for Federal grants, as provided for in 44 CFR Part 13.36 *Procurement* ([http://www.access.gpo.gov/nara/cfr/waisidx\\_04/44cfr13\\_04.html](http://www.access.gpo.gov/nara/cfr/waisidx_04/44cfr13_04.html)). Public Assistance applicants should comply with their own procurement procedures in accordance with applicable State and local laws and regulations, provided that they conform to applicable Federal laws and standards identified in Part 13.



David Garratt  
Acting Assistant Administrator  
Disaster Assistance Directorate

5/3/07  
Date



Disaster recovery assistance is available without regard to race, color, national origin, sex, age, religion, disability, or economic status. Anyone who believes he/she has been discriminated against should contact the FEMA Helpline at: 1-800-525-0321.

Report fraud, waste, and abuse to FEMA's Office of Inspector General on the Hotline at 1-800-323-8603.

# Public Assistance Debris Monitoring Guide

March 2021



**FEMA**



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## Purpose

When a disaster or emergency that generates large amounts of debris occurs, the Federal Emergency Management Agency (FEMA), through its Public Assistance (PA) program, may reimburse eligible PA Applicants, including State, local, tribal, and territorial (SLTT) governments and certain Private Nonprofit (PNP) organizations, for costs associated with debris removal operations.

This *Debris Monitoring Guide* provides PA Applicants and Recipients (States, Territories, or Tribes that are the pass-through entity between the Applicant and FEMA) with guidance on monitoring debris removal operations and eligibility requirements associated with necessary work and reasonable costs to carry out a debris monitoring program.

## Executive Summary

Effective coordination is required between the Applicant, the Recipient, and FEMA to ensure that debris removal operations are efficient, effective, and eligible for FEMA PA grant funding. Applicants must monitor their debris removal operations and document work and costs that may be eligible for reimbursement through the PA grant program. Monitoring debris removal operations requires observation and documentation of all work from the point of debris collection to final disposal. This is to ensure that all work performed is in accordance with PA guidelines and all applicable Federal and SLTT laws and regulations. Failure to properly monitor debris removal operations may jeopardize PA funding.

In monitoring all aspects of its debris removal operations, including activities at all loading, staging, and disposal sites, the Applicant can use its own staff (force account labor) or procure a contract for these services. Applicants are required to use competitive contract bidding procedures when procuring these services, unless circumstances only allow for a noncompetitive method of procurement. Contracting out debris monitoring services does not absolve the Applicant of their responsibility to supervise the performance of the contract. The Applicant should provide clear direction, direct supervision, and a system of control and verification of the performance of debris monitoring contract services. Overall, Applicants are strongly encouraged to work with SLTT emergency management staff and FEMA to ensure compliance with the provisions of the PA program.

While the Applicant has the primary responsibility for daily monitoring operations, the Recipient is responsible for verifying that those monitoring activities are implemented. The primary role of FEMA is to provide technical assistance and debris monitoring guidance to ensure that PA grant requirements and eligibility criteria are met by the Applicant in all areas of the debris operation. FEMA will evaluate the level of effort of debris monitoring operations for reasonableness when determining the eligibility of debris monitoring costs. The level of effort for debris monitoring operations should be proportionate with the magnitude of the disaster, the types and quantities of debris to be removed, and the scope of the debris removal operation.

A good debris monitoring program should ensure accurate documentation of debris removal and disposal operations and associated costs. This documentation serves as the basis for PA Project Worksheets (PWs), which document work and costs eligible for reimbursement from FEMA. Debris monitoring documentation is critical to verify that debris operations are eligible for reimbursement, costs are reasonable, debris quantities are accurate, debris is tracked to its final disposition, and all work and costs comply with regulatory requirements.

Pursuant to FEMA Directive 112-12, this guidance will have a review cycle of no greater than three years. The FEMA PA Division will be responsible for any updates and changes to this guidance.

## Chapter 1: General Eligibility Requirements

In order for debris removal activities to be eligible for PA program funding, debris must be generated by a Presidentially declared disaster; be located within the designated disaster area; be the legal responsibility of an eligible Applicant to remove; and present an immediate threat to life, improved property, or public health and safety. Applicants should consult FEMA's *Public Assistance Program and Policy Guide*<sup>1</sup> (PAPPG), which provides comprehensive information regarding FEMA assistance and the requirements that Applicants must meet in order to receive assistance for debris removal activities.

### A. Eligible Debris Monitoring Work and Costs

The Applicant is responsible for monitoring debris operations to ensure that debris removal activities claimed to the FEMA PA program for reimbursement are completed in accordance with contract specifications and other supplemental guidance, PA program eligibility criteria, and applicable Federal and SLTT laws, regulations and other requirements. FEMA PA personnel will determine eligibility based on the defined scope of work (SOW) of the debris removal operation, field observations, documentation, and reasonable costs. Eligible activities should be clearly documented on loading tickets and the summary of debris totals.

Reasonable costs associated with the following debris monitoring activities may be eligible for PA funding:

- Labor and material costs associated with debris monitoring staff such as field supervisors, loading and tower/site monitors, and staff needed to complete documentation as necessary to substantiate PA grant funding;
- Data compilation of load tickets and field debris monitoring reports to verify eligible work and costs invoiced by the debris removal contractor (if under contract);
- Training of debris monitors on debris removal operations, debris monitoring and documentation processes, and FEMA eligibility (FEMA can provide training to Applicant debris monitors upon request); and/or
- Use of electronic load ticket system or automated debris monitoring system (ADMS) to document debris quantities and eligibility. The Applicant should demonstrate through a cost analysis that the use of the system is cost effective and the cost is reasonable.

### B. Reasonable Cost Guidance

Costs associated with debris monitoring must be reasonable and necessary.<sup>2</sup> Competitively bid debris monitoring contracts that comply with Federal and SLTT procurement regulations and procedures will help to establish reasonableness for debris monitoring costs. Federal procurement standards are found in Title 2 Part 200 of the *Code of Federal Regulations*.<sup>3</sup>

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<sup>1</sup> *Public Assistance Program and Policy Guide* (PAPPG) Version 4 located at: [www.fema.gov/sites/default/files/2020-06/fema\\_public-assistance-program-and-policy-guide\\_v4\\_6-1-2020.pdf](http://www.fema.gov/sites/default/files/2020-06/fema_public-assistance-program-and-policy-guide_v4_6-1-2020.pdf)

<sup>2</sup> 2 Code of Federal Regulations (C.F.R.) Part 200, Subparts D and E.

<sup>3</sup> 2 C.F.R. §§ 200.317 - 200.327.

In determining if costs are reasonable, FEMA performs a preliminary review of the documentation to assess the complexity of the project and expertise required to conduct the work. Specific to debris monitoring, FEMA determines reasonableness<sup>4</sup> by evaluating:

- **Labor:** Are labor rates, labor classifications, and number of proposed labor hours reasonable for the proposed SOW? The labor rates should be commensurate with the skill level required by the job function. Professional engineers and those with similar qualifications are not required to perform debris monitoring duties.
- **Materials and Supplies:** Are costs necessary and reasonable for the materials and supplies, considering the type of work being performed.
- **Profit:** Was profit negotiated as a separate element of the contract price?<sup>5</sup>

### *Project Management and Design Services*

Costs which are considered project management and/or design services<sup>6</sup> differ from eligible debris monitoring costs. Project management and design services are expenses for the initial design and oversight of work performed related to an eligible project from the design phase (when necessary) to the completion of work. These costs should be documented and claimed separately. The eligibility of this work and its cost will be evaluated on a case-by-case basis.

Such project management and/or design services may include costs associated with direct management and oversight of the debris removal operation by an Applicant's force account labor or by a consulting firm retained to analyze, design, and oversee the debris removal operation. These costs may also include labor costs associated with project management services for the debris removal operation, developing reports to establish contractor performance measures, and evaluating operational efficiency. These costs are separate and distinct from costs related to management and administration of PA awards and subawards.<sup>7</sup>

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<sup>4</sup> Chapter 6:I.A. Reasonable Cost Analysis of the PAPPG (V4).

<sup>5</sup> 2 C.F.R. § 200.323(b).

<sup>6</sup> Chapter 6:XV. Project Management and Design Services of the PAPPG (V4).

<sup>7</sup> Chapter 6:XVI. Grant Management and Administration of the PAPPG (V4).

## Chapter 2: Debris Monitoring Roles and Responsibilities

The Applicant has the primary responsibility for monitoring its debris removal operations. The Recipient, as a pass-through entity, is responsible for ensuring that Applicants comply with grant conditions and monitoring the activities of the Applicant. FEMA provides guidance and technical assistance and makes final eligibility determinations related to debris-related work and costs.

### **A. Applicant's Role and Responsibilities**

Applicants are required to maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.<sup>8</sup> Debris monitors serve as the Applicant's field representatives. They ensure that the terms and specific monitoring and documentation requirements of debris removal contracts are adhered to and met. Having a debris monitor does not relieve Applicants of the obligation to maintain oversight over both the debris monitoring and debris removal costs.

FEMA recommends that Applicants clearly outline their debris monitoring requirements in their debris management plan, requests for proposals (RFPs), and debris removal contracts. These documents should include instructions on actions the Applicant needs to take to document and correct non-compliance issues. If an Applicant undertakes work that is ineligible for FEMA funding, a methodology should also be established to separate ineligible work from eligible work. Optimally, this methodology should be discussed with the Recipient and FEMA prior to implementation to ascertain compliance. Refer to Appendix B: Sample Debris Monitoring Plan and Monitoring Forms for a sample debris monitoring plan, including monitoring forms and refer to Appendix C: Monitoring Contract Process/Documents for Contract documents.

### **B. Recipient's Role and Responsibilities**

While the Applicant has the primary responsibility for daily monitoring operations, the Recipient is responsible for verifying that those monitoring activities are implemented. As Recipient, the State or Tribe are the pass-through entity between the Applicant and FEMA. The Recipient should ensure that the Applicant is complying with all grant requirements and is performing adequate monitoring. The Recipient may conduct random monitoring at loading and disposal sites to ensure compliance with PA grant requirements. Refer to Appendix A: Field Reference Guides for more information.

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<sup>8</sup> 2 C.F.R. § 200.318(b).

### C. FEMA Public Assistance Role and Responsibilities

The primary role of FEMA is to provide technical and debris monitoring guidance to ensure that PA grant requirements and work and costs in all areas of the debris operation meet PA eligibility criteria. FEMA may also conduct random, periodic checks of debris loading, staging, reduction, and disposal sites. FEMA is responsible for:

- Determining whether the debris removal activities are eligible;
- Verifying compliance with all environmental and historic preservation laws and executive orders; and
- Reporting any noncompliance, misconduct, or other issues for resolution with the Recipient and Applicant.

In disasters where the estimated amount of debris is 200,000 cubic yards (CY) or greater, the Federal Coordinating Officer (FCO) may provide technical expertise and advise to the Recipient or Applicant on debris monitoring through a mission assignment with the U.S. Army Corps of Engineers (USACE).

FEMA does not direct field operations on behalf of the Applicant. FEMA is not a party to the Applicants contract and will not resolve disputes. The Applicant is responsible for implementing and managing its debris removal and monitoring activities. Refer to Appendix A: Field Reference Guides for additional information.

## Chapter 3: Debris Monitoring Resources and Duties

### A. Force Account Resources

Applicants are encouraged to use their own employees (force account labor) to monitor debris removal operations.<sup>9</sup> An Applicant's own employees are the most familiar with the jurisdiction and know the priorities of the Applicant's debris management plan.

Other benefits of using force account labor for debris monitoring include:

- The local workforce may be able to respond immediately after the disaster.
- Standard timesheet and equipment documentation procedures are typically adequate for documentation purposes.

### B. Contractor Resources

An Applicant may hire contractors to provide debris monitoring services. Debris monitoring contractors should not be employed by or affiliated with the debris removal contractor.

Applicants are required to use competitive contract bidding procedures when procuring these services, unless they can justify sole sourcing.<sup>10</sup> If the Applicant, in compliance with SLTT law, wants to issue a sole source contract rather than conduct a sealed bidding process, the Applicant would have to demonstrate that there are "exigent circumstances" necessitating procurement by non-competitive methods and use of a sealed bidding process would cause an unacceptable delay. Applicants are also required to maintain proper oversight of these contracts to ensure compliance with contract terms.<sup>11</sup> The Applicant must include in the contract a termination date for the non-competitively procured contract and justify in writing why the period of performance is reasonable under the prevailing circumstances.<sup>12</sup> More information on debris monitoring contracts is found in Chapter 4: Debris Monitoring Contract Provisions and Methods.

### C. General Debris Monitor Qualifications

Applicant debris monitors should:

- Fully understand their responsibilities in accordance with the terms of the debris removal contract and other specific guidance provided by the Applicant;
- Possess the capability to estimate debris quantities accurately and objectively;
- Understand all phases of debris management operations, including loading sites, debris management sites (DMSs), and final disposition locations;
- Be able to differentiate between debris types;
- Be able to complete load tickets properly;
- Understand site safety procedures;
- Communicate effectively and efficiently; and
- Possess previous construction site experience (preferred).

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<sup>9</sup> 44 C.F.R. § 206.228.

<sup>10</sup> 2 C.F.R. § 200.320(f) or analogous state obligations if procurement under 2 C.F.R. § 200.317 auspices.

<sup>11</sup> 2 C.F.R. § 200.318(b).

<sup>12</sup> See generally 2 C.F.R. § 200.320(f).

- Have general knowledge pertaining to the operation of large construction machinery (preferred).

Debris monitors do not need to be registered professional engineers.

In addition to the general qualifications for debris monitors, field supervisors need to:

- Possess the ability to communicate with field staff as well as management;
- Be able to resolve conflicts and issues in the field; and
- Understand when to elevate issues to the Applicant's management.

### D. Types of Debris Monitors

Applicants need to monitor all aspects of the debris removal operation, including activities at all loading, staging, and disposal sites. Debris monitors may have different roles and responsibilities at different stages or components of a debris removal operation; an individual may assume the role of each monitor type at various stages of the disaster. Debris monitors report directly to the field supervisor regarding their daily oversight. All logs and load tickets are submitted daily to the field supervisor. See Appendix A: Field Reference Guides for lists of debris monitoring duties by type of debris monitor.

#### *Loading Site Monitors*

Loading site monitors perform on-site, street-level debris monitoring at all loading sites to verify debris eligibility based on contract requirements, and initiate debris removal documentation using load tickets. Loading site debris monitors' primary duties are:

- Estimating load volumes and issuing load tickets at the load sites, retaining a copy of the ticket (for detailed description of load ticket chain-of-custody, refer to Appendix B: Sample Debris Monitoring Plan and Monitoring Forms); and
- Maintaining logs of daily subcontractor performance, eligibility, or other activities as required.
- Can be a roving monitor who follows a truck around throughout the day or checks-in on multiple loading trucks. Produces roving monitor report.

#### *Tower/Site Monitors*

Debris monitors at a DMS are often referred to as "tower" or "site" monitors." Tower/site monitors' primary duties are:

- Accurately measuring and documenting load hauling compartments prior to debris hauling operations (and recertifying on regular basis);
- Collecting and physically controlling load tickets;
- Ensuring that all debris is removed from trucks at DMSs;
- Monitoring DMS development and restoration; and
- Overseeing debris reduction (grinding, burning, chipping, etc.).



### *Field Supervisor*

The Applicant's field supervisor resolves field operational, eligibility, and safety issues, and communicates these issues to the Applicant. They may also coordinate daily activities with FEMA, the Recipient, and Applicant field personnel. The field supervisors' primary duties are:

- Scheduling and deploying the loading and tower/site debris monitors and overseeing their daily activities at loading sites and disposal and staging sites;
- Conducting or overseeing truck certifications, load measurements, and photo-documentation as required; and
- Collecting daily logs from the debris monitors and tabulating truck load data for the daily report.

### **E.** Reasonable Level of Effort Guidance

All costs must be associated with a reasonable level of effort, including appropriate numbers of debris monitoring personnel and clerical staff related to the scope of the debris removal operation. FEMA will evaluate the level of effort of debris monitoring operations for reasonableness when determining the eligibility of debris monitoring costs. The level of effort for debris monitoring operations should be proportionate with the magnitude of the disaster, the types and quantities of debris to be removed, and the scope of the debris removal operation. Historical data for debris monitoring operations suggests the following level of effort may be appropriate for field efforts.

#### *Level of Effort for Debris Loading Sites*

- **Rural areas:** One loading monitor may be provided for each loading device/location in order to properly observe all debris loading activity. The number of loading monitors can be amended to allow one monitor to oversee two or three contractor loading sites, if the loading activity can be properly observed from a single controlled location and the collected debris can be documented and verified as eligible or ineligible.
- **Urbanized or higher-density areas:** One loading monitor may be provided for each loading site. One loading monitor may be provided for every three to four loading sites if the loading monitor can monitor the sites via line-of-sight or a controlled access point.

#### *Level of Effort for Debris Management Sites*

- **Tower/site monitors:** Tower/site monitors are required at DMSs regardless of if the site is a temporary or a permanent one. Depending on the set-up of the DMS, a minimum of one tower/site monitor is required to document load quantities and verify that trucks are emptied. Additional tower/site monitors may be needed at exit locations to verify that trucks are emptied, or at reduction (grinding burning, chipping, etc.) locations to document and verify production rates.
- **Field supervisors:** If multiple DMSs are in operation, one field supervisor may be added for every 10 debris load site monitors, or as needed for exceptionally large and unique operations to ensure adequate management of operations.
- **Clerical/data entry support:** Typically, one or two data entry personnel can accommodate the daily data amassed when debris operations use load tickets for

documentation. Larger or faster operations with a multitude of reports may require additional clerical support. The number of clerical/data entry personnel should be adjusted to the needs of the Applicant. The use of automated debris monitoring documentation systems may significantly reduce the required level of effort for data entry support.

## Chapter 4: Debris Monitoring Contract Provisions and Methods

When procuring contracts for debris removal operations and monitoring services, Applicants must use their standard procurement processes and practices that conform to SLTT procurement policies and regulations, as well as those required by Federal regulations.<sup>13</sup> Failure to adequately follow procurement requirements may result in the deobligation of all or some of an Applicant's PA funding. If a Federal requirement is different than the SLTT requirements, or the Applicant's own requirements, it must use the more restrictive requirement.<sup>14</sup>

Applicants are strongly encouraged to work with SLTT emergency management staff and FEMA to ensure compliance with the provisions of the PA program, as well as other applicable statutes and regulations, if they intend to seek PA grant funding. Upon request, FEMA PA program personnel will review an Applicant's procurement process to highlight potential instances of non-compliance with the federal procurement rules.<sup>15</sup> FEMA can also provide high-level reviews of contracts to highlight potential instances of non-compliance with the federal procurement rules.

### A. General Procurement and Contract Oversight

Applicants are strongly encouraged to consider, and/or comply with, the following guidance when procuring and overseeing contracts for debris monitoring services:

#### *Procurement Process*

- Use competitive bidding procedures to meet procurement requirements for Federal grants.<sup>16</sup>
- Use abbreviated emergency procurement procedures that include an expedited competitive bid process only if time does not allow for more stringent procedures and if they are allowed under SLTT and Federal laws, codes, or ordinances.
- Maintain records regarding the history of the procurement<sup>17</sup> and document procedures used to obtain/award contracts (procurement information, bid requests, and tabulations, etc.).
- Seek legal review of the contract from Applicant's legal counsel and the process used to procure it, to ensure compliance with all applicable Federal and SLTT requirements.

#### *Scope of Work*

- Verify that all requests for proposals, bids, and contracts have a well-defined SOW, specified costs, basis of payment, performance schedule, and descriptions of the type of service provided by each labor category and skill class.

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<sup>13</sup> 2 C.F.R. § 200.318(a).

<sup>14</sup> Chapter 6:VIII.B. Procurement and Contracting Requirements for Tribal and Local Government Agencies and Private Nonprofits of the PAPPG (V4).

<sup>15</sup> 2 C.F.R. §§ 200.317 - 200.327.

<sup>16</sup> 2 C.F.R. § 200.319.

<sup>17</sup> 2 C.F.R. § 200.318(i).

- Ensure that labor rates are commensurate with the skill level required by the debris monitoring job function. Professional engineers and other similar qualifications are not required to perform monitoring duties.
- Use a load ticket system (paper or electronic) to record with specificity where debris is picked up (e.g., street address) and the amount picked up, hauled, reduced, and disposed of.
- Ensure that the level of effort provided by the monitoring contractor and the contract terms is reasonable.

#### *Reasonable Costs*

- Ensure that debris monitoring contract costs are reasonable and necessary.<sup>18</sup> Competitively bid contracts that comply with Federal and SLTT procurement regulations and procedures will help to establish reasonable costs for the work.
- The Applicant must perform a price/cost analysis for all contractors or contract modifications over the simplified acquisition threshold currently set at \$250,000.<sup>19</sup> Additionally, profit must be negotiated as a separate element when performing a cost analysis and for each contract when there is no price competition.<sup>20</sup>

#### *Contract Requirements*

- Award contracts to responsible bidders who are reputable and qualified contractors.
  - Conduct reference checks on contractors' performance history with the State's contractor licensing board and with previous clients before awarding contracts.
  - Verify that potential contractors are not on a State's "Debarred Contractor" listing.<sup>21</sup>
  - Check SAM.gov to verify that potential contractors have not been suspended or debarred from performing work funded by the federal government.
- Require the contractor to provide a safe working environment, including properly constructed monitoring towers.
- Ensure that complete and accurate records are kept of contractor activities and costs to include in reimbursement requests.

### **B. Basis of Payment**

The basis of payment and the payment process must be clearly outlined in the contract. Contractor payments should be based upon verification of completed work, and the required information for the payment request should be included within the provisions of the contract.

The SOW and costs for the service are key factors in analyzing reasonable costs. When determining if a cost for debris monitoring is reasonable, FEMA considers the level of effort required for the monitoring services, supervision, and support services to perform the job requirements effectively and efficiently. Debris monitoring services should be tailored to the scale of the debris operations, the schedule requirements, and the Applicant's overall concept of

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<sup>18</sup> 2 C.F.R. Part 200, subpart E.

<sup>19</sup> The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 C.F.R. § 2.101. The threshold is adjusted periodically for inflation.

<sup>20</sup> 2 C.F.R. § 200.324(b).

<sup>21</sup> 2 C.F.R. § 200.318(h).

operations. This includes planning for the number of DMSs and final disposition sites, acceptable travel distances, truck routes, neighborhood safety issues, personnel planning, and documentation requirements.

The debris monitoring contract must include the applicable contract provisions addressing payment, contract duration, performance measures, termination for convenience, termination for cause, and a conflict resolution process, and any other required contract provisions.<sup>22</sup> The Applicant should:

- Consider using a progress payment method for contract services. This method requires specific documentation from the contractor to verify and validate the completed work and support the contractor's invoices.
- Provide supervision and oversight of the debris monitoring operations to ensure that only approved and necessary hours are applied to the debris monitoring contract. Applicants are required to maintain contractor oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.<sup>23</sup>
- Confer with the contractor to determine the deployment of monitors, daily schedules, and the number of personnel, supervisors, and clerical/data support assigned at any given time.

Generally, documentation for debris monitoring reimbursement includes:

- Personnel assignments, duties, and responsibilities
- Timesheets
- Debris monitoring reports
- Debris totals (CY and tonnage)
- DMS reports
- Exception reports (when debris monitoring reveals problems with debris operations)
- Truck/Trailer Certification reports
- Geographic information system (GIS) planning and progress reports
- Debris progress reports
- Safety reports

### **C.** Duration of Contract

Debris removal and monitoring services contracts should include specific timelines for work to be completed. The contract should clearly state the duration and the scheduled milestones. By doing so, the Applicant sets clear expectations for the contractor. Moreover, the contractor can effectively manage resources and schedule work to meet the Applicant's requirements. The Applicant should determine the contractor's mobilization requirements (e.g., whether debris monitors are required during the debris clearance phase).

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<sup>22</sup> 2 C.F.R. § 200.327.

<sup>23</sup> 2 C.F.R. § 200.318(b).

#### **D.** Performance Measures and Termination Clause

The contract should include performance measures that specify how performance will be evaluated and measured, including the size and number of monitoring crews, the number of truckloads monitored each day by the monitoring crews, the number of truckloads arriving at each DMS or final disposition site, the processing rate for a reduction site, and the number of monitoring crews in relation to the debris removal crews. Additionally, all contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity, including the manner by which termination will be effected and the basis for settlement. This clause should describe probable reasons for termination.

#### **E.** Conflict Resolution Process

The conflict resolution process should be well defined in the contract. The process should include alternatives for mediation in case an issue proves difficult to resolve. Contracts in excess of \$250,000 must include a remedies clause that addresses administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate.<sup>24</sup>

#### **F.** Types of Debris Removal Contracts

There are several types of debris removal contracts and each type of debris removal contract has variables that can dictate adaptations to the necessary debris monitoring activities to protect the Applicant's interests. The different types of contracts, specific contract provisions, monitoring efforts, and documentation requirements are described in this discussion and summarized in Table 1 at the end of Section 6. The most common types of debris removal contracts are unit price, lump-sum, and time-and-materials (refer to Appendix A: Field Reference Guides).

##### *Unit Price*

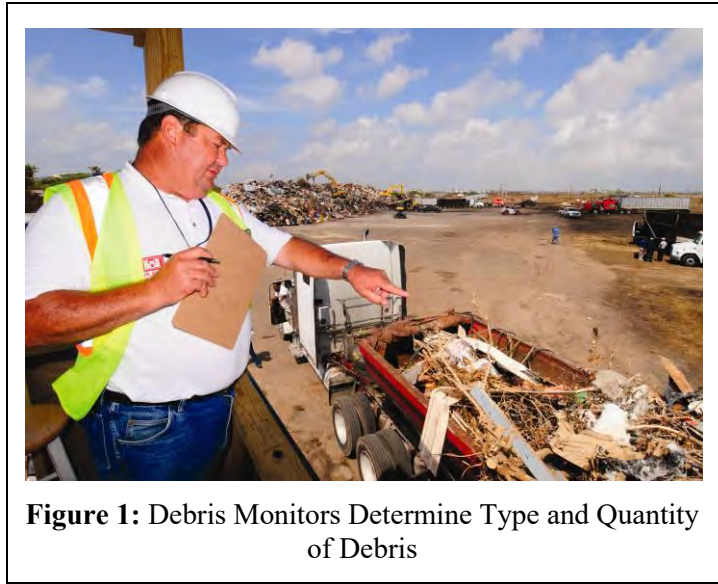
Unit price contracts are used when the individual work tasks are known, but the total amount of work cannot be known in advance. Units of work can be measured in terms of weight, volume, or any other quantifiable measure (Figure 1). The contractor uses estimated quantities to establish a total contract price.

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<sup>24</sup> 2 C.F.R. § 200.327.

Since a unit price contract is initiated based on an estimate of debris quantities, documentation of the location, eligibility, and quantities of debris (CY or tonnage) during the debris processing is essential.

- Debris monitoring is essential during pick up, transportation, eligibility determination, segregation, staging, reduction, and final disposition.
- The Applicant should manage the measurement of the trucks/trailers used to haul the debris. The volume of each truck should be measured and certified before being allowed into service.



### *Lump-Sum*

Lump-sum contracts are used when the SOW can be identified and quantified. Bid requests for lump-sum contracts include a set of specifications that have a well-defined SOW for a finite amount of time.

The advantage of a lump-sum contract is that the total price for the specified work is known at the time the contract is awarded. For example, 250 tons of mulched debris hauled from 1000 N. Debris Road to the county landfill at 3450 S. Main Street will equal \$XX,XXX.

Loading monitors are required to validate that only contract-identified debris is collected. These quantities should match the quantities identified in the debris removal contract.

- The DMS site/tower monitors should carefully review the processing of materials, especially the quantities of materials collected for processing (grinding, burning, chipping, etc.), and the quantities at the back end of the processing.
- Documentation of truckloads and debris volumes are still needed if the final tally of debris quantities vary significantly from the original contract estimates; change orders may be necessary to adjust the contract price. This documentation is essential to establish final debris volumes.
- When applicable, the debris quantities entering a DMS should be compared with the debris quantities that have been processed. For example, chip piles or outbound truckloads can be measured to corroborate the debris volumes.

### *Time-and-Materials*

A time-and-materials contract establishes hourly rates for labor and equipment that will be used to perform specific tasks. For example, backhoe with loader, X CY bucket, and operator = \$XX/hour. The contractor is paid based on the sum of the actual cost of materials and the direct

labor hours charged at a fixed hourly rate that reflect wages, general and administrative expense, and profit.<sup>25</sup>

Applicants should work closely with the SLTT and FEMA when awarding such contracts to ensure PA eligibility requirements are met. The following requirements apply to time-and-materials contracts and must be memorialized:

- Use only after determining that no other contract type is suitable;
- Time-and-materials contract must contain a not-to-exceed clause;<sup>26</sup>
- The contract must include a ceiling price which the contractor exceeds at its own risk;
- The Applicant must maintain a high degree of contractor oversight to avoid any unnecessary cost overruns; and
- Once the scope of work becomes clear, the Applicant must transition to a more suitable contract type.



**Figure 2:** Type and Duration of Equipment Used Must Be Documented

A higher level of monitoring of time-and-materials contracts is required. Debris monitors should produce daily inspection reports that clearly quantify the amount of work accomplished each day, including:

- The number of hours worked (scheduled work hours/crew size).
- The type and quantity of each type of truck/trailer/equipment used (Figure 2).
- Verification of equipment hours. Only active work hours should be submitted for FEMA reimbursement.
- Standby time is not eligible for FEMA reimbursement.
- Verification of labor hours as compared to equipment hours. Intermittent use of equipment may result in a crew having more equipment hours than labor hours; this type of discrepancy needs to be verified by the debris monitors.
- The weather conditions as they affect daily work.
- Production rates for each staging and reduction site.
- Quantities of debris hauled (CY or per ton). If debris is hauled based on CY, load tickets may be used as a way of checking contractor efficiency.

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<sup>25</sup> 2 C.F.R. § 200.318(j)(1).

<sup>26</sup> 2 C.F.R. § 200.318(j).



Table 1 outlines the monitoring requirements for each type of contract.

**Table 1: Monitoring Requirements by Contract Type**

| Contract Type      | Scope of Work   | Monitoring Required |                 |      |               |            | Comments   |
|--------------------|---|---------------------|-----------------|------|---------------|------------|--|
|                    |   | Crew Efficiency     | Collection Site | DMSs | Disposal Site | Compliance |  |
| Lump-Sum           | Defined debris quantities and reasonable costs. Estimate is basis for contract costs.                       |                     | ✓               |      | ✓             |            | <ul style="list-style-type: none"> <li>Assess debris eligibility at collection site</li> <li>Quantities are required to determine reasonable costs and establish change orders</li> <li>Ensure ONLY debris from within contract limits is processed</li> </ul>   |
| Unit Price – CY    | Based on eligible debris listed on load tickets.  | ✓                   | ✓               | ✓    | ✓             | ✓          | <ul style="list-style-type: none"> <li>Assess debris eligibility at collection site</li> <li>Document debris quantities</li> <li>Verify debris processing volumes</li> </ul>   |
| Unit Price – Ton   | Based on actual weight measurements of eligible debris listed on load tickets.                              | ✓                   | ✓               | ✓    | ✓             | ✓          | <ul style="list-style-type: none"> <li>Assess debris eligibility at collection site</li> <li>Document debris quantities</li> <li>Verify debris processing weights</li> <li>Verify calibration of scales</li> </ul>   |
| Time-and-Materials | Based on labor, equipment, and materials records. Reasonable costs evaluated by determining costs per unit. | ✓                   | ✓               |      | ✓             | ✓          | <ul style="list-style-type: none"> <li>Assess debris eligibility at collection site</li> <li>Typically used for road clearance activities during the Response Phase</li> <li>Supervising and monitoring every work crew is required</li> <li>Tracking debris removal quantities is still required to determine reasonable costs</li> </ul> |

## Chapter 5: Debris Monitoring by Debris Type

Debris monitoring considerations and responsibilities may vary depending on the type of debris being removed. Debris monitoring considerations for each of the primary debris types are described below. Refer to Appendix A: Field Reference Guides for additional debris monitoring recommendations.

### A. Vegetative Debris

Vegetative debris may consist of whole trees, tree stumps, tree branches, tree trunks, and other leafy material. Depending on the size of the debris, the collection of vegetative debris may require the use of flatbed trucks, dump trucks, and grapple loaders. For consideration:

- Hand-loaded trucks/trailers are graded at 50 percent of a load because of the low compaction achieved by hand-loading.<sup>27</sup>
- This type of debris may be recyclable or have salvage value. Document separation and salvage operations when implemented.
- For special vegetative debris considerations, refer to the PAPPG.<sup>28</sup>



**Figure 3: Hand-Loaded Truck**

### B. Construction and Demolition Debris

Construction and demolition (C&D) debris can be defined as damaged components of buildings and structures, such as lumber and wood, gypsum wallboard, glass, metal, roofing material, tile, carpeting and floor coverings, window coverings, pipe, concrete,<sup>29</sup> fully cured asphalt, equipment, furnishings, and fixtures. The definition of C&D debris may vary between jurisdictions and what is included in one jurisdiction may be excluded in another. When monitoring, consider that the C&D debris must be disaster-generated (i.e., eligible C&D debris cannot be the result of an Applicant's rebuilding efforts) and must present an immediate threat to be considered for FEMA eligibility.

### C. Hazardous Waste

The Applicant must comply with Federal and SLTT environmental requirements for handling hazardous waste. Acceptable FEMA reimbursable activities related to hazardous materials are described in the PAPPG.<sup>30</sup> Hazardous waste is regulated under the Resource Conservation and Recovery Act (RCRA) and contains properties that make it potentially harmful to human health or the environment. In regulatory terms, a RCRA hazardous waste is a waste that appears on one of the four hazardous waste lists<sup>31</sup> or exhibits at least one of the following four characteristics:

<sup>27</sup> Chapter 7:I.E.3. Hand-Loaded Trucks and Trailers of the PAPPG (V4).

<sup>28</sup> Chapter 7:I.B. Hazardous Limbs, Trees, and Stumps of the PAPPG (V4).

<sup>29</sup> Chapter 7:II.U.4. Ineligible Work of the PAPPG (V4).

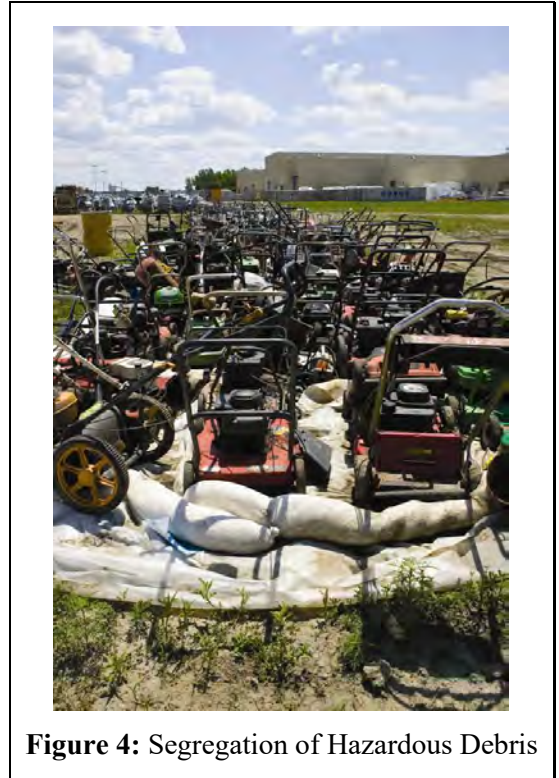
<sup>30</sup> Chapter 7:II.K. Hazardous Materials of the PAPPG (V4).

<sup>31</sup> 40 C.F.R. Part 261.

- Ignitability
- Corrosivity
- Reactivity
- Toxicity

When monitoring, consider:

- Hazardous wastes may require segregation and special handling (Figure 4).
- Improper segregation of the hazardous waste debris should be documented.
- If unsafe practices are observed during the handling and disposal of hazardous materials, the appropriate authorities should be notified.
- Safety precautions will vary depending upon the circumstances and type of hazardous materials encountered, but they may include personal protective equipment, decontamination stations, closed and secured containers, and covered trucks or specialized containers.
- Monitor hazardous material processing carefully and regularly to verify that proper precautions are taken and that the chain-of-custody is maintained.
- Verify that hazardous materials are delivered to an appropriate DMS since hazardous wastes typically require special handling, transportation, and final disposition that are significantly more costly than typical waste disposal.



**Figure 4:** Segregation of Hazardous Debris

#### **D.** Household Hazardous Waste

Household Hazardous Waste (HHW) refers to hazardous products and materials that are used and disposed of by residential consumers, rather than commercial or industrial consumers. HHW include, but are not limited to, some paints, stains, varnishes, solvents, pesticides, and other products or materials containing volatile chemicals that catch fire, react, or explode under certain circumstances, or that are corrosive or toxic. When monitoring:

- Verify and document that HHW is picked up and handled by specialists licensed by the Recipient's Department of Environmental Quality (DEQ) and managed in designated areas within the DMS.
- Verify and document that the chain-of-custody is maintained throughout the collection, handling, transport, and disposal of HHW.

#### **E.** Electronic Waste

Electronic waste (e-waste) refers to electronics that contain hazardous materials, such as cathode ray tubes. Examples of e-waste include, but are not limited to, computer monitors and

televisions.<sup>32</sup> Typically, these products contain minerals and chemicals that require specific disposal methods. When monitoring ensure that:

- E-waste is removed intact, collected, and stored at the DMS for later processing;
- E-waste complies with state e-waste requirements where applicable;
- Separation and salvage activities are implemented and documented as this type of debris may be recyclable or have salvage value; and
- E-waste is segregated (in wildfire events, white goods and E-waste may not be able to be segregated and therefore should be documented as one).

## F. White Goods

White goods are defined as discarded household appliances such as refrigerators, freezers, air conditioners, heat pumps, ovens, ranges, washing machines, clothes dryers, and water heaters. Many white goods contain ozone-depleting refrigerants, mercury, or compressor oils that must be removed and processed following environmental protocols and procedures before the white goods can be further processed for disposal and recycling. When monitoring:

- Document that white goods are collected separately, cleaned, and processed to remove putrescent debris inside and to remove all oils, solvents, and refrigerants (Figure 5).
- If white goods are to be collected without being cleaned, verify and document that the DMS includes ample space for processing the collected white goods.
- This type of debris may be recyclable or have salvage value. Document separation and salvage activities that are implemented.



**Figure 5:** White Goods Being Staged

## G. Soil, Mud, and Sand

Floods, landslides, winds, wildfires, and storm surges often result in soil, mud, and sand debris on improved public property and public rights-of-way. Facilities commonly affected by this type of debris include streets, sidewalks, storm and sanitary sewers, water treatment facilities, drainage canals and basins, parks, and public swimming pools. When monitoring:

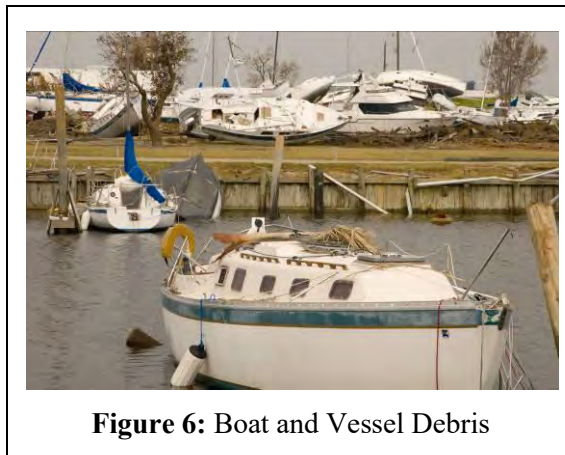
- Document that only the disaster-generated silt and soils are removed. This requires an understanding of pre-disaster conditions as well as the documented maintenance of the affected area.
- Contaminated soils may require special handling depending on the contaminant. Document any contaminated soil issues to ensure proper handling, processing, and disposition.
- Verify that any contaminated disaster-generated soils are addressed by specialists from the State's DEQ and/or U.S. Department of Environmental Protection (EPA) and managed appropriately in designated areas.

<sup>32</sup> 40 C.F.R. Part 261.

## H. Vehicles and Vessels

Vehicles and vessels may be damaged, destroyed, displaced, or lost as a result of a disaster (Figure 6). These vehicles and vessels may eventually be abandoned because of the damage incurred or because the original owners have relocated. Vehicles and vessels may be classified as debris if they block public access and critical facilities and are abandoned.<sup>33</sup> When monitoring:

- Verify that each vehicle or vessel identification number is documented and processed appropriately according to applicable municipal, state, or coastal law.
- Verify that collected vehicles and vessels are transported to a collection area where they are secured and protected. Depending on the ownership, the vehicles or vessels can be returned, salvaged, or destroyed.
- Verify that all vehicles and vessels have all minerals and fluids removed before processing or destruction.
- This type of debris may be recyclable or have salvage value. Document separation and salvage activities that are implemented.



**Figure 6:** Boat and Vessel Debris

## I. Putrescent Debris

Putrescent debris is any debris that will decompose or rot, such as animal carcasses and other fleshy organic matter. Handling of putrescent debris must comply with applicable Federal and SLTT requirements. When monitoring:

- Document that putrescent debris is collected in accordance with contract specifications or other specific requirements.
- Document the volume of putrescent debris. The volume of putrescent materials cannot be determined based solely on the volume of the originally inventoried materials because the spoiled materials may have lost a significant portion of their volume. The actual volume at the time of removal needs to be documented.

## J. Infectious Waste

Infectious waste is waste capable of causing infections in humans and can include contaminated animal waste, human blood and blood products, medical waste, pathological waste, and discarded sharps (needles, scalpels, or broken medical instruments). Clearance, removal, and disposal of infectious waste may be under the authority of another Federal agency (the Centers for Disease Control and Prevention, EPA, etc.) or applicable state agency. Upon review of applicable Federal statutes, regulations, and policies governing infectious waste, FEMA will determine eligibility on a case-by-case basis. When monitoring:

<sup>33</sup> Chapter 7:I.D. Privately Owned Vehicles and Vessels on Public Property of the PAPPG (V4).

- Document that the disaster-related infectious waste is collected and separated in accordance with prescribed safety and medical practices. SLTT or Federal health officials may dictate the collection process, including collection containers, protective gear, decontamination requirements, and disposal methods.
- The collection method and the volume of debris should be documented.
- Verify that chains-of-custody of the collected materials are maintained. Based on the condition and type of materials, this debris may require special handling, containerization, and disposal, including incineration.

## K. Chemical, Biological, Radiological, and Nuclear-Contaminated Debris

Chemical, biological, radiological, and nuclear (CBRN)-contaminated debris is any debris contaminated by chemical, biological, radiological, or nuclear materials as a result of a natural or man-made disaster, such as a weapon of mass destruction event. The clearance, removal, and disposal of CBRN-contaminated debris should be performed in accordance with applicable Federal statutes, regulations, policies, and other guidance documents. When monitoring:

- Man-made disasters may create debris that is considered evidence as part of a crime scene. Law enforcement officials may need to clear the activities before debris operations can begin. Monitors should ensure the CBRN-contaminated debris is cleared by law enforcement officials before removal so as not to undermine the integrity of the crime scene. Debris operations may also proceed concurrently with incident investigations.
- Be aware of the types of evidentiary material being sought in case CBRN-contaminated debris is encountered outside the identified crime scene area.
- CBRN-contaminated debris may be either disposed of or taken to a special collection area for further processing. Verify and document that separation, processing, and disposal follow the prescribed procedures.

| Type of Waste   | Examples  |
|---|---|
| Hazardous Waste   | Any debris containing any of the characteristics of ignitability, corrosivity, reactivity, or toxicity  |
| Household Hazardous Waste   | Any hazardous debris disposed of by resident consumers (some paints, stains, varnishes, solvents, and pesticides)   |
| Infectious Waste  | Any debris that can cause infections in humans (animal waste, human blood and blood products, medical waste, pathological waste, and discarded sharps (needles, scalpels, or broken medical instruments)) |
| Chemical, Biological, Radiological, and Nuclear-Contaminated Debris | Any debris contaminated by chemical, biological, radiological, or nuclear materials (weapons of mass destruction)   |

## Chapter 6: Documenting Eligible Work and Costs

With proper documentation, an Applicant may fully account for debris clearance and removal costs incurred as a result of a Presidentially declared disaster. A load ticket provides the most comprehensive information and a paper trail for FEMA PA program reimbursement. To support the documentation provided by the load tickets, monitors should use tower-monitoring logs, roving monitor reports, daily issue logs, and truck certification forms as part of their reporting process. Samples of these forms are included in Appendix B: Sample Debris Monitoring Plan and Monitoring Forms. When ADMS technology is used, the data generated should clearly display loading monitor and tower/site monitor names, load times, and locations so that an individual's daily activities can be easily reviewed.

The following describes the types of documentation that should be provided to FEMA PA to substantiate eligible work performed and associated costs for grant funding.

### A. Documenting Force Account Debris Operation Costs

When an Applicant uses its own force account resources to perform debris removal and disposal work, requests for reimbursement should be supported by documentation of the labor and equipment charges incurred in the operation. This includes:

- Payroll records of full-time and temporary employees working debris removal operations.
- Records of Applicant-owned equipment used in debris removal operations, including a record of equipment hours in service, associated equipment rates, and operator name.
- Invoices of rental equipment used in the debris removal operation.
- Documentation from permitted final disposal locations including:
  - Temporary disposal permits from State DEQ if temp site is utilized and Municipal Solid Waste Permit number for final disposition.
  - Invoices of disposal tipping fees.
  - Quantities of debris disposed.
- Documentation of the location of the debris removal activities demonstrating FEMA debris eligibility and/or documentation certifying that FEMA-eligible debris work was performed.

### B. Documenting Contractor Debris Operation Costs

The debris operation, if completed by contract, should have adequate controls in place to ensure contract terms are adhered to, that only specified debris is removed, and proper documentation is collected and compiled for payment purposes. Applicants should monitor the performance of their contractors and ensure that they comply with their contract terms and conditions.<sup>34</sup>

When an Applicant has hired a contractor to perform debris removal work, documentation should correspond with the invoiced costs and line item prices of the debris removal contract. This documentation will be provided on monitoring forms and reports (refer to Appendix B:

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<sup>34</sup> Refer to PDAT resources when procuring with Federal grant awards: [www.fema.gov/procurement-disaster-assistance-team](http://www.fema.gov/procurement-disaster-assistance-team).

Sample Debris Monitoring Plan and Monitoring Forms), including load tickets and tower logs, which will provide information on:

- Locations of debris removal.
- Type of debris removed.
- FEMA debris removal eligibility determination.
- Debris quantities (volume or weight determined at inspection site).
- Identification of debris hauling truck/trailer and contractor.
- Location of permitted final debris disposal site.
- Documentation of labor, equipment, and materials charges including hours of service and associated charges (for time and materials contracts).
- Documentation of quantities of debris reduced or recycled at DMSs and associated detailed charges.
- Invoices of disposal tipping fees.

In addition to the load tickets, summaries of the information included in the load tickets are typically provided in support of an Applicant's PA funding request. FEMA and the Recipient may also request to see all backup supporting documentation and reports, including truck certification forms, tower logs, roving monitor reports, and daily issue logs used to substantiate claimed costs (refer to Appendix B: Sample Debris Monitoring Plan and Monitoring Forms).

### C. Monitoring Reports

Applicants should have debris monitors submit daily reports on operational issues, including DMS operations and safety issues, to promote situational awareness and help identify and resolve issues. Regular reporting promotes quality assurance and provides the Applicant with a consistent accounting of operations, issues, and costs in the field. This information is included in reports such as tower monitor logs, roving monitor reports, and daily issue logs.

### D. Electronic Load Tickets and Automated Reporting

Historically, debris monitoring operations have used the four-part paper load ticket system. Depending on the size of the event, the manual process of filling out load tickets, transferring copies, and entering data for reporting and data compilation purposes can be labor and time intensive, and can result in human error.

Automated debris management tracking systems provide real-time and automated tracking and reporting. Electronic load tickets, computer tablets, and systems employing electronic contractor ID cards allow for instant data tracking, verification, and reporting. Some systems also incorporate truck tracking systems, global positioning system (GPS) capability, and enhanced analytical capabilities of debris monitoring data.

FEMA embraces technological advancements and recognizes the potential benefits of these automated systems. As discussed in **Chapter 1: General Eligibility Requirements**, reasonable costs associated with the use of electronic load ticket systems and other automated debris monitoring systems may be eligible for PA funding.



Appendix A: Field References Guides

| DEBRIS MONITOR DUTIES AND RESPONSIBILITIES   |  |  |
|--|--|--|
| FEMA   | Applicant Debris Monitor   | Applicant Field Supervisor   |
| <b>Safety</b>  |  |  |
| <ul style="list-style-type: none"> <li>Verify safety by identifying possible health/safety risks and requiring proper field safety gear.</li> </ul>  | <ul style="list-style-type: none"> <li>Ensure contractor is complying with public and employee safety standards.</li> <li>Ensure safety requirements on State highways and roads are observed during debris operations (load limits, truck covers, etc.).</li> </ul>   | <ul style="list-style-type: none"> <li>Be familiar with and maintain/ implement all safety requirements.</li> </ul>  |
| <b>Eligibility</b>   |  |  |
| <ul style="list-style-type: none"> <li>Verify compliance with FEMA PA program requirements (i.e., provide eligibility guidance, timeframe requirements, and documentation and reporting requirements).</li> </ul>  | <ul style="list-style-type: none"> <li>Verify compliance with FEMA PA program requirements.</li> <li>Ensure only eligible debris is removed. Notify the field supervisor of any ineligible debris removal.</li> </ul>  | <ul style="list-style-type: none"> <li>Ensure that a reasonable level of effort is applied to the monitoring process, commensurate with the debris operations and the schedule.</li> <li>Ensure only eligible debris is noted on tickets. Ensure any ineligible activities are noted and the associated tickets are not recommended for invoicing.</li> </ul>  |
| <b>Compliance</b>  |  |  |
| <ul style="list-style-type: none"> <li>Spot check debris loading, staging, reduction, and disposal sites to ensure compliance with eligibility requirements.</li> <li>Report any noncompliance, misconduct, or other negative actions to the assigned FEMA staff for appropriate coordination and resolution with State/Tribal and Applicant officials.</li> </ul> | <ul style="list-style-type: none"> <li>Ensure all work complies with local ordinances and SLTT and Federal regulations.</li> <li>Monitor environmental compliance on all debris management sites (DMSs).</li> <li>Monitor preservation of places and buildings pertaining to the State’s historic and archaeological treasures.</li> </ul> | <ul style="list-style-type: none"> <li>Obtain and become familiar with the requirements outlined in all debris removal and disposal contracts to ensure the contract requirements are implemented correctly.</li> <li>Make unannounced visits to all loading and disposal sites in an assigned area.</li> <li>Take photographs of all trucks and trailers used in the debris operation, to establish a baseline inventory of equipment.</li> </ul> |

| DEBRIS MONITOR DUTIES AND RESPONSIBILITIES  |   |  |
|---|---|--|
| FEMA  | Applicant Debris Monitor  | Applicant Field Supervisor   |
| <b>Debris Operations</b>  |   |  |
| <ul style="list-style-type: none"> <li>• Validate certification of trucks and trailers.</li> <li>• Evaluate operational efficiency.</li> <li>• Oversee documentation requirements.</li> </ul> | <ul style="list-style-type: none"> <li>• Ensure trucks are measured, certified, and operated properly.</li> <li>• Ensure trucks are loaded properly and loads are accurately evaluated.</li> <li>• Verify load tickets are properly completed and controlled.</li> </ul>      | <ul style="list-style-type: none"> <li>• Ensure only debris from approved public areas is removed.</li> <li>• Assist in measuring all debris hauling trucks and trailers for truck certification. Coordinate with the appropriate contractor representatives, if applicable, to confirm certification completion.</li> </ul>               |
| <b>Management and Oversight</b>   |   |  |
| <ul style="list-style-type: none"> <li>• Not Applicable</li> </ul>  | <ul style="list-style-type: none"> <li>• Ensure debris sites are properly mobilized and administered.</li> <li>• Ensure accurate recordkeeping and appropriate documentation.</li> <li>• Ensure contractor activities are conducted as mandated in contractor SOW.</li> </ul> | <ul style="list-style-type: none"> <li>• Serve as the first line of management for debris monitors and assist with any questions or conflicts that arise.</li> <li>• Prepare a daily written report of all activities observed and include photographs.</li> <li>• Be familiar with all phases of debris management operations.</li> </ul> |

| DEBRIS MONITOR DUTIES AND RESPONSIBILITIES  |
|---|
| <b>Applicant Debris Loading Monitor</b>   |
| <b>Safety</b>   |
| <ul style="list-style-type: none"> <li>• Check area for safety considerations, such as downed power lines, children playing in the area, traffic control needs, and safe operation of trucks and equipment.</li> <li>• Implement all safety requirements.</li> <li>• Before work begins, inspect areas to identify covered utility meters, transformers, fire hydrants, mailboxes, etc. (as a baseline to account for any damage as a result of the debris removal operations).</li> <li>• Ensure that debris loads are contained properly before leaving the loading area.</li> </ul>  |
| <b>Eligibility</b>  |
| <ul style="list-style-type: none"> <li>• Determine whether each load is to be claimed for reimbursement based on established eligibility criteria, and mark load tickets, if ineligible, for FEMA reimbursement.</li> <li>• Validate eligible hazardous trees, including hangers, leaners, and stumps.</li> <li>• Verify global positioning system (GPS) readings or an address/location for leaning trees, trees with hanging limbs, and uprooted/exposed stumps that constitute an immediate threat; a separate ticket should be written for these items if required in the contract.</li> <li>• Do not issue tickets for trucks that arrive at pick-up sites already loaded or partially loaded.</li> <li>• Ensure that force account labor and debris contractor work is within the assigned SOW.</li> </ul>                        |
| <b>Compliance</b>   |
| <ul style="list-style-type: none"> <li>• Obtain and become familiar with the requirements outlined in all debris removal and disposal contracts to ensure the contract requirements are implemented correctly.</li> <li>• Report to field supervisor if debris removal work does not comply with all local ordinances as well as SLTT and Federal regulations (i.e., improper disposal of hazardous wastes).</li> </ul>   |
| <b>Debris Operations</b>  |
| <ul style="list-style-type: none"> <li>• Ensure that hazardous wastes are not mixed into loads.</li> <li>• Record the types of equipment used (for time-and-materials contracts).</li> <li>• Record the hours equipment was used, including down time of each piece of equipment by day (for time-and-materials contracts).</li> <li>• Ensure that only debris specified by the Applicant is collected for loading and hauling.</li> <li>• Ensure only debris from approved public areas is removed.</li> <li>• Ensure the work area is clear of debris before equipment is moved to a new loading area.</li> <li>• Prepare complete and accurate load tickets.</li> <li>• Issue load tickets for each debris load to the truck driver.</li> <li>• Evaluate and record performance and productivity of debris removal crews.</li> </ul> |
| <b>Communication</b>  |
| <ul style="list-style-type: none"> <li>• Remain in constant contact with debris management/dispatch center or field supervisor.</li> <li>• Report issues (such as safety concerns, contractor non-compliance, and improper equipment use) to field supervisor.</li> <li>• Maintain a log of debris operations issues.</li> <li>• Photograph and provide written documentation of any damage to utility components, driveways, road surfaces, private property, vehicles, etc.</li> <li>• Perform other duties as directed by designated debris management personnel.</li> </ul>   |

| DEBRIS MONITOR DUTIES AND RESPONSIBILITIES   |
|--|
| <b>Applicant Debris Tower/Site Monitor</b>   |
| <b>Safety</b>  |
| <ul style="list-style-type: none"> <li>• Check area for safety considerations, such as downed power lines, children playing in the area, traffic control needs, and safe operation of trucks and equipment.</li> <li>• Implement all safety requirements.</li> </ul>   |
| <b>Compliance</b>  |
| <ul style="list-style-type: none"> <li>• Obtain and become familiar with the requirements outlined in all debris removal and disposal contracts to ensure the contract requirements are implemented correctly.</li> <li>• Report to field supervisor if debris removal work does not comply with all local ordinances as well as SLTT and Federal regulations (i.e., improper disposal of hazardous wastes).</li> <li>• Coordinate with management to ensure and verify that DMSs are properly permitted for the debris reduction methods utilized.</li> </ul>   |
| <b>Debris Operations</b>   |
| <ul style="list-style-type: none"> <li>• Ensure that hazardous wastes are not mixed into loads.</li> <li>• Record the types of equipment used (for time-and-materials contracts).</li> <li>• Record the hours equipment was used, including down time of each piece of equipment by day (for time-and-materials contracts).</li> <li>• Accurately measure and document load hauling compartments for trucks and trailers to compute volume capacity in CY for each truck and trailer prior to its commencement of debris hauling operations (recertify on regular basis).</li> <li>• Recertify and re-measure truck capacities on a regular basis.</li> <li>• Ensure that truck loads are accurately credited.                             <ul style="list-style-type: none"> <li>○ Estimate the percentage of full capacity for each truck or trailer load.</li> <li>○ Ensure trucks are not artificially loaded (e.g., debris is wetted, fluffed, or not compacted).</li> </ul> </li> <li>• Verify the origination of debris and the destination either through load tickets or electronic monitoring (ADMS).</li> <li>• Physically control load tickets.</li> <li>• Ensure that all debris is removed from trucks at DMSs.</li> <li>• Monitor site development and restoration of DMSs.</li> <li>• Oversee debris reduction (grinding, burning, chipping, etc.).</li> </ul> |
| <b>Communication</b>   |
| <ul style="list-style-type: none"> <li>• Remain in constant contact with debris management/dispatch center or field supervisor.</li> <li>• Report issues (such as safety concerns, contractor non-compliance, and improper equipment use) to field supervisor.</li> </ul>  |

## GENERAL DEBRIS MONITORING TIPS AND CONSIDERATIONS

### Equipment

- The most common unit of measurement for vegetative and C&D debris is the CY. Debris trucks are evaluated for capacity at the DMS or final disposal sites. Applicants should require contractors to use appropriate equipment to load debris efficiently so that the maximum level of compaction can be achieved to facilitate expeditious removal of debris from the public rights-of-way.
- All trucks and trailers will be measured and placarded with the measured capacity of the vehicle. The Applicant should photograph all trucks/trailers to ensure that the capacity is not reduced by removing sideboards or tailgates on the truck as the debris removal operation unfolds.
- Equipment limitations affect the maximum loading capacity of some vehicles.
- **Hand-loaded trucks and trailers** cannot achieve compaction levels comparable to mechanically loaded vehicles. This effectively reduces the capacity of the hand-loaded truck or trailer compared to a truck or trailer that is loaded mechanically. Therefore, FEMA only reimburses 50 percent of the debris monitor's observed capacity for a hand-loaded truck or trailer. Example: If a hand-loaded truck or trailer appears to be 100 percent full, that load should be recorded at 50 percent. Hand-loading debris in trucks or trailers does not achieve maximum compaction, and as a result, debris removal operations take longer to complete. A hand-loaded truck hauls less debris by weight per CY than a mechanically loaded truck.<sup>35</sup>
- **A truck with no tailgate or no solid tailgate** cannot be compacted to its full capacity; therefore, FEMA would automatically apply a 15 percent reduction to the total quantity and only considers a maximum of 85 percent of the certified truck capacity for reimbursement purposes.

### Debris Challenges

- **Vegetative Debris Challenges:** Hazardous leaners, stumps, and hangers can be difficult to measure consistently (particularly because monitors must determine if leaners are leaning at least 30 degrees and eligible to be cut). Debris monitors should have a map of all roads and work with the Applicant's public works department to determine the length and location of the public right-of-way.
- **Construction and Demolition Debris Challenges:** Debris generated from prior construction work may be comingled with disaster-generated C&D debris by citizens. Some citizens may claim that remodeling or renovation work is C&D material too. Many people will choose to remodel a house after a storm instead of demolishing it. The materials from the remodeling are not eligible; these are notable because they look like new materials instead of disaster-damaged materials. A rule of thumb is that no bricks or foundation material would be hauled or considered eligible for FEMA PA reimbursement.
- **Hazardous Waste Challenges:** Health issues, such as headaches and vomiting, can arise at a burning site if the debris stream includes mixed debris and hazardous chemicals. Soil and air contamination can occur at the pick-up location, along the transit route, and at the DMS. Appropriate precautionary measures should be implemented when hazardous materials are identified. Further, the Applicant should implement proactive measures to ensure that all hazardous materials are identified.
- **White Goods Challenges:** When debris removal is extended beyond 90-180 days, some residents will try to discard their current appliance for free by claiming it is storm debris. The disposal requirements for white goods should include instruction on how to prepare the white goods, ensuring the materials on the curb do not present a safety hazard.
- **Animal and/or Plant Pest and Noxious Weeds Challenges:** When debris is generated from within a regulated area to suppress and control an animal/plant pest, such as the Asian Longhorn Beetle, it becomes important to ensure that the movement of debris does not allow the spread of said pest outside of the area of containment. It will be important to follow proper biosecurity measures and environmental

<sup>35</sup> Chapter 7.I.E.3 of the PAPPG.

## GENERAL DEBRIS MONITORING TIPS AND CONSIDERATIONS

assessments, plus coordination with State and Federal regulators, prior to removal of debris from a containment area and similar approvals to move them to another area, especially across local/tribal/state lines.<sup>36</sup>

### Monitoring Tips

Monitors should be aware of situations that could impact an Applicant's reimbursement under the PA program. They should look for:

- ***Inaccurate Truck Capacities:*** Trucks should be measured before operating and load capacities should be documented by truck number. Periodically, the Applicant should pull trucks out of operation and re-measure.
- ***Trucks Not Fully Loaded:*** Do not accept the contention that loads are higher in the middle and if leveled would fill the truck. Monitors should check to see if that statement is valid.
- ***Trucks Lightly Loaded:*** Trucks may arrive loaded with treetops (or a treetop) with extensive voids in the load. Trucks need to be loaded to their full capacity with front-end loaders or other similar equipment to compress the debris materials and remove any voids.
- ***Trucks Overloaded:*** Trucks cannot receive credit for more than the measured capacity of the truck or trailer bed, even if material is above the sideboards. If a truck is measured to carry 18 CY, it cannot receive credit for more than 18 CY. However, it can receive credit for less if not fully loaded or lightly loaded as described above.
- ***Changing Truck Numbers:*** Typically, trucks are listed by an assigned vehicle number and capacity. There have been occasions where truck or trailer numbers with a smaller carrying capacity have been changed to one with a larger capacity. For instance, a 20 CY truck may have a number for a truck that can carry 30 CY. This can be detected if the Applicant periodically re-measures the trucks or records actual license plate numbers in addition to a description of the truck. Maintaining truck and trailer certifications with attached photographs at the DMS tower can assist in eliminating such activities.
- ***Reduced Truck Capacity or Increased Truck Weight:*** On some occasions, trucks have had heavy steel grating welded 2 to 3 feet above the bed after being measured, thus reducing the capacity or inflating the weight of a load. This can be detected by periodically re-measuring the truck bed or recertifying the truck tare weight.
- ***Wet Debris When Paid by Weight:*** Excessive water added to debris increases the weight of the load. This can be detected during monitoring if there is excessive water dripping from the truck bed or by inspecting the truck bed immediately after unloading. The Applicant should periodically recertify the truck tare weight.
- ***Multiple Counting of the Same Load:*** To prevent reentry with the same load, trucks should not exit the disposal site without unloading. This can be prevented by observing the time of departure and time of arrival recorded on the driver's load ticket. This check may also indicate problems with the Applicant's debris monitors at the loading or unloading site. Tower monitors should ensure the load ticket is checked in and compared to the tower log-in sheet to determine if the truck's round-trip time is appropriate.

<sup>36</sup> Please refer to this website for current operations: <https://www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases>.

## GENERAL DEBRIS MONITORING TIPS AND CONSIDERATIONS

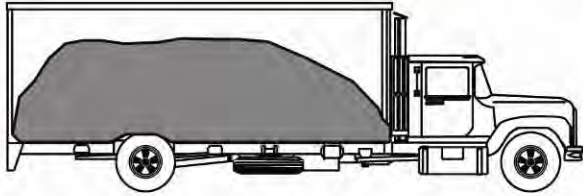
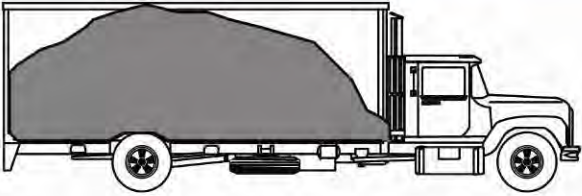
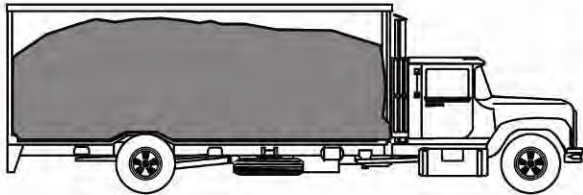
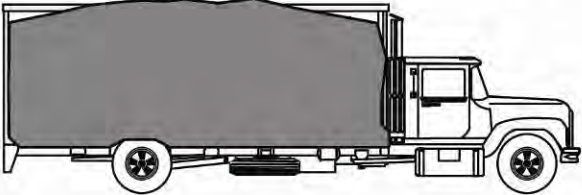
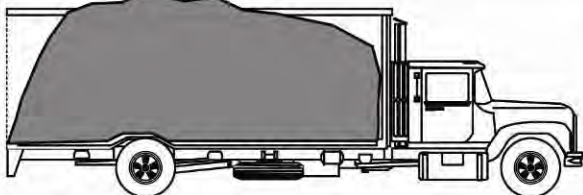
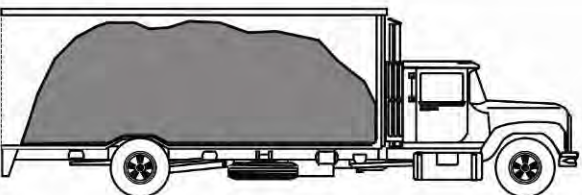
- **Picking up Ineligible Debris:** Debris monitors should be present at loading sites. Monitors should have a good understanding of eligible debris and any time limits imposed on picking up specific types of debris. Examples of ineligible debris activities include sweeping areas for abandoned cars and white goods; cleaning up illegal dump sites; removing cut trees from subdivisions under development; removing debris from private property; and removing/cutting trees from off rights-of-way in rural areas.

## DEBRIS MONITOR GUIDELINES FOR ESTIMATING QUANTITIES

### Monitoring Debris Trucks – Guideline for Estimating Loads in Trucks

- Check the truck number on the placard.
- Check that the capacity (size) of the truck written on the ticket matches the size marked on the side of the truck.
- Observe the truck load from the tower. Make sure that the truck is loaded with disaster debris. Ensure that the truck is not falsely loaded.
- When the truck leaves, make sure it is completely empty.
- If there is no tailgate on a truck, the truck is not full. The maximum estimate of the capacity of the load is 85 percent full. However, the monitor must use good judgment to determine if the load is really 85 percent. It is more likely that the truck is between 40 percent and 60 percent full.
- There are other percentage variations of how a truck can be filled (see illustrations and photographs that follow).
- If there is a handloaded truck, there is an automatic 50 percent reduction.

Note: It is difficult, though not impossible, for a truck to be 100 percent loaded because woody debris, trees, branches, and rubble cannot be placed in a truck without having air holes. Applicant debris monitors typically record estimated volumes in 5 percent increments. FEMA will allow a truck to be recorded as 100 percent full if debris volumes can reasonably (and safely) be estimated to meet or exceed certified truck container capacities.

| <b>DEBRIS MONITOR GUIDELINES FOR ESTIMATING QUANTITIES</b>   |  |
|--|--|
|   |    |
| <p><b>60 Percent Debris Load in Truck</b></p> <p>If truck bed measured 20 cubic yards (CY), this 60 percent load would be 12 CY.</p>   | <p><b>75 Percent Debris Load in Truck</b></p> <p>If truck bed measured 20 CY, this 75 percent load would be 15 CY.</p>   |
|   |    |
| <p><b>85 Percent Debris Load in Truck</b></p> <p>If truck bed measured 20 CY, this 85 percent load would be 17 CY.</p>   | <p><b>95 Percent Debris Load in Truck</b></p> <p>If truck bed measured 20 CY, this 95 percent load would be 19 CY.</p>   |
|   |    |
| <p><b>85 Percent Debris Load in Truck w/ No Tailgate</b></p> <p>This truck has no structural tailgate—the capacity would automatically be reduced from 20 CY to 17 CY (15 percent reduction). Then the debris load itself is 85 percent of fully loaded—14.5 CY.</p> | <p><b>75 Percent Debris Load in Truck w/ No Tailgate</b></p> <p>This truck has no structural tailgate—the capacity would automatically be reduced from 20 CY to 17 CY (15 percent reduction). Then the debris load itself is 75 percent of fully loaded—12.8 CY.</p> |



| <b>DEBRIS MONITOR GUIDELINES FOR ESTIMATING QUANTITIES</b>  |   |
|---|---|
|    |   |
| <p>Truck without a structural tailgate. Its maximum load is automatically reduced to 85 percent of the rated truck size.</p>  | <p>Truck without a tailgate. Its load capacity is automatically reduced to 85 percent. Slat-sided trucks may not be capable of being mechanically compacted. This means the truck capacity should be further reduced.</p> |
|   |    |
| <p>Truck without a tailgate. Its maximum load capacity is reduced to 85 percent. This truck is claimed to be ‘fully loaded’ with branches sticking above the top and beyond the back of the truck bed—the actual load is only 75 percent.</p>                 | <p>Truck with branches extending above the top of the truck sides. Although claiming to be ‘fully loaded,’ the load is filled with air pockets and the actual load is only 70 percent of the rated load capacity.</p>     |
|    |   |
| <p>This 20-CY roll-off container has a tailgate (in open position). The load appears to be near top of truck sides and was estimated at 85 percent. The assessment was done from the ground; no monitor tower was used at this DMS (see next photograph).</p> | <p>This is the actual load from the 20-CY container truck shown on left. It measures approximately 4 CY when on the ground.</p>   |

| TYPES OF DEBRIS AND MONITORING CONSIDERATIONS |  |   |
|---|--|---|
| Type of Debris                                | Description of Debris  | Considerations for Monitoring Operations  |
| <b>Vegetative</b>                             | Includes whole trees, tree stumps, tree branches, tree trunks, and other leafy material.   | <ul style="list-style-type: none"> <li>• Verify that only eligible debris is counted for reimbursement purposes; keep a map of all roads and rights-of-way for area.</li> <li>• Ineligible debris should be identified accordingly.</li> <li>• Evaluate the loaded capacities of the trucks/trailers to determine the percentage of the rated capacity.</li> <li>• Hand-loaded trucks/trailers are graded at 50 percent of a load because of the low compaction achieved by hand-loading.<sup>37</sup></li> <li>• This type of debris may be recyclable or have salvage value; document separation and salvage operations when implemented.</li> <li>• For special vegetative debris considerations, please refer to the PAPPG.<sup>38</sup></li> </ul> |
| <b>Construction and Demolition (C&amp;D)</b>  | Includes, but is not limited to, damaged components of buildings and structures, such as lumber and wood, gypsum wallboard, glass, metal, roofing material, tile, carpeting and floor coverings, pipe, concrete, fully cured asphalt, equipment, furnishings, and fixtures.                                    | <ul style="list-style-type: none"> <li>• To be eligible for PA funding, C&amp;D debris must present an immediate threat.</li> <li>• Must be disaster-generated.</li> </ul>  |
| <b>Hazardous Waste</b>                        | <p>Waste that is potentially harmful to human health or the environment that exhibits at least one of the following four characteristics:</p> <ul style="list-style-type: none"> <li>• Ignitability</li> <li>• Corrosivity</li> <li>• Reactivity</li> <li>• Toxicity</li> </ul>                                | <ul style="list-style-type: none"> <li>• Hazardous wastes may require segregation and special handling.</li> <li>• Document improper segregation.</li> <li>• Notify appropriate authorities if unsafe practices are observed during handling and disposal (know required safety procedures for the circumstances).</li> <li>• Monitor processing carefully and regularly to verify the proper precautions are taken and the chain-of-custody is maintained.</li> <li>• Verify that hazardous wastes are delivered to an appropriate DMS, as they can require special handling, transportation, and final disposition.</li> </ul>  |
| <b>Household Hazardous Waste (HHW)</b>        | Includes hazardous products and materials used and disposed of by residential consumers, such as some paints, stains, varnishes, solvents, pesticides, and other products or materials containing volatile chemicals that catch fire, react, or explode under certain circumstances or are corrosive or toxic. | <ul style="list-style-type: none"> <li>• Verify and document that HHW is picked up and handled by specialists from the State’s DEQ and/or the EPA and managed in designated areas within the DMS.</li> <li>• Verify and document that the chain-of-custody is maintained throughout the collection, handling, transport, and disposal of HHW.</li> </ul>  |
| <b>Electronic Waste (e-waste)</b>             | Includes electronics such as cathode ray tubes (computer monitors and televisions) that contain hazardous materials.   | <ul style="list-style-type: none"> <li>• Ensure e-waste is segregated.</li> <li>• Ensure e-waste is removed intact, collected, and stored at the DMS for later processing.</li> <li>• Document separation and salvage activities.</li> </ul>  |

<sup>37</sup> Chapter 7.I.E.3 of the PAPPG.

<sup>38</sup> Chapter 7.I.B of the PAPPG.

| TYPES OF DEBRIS AND MONITORING CONSIDERATIONS                                     |   |  |
|---|---|--|
| Type of Debris  | Description of Debris   | Considerations for Monitoring Operations   |
| <b>White Goods</b>  | Includes discarded household appliances such as refrigerators, freezers, air conditioners, heat pumps, ovens, ranges, washing machines, clothes dryers, and water heaters.  | <ul style="list-style-type: none"> <li>• Document that white goods are collected separately, cleaned, and processed to remove putrescent debris inside and to remove all oils, solvents, and refrigerants.</li> <li>• Verify and document that the DMS has adequate space for processing white goods if collected without being cleaned.</li> <li>• Document separation and salvage activities.</li> </ul>   |
| <b>Soil, Mud, and Sand</b>  | Can be deposited on streets, sidewalks, storm and sanitary sewers, water treatment facilities, drainage canals and basins, parks, and public swimming pools.  | <ul style="list-style-type: none"> <li>• Document that only disaster-generated silt and soils are removed (must know pre-disaster condition and documented maintenance).</li> <li>• Document any contaminated soil issues to ensure proper handling, processing, and disposition.</li> <li>• Verify that any contaminated disaster-generated soils are addressed by specialists from the State’s DEQ and/or the EPA and managed appropriately in designated areas.</li> </ul>                |
| <b>Vehicles and Vessels</b>   | Includes vehicles and vessels meeting one of the following criteria: <ul style="list-style-type: none"> <li>• Presents a hazard or immediate threat that blocks ingress/egress within a public use area.</li> <li>• It is abandoned.</li> <li>• Applicant followed local ordinance and SLTT and Federal laws in securing possession.</li> <li>• Applicant has verified chain-of-custody for the vehicle or vessel.</li> </ul> | <ul style="list-style-type: none"> <li>• Verify that each vehicle or vessel identification number is documented and processed appropriately.</li> <li>• Verify that collected vehicles and vessels are transported to a secure collection area.</li> <li>• Verify that vehicles are processed to remove all minerals and fluids before processing or destruction.</li> <li>• Document separation and salvage activities that are implemented.</li> </ul>                                     |
| <b>Putrescent Debris</b>  | Includes debris that will decompose or rot, such as animal carcasses.   | <ul style="list-style-type: none"> <li>• Document that collection is in accordance with contract specifications or other requirements.</li> <li>• Document actual volume of putrescent debris.</li> </ul>  |
| <b>Infectious Waste</b>   | Waste capable of causing infection in humans including contaminated animal waste, human blood and blood products, medical waste, pathological waste, and discarded sharps.  | <ul style="list-style-type: none"> <li>• Document that collection and separation is in accordance with prescribed safety and medical practices.</li> <li>• Document volume of debris.</li> <li>• Verify that infectious waste debris quantities are well documented, and chains-of-custody are maintained.</li> <li>• Special handling, containerization, and disposal may be required.</li> </ul>   |
| <b>Chemical, Biological, Radiological, and Nuclear (CBRN)-Contaminated Debris</b> | Includes debris contaminated by CBRN sources.   | <ul style="list-style-type: none"> <li>• Ensure CBRN-contaminated debris is cleared by law enforcement officials before removal so as not to undermine integrity of the crime scene (as from a man-made disaster).</li> <li>• Be aware of the types of evidentiary material being sought in case debris is located outside of the identified crime scene.</li> <li>• Verify and document the separation, processing, and disposal to ensure it follows the prescribed procedures.</li> </ul> |

| DEBRIS MONITOR RESPONSIBILITIES FOR LOAD TICKETS            |   |                    |
|---|---|--------------------|
| Load Ticket Information                                     | Monitor Load Ticket Responsibilities            |                    |
|   | Loading Monitor                                 | Tower/Site Monitor |
| Preprinted ticket number                                    | Not Applicable                                  | Not Applicable     |
| Contract number   | Contracts may be identified by a number or name |                    |
| Prime contractor's name                                     |   |                    |
| Date  | X   |                    |
| Truck number  | X   |                    |
| Truck driver's name   | X   |                    |
| Vegetation  | X   |                    |
| Construction and Demolition Debris                          | X   |                    |
| White Goods   | X   |                    |
| Household Hazardous Waste                                   | X   |                    |
| Other (required to be described applicable)                 | X   |                    |
| Load location   | X<br>(GPS or address preferred)                 |                    |
| Loading date/time (departure from collection location)      | X   |                    |
| Loading Site Monitor name/signature                         | X   |                    |
| Truck capacity in cubic yards or tons                       |   | X                  |
| Load size, either cubic yards (percent of capacity) or tons |   | X                  |
| Unloading location  |   | X                  |
| Unloading date/time (arrival at disposal site)              |   | X                  |
| Tower/Site Monitor name/signature                           |   | X                  |

| TYPES OF DEBRIS REMOVAL CONTRACTS AND MONITORING CONSIDERATIONS |  |  |
|---|--|--|
| Contract Type   | Description of Contract  | Considerations for Monitoring Operations   |
| <b>Unit Price Contract</b>                                      | <ul style="list-style-type: none"> <li>Used when individual work tasks are known but the total amount of work cannot be verified.</li> <li>Units of work can be measured in terms of weight, volume, or any other quantifiable measure.</li> </ul> | <ul style="list-style-type: none"> <li>Documentation of the location, eligibility, and quantities of debris is essential because the unit price contract is based on an estimate of debris quantities.</li> <li>Closely monitor pick up, transportation, eligibility determination, segregation, staging, reduction, and final disposition.</li> <li>Maintain management of truck/trailer measurements; certify all trucks before use.</li> </ul>  |
| <b>Lump-Sum Contract</b>  | <ul style="list-style-type: none"> <li>Used when the SOW can be identified and quantified; use for a well-defined SOW with a finite contract period.</li> </ul>  | <ul style="list-style-type: none"> <li>Loading monitors must validate that only contract-identified debris is collected.</li> <li>Debris should only be obtained from eligible sources.</li> <li>DMS site monitors should carefully review processing of materials (quantities collected for processing and quantities post-processing).</li> <li>Document truckloads and debris volumes to make sure final volume matches contract.</li> </ul>  |
| <b>Time-and-Materials Contract</b>                              | <ul style="list-style-type: none"> <li>Used when the SOW necessary to achieve an outcome is unknown contractor is paid for actual time, equipment usage based on hourly rates, and materials used (a ceiling prices is required).</li> </ul>       | <ul style="list-style-type: none"> <li>Monitoring must be thorough.</li> <li>Inspection reports should be produced every day and should include the following information:                             <ul style="list-style-type: none"> <li>Number of hours worked</li> <li>Type and quantity of each type of truck/trailer/equipment used</li> <li>Verification of equipment hours—document active work hours only; “stand-by” time is not eligible for FEMA funding</li> <li>Verification of labor hours compared to equipment hours</li> <li>Document weather conditions as they might affect daily work</li> <li>Monitor production rates for each staging and reduction site</li> <li>Monitor performance</li> <li>Check quantities of debris hauled (CY)</li> <li>Load tickets can be used as a way of checking contractor efficiency if debris is hauled based on CY</li> </ul> </li> </ul> |

Appendix B: Sample Debris Monitoring Plan and Monitoring Forms

Sample Forms and Tables  
are intended as guidance and  
should be modified to meet  
SLTT procurement rules and  
regulations.

## 1.0 General

The \_\_\_\_\_ has entered into a contract with \_\_\_\_\_ for the purpose of:

- Removing storm-generated debris from \_\_\_\_\_ rights-of-way and hauling the debris to a temporary debris management site (DMS) for volume reduction and/or to a final disposal site
- Setting up and operating \_\_\_\_\_ ( ) DMS located at \_\_\_\_\_
- Hauling chips/mulch from the debris volume reduction site(s) to a location of the Debris Manager's choosing

The Debris Manager will be responsible for monitoring the contractor's debris removal and disposal activities using debris monitoring contractor personnel to prepare debris load tickets and oversee the debris removal and disposal contractor's operations.

## 2.0 Purpose

The purpose of this plan is to outline the debris monitoring responsibilities of the debris monitoring contractor's personnel. This plan is subject to revision based on changing conditions.

## 3.0 Monitoring Operations

The debris removal and disposal contractor will be responsible for removing all eligible debris from maintained street rights-of-way and hauling the debris to designated DMSs.

Contractor debris monitoring activities will be controlled by the Contractor's Project Manager located at \_\_\_\_\_. Phone number is \_\_\_\_\_.

The debris monitor's workday is expected to be from 7 a.m. to 6 p.m., or a maximum of 10 hours per day, 7 days per week.

Debris monitors will be responsible for initiating debris load tickets at contractor debris loading sites and estimating and recording the quantity of debris, in cubic yards (CY) on debris load tickets of *all* vehicles entering temporary DMSs (Figure B-1).

### 3.1 Loading Site Monitors

The loading site monitor is responsible for completing the debris load ticket, the Daily Loading Site Monitor Log, and the Daily Debris Issue Log. Each of these is described below.

#### *Sample Debris Load Ticket*

The loading site monitor will complete Section 1 of the load ticket (Figure B-1) for all contractor debris-hauling vehicles. The monitor will keep one copy and give the original and remaining copies to the truck driver. The monitor's copy will be submitted to the debris monitoring

Appendix B: Sample Debris Monitoring Plan and Monitoring Forms

contractor’s Data Entry Supervisor or designated representative on a daily basis. Load ticket information will be entered into a database by the monitoring contractor’s data entry staff.

|  |                                     |  |                   |
|--|-------------------------------------|--|-------------------|
| <b>Load Ticket</b>   |                                     | Ticket No. 0012345   |                   |
| Municipality (Applicant)   |                                     | Prime Contractor   |                   |
|  |                                     | Sub-Contractor   |                   |
| <b>Truck Information</b>   |                                     |  |                   |
| Truck No   |                                     | Capacity   |                   |
| Truck Driver (print legibly)   |                                     |  |                   |
| <b>Loading Information</b>   |                                     |  |                   |
| <b>Loading</b>   | Time                                | Date   | Inspector/Monitor |
|  | Location (Address or Cross Streets) |  |                   |
| When Using GPS Coordinates use Decimal Degrees (N xx.xxxxx)  |                                     |  |                   |
| N  |                                     | W  |                   |
| <b>Unloading Information</b>   |                                     |  |                   |
| Debris Classification  |                                     | Estimated %, CYs, or Actual Weight   |                   |
| <input type="checkbox"/> Vegetation<br><input type="checkbox"/> C&D<br><input type="checkbox"/> White Goods<br><input type="checkbox"/> HHW<br><input type="checkbox"/> Other* See Below |                                     |  |                   |
| <b>Unloading</b>   | Time                                | Date   | Inspector/Monitor |
|  | DMS Name and Location               |  |                   |
| *Other Debris Explanation  |                                     | Original:      Applicant<br>Copy 1:        _____<br>Copy 2:        _____<br>Copy 3:        _____ |                   |

**Figure B-1: Sample Debris Load Ticket**

The loading site monitor should be responsible for initiating load tickets (Figure B-1) where trucks are loaded and verifying the estimated amount of debris hauled at the temporary storage area or landfill. The Applicant monitors must provide a list of the measured truck capacities in CY and license plate number of all trucks to be used to move debris upon award of the debris removal contract.

Once a truck is loaded with debris at the loading site, the loading site monitor should fill out a load ticket. The load tickets issued by the loading site monitors are the basis for debris contractor payment. Each item in the load ticket must be completed or the load ticket will not be considered valid.

*Sample Daily Debris Loading Site Monitor Log*

The Daily Debris Loading Site Monitor Log (Figure B-2) is used by the Applicant and/or FEMA debris loading site monitor to collect data at the debris pick-up sites. The loading site monitor



Appendix B: Sample Debris Monitoring Plan and Monitoring Forms

monitors the removal and disposal crews at several loading sites. The number of crews monitored will depend on the geographical area and volume of debris.

It is important for the debris loading site monitor to document the pick-up site locations (using addresses, mile-markers, or GPS readings) to ensure that debris being picked up is eligible and contractors are working where they were assigned. When issues arise, they should be documented on the Daily Issues Log (see next section). Each loading site monitor should provide his or her name and company name on the form. The loading site monitor should record any issues noted for that day and provide comments concerning that day’s operation; photographs should also be provided as needed. Photographs should be taken of any safety violations or other unusual events affecting the debris operation. The debris loading site monitor should document the type of debris being removed.

| Time | Ticket Number | Truck Number | Full Truck Rated Capacity (CY) | Pickup Location | Vegetative Debris | C&D Debris | White Goods/ Metals | Other | Issues or Comments/ Pictures Disc |
|------|---------------|--------------|--------------------------------|-----------------|-------------------|------------|---------------------|-------|-----------------------------------|
|      |               |              |                                |                 |                   |            |                     |       |                                   |
|      |               |              |                                |                 |                   |            |                     |       |                                   |
|      |               |              |                                |                 |                   |            |                     |       |                                   |

**Figure B-2:** Debris Loading Site Monitor Log

*Sample Daily Issue Log*

The Daily Issue Log (Figure B-3) is used by the Applicant and/or FEMA debris loading site monitor to collect data at the location where any issue of significance should be recorded. When documenting information on the Daily Issue Log, the location, monitoring personnel, truck identification data, and details of the issue being resolved should be recorded. For any eligibility or capacity issues, photographs (identified by corresponding numbers on the log sheet) should accompany this log.

| Issue No. | Truck No. | Load Ticket | Pick-Up Location | Contractor/ Sub-contractor | Applicant Monitor | Photo/ Disc | Issue/Resolution |
|-----------|-----------|-------------|------------------|----------------------------|-------------------|-------------|------------------|
|           |           |             |                  |                            |                   |             |                  |
|           |           |             |                  |                            |                   |             |                  |
|           |           |             |                  |                            |                   |             |                  |

**Figure B-3:** Daily Issue Log

### 3.2 Debris Disposal Tower/Site Monitors

Disposal tower/site monitors will be located at the entrance to the DMS or landfill where the inspection tower is located. They will be responsible for estimating and recording the CY of debris in appropriate location on the lower portion of the load ticket (Figure B-1) for *all* incoming debris-hauling vehicles. The following procedures will be followed:

- The tower/site monitor will be stationed in the inspection tower and estimate the quantity of debris contained in the truck or trailer in CY. Each truck or trailer will have the measured hauling capacity in CY recorded on the side of the truck or trailer. That number should be validated with the quantity stated in appropriate location on the upper portion of the load ticket (Figure B-1).
- The tower/site monitor will record the name and the arrival time of the truck and confirm the type of debris in the truck.
- The tower/site monitor will record the estimated volume of debris contained within the bed of the truck or trailer, in CY, under “Unloading Information” on the load ticket. The monitor must print and sign his/her name in the designated block on the load ticket.

The tower/site monitor may find it useful to use an estimating table such as shown in Table B-1 and should also refer to the job aid presented in Appendix A: Field Reference Guides - Debris Monitor Guidelines for Estimating Quantities.

**Table B-1: Estimating Truck/Trailer Capacity**

| <b>Truck/Trailer Size<br/>- CY</b> | <b>100%<br/>CY</b> | <b>90%<br/>CY</b> | <b>85%<br/>CY</b> | <b>80%<br/>CY</b> | <b>75%<br/>CY</b> |
|------------------------------------|--------------------|-------------------|-------------------|-------------------|-------------------|
|                                    |                    |                   |                   |                   |                   |
|                                    |                    |                   |                   |                   |                   |
|                                    |                    |                   |                   |                   |                   |

*Note: Truck/trailer without a tailgate is rated at 85 percent of capacity to start.*

- The tower/site monitor will retain the original of the load ticket and give the remaining copies to the truck driver. The original load ticket will be submitted to the monitoring contractor’s Data Entry Supervisor or designated representative on a daily basis. Load ticket information will be entered into a database by the monitoring contractor’s data entry staff. Load tickets are controlled forms and cannot be lost since they will be used to verify the amount of money paid to the debris reduction site contractor and to the debris hauling contractor.

*Sample Daily Debris Site/Monitoring Tower Log*

The Daily Debris Tower Log (Figure B-4) on the following page can be used by the Applicant and/or FEMA tower/site monitor to record the truck data, document estimates of the load volumes, and describe what types of debris are being brought into the DMS or landfill.

Documenting the tower and pick-up site locations is important so that debris can be correlated and tracked. Each tower/site monitor should provide his or her name and company name on the form. The tower/site monitor should record any issues noted for that day and provide comments concerning that day’s operation; photographs should also be provided as needed. Photographs should be taken of any safety violations or other unusual things affecting the debris operation.

| Time | Ticket Number | Truck Number | Full Truck Rated Capacity (CY) | Applicant QA Eligible Capacity (% CY/Weight(Wt)) | FEMA Eligible Capacity (% CY/Wt) | Vegetative Debris | C&D Debris | White Goods/ Metals | Other | Issues or Comments/ Pictures Disc |
|------|---------------|--------------|--------------------------------|--|----------------------------------|-------------------|------------|---------------------|-------|-----------------------------------|
|      |               |              |                                |  |                                  |                   |            |                     |       |                                   |
|      |               |              |                                |  |                                  |                   |            |                     |       |                                   |
|      |               |              |                                |  |                                  |                   |            |                     |       |                                   |

**Figure B-4:** Daily Debris Tower/Site Monitoring Log

**4.0 Truck Certification Form**

The Applicant should ensure that every truck and trailer to be used in debris removal operations is measured and documented on a Truck Certification Form (Figure B-5). Knowing the hauling capacity of each truck is necessary because debris, specifically vegetative debris, is often hauled and billed by volume. Accurately capturing all the truck capacity information and driver profile information is important; having a FEMA PA representative present when certifying debris trucks is recommended.

Truck documentation should include all trucks to be used, including City/County trucks and trailers. A Truck Certification Form allows the debris monitor to identify the truck itself and its hauling capacity in a standardized manner. The following information should be documented:


- Capacity of hauling bed (CY)
- License plate number
- Truck identification number assigned by the owner
- Brief physical description of the truck
- Photographs

Determining an accurate capacity for each truck is important. Refer to Truck Certification Form Calculation Instructions (on page B-12) for additional information.

Appendix B: Sample Debris Monitoring Plan and Monitoring Forms

The information on the Truck Certification Form should be entered into a database by the data entry staff. Copies of the Truck Certification Form should be on file with the Applicant and kept in the truck throughout the operational period.

Debris monitors may need to be trained to measure truck capacities for certification purposes. Recertification of the hauling trucks on a random and periodic basis should be implemented for contract compliance and reimbursement considerations.

|  |             |                       |                |
|--|-------------|-----------------------|----------------|
| <b>Truck Information</b>   |             |                       |                |
| Make: _____  | Year: _____ | Color: _____          | License: _____ |
| <b>Truck Measurements</b>  |             |                       |                |
| Performed By: _____  | Date: _____ |                       |                |
| Volume Calculated By: _____  | Date _____  |                       |                |
| Both Checked By: _____   | Date: _____ |                       |                |
| <b>Driver Information</b>  |             |                       |                |
| Name: _____  |             |                       |                |
| Address: _____   |             | Phone Number: _____   |                |
| <b>Owner Information</b>   |             |                       |                |
| Name: _____  |             |                       |                |
| Address: _____   |             | Phone Number: _____   |                |
| Truck Identification: _____  |             | Truck Capacity: _____ |                |
|  |             |                       |                |
| <b>Photo</b>   |             |                       |                |

**Figure B-5:** Truck Certification Form

*Truck Certification Form Calculation Instructions*

Instructions to take the necessary dimensions of corner wedge (refer to Figure B-6):

“a”: Along the side of the bed, measure the distance from the point where the rounded part of the bed starts, to the front corner of the bed.

“b”: Equal to “a.”

“c” and “d”: Along the side of the bed, mark the point where the rounded part of the bed starts, and along the front of the bed, also mark the point where the rounded part of the bed ends. Run a string between the two points and measure the distance between them; half of that distance is “c” and half of the distance is “d” (“c” and “d” are equal).

“e”: Measure the distance from the mid-point of the string that was stretched from the side to the front of the bed in the previous step to the rounded part of the bed.

Extra trailer: The volume calculations for the extra trailer would be simply length x width x height if the extra trailer has a rectangular bed. However, if the extra trailer also has round corners at the front, the volume calculation would be the same as explained above.

Instructions to take the necessary dimensions of round bottom truck (refer to Figure B-6):

“a”: The width of the bed.

“b”: The depth of the vertical portion (the side) of the bed.

“c” and “d”: Both are equal to half the width of the bed.

“e”: Run a string between the lower ends of the vertical portions of the bed (the sides) and measure the distance from the mid-point of the string to the bottom of the bed.

*NOTE: All dimensions used in the above formulas must be in feet, with inches converted to fractions of feet, using the following conversions (for example, 8 feet, 5 inches should be written as 8.42 feet):*

|                     |                      |
|---------------------|----------------------|
| 1 inch = .08 foot   | 7 inches = .58 foot  |
| 2 inches = .17 foot | 8 inches = .67 foot  |
| 3 inches = .25 foot | 9 inches = .75 foot  |
| 4 inches = .33 foot | 10 inches = .83 foot |
| 5 inches = .42 foot | 11 inches = .92 foot |
| 6 inches = .50 foot |                      |

## Appendix B: Sample Debris Monitoring Plan and Monitoring Forms

| <b>DUMP TRUCK</b>  |   |
|--|---|
| <b>Measurements</b>  |   |
| Truck Measurements   | Length (L) = <input style="width: 80px;" type="text"/> Width (W) ft = <input style="width: 80px;" type="text"/> Height (H) ft = <input style="width: 80px;" type="text"/>   |
| Hoist Measurement  | Length <sub>1</sub> (L <sub>1</sub> ) ft = <input style="width: 80px;" type="text"/><br>Length <sub>2</sub> (L <sub>2</sub> ) ft = <input style="width: 80px;" type="text"/> Width <sub>H</sub> (W <sub>H</sub> ) ft = <input style="width: 80px;" type="text"/> Height <sub>H</sub> (H <sub>H</sub> ) ft = <input style="width: 80px;" type="text"/> |
| Radius   | Radius ft = <input style="width: 80px;" type="text"/> Height (H) = <input style="width: 80px;" type="text"/>  |
| <b>Calculations</b>  |   |
| Bed Volume (Basic)   | $(L \times W \times H) / 27 =$ <input style="width: 80px;" type="text"/> cyd  |
| Hoist Volume   | $((L_1 + L_2) / 2 \times W_H \times H_H) / 27 =$ <input style="width: 80px;" type="text"/> cyd  |
| Radius Volume  | $(3.14 \times R^2 \times H) / 27 =$ <input style="width: 80px;" type="text"/> cyd   |
| <b>Total =</b> <input style="width: 80px;" type="text"/> <b>cyd</b>  |   |
| <b>Cubic Yards</b>   |   |
| <div style="display: flex; justify-content: space-between;"> <div style="width: 30%; text-align: center;"> </div> <div style="width: 30%; text-align: center;"> </div> <div style="width: 30%; text-align: center;"> </div> </div> <div style="text-align: right; margin-top: 10px;"> </div> |   |
| <b>EXTRA TRAILER</b>   |   |
| <b>Measurements</b>  |   |
| Truck Measurements (Basic)   | Length (L) = <input style="width: 80px;" type="text"/> Width (W) ft = <input style="width: 80px;" type="text"/> Height (H) ft = <input style="width: 80px;" type="text"/>   |
| Hoist Measurement  | Length <sub>1</sub> (L <sub>1</sub> ) ft = <input style="width: 80px;" type="text"/><br>Length <sub>2</sub> (L <sub>2</sub> ) ft = <input style="width: 80px;" type="text"/> Width <sub>H</sub> (W <sub>H</sub> ) ft = <input style="width: 80px;" type="text"/> Height <sub>H</sub> (H <sub>H</sub> ) ft = <input style="width: 80px;" type="text"/> |
| Radius   | Radius ft = <input style="width: 80px;" type="text"/> Height (H) = <input style="width: 80px;" type="text"/>  |
| <b>Calculations</b>  |   |
| Bed Volume (Basic)   | $(L \times W \times H) / 27 =$ <input style="width: 80px;" type="text"/> cyd  |
| Hoist Volume   | $((L_1 + L_2) / 2 \times W_H \times H_H) / 27 =$ <input style="width: 80px;" type="text"/> cyd  |
| Radius Volume  | $(3.14 \times R^2 \times H) / 27 =$ <input style="width: 80px;" type="text"/> cyd   |
| <b>Total =</b> <input style="width: 80px;" type="text"/> <b>cyd</b>  |   |
| <b>Cubic Yards</b>   |   |
| <div style="display: flex; justify-content: space-between;"> <div style="width: 60%; text-align: center;"> </div> <div style="width: 30%; text-align: center;"> </div> </div>  |   |
| <b>ROUND BOTTOM TRUCK</b>  |   |
| <b>Measurements</b>  |   |
| Truck Measurements   | Length (L) ft = <input style="width: 80px;" type="text"/> Diameter (D) ft = <input style="width: 80px;" type="text"/>   |
| <b>Calculations</b>  |   |
| Approx. Volume $(3.14 \times (D/2)^2 \times L) / 27 =$ <input style="width: 80px;" type="text"/> cyd (round bottom portion only)   |   |
| <b>Cubic Yards</b>   |   |
| <div style="display: flex; justify-content: space-between;"> <div style="width: 45%; text-align: center;"> </div> <div style="width: 45%; text-align: center;"> </div> </div>  |   |

**5.0 Sample Debris Collection Summary Spreadsheet**

The Debris Collection Summary Spreadsheet (Figure B-7) is used to capture the total amount and types of debris removed and disposed of, as well as the cost for each. This information may also be helpful to FEMA to validate any debris prediction models that are run, as well as establishing reasonable costs for debris removal.

| CY         | Unit Price \$ | CY  | Unit Price \$ | CY  | Unit Price \$ | CY          | Unit Price \$ | Average Haul Distance | Primary Disposal Method | CY to Landfill |
|------------|---------------|-----|---------------|-----|---------------|-------------|---------------|-----------------------|-------------------------|----------------|
| Vegetative |               | C&D |               | HHW |               | White Goods |               |                       |                         |                |
|            |               |     |               |     |               |             |               |                       |                         |                |
|            |               |     |               |     |               |             |               |                       |                         |                |

**Figure B-7: Debris Data Collection Summary Spreadsheet**

Appendix C: Monitoring Contract Process/Documents

Sample documents are intended as guidance and should be modified to meet applicable SLTT procurement rules and regulations.



Sample Request for Proposal Cover Letter for Debris Monitoring Services

Date:

Subject: Request for Proposals for Disaster Debris Monitoring

The \_\_\_\_\_ invites qualified firms to respond to this request for proposal (RFP) by providing their qualification and experience for consideration to provide Disaster Debris Monitoring Services on an as-needed basis.

**DISASTER DEBRIS MONITORING SERVICES**

The scope of services shall include, but not be limited, to the following:

The \_\_\_\_\_ seeks qualified firm(s) to assist in the monitoring of disaster debris collection and disposal operations on behalf of the \_\_\_\_\_, ensuring compliance with Federal requirements and Applicant debris management plans as related to contractor oversight, truck measurements, load ticket preparation and issuing, report preparation, and project administration.

The Debris Monitoring Contractor shall provide personnel to monitor at least \_\_\_\_\_ debris loading sites and up to \_\_\_\_\_ personnel to monitor debris management sites (DMS)/disposal sites located in \_\_\_\_\_. Each site will operate approximately 12 to 14 hours per day, 7 days per week. The exact number and locations of sites will be determined by the Debris Manager.

The Debris Monitoring Contractor's on-site Project Manager shall also assign a field supervisor who will be assigned to provide oversight of up to 10 loading site and tower/site debris monitors.

The Debris Monitoring Contractor shall provide all management, supervision, labor, transportation, and equipment necessary to initiate load tickets at debris loading sites, estimate the volume of debris (in cubic yards) being delivered by trucks to each DMS/disposal site, and support the operations of the field supervisor(s), debris loading and tower/site monitors, and clerical staff.

Scope of Services for Debris Management to include field supervisors, debris loading monitors, tower/site debris monitors, and clerical staff is at Attachment 1.

The Bid Schedule (Attached) must be completed and submitted with your proposal.

The RFP should be limited to 10 pages and address the following:

- Office location responsible for this project
- Key personnel

- Evidence of satisfactory completion of disaster debris monitoring in the past 5 years at similar jurisdictions
- The scope, project budget, and operational duration (include the firm's contract manager, and phone number and e-mail address for each disaster response or project, if available)
- Summarized past relevant experience for each response should include the following:
  - Type of disaster—hurricane, tropical storm, tornado, etc.
  - Type of jurisdiction—city, county, district, or combination
  - Collection debris monitoring assignments
  - DMS debris monitoring assignments
  - Final disposal debris monitoring functions
  - FEMA reimbursement actions and issue resolution
- List of references
- Knowledge and experience with Applicant solid waste regulations and the disaster debris management policies
- Sub-consultant(s)/subcontractors that may be used on this project
- 3-year claims/litigation history and status

Any material received that is not requested may be discarded. Bindery (except removable fasteners) in any form is not preferred, nor is specially prepared covers, dividers, tables of content, organizational charts, reference letters, etc.

The evaluations made as a result of reviewing the above information from each firm will be part of the basis for developing a short list of firms who may be scheduled to make presentations before the Selection/Negotiation Committee (S/NC), and may serve as continuing information for the final ranking.

## **SELECTION/NEGOTIATION PROCESS**

An S/NC has been appointed by the \_\_\_\_\_ and will be responsible for recommending the most qualified firm(s) with whom to begin negotiation of an agreement for this project. The process for this procurement is anticipated, but not required, to proceed in the following manner:

### **REVIEW OF WRITTEN SUBMITTALS**

Each firm should submit documents that provide evidence of capability to provide the Debris Monitoring services required for this project. Each short-listed firm will be contacted via telephone and a follow-up letter advising of date and time for presentations/interviews.

The \_\_\_\_\_ will not consider oral/written communications, prior to the conclusion of short-listing firms, that vary the terms of the submittals.

### **PRESENTATIONS/INTERVIEWS**

Appendix C: Monitoring Contract Process/Documents

The S/NC may provide a list of subject matter for discussion. Each short-listed firm will be given equal time to make presentations, but the question-and-answer time may vary.

All inquiries are to be directed to \_\_\_\_\_ at \_\_\_\_\_.

Interested firms should submit four copies of materials that indicate interest and qualifications to:

Submittals **MUST BE RECEIVED** by the \_\_\_\_\_ no later than 5:00 p.m. on \_\_\_\_\_, 20\_\_\_. Electronically transmitted and late or misdirected submittals will not be accepted.

Signature \_\_\_\_\_

Attachment 1 – Scope of Services

Attachment 2 – Bid Schedule

**THIS SAMPLE IS INTENDED AS GUIDANCE AND SHOULD BE MODIFIED TO MEET APPLICABLE SLTT PROCUREMENT RULES AND REGULATIONS.**

## Sample Scope of Services for Debris Monitoring Services

### **General**

Provide debris monitors and debris monitoring services to assist the City/County with monitoring the operations of the disaster debris removal and disposal contractor(s). The debris monitoring services to be provided are contract compliance supervision and inspection, not professional engineering services. All debris monitoring activities are to be in compliance with current FEMA guidance and applicable SLTT and Federal regulations.

### **Pre-Event Requirements**

Contractor will provide assistance in preparation for disasters through participation in meetings and workshops and the establishment of data management and other integrated systems.

Contractor will, at no cost to the City/County:

- Provide City/County full-time personnel with a half-day debris management training session. Training program must, at a minimum, meet the training requirement for debris monitors as outlined by current FEMA debris management guidance.
- Provide a list of key personnel and subcontractors that may be involved in the disaster debris monitoring activities to include facsimile, cell phone numbers, and e-mail addresses.
- Participate in annual workshops or planning meetings with City/County representative and debris hauling and disposal contractor(s) to establish/review applicable policies and procedures.

### **Post-Event Requirements**

Contractor will assist with load inspections for storm debris cleanup being performed by one or more debris hauling and disposal contractors or City/County agencies.

Contractor shall supply sufficient number of trained debris monitors and trained field supervisors to accommodate the volume of debris to be removed at loading sites and debris management sites or final disposal sites.

Contractor shall supply one field supervisor to oversee no more than 10 loading and tower/site debris monitors.

Contractor shall remove and replace employees immediately upon notice from the City/County Debris Manager for conduct or actions not in keeping with this contract.

## **Personnel Requirement and Responsibilities**

### **Debris Monitoring Field Supervisor**

Consultant will provide one debris monitoring field supervisor for no more than 10 debris loading site debris monitors.

Services include, but are not limited to:

- Overseeing and supervising loading site and disposal site debris monitoring activities
- Scheduling debris monitoring resources and deployment timing
- Communicating and coordinating with City/County personnel
- Providing suggestions to improve the efficiency of collection and removal of debris
- Coordinating daily activities and future planning
- Remaining in contact with debris management/dispatch center or supervisor
- Identifying, addressing, and troubleshooting any questions or problems that could affect work area safety and eligibility
- Supervising the accurate measurement of load hauling compartments and accurately computing volume capacity in cubic yards (CY)
- Documenting and recording measurements and computations
- Documenting truck hauling compartment condition using digital photographs
- Ensure all truck certifications are complete and available to all parties

### **Debris Monitors**

Consultant will provide trained debris monitoring personnel to oversee the loading of eligible debris at collection sites and verification of load capacity and documentation at designated temporary debris management or final disposal sites. Services include, but are not limited to:

#### **Debris Loading Site Monitors**

Consultant will perform on-site, street-level debris monitoring at all contractor loading sites to verify debris eligibility based on the monitoring contract's requirements and initiate debris removal documentation using load tickets. Services include, but are not limited to:

- Providing trained debris monitoring personnel at designated loading sites to check and verify information on debris removal operations
- Monitoring collection activity of trucks
- Issuing load tickets at loading site for each load
- Checking the area for safety considerations such as downed power lines and children playing in area, and ensuring that traffic control needs are met, and trucks and equipment

are operated safely. Notify supervisors of concerns regarding the safe operation of trucks and equipment

- Ensuring that Freon-containing appliances are sorted and ready for Freon removal on-site or separating transport for Freon removal before final disposal
- Performing a pre-work inspection of areas to identify potential problems such as covered utility meters, transformers, fire hydrants, mailboxes, etc. to mitigate damage from loading equipment
- Documenting damage to utility components, driveways, road surfaces, private property, vehicles, etc., should it occur, with photographs (if possible, collect information about owner, circumstances of the damage [who, what, when, where] and report to field supervisor)
- Ensuring the work area is clear of debris to the specified level before equipment is moved to a new loading area. Notify supervisor/manager of any concerns regarding inadequate debris clearance
- Properly monitoring and recording performance and productivity of debris removal crew
- Remaining in regular contact with debris management/dispatch center or supervisor
- Ensuring that loads are contained properly before leaving the loading area
- Ensuring that only eligible debris is collected for loading and hauling
- Ensuring that only debris from approved public areas is loaded for removal
- Performing other duties from time to time as directed by the debris management project manager or designated debris management personnel

#### Debris Tower/Site Monitors

Consultant will provide debris tower and site monitors to verify estimated quantities of eligible debris hauled by contractor trucks and documented on load tickets. Services include, but are not limited to:

- Providing trained debris monitoring personnel to accurately measure load hauling compartments and accurately compute volume capacity in CY for all contractor trucks and trailers prior to commencement of debris hauling operations
- Documenting measurements and computations
- Completing record of contract haulers' cubic yardage and other recordkeeping as needed on the load ticket
- Initialing each load ticket before permitting trucks to proceed from the check-in area to the tipping area
- Remaining in regular contact with debris management/dispatch center or field supervisor
- Performing other duties as directed by the dispatch/staging operation, debris management project manager, or other designated personnel

### **Clerical/Data Entry Supervisor**

Consultant will provide a clerical/data entry supervisor to coordinate data entry and information management systems. Services include, but are not limited to:

- Supervising the preparation of detailed estimates and submitting them to the City/County debris manager
- Implementing and maintaining a disaster debris management system linking the load ticket and debris management site information, including reconciliation and photographic documentation processes
- Providing daily, weekly, or other periodic reports for the City/County debris manager noting work progress and efficiency, current/revised estimates, project completion, and other schedule forecasts/updates

### **Clerical Staff/Data Entry Clerk**

Consultant will provide clerical staff/data entry clerk(s) as required to enter load ticket information into the contractor's information management systems and to respond to specific directions from the data entry supervisor.

### **Terms**

The work shall begin on notice to proceed and continue for no longer than 60 days, unless extended by the City/County with 10 days written notice.

### **Deployment**

Consultant must be prepared to deploy debris monitors within 24 hours from the notice to proceed. When additional debris monitoring is needed to meet requirements of the monitoring contract, consultant shall be prepared to increase the number of debris monitors for the City/County to use as needed.

**THIS SAMPLE IS INTENDED AS GUIDANCE AND SHOULD BE MODIFIED AS APPROPRIATE TO ADDRESS THE CONDITIONS OF THE OPERATION.**



# Public Assistance Program and Policy Guide

*Version 4, Effective June 1, 2020*

*(FP 104-009-2)*



FEMA



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# FOREWORD

On behalf of the Federal Emergency Management Agency (FEMA), I am pleased to issue this Fourth Edition (Version 4) of the *Public Assistance Program and Policy Guide* (PAPPG). FEMA has archived previous editions at [www.fema.gov/assistance/public/policy-guidance-fact-sheets/policy-archives](http://www.fema.gov/assistance/public/policy-guidance-fact-sheets/policy-archives). FEMA applies this Version 4 to incidents declared on or after June 1, 2020. This version supersedes Version 3.1.

As part of this version of the PAPPG, FEMA has incorporated the *Public Assistance Alternative Procedures for Permanent Work Pilot Policy* (FP 104-009-7). This establishes Alternative Procedures as the first option considered for all large permanent work projects in order to ensure the ability of Applicants to drive their own recovery. It standardizes a single process for the development and consideration of fixed cost estimates for all permanent work projects. Applicants will be able to agree to a fixed cost estimate or choose to pursue funding under standard, actual cost procedures. This approach maximizes Applicant awareness of the opportunities and benefits provided by the Alternative Procedures, which include, but are not limited to:

- Flexibility in meeting post-disaster recovery needs, as opposed to being limited to rebuilding back to what existed prior to the disaster;
- Ability to share funds across all Alternative Procedures Permanent Work Projects;
- Ability to retain and use excess funds to reduce risk and improve future disaster operations (subject to timely closeout); and
- Eligibility for cost-effective hazard mitigation on replacement projects.

[Appendix M: \*Alternative Procedures for Permanent Work Pilot\*](#), provides additional information along with a summary of benefits in comparison to the standard Public Assistance (PA) procedures.

Additionally, this PAPPG Version 4 incorporates the following:

## List of Changes and Clarifications Grouped by General Topic

| Administrative   |
|--|
| Reorganized and simplified language throughout the PAPPG   |
| Incorporated the <b>Program Delivery Process</b> throughout the PAPPG  |
| Updated <a href="#">References and Resources</a> list  |
| Updated <a href="#">Appendix A: <i>Environmental and Historic Preservation Compliance</i></a>  |
| Added language on <b>outcome-driven recovery</b> ( <a href="#">Chapter 2. <i>Operational Coordination</i></a> )  |
| Incorporated key <b>Grants Management</b> language and requirements such as <b>work completion definition</b> and deadline requirements throughout the PAPPG |
| Moved documentation checklists to relevant sections and <b>specified required documents</b> throughout the PAPPG   |
| Defined <b>policy on logical grouping</b> of damage ( <a href="#">Chapter 5:II. <i>Grouping Impacts into Projects</i></a> )                                  |
| Incorporated <b>Documentation Retention</b> Requirement ( <a href="#">Chapter 12:IV. <i>Documentation Retention Requirements</i></a> )                       |
| Incorporated <b>Appeal policy</b> ( <a href="#">Chapter 3:V.C. <i>Appeal Rights and Requirements</i></a> )   |

| Administrative  |
|---|
| Incorporated <b>Determination Memo</b> and <b>Administrative Record</b> guidance ( <a href="#">Chapter 3:V.B. Notification of Ineligibility Determination</a> )   |
| Added <b>Closeout</b> policy and <b>documentation requirements</b> ( <a href="#">Chapter 12. Final Reconciliation and Closeout</a> )  |
| Added standard <b>Request for Information</b> deadlines ( <a href="#">Chapter 3:V. Eligibility Determinations</a> )   |
| Added definition for <b>site</b> ( <a href="#">Chapter 5: Damage and Impact Information</a> )   |
| Added FEMA <b>validation</b> of Applicant-submitted <b>damage</b> information and documentation ( <a href="#">Chapter 5:III.B. Site Inspections</a> )   |
| Added requirement for all <b>documentation</b> to be submitted <b>within 90 days</b> of work completion <b>regardless of obligation</b> status ( <a href="#">Chapter 9:II.C. Costs for Projects with All Work Completed</a> ) |

| Applicant Eligibility   |
|---|
| Added <b>animal control services, center-based childcare, and food banks</b> to eligible private nonprofit (PNP) list ( <a href="#">Chapter 3:VI.D.2. Private Nonprofit Essential Social Services</a> ) |
| Proration of emergency work on PNP <b>mixed-use facilities</b> ( <a href="#">Chapter 4:II.B.1. Mixed-Use Facility</a> )   |
| Clarified that <b>PNP</b> facilities that provide <b>flood control</b> are <b>ineligible</b> ( <a href="#">Chapter 3:VI.D.3. Private Nonprofit Ineligible Services</a> )                                |
| Clarified requirements for <b>PNPs exempt from 501c</b> requirement ( <a href="#">Chapter 3:VI.D. Private Nonprofit Organizations</a> )   |
| Clarified <b>Community Development District</b> requirement to <b>serve the public</b> ( <a href="#">Chapter 3:VI.D. Private Nonprofit Organizations</a> )  |
| Moved <b>public broadcasting</b> to PNP <b>critical service</b> table based on Stafford Act ( <a href="#">Chapter 3:VI.D.1. Private Nonprofit Critical Services</a> )                                   |

| Emergency Work Eligibility  |
|---|
| Clarified <b>demolition versus debris</b> ( <a href="#">Chapter 7:I.G. Debris Removal from Private Property</a> )   |
| Added reference to Operation <b>Blue Roof</b> ( <a href="#">Chapter 7:II.X.1. Operation Blue Roof</a> )   |
| Clarified that FEMA may provide exceptions to <b>demolish commercial structures</b> in limited, extraordinary circumstances ( <a href="#">Chapter 7:II.U.2. Commercially Owned Structures</a> )                 |
| Clarified and aligned <b>standby time</b> and <b>pre-positioning</b> of resources ( <a href="#">Chapters 6:II.B.7. Standby Time</a> and <a href="#">7:II.E. Pre-positioning Resources</a> )                     |
| Simplified the <b>opt-in</b> procedure for <b>debris removal Alternative Procedures</b> ( <a href="#">Chapter 7:I.A. Alternative Procedures for Debris Removal</a> )  |
| <b>Removed “temporary”</b> from emergency repair language ( <a href="#">Chapter 7:II.X. Emergency Repair or Stabilization</a> )   |
| Clarified <b>debris clearance vs. debris removal</b> ( <a href="#">Chapter 7:II.J. Emergency Access</a> )   |
| Reduced list of <b>services eligible for temporary relocation</b> and added examples of eligible and ineligible support services ( <a href="#">Chapter 7:II.V. Temporary Relocation of Essential Services</a> ) |
| Clarified that <b>Mosquito Abatement</b> may be eligible if any one of the bullet scenarios exists ( <a href="#">Appendix G: Mosquito Abatement</a> )   |
| Eliminated requirement to make at least 10 percent of <b>sheltering capacity</b> available in Host-State sheltering ( <a href="#">Chapter 7:II.O.4. Host-State or Host-Tribe Evacuation and Sheltering</a> )    |
| Refined <b>beach</b> eligibility language ( <a href="#">Chapter 7:II.X.4. Emergency Dunes or Berms on Beaches</a> )   |
| Clarified language on <b>essential employees</b> being called-back from leave ( <a href="#">Chapter 6:II.B.4. Essential Employees Called Back from Furlough</a> )   |

| Emergency Work Eligibility  |
|---|
| Clarified that the <b>return of evacuees</b> is eligible ( <a href="#">Chapter 7:II.O.1. Evacuation</a> )   |
| Clarified language regarding <b>damage caused during Emergency Work</b> ( <a href="#">Chapter 7:III. Damage Caused During Performance of Emergency Work</a> ) |

| Permanent Work Eligibility   |
|--|
| Eliminated <b>Alternate Project</b> reduction ( <a href="#">Chapter 8:VIII.A. Capped Project Funding</a> )   |
| Clarified that replacement of <b>moldy</b> construction materials is only eligible as Permanent Work ( <a href="#">Appendix I: Mold Remediation</a> )                |
| Clarified cost-effective <b>mitigation for low slope roofs</b> ( <a href="#">Appendix J: Cost-Effective Public Assistance Hazard Mitigation Measures</a> )           |
| Refined <b>beach</b> eligibility language ( <a href="#">Chapter 8:IX.E.1. Beaches</a> )  |
| Clarified eligibility of <b>Americans with Disability Act</b> requirements ( <a href="#">Chapter 8:III.G. Accessibility for Individuals with Disabilities</a> )      |
| Refined hazard <b>mitigation policy</b> language ( <a href="#">Chapter 8:IV.A. Public Assistance Hazard Mitigation</a> )   |
| Defined which <b>Flood Control Works</b> are under authority of the Natural Resources Conservation Service ( <a href="#">Chapter 8:IX.B.2. Flood Control Works</a> ) |

| Cost Eligibility  |
|---|
| Added language on <b>cost share matching</b> with Other Federal Agency funds ( <a href="#">Chapter 1:IV.E. Federal Cost Share</a> )   |
| Clarified PNP cost ineligibility when a <b>PNP declines or misses the deadline</b> to apply for a disaster loan from the Small Business Administration ( <a href="#">Chapter 4:II.B.2. Small Business Administration Loan Requirement</a> )   |
| Clarified Small Business Administration loan requirement for PNP <b>mixed-use facilities</b> ( <a href="#">Chapter 4:II.B.2. Small Business Administration Loan Requirement</a> )   |
| Incorporated additional language on <b>procurement and contracting</b> ( <a href="#">Chapter 6:VIII. Procurement and Contracting Requirements</a> )   |
| Added language on what costs are covered by <b>increased cost shares</b> ( <a href="#">Chapter 6:XIII. Increased Federal Cost Share for a Limited Timeframe</a> )   |
| Explained difference between <b>project management</b> and <b>grant management</b> costs ( <a href="#">Chapter 6:XV. Project Management and Design Services</a> and <a href="#">XVI. Grant Management and Administration</a> )  |
| Clarified eligibility of costs related to <b>pursuing insurance</b> proceeds ( <a href="#">Chapter 6:XVIII.A. Insurance Proceeds</a> )  |
| Added language on eligibility of <b>interest on loans</b> ( <a href="#">Chapter 6:XX. Interest on Loans</a> )   |
| Incorporated <b>increased operating cost clarifications</b> , including ineligibility of costs related to transportation of students to alternate schools or temporary facilities, staff being held-over to cover shifts, and new landfills ( <a href="#">Chapter 7:II.F. Expenses Related to Operating a Facility or Providing a Service</a> ) |
| Clarified that the <b>minimum threshold</b> does not apply to Donated Resources or Management Costs ( <a href="#">Chapter 9:II.A. Project Thresholds</a> )  |
| Allowing <b>Small Project completed work</b> to be <b>estimated and certified</b> ( <a href="#">Chapter 9:II.C. Costs for Projects with All Work Completed</a> )  |

### Cost Eligibility

Added language conveying that FEMA **does not re-evaluate reasonable costs on Alternative Procedure Permanent Work Pilot projects** ([Chapter 9:II.E.6. Fixed-Cost Offer for Alternative Procedures Projects](#))

Eliminated allowance for **insurance** adjustments on **individual small projects** ([Chapter 12:I.A. Project Reconciliation and Closeout, Small Projects](#))

### Policy and Guidance Documents Incorporated and Superseded

FEMA Recovery Policy, *Public Assistance Donated Resources*

FEMA Recovery Policy FP 104-09-12, *Public Assistance Alternative Procedures Pilot Program for Debris Removal*

FEMA Recovery Policy FP 104-009-7, *Public Assistance Alternative Procedures Pilot Program - Permanent Work Standard Operating Procedures*

*Public Assistance Alternative Procedures for Permanent Work Pilot (Version 4)*

FEMA Fact Sheet, *Public Assistance: Procurement Conducted Under Exigent or Emergency Circumstances*

FEMA Fact Sheet, *Public Assistance: Purchasing Goods or Services through Cooperative Purchasing Programs*

FEMA Fact Sheet, *Public Assistance: Private Property Debris Removal*

FEMA Fact Sheet, *Public Assistance: Contracting Requirements Checklist*

FEMA Job Aid, *Public Assistance: Reasonable Cost Evaluation*

FEMA's *Public Assistance Program Interim Guidance on 2 C.F.R. Part 200*

March 15, 2019, memo: FEMA's *Approved Cost Estimating Methodology*

July 9, 2018, memo: *Policy Clarification for Public Assistance Hydrologic and Hydraulic Study Requirements for Drainage Structures and Culverts*

March 15, 2019, memo: *FEMA Public Assistance Repair Versus Replacement Policy Clarification*

April 11, 2018, memo: *FEMA Public Assistance Eligibility of Private Nonprofit Elementary and Secondary Schools*

*Public Assistance Program Field Operations Pocket Guide*

*Public Assistance Program Management and Grant Closeout Standard Operating Procedure (SOP 9570.14), December 2013*

*FEMA Instructional Guidance, Public Assistance Expedited Projects*

### Guidance Documents Summarized and Referenced

FEMA Fact Sheet *Public Assistance Appeals and Arbitration Under the Disaster Recovery Reform Act*

## Guidance Documents Summarized and Referenced

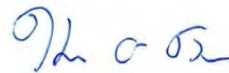
*State Led Public Assistance Guide*

*Damage Assessment Operations Manual*

FEMA Recovery Policy FP 104-11-2, *Public Assistance Management Costs (Interim)*

FEMA Recovery Interim Policy FP 104-009-11, *Consensus-Based Codes, Specifications and Standards for Public Assistance* (Chapter 8:III.B, *FEMA Consensus-Based Codes, Specifications and Standards*)

FEMA makes updates to the PAPPG at [www.fema.gov/assistance/public/policy-guidance-fact-sheets](http://www.fema.gov/assistance/public/policy-guidance-fact-sheets) on an annual basis when necessary and conducts a comprehensive review no less than every three years. We look forward to your feedback to help inform the next version. FEMA staff may send policy recommendations through the PA Change Control Tool at [usfema.sharepoint.com/teams/ORRApps/NewPA/Pages/SubmitRequest-CCT-P3.aspx](https://usfema.sharepoint.com/teams/ORRApps/NewPA/Pages/SubmitRequest-CCT-P3.aspx). Recipients and Applicants may request changes via email at [FEMA-Recovery-PA-Policy@fema.dhs.gov](mailto:FEMA-Recovery-PA-Policy@fema.dhs.gov).



Keith Turi  
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# INTRODUCTION

## I. Public Assistance Program Overview

The mission of the Federal Emergency Management Agency’s (FEMA’s) Public Assistance (PA) Program is to provide assistance to State, local, Territorial, or Tribal, and local (SLTT) governments, and certain types of private nonprofit (PNP) organizations so that communities can quickly respond to and recover from major disasters or emergencies declared by the President. Through the PA Program, FEMA provides supplemental Federal grant assistance for debris removal, emergency protective measures, and the restoration of disaster-damaged, publicly owned facilities and specific facilities of certain PNP organizations. The PA Program also encourages protection of these damaged facilities from future incidents by providing assistance for hazard mitigation measures. FEMA provides this assistance based on authority in statutes, executive orders (EOs), regulations, and policies.

## II. Authorities

FEMA provides assistance based on authorities defined in statutes and regulations. These authorities also specify requirements that must be met. When the PAPPG uses the words “must” or “required,” it is a legal requirement. The Applicant jeopardizes its PA funding if it does not comply with these requirements.

### A. Statutes

Statutes are Federal laws passed by the U.S. Congress and signed by the President. All PA Program assistance must comply with all applicable statutes. The statute that authorizes FEMA to provide assistance via the PA Program is the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as Amended (Stafford Act), Title 42 of the United States Code (U.S.C.) § 5121 et seq.<sup>1</sup> The following sections of the Stafford Act specifically authorize the assistance FEMA provides under the PA Program:

- Title I – Findings, Declarations and Definitions
- Title III – Major Disaster and Emergency Assistance Administration
  - Sec. 311. Insurance
  - Sec. 312. Duplication of Benefits
  - Sec. 324. Management Costs
- Title IV – Major Disaster Assistance Programs (applies to Major Disaster Declarations)
  - Sec. 403. Essential Assistance
  - Sec. 406. Repair, Restoration, and Replacement of Damaged Facilities
  - Sec. 407. Debris Removal
  - Sec. 428. Public Assistance Program Alternative Procedures
    - Section 428 of the Stafford Act authorizes FEMA to provide specific exceptions, or “Alternative Procedures,” to PA Program regulations.<sup>2</sup> FEMA is currently

<sup>1</sup> [www.fema.gov/disasters/stafford-act](http://www.fema.gov/disasters/stafford-act).

<sup>2</sup> The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as Amended (Stafford Act) § 428, Title 42 of the United States Code (U.S.C.) § 5189f.

piloting these Alternative Procedures as optional procedures. These procedures are available to each Applicant on a voluntary basis. The specific alternatives are presented throughout this document, where applicable.

- Title V – Emergency Assistance Programs (applies to Emergency Declarations)
  - Sec. 502. Federal Emergency Assistance
- Title VII – Miscellaneous
  - Sec. 705. Disaster Grant Closeout Procedures

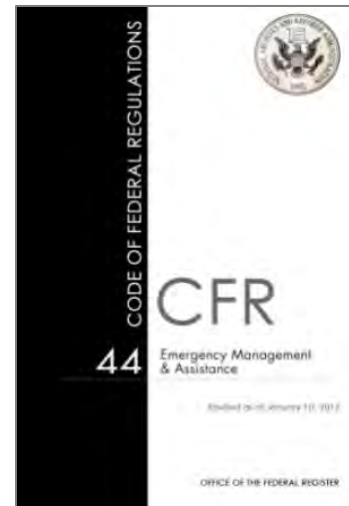
## B. Regulations

Regulations are Federal rules with the force and effect of law that implement a statute based on a Federal agency’s interpretation of that statute.<sup>3</sup> FEMA and any entity receiving PA assistance must comply with all applicable Federal Regulations.<sup>4</sup>

FEMA publishes PA Program rules in the following parts of Title 44 of the Code of Federal Regulations (C.F.R.), Emergency Management and Assistance:<sup>5</sup>

- Part 206 Subpart G, Public Assistance Project Administration;
- Part 206 Subpart H, Public Assistance Eligibility; and
- Part 206 Subpart I, Public Assistance Insurance Requirements.

The Office of Management and Budget establishes regulations regarding administrative requirements, cost principles, and audit requirements in 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.



## III. Document Purpose and Use

FEMA issues policy to articulate the Agency’s intent and direction in applying statutory and regulatory authority to achieve desired outcomes. The purpose of the *Public Assistance Program and Policy Guide* (PAPPG) is to define FEMA’s PA Program and its policy and procedural requirements. Only the Assistant Administrator of Recovery at FEMA Headquarters has the authority to modify or waive PA Policy.

The PAPPG provides high-level program delivery information and describes important PA functions that occur throughout the entire program delivery lifecycle.

FEMA staff use the PAPPG to guide decision-making and ensure consistent implementation of the PA Program across the Nation. Separate FEMA policies and guidance documents that apply

<sup>3</sup> Stafford Act § 321, 42 U.S.C. § 5164.

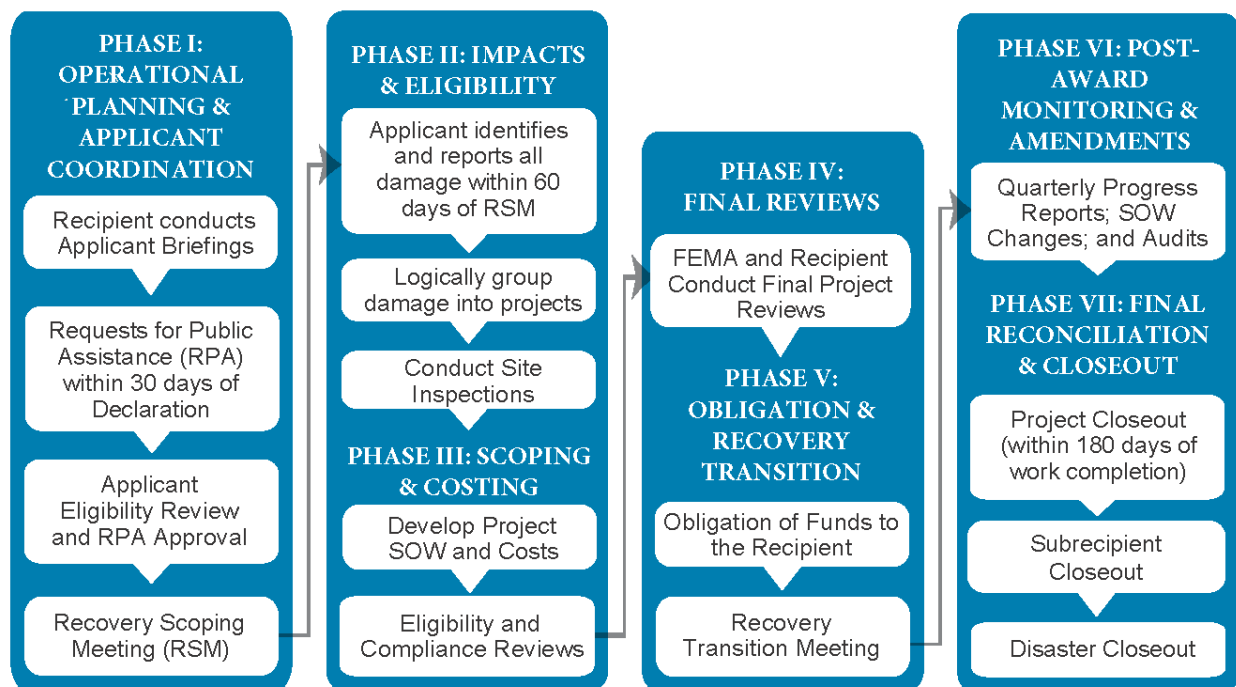
<sup>4</sup> Title 44 of the Code of Federal Regulations (C.F.R.) § 206.200(b). The electronic version of the C.F.R. is available at [www.ecfr.gov](http://www.ecfr.gov).

<sup>5</sup> Stafford Act § 325, 42 U.S.C. § 5165c; 44 C.F.R. § 1.4.

to the PA Program are referenced where applicable and listed in the [References and Resources](#) section at the end of the PAPPG.

## IV. Scope

The PAPPG provides comprehensive PA policy to use when evaluating eligibility. It includes FEMA’s policy statements and provides a summary of each step of the PA Program lifecycle beginning with pre-declaration activities through closure of the PA Program award for a declared incident. Figure 1 below provides an overview of the PA Program delivery process. The PAPPG references and provides weblinks to other FEMA policies and documents such as standard operating procedures and job aids that provide detailed instructions for individuals involved with implementing each of the various steps.



**Figure 1. PA Program Delivery Process**

## V. Applicability

FEMA applies Version 4 of the PAPPG to incidents declared on or after June 1, 2020. Individuals who have responsibilities managing, implementing, or pertaining to the PA Program should refer to the PAPPG for PA policy and procedural requirements.

## VI. Document Management and Maintenance

FEMA generally publishes proposed PA policy language for public comment prior to publishing in this document.<sup>6</sup> When the policy is deemed significant, FEMA publishes it in the *Federal*

<sup>6</sup> Stafford Act § 325, 42 U.S.C. § 5165c.

*Register.*<sup>7</sup> FEMA conducts a comprehensive review of this publication no less than every three years. FEMA staff may send policy recommendations through the PA Change Control Tool at [usfema.sharepoint.com/teams/ORRApps/NewPA/Pages/SubmitRequest-CCT-P3.aspx](https://usfema.sharepoint.com/teams/ORRApps/NewPA/Pages/SubmitRequest-CCT-P3.aspx). Recipients and Applicants may request changes via email at [FEMA-Recovery-PA-Policy@fema.dhs.gov](mailto:FEMA-Recovery-PA-Policy@fema.dhs.gov).

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<sup>7</sup> FEMA is required to publish policies for comment if they are deemed “significant” by the Office of Management and Budget, pursuant to Executive Order 12866.

# CHAPTER 1: PRE-AWARD ACTIVITIES

The Stafford Act<sup>8</sup> authorizes the President to provide Federal assistance when the magnitude of an incident or threatened incident exceeds the affected State,<sup>9</sup> local<sup>10</sup> Territorial, and Indian Tribal<sup>11</sup> government capabilities to respond or recover. This chapter explains procedures and requirements for activities that occur during the pre-award phase, including the process for requesting a Presidential declaration, FEMA's evaluation criteria, the contents of the declaration, and the initial administrative requirements for a State, Territorial, or Tribal government to receive assistance.

## I. Preliminary Damage Assessment

When a State, Territorial, or Tribal government determines that an incident may exceed SLTT capabilities to respond, it requests a joint Preliminary Damage Assessment (PDA) with FEMA.<sup>12</sup> Federal, SLTT government, and certain PNP organization officials work together to estimate and document the impact and magnitude of the incident.<sup>13</sup> Accurate and comprehensive PDAs are critical to enabling efficient response and recovery. FEMA's *Damage Assessment Operations Manual*<sup>14</sup> provides detailed information to assist staff involved with damage assessments and describes how FEMA utilizes the information when evaluating requests for Major Disaster Declarations.

## II. Declaration Request

The Governor<sup>15</sup> or Tribal Chief Executive<sup>16</sup> may request a declaration from the President through FEMA. A Tribal government may elect to be a Recipient<sup>17</sup> or a Subrecipient<sup>18</sup> under a

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<sup>8</sup> [www.fema.gov/disasters/stafford-act](http://www.fema.gov/disasters/stafford-act).

<sup>9</sup> Stafford Act § 102(4), 42 U.S.C. § 5122; 44 C.F.R. § 206.2(a)(22), State governments include the District of Columbia, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands.

<sup>10</sup> Stafford Act § 102(8), 42 U.S.C. § 5122; 44 C.F.R. § 206.2(a)(16), local governments include counties, municipalities, cities, towns, townships, local public authorities, school districts, special districts established under State law, intrastate districts, councils of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entities, agencies or instrumentalities of a local government; State-recognized Tribes; and rural communities, unincorporated towns or villages, or other public entities, for which an application for assistance is made by a State or political subdivision of a State.

<sup>11</sup> Stafford Act § 102(6), 42 U.S.C. § 5122; 44 C.F.R. § 206.201(i), an Indian Tribal Government is any Indian or Alaska Native tribe, band, nation, pueblo, village, or community listed as an Indian Tribe under the Federally Recognized Indian Tribe List Act of 1994. Hereinafter referred to as Tribal Government.

<sup>12</sup> 44 C.F.R. § 206.33(a).

<sup>13</sup> 44 C.F.R. § 206.33(b).

<sup>14</sup> [www.fema.gov/disasters/preliminary-damage-assessment-reports/guide](http://www.fema.gov/disasters/preliminary-damage-assessment-reports/guide).

<sup>15</sup> Stafford Act § 102(5), 42 U.S.C. § 5122; 44 C.F.R. § 206.2(12).

<sup>16</sup> Stafford Act § 102(12), 42 U.S.C. § 5122.

<sup>17</sup> 44 C.F.R. § 206.201(e). Per 2 C.F.R. § 200.86, A Recipient is an entity that receives a Federal award directly from a Federal awarding agency to carry out an activity.

<sup>18</sup> Per 2 C.F.R. § 200.93, a Subrecipient is an Applicant that receives a subaward from a pass-through entity to carry out part of a Federal program.

State or Territorial declaration or request its own declaration as a Recipient.<sup>19</sup> The Governor, and/or the Tribal Chief Executive if the Tribal Government wishes to be its own Recipient, must submit the request no later than 30 days after the incident occurs.<sup>20</sup> FEMA may extend the deadline if the Governor or Tribal Chief Executive submits a written time extension request within 30 days of the incident stipulating the reason for the delay.<sup>21</sup> When a severe or catastrophic incident occurs, the Governor or Tribal Chief Executive may submit a declaration request prior to completion of the PDA.<sup>22</sup> This is referred to as an expedited declaration request. In such circumstances, assistance is generally limited to that which would address immediate needs based on rapid assessments until the PDA is completed.



#### **Terminology: Recipients, Subrecipients, and Applicants**

When an entity applies for PA funding, it is the **Applicant**. Once the Applicant receives funding, it is either the **Recipient, pass-through entity** or a **Subrecipient**. For simplicity, FEMA uses the term Applicant throughout this document when referring to the responsible entity for a project rather than making distinctions between an entity as the Applicant, Recipient, pass-through entity, or Subrecipient. FEMA uses the terms Recipient and Subrecipient when necessary to differentiate between the two entities.

### **III. Declaration Evaluation**

FEMA uses PDA information to evaluate the need for assistance under the PA Program.

#### **A. State and Territorial Governments**

For State and Territorial governments, FEMA's evaluation is based on six primary factors:

- Estimated cost of assistance;
- Insurance coverage;
- Other Federal agency programs;
- Localized impacts;
- Hazard mitigation; and
- Recent multiple disasters.<sup>23</sup>

FEMA reviews the facility and cost information to ensure that the estimated costs include all appropriate insurance reductions and do not include costs related to facilities under the authority of another Federal agency. FEMA then compares the estimated eligible amounts to the established annual per capita indicators. To account for localized impacts when the statewide per

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<sup>19</sup> A Tribal Governmental may also receive one type of assistance under a State or Territorial declaration and another type of assistance under its own declaration, provided there is no duplication of benefits. Additional information for Tribal declarations is available at [www.fema.gov/about/organization/tribes](http://www.fema.gov/about/organization/tribes).

<sup>20</sup> Stafford Act §§ 401 and 501, 42 U.S.C. §§ 5170 and 5191; 44 C.F.R. §§ 206.35 and 206.36. For Emergency Declarations, the Governor or Tribal Chief Executive must submit the request within 5 days after the need for assistance becomes apparent. For Major Disaster Declarations, the Governor or Tribal Chief Executive should submit the request as soon as possible after completion of the Joint PDA. Information and forms for Presidential declaration requests are available at [www.fema.gov/disasters/request-for-presidential-disaster-declaration](http://www.fema.gov/disasters/request-for-presidential-disaster-declaration), and for Tribal governments specifically, [www.fema.gov/disasters/tribal-declarations](http://www.fema.gov/disasters/tribal-declarations).

<sup>21</sup> 44 C.F.R. §§ 206.35(a) and 206.36(a).

<sup>22</sup> 44 C.F.R. § 206.33(d).

<sup>23</sup> 44 C.F.R. § 206.48(a).

capita impact is low, FEMA evaluates whether there are extraordinary concentrations of damage resulting in significantly high per capita impacts at the local government level.

To encourage hazard mitigation, FEMA considers whether SLTT government mitigation measures taken prior to the incident likely reduced the damage impacts, especially if such mitigation averted damage that would have increased the estimated eligible cost above the per capita indicator.

Understanding that the effects of multiple disasters in a confined period of time can affect response and recovery capabilities, FEMA also evaluates the overall impacts of Federal and State, Territorial, or Tribal declarations that have occurred within the past 12 months and the extent to which the State, Territorial, or Tribal government has spent its own funds. If there were disasters prior to the 12-month period that still have substantial impacts on SLTT governments, FEMA may also consider impacts from these disasters.

## **B. Tribal Governments**

Tribal governments requesting a declaration have different declaration factors than State and Territorial governments. PA declaration factors for tribes include:

- Estimated cost of assistance (minimum damage amount of \$250,000);
- Insurance coverage;
- Other Federal agency programs;
- Hazard mitigation;
- Recent multiple disasters (previous 24 months);
- Types and amounts of damage;
- Economic impact of the damage to the community and government;
- Tribal resources available for response and recovery;
- Demographics of the impacted community;
- Impact on community infrastructure;
- Unique conditions that affect Tribal governments (e.g., remoteness, economy, cultural considerations); and
- Other relevant information.

Additional detail is provided in the [Tribal Declaration Pilot Guidance](#).<sup>24</sup>

## **IV. Presidential Declaration**

For FEMA to provide assistance, the President must declare that an emergency or major disaster exists. The declaration<sup>25</sup> establishes the:

- Type of incident;
- Incident period;
- Designated areas;
- Types of assistance;
- Federal cost share; and

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<sup>24</sup> [www.fema.gov/disasters/tribal-declarations](http://www.fema.gov/disasters/tribal-declarations).

<sup>25</sup> Each Presidential declaration is available at [www.fema.gov/disasters/disaster-declarations](http://www.fema.gov/disasters/disaster-declarations).

- Federal Coordinating Officer (FCO).

### **A. Type of Incident**

The declaration designates the type of incident (e.g., hurricane, tsunami, or earthquake). For Emergency Declarations, an incident is any instance that the President determines warrants supplemental emergency assistance to save lives and protect property and public health and safety, or to lessen or avert the threat of a catastrophe.<sup>26</sup> For Major Disaster Declarations, an incident is any natural catastrophe (including any hurricane, tornado, storm, high water, wind driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion.<sup>27</sup> Major Disaster Declarations may include a combination of incident types, such as storms and landslides.

### **B. Incident Period**

The declaration designates the incident period. The incident period is the span of time during which the federally declared incident occurs.<sup>28</sup> This period varies in length, depending on the incident.

### **C. Designated Areas**

The declaration designates which areas (e.g., county, parish, city, or Tribal government) are eligible to receive Federal assistance.<sup>29</sup> FEMA may add additional areas after the initial designation. However, for FEMA to consider adding an additional area, the Governor or Governor's Authorized Representative (GAR)<sup>30</sup> or, for Tribal declarations, the Tribal Chief Executive or Tribal Authorized Representative (TAR) must request the addition within 30 days of the declaration date or the end of the incident period, whichever is later.<sup>31</sup> FEMA may extend the deadline if the Governor, GAR, Tribal Chief Executive, or TAR submits a written time extension request within the 30-day deadline with justification of the inability to meet the deadline.<sup>32</sup>

### **D. Types of Assistance**

The declaration designates the types of Federal assistance authorized.<sup>33</sup> The President may authorize assistance to individuals, households, and SLTT governments, and certain types of PNP organizations. FEMA provides assistance to individuals and households via its Individual Assistance (IA) programs. FEMA provides assistance to SLTT governments and certain types of PNP organizations via its PA Program. The type of assistance authorized may vary among designated areas. FEMA may add additional types of assistance after the declaration. However, for FEMA to consider adding additional types of assistance, the Governor or GAR or, for Tribal declarations, the Tribal Chief Executive or TAR must request the assistance within 30 days of

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<sup>26</sup> Stafford Act § 102(1), 42 U.S.C. § 5122; 44 C.F.R. § 206.2(a)(9).

<sup>27</sup> Stafford Act § 102(2), 42 U.S.C. § 5122; 44 C.F.R. § 206.2(a)(17).

<sup>28</sup> 44 C.F.R. § 206.32(f).

<sup>29</sup> 44 C.F.R. §§ 206.2(a)(6) and 206.40(b).

<sup>30</sup> 44 C.F.R. §§ 206.2(a)(13) and 206.41(d).

<sup>31</sup> 44 C.F.R. § 206.40(c).

<sup>32</sup> 44 C.F.R. § 206.40(d).

<sup>33</sup> 44 C.F.R. § 206.40(a).



the declaration date or the end of the incident period, whichever is later.<sup>34</sup> FEMA may extend the deadline if the Governor, GAR, Tribal Chief Executive, or TAR submits a written time extension request within the 30-day deadline with justification of the inability to meet the deadline.<sup>35</sup> Tribal governments may receive one type of assistance under a State or Territorial declaration as a Subrecipient and another type of assistance under its own declaration as a Recipient, provided there is no duplication of benefits.

FEMA Regional Administrators (RAs)<sup>36</sup> have the authority to issue Fire Management Assistance Grant (FMAG) declarations for wildfires that threaten such destruction that would constitute a major disaster.<sup>37</sup> The FMAG Program is separate and distinct from the PA Program. FMAG declaration criteria, eligibility, and other program information are available at 44 C.F.R. Part 204, Fire Management Assistance Grant Program, and in FEMA's *Fire Management Assistance Grant Program Guide* (FEMA P-954).<sup>38</sup>

If significant damage occurs as a result of one or more FMAG fire incidents, the Governor or Tribal Chief Executive may subsequently request a Major Disaster Declaration for the fire incident(s). FEMA evaluates such requests based on damage and costs not covered under the FMAG Program, such as public infrastructure damage. If the President declares a Major Disaster and authorizes the PA Program, FEMA usually funds all costs related to those fire incidents under the PA Program for efficiency in administration of assistance and to avoid a duplication of benefits between programs.

## E. Federal Cost Share

The assistance FEMA provides through its PA Program is subject to a cost share.<sup>39</sup> The cost share ensures local interest and involvement through financial participation. The Federal share is not less than 75 percent of the eligible costs.<sup>40</sup> FEMA may recommend an increase up to 90 percent if actual Federal obligations, excluding administrative costs, meet or exceed a qualifying threshold.<sup>41</sup>

For Emergency Work specifically, the Federal cost share may be increased in limited circumstances, and for limited periods of time, if warranted.<sup>42</sup> See [Chapter 6:XIII, \*Increased Federal Cost Share for a Limited Timeframe\*](#), for details on how FEMA applies the increased Federal cost share.



### Terminology

A **project** is a logical grouping of work required as a result of the declaration. The damage description, scope of work, and costs are documented in the **project**, which is the basis for PA funding. 44 C.F.R. § 206.201(k).

<sup>34</sup> 44 C.F.R. § 206.40(c).

<sup>35</sup> 44 C.F.R. § 206.40(d).

<sup>36</sup> 44 C.F.R. § 206.2(a)(21).

<sup>37</sup> Stafford Act § 420, 42 U.S.C. § 5187; 44 C.F.R. Part 204.

<sup>38</sup> [www.fema.gov/assistance/public/fire-management-assistance](http://www.fema.gov/assistance/public/fire-management-assistance).

<sup>39</sup> 44 C.F.R. § 206.203(b).

<sup>40</sup> Stafford Act §§ 403(b), 406(b), 407(d), and 503(a), 42 U.S.C. §§ 5170b, 5172, 5173, 5193; 44 C.F.R. §§ 206.47(a) and 206.65.

<sup>41</sup> 44 C.F.R. § 206.47(b).

<sup>42</sup> 44 C.F.R. § 206.47(d).

The Applicant can only apply other Federal award funds toward the PA non-Federal cost share if the other Federal agency has specific statutory authority allowing its funds to be used to meet cost-share requirements.<sup>43</sup> For example, the U.S. Department of Housing and Urban Development's (HUD's) Community Development Block Grant (CDBG) program may be used for the non-Federal share on PA projects if certain requirements are met. FEMA applies the cost share at the project level. Therefore, any other agency's Federal funds must be applied at the project level and may not be used across multiple projects (with exception of Permanent Work Alternative Procedure projects as described in [Chapter 8:VIII. Capped Projects](#)). Further, if the Applicant uses funds from another Federal agency to meet the non-Federal share, it must meet all requirements of the other agency as well as all PA Program requirements. The Applicant cannot apply PA funds toward the non-Federal cost share of other Federal agency awards.

## V. Recipient Administrative Requirements

When the Presidential declaration authorizes assistance to SLTT governments and certain types of PNP organizations, FEMA implements the PA Program. The Recipient is responsible for completing an application for assistance and submitting required documents before FEMA can provide PA funding. This section describes the required documents. The Recipient may upload these documents into PA Grants Portal at the Event Level (see Chapter 3:I, *Public Assistance Web-based Systems*). If the document is related to multiple disasters, such as a Hazard Mitigation Plan, the Recipient should upload it to its Organizational Profile.



### Recipient-Led Public Assistance Disasters

FEMA may approve a Recipient to manage PA disasters. Recipients may choose a scalable approach by performing any one or more of the following key functions: customer service, site inspections, and scoping and costing. The *State-Led Public Assistance Guide* provides guidance on the processes, resources, and capabilities required ([www.fema.gov/sites/default/files/2020-07/fema\\_state-led-public-assistance\\_Guide\\_2-1-2019.pdf](http://www.fema.gov/sites/default/files/2020-07/fema_state-led-public-assistance_Guide_2-1-2019.pdf)).

### A. Application for Federal Assistance

The declared State, Territorial, or Tribal government must complete and submit Standard Form (SF) 424, Application for Federal Assistance, and SF-424D, Assurances for Construction Programs<sup>44</sup> before FEMA provides assistance. The SF-424 includes the period of performance (POP) for the PA award (referred to as the prime award). The prime award POP begins on the first day of the incident period and initially extends four years from the declaration date.

### B. FEMA-State/Territory/Tribe Agreement

After every declaration, the applicable State, Territorial, or Tribal government enters into an agreement with FEMA regarding the understanding, commitments, and conditions under which FEMA provides assistance (FEMA-State/Territory/Tribe Agreement). FEMA and the Governor or Tribal Chief Executive must sign this agreement before FEMA provides assistance. If necessary, because of exigent circumstances, FEMA may authorize essential emergency services

<sup>43</sup> Stafford Act § 312, 42 U.S.C. § 5155.

<sup>44</sup> 44 C.F.R. § 206.202(e). The SF-424 forms are available at [www.grants.gov/web/grants/forms/sf-424-family.html](http://www.grants.gov/web/grants/forms/sf-424-family.html).

or housing assistance under the Individuals and Households Program (IHP) while the agreement is in process for signature.<sup>45</sup>

### **C. Payment Management System**

FEMA provides PA funding to Recipients via the U.S. Department of Health and Human Services (HHS) Payment Management System. Therefore, if an entity is a Recipient for the first time, it must request access to the Payment Management System and complete the Direct Deposit Form (SF-1199A) to obtain a FEMA-specific account before FEMA can provide funding.<sup>46</sup>

### **D. Administrative Plan**

Recipients must have a FEMA-approved Administrative Plan that describes how it intends to administer the PA Program before FEMA provides PA funding for any project. At a minimum, the Administrative Plan must include:

- The agencies responsible for program administration;
- Identification of staffing functions, the source of staff to fill the functions, the management and oversight responsibilities of each function; and
- Procedures for:
  - Notifying potential Applicants of the availability of the PA Program;
  - Conducting Applicant Briefings;
  - Assisting FEMA in determining Applicant eligibility;
  - Participating with FEMA in conducting PDAs;
  - Participating with FEMA in establishing PA mitigation and insurance requirements;
  - Processing appeals, time extension requests, and other project-related correspondence;
  - Complying with Environmental and Historic Preservation (EHP) requirements;
  - Complying with PA administrative requirements including, but not limited to, procurement, contracting, and closeout;
  - Complying with audit requirements;
  - Requesting reimbursement or advanced funds; and
  - Determining staffing and budgeting requirements for proper management of the PA Program.

A Recipient must submit its Administrative Plan to FEMA on an annual basis and an amendment for each incident that occurs within the year if needed to meet current policy guidance or to address the specifics of the new incident. The Recipient must incorporate the approved Administrative Plan into its State, Territorial, or Tribal emergency plan.<sup>47</sup>

### **E. Hazard Mitigation Plan**

Hazard mitigation is most effective when implemented under a comprehensive, long-term mitigation plan. SLTT governments engage in hazard mitigation planning to identify risks and

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<sup>45</sup> 44 C.F.R. § 206.44(a).

<sup>46</sup> The Payment Management System Access Form and the SF-1199A are available at [pms.psc.gov/](https://pms.psc.gov/).

<sup>47</sup> 44 C.F.R. § 206.207(b). An administrative plan template is available [here](#).

vulnerabilities associated with natural disasters and develop long-term strategies for protecting people and property from future incidents. Recipients must have a FEMA-approved Hazard Mitigation Plan before FEMA can provide PA funding for any Permanent Work.<sup>48</sup> The Recipient must show in its plan how it intends to reduce risks from natural hazards and must update the plan every 5 years.

Tribal governments must meet the requirements of 44 C.F.R. § 201.7, *Tribal Mitigation Plans*. States and Territories must meet the requirements of 44 C.F.R. § 201.4, *Standard State Mitigation Plans* or have an Enhanced Mitigation Plan that meets the requirements of 44 C.F.R. § 201.5, *Enhanced State Mitigation Plans*.<sup>49</sup>

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<sup>48</sup> 44 C.F.R. § 201.3(c)(1) and (e)(1).

<sup>49</sup> Additional information about the mitigation plan requirement is available [here](#).

## CHAPTER 2: OPERATIONAL COORDINATION

FEMA leads implementation of Stafford Act authorities and coordination of Federal assistance to impacted communities. FEMA's goal is to help communities recover by focusing on their desired goals and outcomes. FEMA refers to this as outcome-driven recovery. This is a problem-solving approach that promotes unity of effort among stakeholders to identify recovery needs, vision, and goals, and to resource holistic recovery solutions. It emphasizes the need for integration of all partners in recovery, appropriate and consistent coordination, and transparency to ensure that a community can set its own goals and priorities, identify strategies to access funding and other resources to meet its goals, and effectively implement projects. This chapter describes how Federal, State, Territorial, and Tribal leadership coordinate during response and recovery operations to ensure successful outcomes.

FEMA conducts incident operations based on the national comprehensive, systematic approach set forth by the *National Incident Management System* (NIMS).<sup>50</sup> NIMS is designed to ensure that local jurisdictions retain command, control, and authority over response and recovery activities for their jurisdictional areas. It establishes consistent structure, concepts, principles, processes, and language at a national level enabling efficient coordination of emergency management operations across all levels of government.

The *National Response Framework* (NRF) and *National Disaster Recovery Framework* (NDRF)<sup>51</sup> build upon NIMS by defining the core capabilities necessary for response and recovery and fostering a holistic, collaborative approach, emphasizing the need for the involvement of the whole community (individuals, families, households, communities, private and nonprofit sectors, faith-based organizations, and all levels of government). The NRF and NDRF detail Federal and SLTT government roles and responsibilities during response and recovery operations.



### Incident Command System

The Incident Command System (ICS) is a key component of NIMS and is the organizing principle for Federal response and recovery operations. Refer to the *Incident Management Handbook* for more information on how FEMA applies ICS.

Basic elements of ICS include:

- Establishes common terminology
- Allows organizational structures to be scalable based on the size, complexity, and needs of the operation.
- Establishes a common set of objectives to develop strategies, issue assignments, establish tactics, and document results.
- Utilizes a centralized, coordinated Incident Action Plan (IAP) to guide all activities and manage all resources including personnel, teams, equipment, supplies, and facilities.
- Promotes effective management by ensuring:
  - Unity-of-command;
  - Chain-of-command; and
  - Span-of-control.

<sup>50</sup> [www.fema.gov/emergency-managers/nims](http://www.fema.gov/emergency-managers/nims).

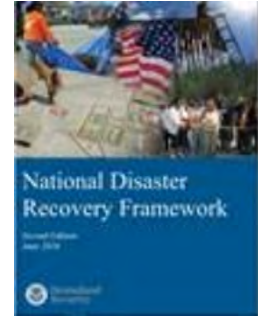
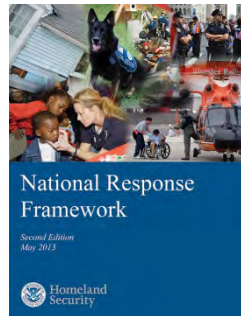
<sup>51</sup> [www.fema.gov/emergency-managers/national-preparedness/frameworks/recovery](http://www.fema.gov/emergency-managers/national-preparedness/frameworks/recovery).

## I. Operational Priorities

### A. Community Lifelines

Lifelines are the most fundamental services in the community, that, when stabilized, enable all other aspects of society. FEMA and other Emergency Management organizations use community lifelines to establish and track operational priorities during incident stabilization. The seven lifelines are:

- Safety and security;
- Food, water, and sheltering;
- Health and medical;
- Energy (power and fuel);
- Communications;
- Transportation; and
- Hazardous materials.



Lifelines provide indispensable service to enable the continuous operation of critical business and government services. Analyzing impacts to each of the lifelines allows decision-makers to:

- Rapidly determine whether an incident is large or complex;
- Prioritize and focus response efforts to maintain or restore the most critical services and infrastructure;
- Ensure limited resources can go toward a common goal that requires involvement across the whole community; and
- Promote a response that fosters better integration and communication across the whole community since lifeline management transcends public and private sector boundaries.

FEMA's *Community Lifelines Implementation Toolkit*<sup>52</sup> provides comprehensive information and resources for implementing lifelines during incident response.

### B. Incident Action Plan

The Incident Action Plan (IAP) is a written plan defining the objectives for managing the overall incident and addressing the operational priorities. FEMA and the State, Territory, or Tribe develop the IAP through a series of meetings which occur once during each Operational Period (O-Period). The O-Period is the timeframe designated to execute a specific set of actions. During the response phase, this is typically 12-24 hours and FEMA usually expands it to 48-96 hours or longer as the operation shifts into the recovery phase. The IAP is initially organized by lifeline stabilization priorities and shifts to recovery outcome priorities as the lifelines stabilize.



#### IAP Collaborative Meetings

FEMA and the State, Territorial, or Tribal government conduct a series of meetings throughout the IAP process to identify incident objectives and share situational awareness. The meetings include:

- Initial incident briefing
- Command and general staff meeting
- Operational tactics meeting
- Planning meeting
- Operations briefing

A meeting schedule (ICS Form 230) describes meeting locations and required attendees.

<sup>52</sup> [www.fema.gov/emergency-managers/practitioners/lifelines-toolkit](http://www.fema.gov/emergency-managers/practitioners/lifelines-toolkit).

The IAP provides the following information:

- Work assignments delineated by division and group;
- Resources required to complete work assignments;
- Operational facilities and reporting locations for plan execution; and
- Organization charts, contact information, and medical, safety, and communications plans.

The PA Group Supervisor (PAGS) ensures that PA Program work assignments, information, and contributions toward larger recovery outcomes are accurately reflected in the IAP. For additional information on the IAP process, see the *Incident Action Planning Guide*.<sup>53</sup>

## II. Response and Recovery Coordination

Federal, State, Territorial, and Tribal government coordination begins with response during the pre-award phase and continues through the completion of recovery operations and closeout of the award. Response operations begin to transition to recovery when immediate threats to health and safety begin to stabilize. This timeframe varies by entity depending on the level of impact and response capabilities.

### A. Response Coordination

FEMA operates 24-hour National and Regional Watch Centers that provide national and regional awareness on potential, developing, or ongoing situations that may require a coordinated Federal response. When warranted, based on situational awareness provided by the Watch Centers, FEMA activates its National and Regional Response Coordination Centers (NRCC/RRCC). These coordination centers function as multi-agency coordination facilities to prepare for and respond to the immediate needs of an incident, as identified by the State, Territorial, or Tribal government. The RA determines when to activate the RRCC. The FEMA Administrator may activate the NRCC when incidents cross regional borders, have broad geographic implications, or are nationally significant. The NRCC allocates and prioritizes national resource deployments and coordinates with the RRCC to provide additional support for immediate needs.

As described in the NRF various agencies that provide response capabilities are grouped into Emergency Support Functions (ESFs). During response, ESFs are a critical mechanism to coordinate functional capabilities and resources provided by Federal departments and agencies, along with certain private-sector and nongovernmental organizations. ESFs are activated selectively and may not be activated for all incidents. The NRF describes the composition and mission functions of each of the ESFs.<sup>54</sup>

When FEMA activates the RRCC or NRCC, it also activates representatives from the appropriate ESFs to deploy to the RRCC or NRCC to support incident objectives consistent with the purpose and scope defined in the NRF annex for each of the ESFs. PA typically staffs a position in the RRCC or NRCC to support incident objectives related to debris removal and critical infrastructure (facilities that provide transportation, energy, communications, water, or emergency services). This position coordinates activities of ESFs 1 (Transportation), 3 (U.S. Army Corps of Engineers), 10 (U.S. Environmental Protection Agency), and 12 (Energy).

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<sup>53</sup> *The Incident Action Planning Guide* is available at [www.fema.gov/sites/default/files/2020-07/Incident\\_Action\\_Planning\\_Guide\\_Revision1\\_august2015.pdf](http://www.fema.gov/sites/default/files/2020-07/Incident_Action_Planning_Guide_Revision1_august2015.pdf).

<sup>54</sup> The NRF is available at [www.fema.gov/emergency-managers/national-preparedness/frameworks/response](http://www.fema.gov/emergency-managers/national-preparedness/frameworks/response).

FEMA’s National Incident Support Manual (NISM) provides additional information on NRCC operations.<sup>55</sup>

## **B. Recovery Coordination**

FEMA’s goal throughout the recovery phase is to assist communities and Applicants with achieving desired outcomes and building resilience. The National Preparedness Goal<sup>56</sup> identifies eight core capabilities that are critical for recovery. Various agencies that provide these recovery capabilities are grouped into the following six Recovery Support Functions (RSFs)<sup>57</sup>:

Community Planning and Capacity Building; Economic Recovery; Health and Social Services; Housing; Infrastructure Systems; and Natural and Cultural Resources. As ESF activities subside, RSF activities ramp up and require continued information sharing and coordination.

RSFs support SLTT recovery efforts by coordinating among Federal and SLTT agencies and nongovernmental and private organizations to problem-solve and improve access to needed resources. The NDRF further describes the composition and mission of each RSF.<sup>58</sup> Activation of each RSF depends on incident-specific recovery issues.

The Federal Interagency Operational Plan (FIOP)<sup>59</sup> describes how Federal recovery field leadership, RSFs, and related entities work in coordination with nongovernmental and private organizations to support SLTT recovery efforts. It provides a flexible structure for disaster recovery leaders to address the specific needs of the incident and enhance sustainability and resilience of communities in a unified and collaborative manner.

### **1. Field Operations**

Prior to a declaration, FEMA may deploy a Regional or National Incident Management Assistance Team (IMAT) to provide additional situation awareness and manage Federal response operations from the field in the initial days or weeks after an incident.

Once the President issues an Emergency or Major Disaster Declaration, the Regional Watch Center or RRCC deploys key personnel to set up the initial field operations structure and assume primary responsibility for response coordination. At this point, primary responsibility for infrastructure-related tasks conducted at the RRCC are transitioned to the Infrastructure Branch Director (IBD) or PAGS.



#### **Public Assistance Program Leadership**

In large-scale operations, the IBD is responsible for leading delivery of the PA Program and providing operational direction to FEMA PA staff and infrastructure-related ESFs. PAGS serve as deputies to the IBD. When ESFs are not activated, delivery of the PA Program is led by the PAGS. For simplicity, the PAPPG uses the term PAGS for functions that an IBD may also perform.

<sup>55</sup> The NISM is available [here](#).

<sup>56</sup> [www.fema.gov/emergency-managers/national-preparedness/goal](http://www.fema.gov/emergency-managers/national-preparedness/goal).

<sup>57</sup> Recovery Support Functions are teams of Federal and national partners with a Coordinating Agency, primary and supporting agencies, State and Territorial agencies, and other organizations. The Coordinating Agency is usually the entity that can bring in resources to address needs, whereas the support agencies provide technical and subject matter expertise along with additional information. Additional information is available [here](#).

<sup>58</sup> See Table 3 of The National Disaster Recovery Framework, which is available [here](#).

<sup>59</sup> [www.fema.gov/emergency-managers/national-preparedness/frameworks/federal-interagency-operational-plans](http://www.fema.gov/emergency-managers/national-preparedness/frameworks/federal-interagency-operational-plans).



The declaration identifies the FCO.<sup>60</sup> The FCO works in partnership with the State or Territorial Coordinating Officer (SCO)<sup>61</sup> and Governor's Authorized Representative (or for Tribal declarations, the Tribal Coordinating Officer (TCO) and TAR) to coordinate Federal resources and disaster assistance programs.<sup>62</sup> FEMA and the State, Territorial, or Tribal government may initially operate at an Initial Operating Facility (IOF) until a facility is identified and established as a Joint Field Office (JFO). The IOF is usually at the State, Territorial, or Tribal Emergency Operations Center (EOC). The JFO is a temporary facility in proximity to the area affected by the incident that becomes the central location for coordination of response and recovery activities. Staff at the IOF transition to the JFO once it is established, typically several days to two weeks. FEMA's *Incident Management Handbook*<sup>63</sup> provides additional information on field operating structures and functional responsibilities.



#### Virtual Joint Field Office

Virtual JFOs allow for the management and coordination of response and recovery operations from a FEMA Regional Office. During select incidents, a Virtual JFO may be a preferred alternative to a conventional JFO for managing field operations.

### C. Public Assistance Coordination and Planning

Primary responsibility for management and delivery of the PA Program rests with the PAGS. The PAGS coordinates with the Recipient to efficiently implement the PA Program. Additionally, the PAGS fosters collaboration and information sharing with other federal agencies (OFAs) and nongovernmental partners through participation in the RSFs and other operational task forces.

PA staff usually deliver the program from the JFO and receive project development and processing support from the designated Consolidated Resource Center (CRC). CRCs are permanent FEMA offices where subject matter experts and specialized resources provide support to all PA operations. The PAGS coordinates with the CRC Director to provide situational awareness and ensure efficient, synchronized operations. CRC responsibilities include project scoping, costing, validation, and compliance reviews.

PA staff at the JFO are responsible for providing customer service to each Applicant, conducting site inspections, obtaining project information and documentation, determining eligibility, and awarding projects. PA staff at the JFO receive policy support from the respective FEMA regional office. When necessary, the FEMA regional office engages FEMA Headquarters on complex policy matters.

FEMA and the Recipient coordinate closely on various operational planning elements. FEMA uses both PDA and Recipient-provided information to determine the initial needs of the operation. This information enables the PAGS and Recipient to determine initial staffing and training requirements, organizational structure, and logistical needs. Additionally, it provides awareness on various operational aspects such as potential policy issues or the need for task forces or specialized personnel for specific types of infrastructure.

<sup>60</sup> Stafford Act §§ 302(a) and (d), 42 U.S.C. § 5143; 44 C.F.R. §§ 206.2(a)(11) and 206.41(a).

<sup>61</sup> Stafford Act § 302(c), 42 U.S.C. § 5143; 44 C.F.R. §§ 206.2(a)(23) and 206.41(c).

<sup>62</sup> Stafford Act § 302(b), 42 U.S.C. § 5143; 44 C.F.R. § 206.42.

<sup>63</sup> [www.fema.gov/emergency-managers/nims](http://www.fema.gov/emergency-managers/nims).

The PA Program is only one of many programs across numerous agencies that contribute to recovery projects in communities. Various agencies require incident impact information to focus their support appropriately and PA staff require assistance from other agencies to provide the best customer service possible to Applicants. Therefore, it is crucial for PA staff to foster partnerships and keep open lines of communication.

## CHAPTER 3: APPLICANT COORDINATION AND ELIGIBILITY

FEMA and the Recipient work in partnership to administer the PA Program and provide customer service to each Applicant. The Recipient sets operational priorities for the incident and each Applicant identifies its priorities. This chapter describes the PA activities that occur throughout Phase I of the PA Program delivery process, *Operational Planning and Applicant Coordination*, which includes the initial stages of Applicant coordination and Applicant eligibility determinations. Key milestones include conducting all Applicant Briefings, receiving and processing all Requests for Public Assistance (RPAs), and completing all Recovery Scoping Meetings. This chapter defines RPA requirements and PA policy on Applicant eligibility. It describes the web-based systems that FEMA, Recipients, and Applicants need to use for PA award processing, including submittal of information. This chapter also defines correspondence requirements and how FEMA documents its eligibility determinations.

### I. Public Assistance Web-based Systems

FEMA uses web-based systems to provide transparency to all stakeholders throughout the PA Program delivery process. FEMA uses PA Grants Manager to review RPAs, develop and review all aspects of a project application, track the status of project application development, and receive information from Recipients and Applicants. Recipients and Applicants use PA Grants Portal to submit all documentation and information to FEMA, review all aspects of PA project applications, and track the status of PA project applications. PA Grants Manager and Grants Portal interface and are updated on an ongoing basis for continuous improvement.<sup>64</sup>



#### Technical Assistance for PA Grants Manager and Grants Portal

FEMA provides technical assistance to individuals using PA Grants Manager and Grants Portal via a Help Line at 1-866-337-8448 and email correspondence at [FEMA-Recovery-PA-Grants@fema.dhs.gov](mailto:FEMA-Recovery-PA-Grants@fema.dhs.gov).

Applicants upload documentation and information to different areas within Grants Portal.<sup>65</sup> Once an entity has an Organizational Profile in PA Grants Portal, it can upload documents to its Organizational Profile anytime regardless of whether it has a current disaster. This section of the portal is not incident-specific. Therefore, Applicants should upload documents that may apply across multiple incidents, such as labor or insurance policies, to this location. Applicants upload any documents that pertain to a specific disaster, but not a specific project to the Applicant Profile. If the documentation is specific to one project, Applicants upload it to the project section. If it pertains to a specific damage line item, Applicants upload it to the damage section.

<sup>64</sup> FEMA staff may submit change requests through the PA Change Control Tool at [usfema.sharepoint.com/teams/ORRApps/NewPA/Pages/SubmitRequest-CCT-P3.aspx](https://usfema.sharepoint.com/teams/ORRApps/NewPA/Pages/SubmitRequest-CCT-P3.aspx). Recipients and Applicants may request changes via email at [FEMA-Recovery-PA-Grants@fema.dhs.gov](mailto:FEMA-Recovery-PA-Grants@fema.dhs.gov).

<sup>65</sup> PA Grants Portal user manuals are available in the resource tab in the portal.

## II. Applicant Briefing

As soon as possible following the President’s declaration, the Recipient conducts briefings for all potential Applicants (i.e., SLTT government entities and PNPs).<sup>66</sup> The Recipient is responsible for notifying potential Applicants of the date, time, and location of the Applicant Briefing. FEMA attends the Applicant Briefing to support the Recipient. During these briefings, the Recipient provides high-level information regarding the PA Program, such as:

- Overview of the PA Program delivery process (e.g., PA Grants Portal, application procedures);
- Program deadlines;
- General eligibility criteria;
- Project funding;
- Hazard mitigation;
- Alternative Procedures;
- Compliance requirements (procurement, EHP, and insurance); and
- Administrative requirements, including documentation and recordkeeping.

To obtain maximum benefit from the information presented at the briefing, a potential Applicant should send representatives from its management, emergency response, public works, and finance department and designate a primary point of contact to interact with the Recipient and FEMA.

## III. Request for Public Assistance

The RPA<sup>67</sup> is an application for the PA Program. If a SLTT government entity or PNP wishes to seek PA funding, it must first submit an RPA to FEMA, through the Recipient. FEMA accepts RPAs through PA Grants Portal. If a Tribal government is its own Recipient, it submits its RPA directly to FEMA via PA Grants Portal. Prior to submitting RPAs to FEMA, the Recipient must review and approve each RPA and provide its assessment of the Applicant’s risk of noncompliance as required by 2 C.F.R. § 200.331(b).

Using the RPA, the Applicant provides general information about its organization, including physical location and point of contact. Given the necessity to collaborate with each Applicant early in the PA Program implementation process, FEMA’s expectation is that the Recipient collect RPAs as soon as possible after the respective area is designated in the declaration. However, FEMA accepts RPAs up to 30 days from the date the respective area was designated.<sup>68</sup> FEMA may extend the deadline for submitting an RPA if the Recipient submits a request in writing with justification based on extenuating circumstances beyond the Applicant’s or Recipient’s control.<sup>69</sup>

Only certain PNPs are eligible Applicants. Therefore, FEMA requires additional documentation and information with PNP RPAs to evaluate eligibility. PNP Applicants must also submit its

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<sup>66</sup> 44 C.F.R. § 206.207(b)(1)(iii)(B).

<sup>67</sup> [www.fema.gov/assistance/public/apply](http://www.fema.gov/assistance/public/apply).

<sup>68</sup> 44 C.F.R. § 206.202(c).

<sup>69</sup> 44 C.F.R. § 206.202(f)(2).

facility-specific information in Grants Portal with all applicable documentation listed in [Chapter 3:VI.D.4, Private Nonprofit Application Documentation Requirements](#).

## IV. Written Correspondence



Throughout this document, FEMA notes specific instances in which the Applicant must obtain FEMA approval. All requests for FEMA approval must be submitted in writing through the Recipient. The Recipient must forward the correspondence to FEMA with its recommendation. One exception is Request for Information (RFI) responses. When the Applicant submits a response to an RFI, it may submit the response simultaneously to the Recipient and FEMA for expediency. Unless otherwise noted, FEMA calculates all deadlines based on calendar days. The RA has the authority to respond to all written correspondence unless otherwise noted. The RA usually delegates this authority to the FCO upon a Presidential declaration.<sup>70</sup> The RA or FCO may further delegate authorities as appropriate. FEMA usually provides its response to the Recipient, which subsequently forwards FEMA's determination to the Applicant (in some instances FEMA may send correspondence simultaneously to the Recipient and the Applicant, such as with notifications of ineligibility determinations, appeal responses, and RFIs). See Figure 2. *Map of FEMA Regions* for the geographical responsibilities of each FEMA Region.



Figure 2. Map of FEMA Regions

<sup>70</sup> 44 C.F.R. § 206.41(b).

## V. Eligibility Determinations

The four basic components of PA eligibility are:

- Applicant;
- Facility;
- Work; and
- Cost.

FEMA refers to these components as the building blocks of an eligibility pyramid. FEMA evaluates each building block to determine eligibility, starting at the foundation (Applicant) and working up to cost at the top of the pyramid (see Figure 3. *PA Eligibility Pyramid*). There are two exceptions to the standard eligibility pyramid.

For PNPs, FEMA must determine whether the PNP owns or operates a facility that provides an eligible service in order to determine whether the Applicant is eligible (see [Chapter 3:VI.D. Private Nonprofit Organizations](#), for additional information and a pyramid specific to PNP eligibility). Secondly, for SLTT government Applicants, evaluating facility eligibility is not a necessary step for most Emergency Work, as described in [Chapter 7. Emergency Work Eligibility](#).



**Figure 3. PA Eligibility Pyramid**

### A. Requests for Information

FEMA may require additional information or documentation to evaluate eligibility. In these cases, FEMA requests the information or documentation by submitting an RFI. Responses to RFIs are due by the deadline specified in the RFI. FEMA usually requires responses within 15 days of the Applicant's receipt of the RFI. FEMA establishes the deadline based on the nature of the request and consideration of the type and volume of information or documentation requested. Therefore, the amount of time allowed may vary.

### B. Notification of an Ineligibility Determination

The Program Delivery Task Force Leader (PDTFL) coordinates with the PAGS to address eligibility issues as projects are developed.

When determining that the Applicant, facility, work, or cost is ineligible, FEMA provides written notice via a Determination Memorandum (DM) or a letter that includes:

- Explanation of what assistance FEMA denied and, as applicable, the amount of assistance denied for each item;
- The basis for FEMA's denial, including the provisions of law, regulation, or policy that support the determination;
- A complete list of all documents reviewed (clearly titled for future reference); and
- Information regarding the Applicant's rights and procedures to appeal.



#### Complex Eligibility Issues

For complex eligibility issues, the PAGS in coordination with the FCO and the Region consults the PA Policy and Regulations Branch at FEMA Headquarters.

When FEMA approves funding for an item with complex eligibility, it documents its decision-making in a DM.

FEMA transmits the letter or DM simultaneously to the Recipient and Applicant via a method that confirms receipt.<sup>71</sup> This serves as the formal notification of FEMA's determination setting forth the Applicant's appeal rights.

The PDTFL is responsible for ensuring all information and documentation directly or indirectly considered in FEMA's eligibility determination is in PA Grants Manager. This may include, but is not limited to:

- Projects and project amendments;
- Notifications of eligibility determinations;
- Supporting backup documentation;
- Correspondence;
- Photographs;
- Technical reports; and
- Other relevant information.

FEMA considers this the Administrative Record.

### **C. Appeal Rights and Requirements**

The Applicant may appeal any FEMA determination related to an application for, or the provision of, assistance under the PA Program.<sup>72</sup> This includes, but is not limited to, Applicant eligibility denials, nonconcurrence on eligible damage or scopes of work (SOWs), denial of time extensions, closeout determinations, and deobligations resulting from an audit.

FEMA provides the Applicant with two opportunities to appeal a determination:

- The first appeal is to the RA.<sup>73</sup>
- If the Applicant disagrees with the first appeal determination, it may submit a second appeal to the Assistant Administrator of the Recovery Directorate at FEMA Headquarters<sup>74</sup>

At any point in the appeal process, the Applicant may withdraw its appeal by submitting a written request simultaneously to the Recipient and FEMA. FEMA sends a written acknowledgment simultaneously to the Recipient and Applicant.

All second appeal decisions represent the agency's final administrative decision on the matter.

#### **1. Appeal Deadlines**

The Applicant must submit a written appeal to the Recipient within 60 days of receiving FEMA's written notification of its determination (FEMA's eligibility determination or first appeal decision).<sup>75</sup> The Recipient must forward the appeal with its written recommendation to

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<sup>71</sup> FEMA may transmit the document via any method that confirms receipt such as PA Grants Manager, certified or return receipt mail, or an email with read-receipt acknowledgement.

<sup>72</sup> Stafford Act § 423, 42 U.S.C. § 5189a; 44 C.F.R. § 206.206. FEMA requires Applicants to waive appeal rights on Permanent Work Alternative Procedures Projects unless it is related to a cost adjustment made by FEMA after the Fixed-Cost Offer is accepted.

<sup>73</sup> 44 C.F.R. § 206.206(b)(1).

<sup>74</sup> 44 C.F.R. § 206.206(b)(2).

<sup>75</sup> 44 C.F.R. § 206.206(c)(1).

FEMA within 60 days of its receipt of the appeal.<sup>76</sup> If either the Applicant or Recipient does not meet the respective 60-day deadlines, FEMA will deny the appeal as untimely.

## 2. Appeal Content

The Applicant must include:

- All relevant documentation supporting its position;
- The specific funding amount (or amounts if there are multiple issues on appeal) in dispute, as applicable; and
- Citations to the provisions of law, regulation, or policy (applicable to the respective disaster) with which the Applicant believes FEMA's determination was inconsistent.<sup>77</sup>

## 3. Appeal Review

Upon receipt of the appeal, FEMA reviews the appeal content and uses the Administrative Record and the laws, regulations, and policies applicable to the respective incident to analyze the appeal. FEMA may request additional information via an RFI to adequately adjudicate the appeal or it may make its decision based on the documentation and information provided at the time of appeal submission. Within 90 days of receiving the appeal, FEMA takes one of the following three actions:

- Requests additional information specifying the date FEMA must receive the information (usually 30 days). Within 90 days of receiving the information (or within 90 days of the expiration of the deadline to respond), FEMA provides its appeal decision simultaneously to the Recipient and Applicant;<sup>78</sup>
- Submits the appeal to an independent expert, or experts, for technical review and recommendations. Within 90 days of receiving the technical review recommendations, FEMA provides its appeal decision simultaneously to the Recipient and Applicant;<sup>79</sup> or
- Provides its written decision simultaneously to the Recipient and Applicant using a method that confirms receipt.<sup>80</sup>

### (a) *Requests for Information on Appeals*

When FEMA issues an RFI, it includes a deadline for the Applicant to submit the information, usually 30 days.<sup>81</sup> FEMA issues the RFI simultaneously to the Recipient and Applicant via a method that confirms receipt.

FEMA generally issues an RFI when:

- It identifies specific documentation or information that, if provided, might impact the outcome of the appeal or assist FEMA in adequately responding to the appeal; or

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<sup>76</sup> 44 C.F.R. § 206.206(c)(2).

<sup>77</sup> 44 C.F.R. § 206.206(a).

<sup>78</sup> 44 C.F.R. § 206.206(c)(3).

<sup>79</sup> 44 C.F.R. § 206.206(d).

<sup>80</sup> FEMA may transmit notification via PA Grants Manager, certified or return receipt mail, email with read-receipt acknowledgement, or other methods that confirm receipt.

<sup>81</sup> FEMA establishes the deadline based on the nature of the request and consideration of the type and volume of information or documentation requested.



- The original eligibility determination is incorrect based on applicable law, regulation, or policy, but FEMA has identified a new basis for denying all, or a portion of, the appeal.

On first appeal, if FEMA identifies potentially ineligible SOW or costs that were not previously denied it issues an RFI that includes an explanation of the:

- New eligibility issue(s);
- Basis for the determination including an explanation of the applicable provisions of law, regulation, or policy justifying the decision;
- Amount of funding subject to denial and deobligation; and
- Specific information or documentation required to justify or further evaluate the eligibility issue(s).

FEMA proceeds with its review upon receipt of the Applicant's response to the RFI or expiration of the deadline to respond.

*(b) Remanding a Second Appeal*

When reviewing a second appeal, the Assistant Administrator of the Recovery Directorate at FEMA headquarters, or designee, may identify an issue that necessitates sending the appeal back to the RA. This should be reserved for cases when there is no other acceptable way to resolve the issue.

**4. Appeals for Alternative Procedures Projects**

FEMA is piloting Alternative Procedures on Permanent Work Projects. Due to the goals, intent, and benefits of the Alternative Procedures, FEMA does not consider appeals on Alternative Procedures Permanent Work Projects (see [Chapter 8:VIII. Capped Projects](#)) unless it is related to a cost adjustment made by FEMA after the Fixed-Cost Offer is accepted (i.e., related to insurance, noncompliance, or an audit). Any disagreement on damage, SOW, or cost must be resolved prior to accepting the fixed-cost offer. Additionally, FEMA does not consider appeals on time extension denials for Alternative Procedures Projects.

**D. Arbitration**

Under certain circumstances, an Applicant that disputes a FEMA determination related to its PA application, including eligibility for assistance or repayment of assistance, have a right of arbitration.<sup>82</sup> Additional information is provided in FEMA's Fact Sheet *Public Assistance Appeals and Arbitration under the Disaster Recovery Reform Act* at [www.fema.gov/sites/default/files/2020-07/fema\\_DRRRA-1219-public-assistance-arbitration-right\\_fact-sheet.pdf](http://www.fema.gov/sites/default/files/2020-07/fema_DRRRA-1219-public-assistance-arbitration-right_fact-sheet.pdf).

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<sup>82</sup> Stafford Act § 423(d), 42 U.S.C. § 5189a, as amended by the Disaster Recovery Reform Act § 1219.

## VI. Applicant Eligibility

FEMA provides assistance to eligible Applicants, which are defined below.<sup>83</sup> As shown in Figure 4. *Applicant Eligibility*, FEMA must first determine whether the Applicant is eligible before evaluating the Applicant's claim. FEMA and the Recipient review the RPA to determine whether the Applicant is eligible for assistance.<sup>84</sup> This section provides FEMA's policy on Applicant eligibility.

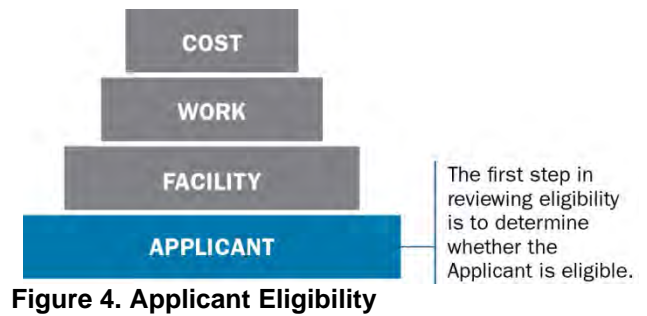


Figure 4. Applicant Eligibility

### A. State and Territorial Governments

State and Territorial governments, including the District of Columbia, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands, are eligible Applicants. This includes any agency or instrumentality thereof, exclusive of local governments.<sup>85</sup> The State or Territorial government designates one of the agencies (usually the emergency management agency) as the Recipient. The Recipient serves as the pass-through entity to the other agencies, which are Subrecipients.

### B. Tribal Governments

Federally recognized Indian Tribal governments, including Alaska Native villages and organizations, are eligible Applicants. Alaska Native Corporations are ineligible as they are privately owned.<sup>86</sup>

### C. Local Governments

The following types of local governments are eligible Applicants:<sup>87</sup>

- Counties and parishes;
- Municipalities, cities, towns, boroughs, and townships;
- Local public authorities;
- School districts;
- Intrastate districts;
- Councils of governments (regardless of whether incorporated as nonprofit corporations under State law);
- Regional and interstate government entities;
- Agencies or instrumentalities of local governments;
- State recognized Tribes; and
- Special districts established under State law.

<sup>83</sup> 44 C.F.R. § 206.222.

<sup>84</sup> 44 C.F.R. § 206.207(b)(1)(iii)(C).

<sup>85</sup> Stafford Act § 102(4), 42 U.S.C. § 5122; 44 C.F.R. §§ 206.2(a)(22) and 206.222(a); and 2 C.F.R. § 200.90.

<sup>86</sup> Stafford Act § 102(6), 42 U.S.C. § 5122; 44 C.F.R. §§ 206.201(i) and 206.222(c); and 2 C.F.R. § 200.54.

<sup>87</sup> Stafford Act § 102(8), 42 U.S.C. § 5122; 44 C.F.R. §§ 206.2(a)(16) and 206.222(a); and 2 C.F.R. § 200.64.

- Community Development Districts are special districts that finance, plan, establish, acquire, construct or reconstruct, operate, and maintain systems, facilities, and basic infrastructure within their respective jurisdictions. To be eligible, a Community Development District must own and be legally responsible for maintenance, and operation of an eligible facility that is open to and serves the general public.<sup>88</sup>

The State or a political subdivision of the State may submit applications on behalf of rural communities, unincorporated towns or villages, and other public entities not listed above.<sup>89</sup>

#### D. Private Nonprofit Organizations

Only certain PNPs are eligible Applicants. To be an eligible PNP Applicant, the PNP must show that it has:



Figure 5. PNP Eligibility

- A ruling letter from the U.S. Internal Revenue Service that was in effect as of the declaration date and granted tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code; or
- Documentation from the State substantiating it is a non-revenue producing, nonprofit entity organized or doing business under State law.<sup>90</sup>

If the organization is not required to obtain 501(c)(3) status or tax-exempt status under applicable State law, the organization must provide articles of association, bylaws, or other documents indicating that it is an organized entity, and a certification that it is compliant with Internal Revenue Code section 501(c)(3) and State law requirements.

Additionally, as shown in Figure 5. *PNP Eligibility*, prior to determining whether the PNP is eligible, FEMA must first determine whether the PNP owns or operates an eligible facility.<sup>91</sup> For PNPs, an eligible facility is one that provides one of the services listed below (the declared incident must have damaged the facility):

- A facility that provides a critical service, which is defined as education, utility, emergency, or medical (see [Table 1. PNP Eligible Critical Services](#));<sup>92</sup> or
- A facility that provides a noncritical, but essential social service AND provides those services to the general public (see [Table 2. PNP Eligible Noncritical, Essential Social Services](#)).<sup>93</sup> PNP facilities generally meet the requirement of serving the general public if ALL of the following conditions are met.<sup>94</sup>

<sup>88</sup> Community Development Districts generally meet the requirement of serving the public based on the same criteria used for PNPs in [Chapter 3:VI.D. Private Nonprofit Organizations](#).

<sup>89</sup> Stafford Act § 102(8)(c), 42 U.S.C. § 5122; 44 C.F.R. § 206.2(a)(16)(iii).

<sup>90</sup> 44 C.F.R. § 206.221(f).

<sup>91</sup> 44 C.F.R. § 206.222(b).

<sup>92</sup> Stafford Act § 406(a)(3)(B), 42 U.S.C. § 5172; 44 C.F.R. § 206.221(e).

<sup>93</sup> 44 C.F.R. § 206.221(e)(7).

<sup>94</sup> FEMA also uses this criteria to determine whether a Community Development District serves the public.

- Facility use is not limited to any of the following:
  - A certain number of individuals;
  - A defined group of individuals who have a financial interest in the facility, such as a condominium association;
  - Certain classes of individuals; or
  - An unreasonably restrictive geographical area, such as a neighborhood within a community;
- Facility access is not limited to a specific population (such as those with gates or other security systems intended to restrict public access); and
- Any membership fees meet all of the following criteria:
  - Are nominal;<sup>95</sup>
  - Are waived when an individual can show inability to pay the fee;
  - Are not of such magnitude to preclude use by a significant portion of the community; and
  - Do not exceed what is appropriate based on other facilities used for similar services.
- Certain types of facilities, such as senior centers, that restrict access in a manner clearly related to the nature of the facility, are still considered to provide essential social services to the general public.<sup>96</sup>

In cases where the facility provides multiple services, such as a community center, FEMA reviews additional items to determine the primary service that facility provides. Facilities established or primarily used for political, athletic, recreational, vocational, or academic training, conferences, or similar activities are ineligible (see [Table 3. PNP Ineligible Services](#)).

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<sup>95</sup> FEMA considers the provision of services with a high membership initiation fee or high annual dues to be restrictive to certain populations. FEMA may consider the provision of services with a low fee that only covers administrative processing costs or a fee that can be waived upon demonstration of need to be accessible to the general public.

<sup>96</sup> Per Stafford Act §§ 102(11)(B) and 406(a)(3)(C), 42 U.S.C. §§ 5122 and 5172, organizations operating houses of worship that limit leadership or membership to persons who share a religious faith or practice still provide essential social services to the general public.

# 1. Private Nonprofit Critical Services

**Table 1. PNP Eligible Critical Services**

| PNP ELIGIBLE CRITICAL SERVICES   |   |
|--|---|
| <p style="text-align: center;"><b>EDUCATION</b></p> <ul style="list-style-type: none"> <li>• Primary or secondary education as determined under State law and provided in a day or residential school, including parochial schools; OR</li> <li>• Higher-education institutions that meet all of the following criteria:               <ul style="list-style-type: none"> <li>○ Admit students or persons having a high school diploma or equivalent;</li> <li>○ Are legally authorized to provide education beyond a secondary level;</li> <li>○ Award a bachelor’s degree or 2-year degree that is acceptable as full credit toward a bachelor’s degree or provides at least a 1-year training program to prepare students for gainful employment in a recognized occupation; and</li> <li>○ Are accredited by a nationally recognized agency or association (as determined by the Secretary of Education).</li> </ul> </li> <li>• Educational facilities that meet the above criteria are eligible without regard to religious character or use for religious instruction.</li> </ul> | <p style="text-align: center;"><b>EMERGENCY MEDICAL</b></p> <ul style="list-style-type: none"> <li>• Emergency medical care (diagnosis or treatment of mental or physical injury or disease) provided in:               <ul style="list-style-type: none"> <li>○ Clinics</li> <li>○ Dialysis facilities</li> <li>○ Facilities that provide in-patient care for convalescent or chronic disease patients</li> <li>○ Hospices and nursing homes</li> <li>○ Hospitals and related facilities, including:                   <ul style="list-style-type: none"> <li>➢ Central service facilities operated in connection with hospitals</li> <li>➢ Extended-care facilities</li> <li>➢ Facilities related to programs for home-health services</li> <li>➢ Laboratories</li> <li>➢ Self-care units</li> <li>➢ Storage, administration, and record areas</li> </ul> </li> <li>○ Long-term care facilities</li> <li>○ Outpatient facilities</li> <li>○ Rehabilitation centers</li> </ul> </li> </ul> |
| <p style="text-align: center;"><b>UTILITY</b></p> <ul style="list-style-type: none"> <li>• Communications transmission and switching, and distribution of telecommunications traffic</li> <li>• Electric power generation, transmission, and distribution.</li> <li>• Irrigation to provide water for drinking water supply, fire suppression, or electricity generation</li> <li>• Sewer and wastewater collection, transmission, and treatment</li> <li>• Water treatment, transmission, and distribution by a water company supplying municipal water</li> </ul>  | <p style="text-align: center;"><b>EMERGENCY SERVICES</b></p> <ul style="list-style-type: none"> <li>• Ambulance</li> <li>• Fire protection</li> <li>• Rescue</li> <li>• Public broadcasting that monitor, receive, and distribute communication from the Emergency Alert System to the public</li> </ul>  |
| <p>Administrative and support facilities essential to the provision of the PNP critical service are eligible facilities.</p>   |   |

## 2. Private Nonprofit Essential Social Services

**Table 2. PNP Eligible Noncritical, Essential Social Services**

| <b>PNP ELIGIBLE NONCRITICAL, ESSENTIAL SOCIAL SERVICES</b>   |  |
|--|--|
| <p>Community centers established and primarily used for the following services (or similar) to the general public:</p> <ul style="list-style-type: none"> <li>● Art services authorized by a SLTT government, including, but not limited to:               <ul style="list-style-type: none"> <li>● Arts administration</li> <li>● Art classes</li> <li>● Management of public arts festivals</li> <li>● Performing arts classes</li> </ul> </li> <li>● Community center activities that serve the public</li> <li>● Educational enrichment activities that are not vocational, academic, or professional training.</li> </ul> <p>Examples include hobby or at-home pursuits, such as:</p> <ul style="list-style-type: none"> <li>○ Car care</li> <li>○ Ceramics</li> <li>○ Gardening</li> <li>○ Personal financial and tax planning</li> <li>○ Sewing</li> <li>○ Stamp and coin collecting</li> </ul> <ul style="list-style-type: none"> <li>● Multi-purpose arts programming</li> <li>● Senior citizen projects, rehabilitation programs, community clean-up projects, blood drives, local government meetings, and similar activities</li> <li>● Services and activities intended to serve a specific group of individuals (e.g., women, African Americans, or teenagers) provided the facility is otherwise available to the public on a non-discriminatory basis</li> <li>● Social activities to pursue items of mutual interest or concern, such as:               <ul style="list-style-type: none"> <li>○ Community board meetings</li> <li>○ Neighborhood barbecues</li> <li>○ Various social functions of community groups</li> <li>○ Youth and senior citizen group meetings</li> </ul> </li> <li>● Performing arts centers with a primary purpose of producing, facilitating, or presenting live performances, including:               <ul style="list-style-type: none"> <li>○ Construction of production materials</li> <li>○ Creation of artistic works or productions</li> <li>○ Design</li> <li>○ Professional training</li> <li>○ Public education</li> <li>○ Rehearsals</li> </ul> </li> </ul> | <p>Facilities that do not provide medical care, but provide:</p> <ul style="list-style-type: none"> <li>● Alcohol and drug treatment and other rehabilitation services</li> <li>● Assisted living</li> <li>● Custodial care, even if the service is not provided to the general public (including essential administration and support facilities)</li> <li>● Childcare</li> <li>● Center-based childcare, even if not provided to the public</li> <li>● Day care for individuals with disabilities or access and functional needs (for example, those with Alzheimer’s disease, autism, muscular dystrophy)</li> <li>● Food assistance programs, including Food Banks and storage of food for Food Banks</li> <li>● Health and safety services, including animal control services</li> <li>● Homeless shelters</li> <li>● Houses of worship</li> <li>● Libraries</li> <li>● Low-income housing (as defined by Federal or SLTT law or regulation)</li> <li>● Museums:               <ul style="list-style-type: none"> <li>○ Constructed, manufactured, or converted with a primary purpose of preserving and exhibiting a documented collection of artistic, historic, scientific, or other objects</li> <li>○ Buildings, associated facilities, fixed facilities, and equipment primarily used for the preservation or exhibition of the collection, including:                   <ul style="list-style-type: none"> <li>➤ Permanent infrastructure, such as walkways and driveways of outdoor museum-type exhibition areas</li> <li>➤ Historic buildings, such as barns and other outbuildings, intended for the preservation and exhibition of historical artifacts within a defined area</li> <li>➤ Permanent facilities and equipment that are part of arboretums and botanical gardens</li> <li>➤ Infrastructure, such as utilities, and administrative facilities necessary for support</li> </ul> </li> <li>○ The grounds at museums and historic sites are ineligible.</li> <li>○ Open natural areas/features or entities that promote the preservation/conservation of such areas are ineligible.</li> </ul> </li> <li>● Residential and other services for families of domestic abuse</li> <li>● Residential services for individuals with disabilities</li> <li>● Senior citizen centers</li> <li>● Shelter workshops that create products using the skills of individuals with disabilities</li> <li>● Zoos</li> </ul> |

With exception of custodial care facilities and museums, administrative and support facilities essential to the provision of PNP noncritical service are ineligible facilities.

### 3. Private Nonprofit Ineligible Services

**Table 3. PNP Ineligible Services**

| PNP INELIGIBLE SERVICES  |   |
|--|---|
| <p style="text-align: center;"><b>COMMUNITY CENTER SERVICES</b></p> <ul style="list-style-type: none"> <li>• Training individuals to pursue the same activities as full-time paying careers (for example, vocational, academic, or professional training)</li> <li>• Meetings or activities for only a brief period, or at irregular intervals</li> <li>• Other education or training including:               <ul style="list-style-type: none"> <li>○ Athletic, vocational, academic training, or similar activities</li> <li>○ Political education</li> </ul> </li> </ul> | <p style="text-align: center;"><b>OTHER COMMUNITY SERVICES</b></p> <ul style="list-style-type: none"> <li>• Advocacy or lobbying groups not directly providing health services</li> <li>• Cemeteries</li> <li>• Conferences</li> <li>• Day care services not included in previous table of eligible services</li> <li>• Flood control (e.g., levees, berms, dunes)</li> <li>• Land reclamation facilities</li> <li>• Irrigation solely for agricultural purposes<sup>97</sup></li> <li>• Job counseling</li> <li>• Property owner associations with facilities such as roads, bridges, and recreational facilities (except utilities or emergency facilities)</li> <li>• Public housing, other than low-income housing</li> <li>• Recreation</li> <li>• Parking not in direct support of eligible facility</li> </ul> |

### 4. Private Nonprofit Application Documentation Requirements

**Table 4. PNP RPA Documentation and Information Requirements**

| All PNP Applicants   |
|--|
| <input type="checkbox"/> A ruling letter from the Internal Revenue Service that was in effect on the declaration date and granted tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code; OR documentation from the State substantiating it is a non-revenue producing, nonprofit entity organized or doing business under State law. If exempt from both the requirement to apply for 501(c)(3) status and tax-exempt status under State law, the organization must provide articles of association, bylaws, or other documents indicating that it is an organized entity and a certification that it is compliant with Internal Revenue Code section 501(c)(3) and State law requirements. (required) |
| <input type="checkbox"/> If the Applicant owns the damaged facility, proof of ownership (required)   |
| <input type="checkbox"/> If the Applicant leases the damaged facility, provide lease or other proof of legal responsibility to repair the incident-related damage (required)   |
| <input type="checkbox"/> List of services provided in the damaged facility, when, and to whom (required)   |
| Membership Organization  |
| <input type="checkbox"/> Who is allowed membership (required)  |
| <input type="checkbox"/> What fees are charged (required)  |
| <input type="checkbox"/> Policy regarding waiving memberships (required)   |

<sup>97</sup> 44 C.F.R. § 206.221(e)(3).

|  |
|--|
| <b>Child Care Facility</b>   |
| <input type="checkbox"/> Proof that the State Department of Children and Family Services, Department of Human Services, or similar agency, recognizes it as a licensed childcare facility (required)   |
| <b>Education</b>   |
| <input type="checkbox"/> Proof that the school is accredited or recognized by the State Department of Education (required). State regulations for private schools vary and some states do not require accreditation. A PNP school must demonstrate that it is recognized by the state as providing elementary or secondary education. Depending on state requirements, documentation may include, but is not limited to, the following (must have been in existence at the time of the incident): <ul style="list-style-type: none"> <li><input type="checkbox"/> Accreditation documents</li> <li><input type="checkbox"/> Certification from the State Department of Education that the Applicant operated the facility as a PNP school at the time of the incident</li> <li><input type="checkbox"/> Documentation demonstrating compliance with the State’s compulsory attendance laws</li> <li><input type="checkbox"/> School-year calendar</li> <li><input type="checkbox"/> School budget</li> <li><input type="checkbox"/> Complete list of students and teachers</li> <li><input type="checkbox"/> Educational instruction property and equipment owned by the PNP</li> <li><input type="checkbox"/> Tax records for the school</li> <li><input type="checkbox"/> Documents reflecting school curriculum, transcripts, health and safety, disciplinary, or other records kept for students</li> <li><input type="checkbox"/> Tuition receipts</li> <li><input type="checkbox"/> Financial statements</li> <li><input type="checkbox"/> Commencement documents</li> <li><input type="checkbox"/> Inclusion in the U.S. Department of Education’s National Center for Education Statistics Private School Universe Survey data<sup>98</sup></li> <li><input type="checkbox"/> State Department of Education electronic and paper homeschool declaration or registration forms</li> </ul> |
| <b>Mixed-Use Facility (See <a href="#">Chapter 4:II.B.1, Mixed-Use Facility</a>)</b>   |
| <input type="checkbox"/> Proof of the established purpose of the facility with documentation (required), such as: <ul style="list-style-type: none"> <li><input type="checkbox"/> U.S. Internal Revenue Service documentation;</li> <li><input type="checkbox"/> Pre-incident charter, bylaws, and amendments; or</li> <li><input type="checkbox"/> Evidence of longstanding, routine (day-to-day) use (e.g., a calendar of activities).</li> </ul>  |

Once FEMA approves the RPA, the PAGS in coordination with the PDTFL assigns a Program Delivery Manager (PDMG) to the Applicant (usually within 5 working days of RPA approval). The PDMG serves as the primary point of contact for the Applicant, providing customer service and programmatic guidance throughout phases I through V of the PA Program delivery process.

## VII. Exploratory Call

The PDMG conducts the Exploratory Call with the Applicant (usually within 7 working days of Applicant assignment). The Exploratory Call is an introductory discussion conducted by the PDMG via a conference call. The PDMG reviews the Applicant Profile prior to the Exploratory

<sup>98</sup> The Private School Universe Survey electronic search tool is available at [nces.ed.gov/surveys/pss/privateschoolsearch/](https://nces.ed.gov/surveys/pss/privateschoolsearch/).



Call. The objective for the call is to begin developing a relationship with the Applicant and prepare for the Recovery Scoping Meeting as follows:

- Understand the Applicant’s incident impacts by gathering information about the type and level of damage and priority needs for assistance;
- Ensure the Applicant understands the general requirements for a list of impacts;
- Provide key information on documentation, procurement, and EHP requirements; and
- Schedule the Recovery Scoping Meeting and define appropriate attendees.

After the Exploratory Call and prior to the Recovery Scoping Meeting, the Applicant needs to begin compiling its list of impacts to formally document its claim. [Chapter 5:I. List of Impacts](#), provides details on how to list the impacts. It is critical that the Applicant work with its PDMG to submit all impact information early in the process to enable efficient and accurate project development. FEMA and the Recipient use this information to deploy the appropriate number and type of resources and need the information as soon as possible to assist Applicants expeditiously.

## VIII. Recovery Scoping Meeting

FEMA and the Recipient should conduct the Recovery Scoping Meeting within 21 working days of assigning a PDMG to the Applicant.

While the Applicant Briefing provides high-level information for all potential Applicants, the Recovery Scoping Meeting addresses the specific needs of each eligible Applicant. At the Recovery Scoping Meeting, FEMA, the Recipient, and the Applicant review and refine the list of impacts and discuss:

- PA delivery process;
- Details of the Applicant’s impacts from the incident;
- Hazard mitigation opportunities;
- Eligibility criteria for facilities, work and costs;
- Logical grouping of damage;
- Procurement requirements;
- Insurance reductions and requirements;
- EHP compliance requirements;
- Documentation requirements;
- Interagency Recovery Coordination;
- Deadlines; and
- Appeal process.

The Applicant should ensure staff with knowledge of the incident-related damage, emergency activities performed, and related costs attend the meeting (e.g., public works official, finance staff, risk manager).

Additionally, the Applicant and PDMG develop the Project Development Plan, which is a 45 to 60-day plan that includes a schedule of key steps to complete the project application development process. FEMA uses the Project Development Plan to track project application progress. In creating the plan, the PDMG and Applicant discuss:

- Weekly Applicant Status Meeting schedule;
- Site inspection schedule;
- Applicant's role in approving the Damage Descriptions and Dimensions;
- Timeline to gather and submit documentation; and
- Timeline to develop SOWs and cost estimates.

# CHAPTER 4: GENERAL WORK AND FACILITY ELIGIBILITY

This chapter provides the general requirements for work to be eligible and provides PA policy on facility eligibility. Although eligibility determinations may occur later in the process, FEMA conducts much of its eligibility evaluation of facilities and work throughout Phase II: *Impacts and Eligibility*.

## I. General Work Eligibility

Through the PA Program, FEMA provides grant funding for:

- Emergency protective measures and debris removal (Emergency Work); and
- Permanent restoration of damaged facilities, including cost-effective hazard mitigation to protect the facilities from future damage (Permanent Work).

If an entity does not comply with all applicable statutes, EOs, regulations, and policies, FEMA may take one of several actions including disallowing all or part of the cost of the project not in compliance.<sup>99</sup>

### A. Categories of Work

To facilitate the processing of PA funding, FEMA separates Emergency Work into two categories and Permanent Work into five categories based on general types of facilities. These categories are shown in Figure 6. *Categories of Work*.

### B. Minimum Work Eligibility Criteria

At a minimum, work must meet each of the following three general criteria to be eligible:

- Be required as a result of the declared incident;
- Be located within the designated area; and
- Be the legal responsibility of an eligible Applicant.<sup>100</sup>

| Emergency Work                         | Permanent Work                                     |
|--|--|
| Address an immediate threat:           | Restoration of:                                    |
| <b>A</b> Debris removal                | <b>C</b> Roads/bridges                             |
| <b>B</b> Emergency protective measures | <b>D</b> Water control facilities                  |
|  | <b>E</b> Buildings/equipment                       |
|  | <b>F</b> Utilities                                 |
|  | <b>G</b> Parks, recreational, and other facilities |

Figure 6. Categories of Work

Work eligibility is discussed in detail in Chapters [7. Emergency Work Eligibility](#) and [8. Permanent Work Eligibility](#).

### 1. Result of Declared Incident

The Applicant is responsible for showing that work is required:

- Due to an immediate threat resulting from the declared incident (Emergency Work); or

<sup>99</sup> 2 C.F.R. § 200.338.

<sup>100</sup> 44 C.F.R. § 206.223(a).

- To address damage caused by the declared incident (Permanent Work, temporary repairs, and mold remediation).

The Applicant must demonstrate that the debris causing an immediate threat was generated by the declared incident during the declared incident period.

The Applicant must demonstrate that damage was caused directly by the declared incident. FEMA does not provide PA funding for repair of damage caused by:

- Deterioration;
- Deferred maintenance;
- The Applicant’s failure to take measures to protect a facility from further damage; or
- Negligence.<sup>101</sup>

When necessary to validate damage, the Applicant may be required to provide:

- Pre-incident photographs of the impacted site or facility; and/or
- Documentation supporting pre-disaster condition of the facility (e.g., facility maintenance records, inspection/safety reports).

If a facility was functioning prior to the disaster and the disaster caused damage that rendered the facility non-functional, the facility may be eligible provided the pre-disaster condition was not a significant contributing factor in the cause of failure.

## **2. Within Designated Area**

To be eligible, the facility must be located, and work must be performed, in the designated area defined in the declaration [except for sheltering, evacuation, and EOC activities]. The sheltering, evacuation and EOC activities must be used for a declared area.<sup>102</sup> Emergency Work or Permanent Work performed on a facility located outside of the designated area is ineligible. This is true even if an eligible Applicant is legally responsible for the work, including work performed outside the designated area to protect a facility within the designated area.

Tribal governments do not always have geographical boundaries, and some have boundaries that cross State lines. Therefore, declarations do not usually define specific designated geographical areas for Tribal governments. For Tribal governments, FEMA determines eligibility based on legal responsibility and whether the work is directly related to the declared incident.

## **3. Legal Responsibility**

To be eligible, work must be the legal responsibility of the Applicant requesting assistance.<sup>103</sup>

To determine legal responsibility for Emergency Work, FEMA evaluates whether the Applicant requesting the assistance either had jurisdiction over the area or the legal authority to conduct the work related to the request at the time of the incident.

To determine legal responsibility for Permanent Work, FEMA evaluates whether the Applicant claiming the costs had legal responsibility for disaster-related restoration of the facility at the time of the incident based on ownership and the terms of any written agreements (such as for facilities under construction, leased facilities, and facilities owned by a Federal agency).

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<sup>101</sup> 44 C.F.R. § 206.223(e).

<sup>102</sup> 44 C.F.R. § 206.223(a)(2).

<sup>103</sup> 44 C.F.R. § 206.223(a)(3).

(a) *Documentation to Support Legal Responsibility*

Documents that support legal responsibility include:

- Deeds;
- Titles;
- Lease agreements (required for leased facilities); and
- Contract (required for facilities under construction at the time of the incident).

(b) *Facility Ownership*

When the Applicant requests PA funding to restore a facility, it is the Applicant's responsibility to provide proof that it owns the facility. To determine ownership, FEMA may review deeds, title documents, and local government tax records.

Ownership of a facility is usually sufficient to establish the Applicant's legal responsibility to restore the facility, provided it is not under construction by a contractor or leased to another entity at the time of the incident.

(c) *Facilities under Construction*

If the facility is under construction by a contractor at the time of the incident, FEMA reviews the contract to determine whether the Applicant is legally responsible for the repair of damage caused by the incident.<sup>104</sup> At a minimum, FEMA evaluates the contract to determine if it:

- Identifies the contractor or owner as being responsible for disaster-related repairs;
- Requires a builder's risk policy for losses that occur while the contractor has control of the facility;
- Has a Force Majeure provision, which is a clause that relieves the contractor from responsibility for damage beyond its reasonable control, such as natural disasters (often referred to "acts of God") or acts of war; or
- Has a provision that identifies the point at which the contractor transfers legal responsibility for the facility, or portions of the facility, back to the owner.

(d) *Leased Facilities*

The Applicant may own a facility and lease it to a tenant, or the Applicant may lease a facility owned by another party. In either case, FEMA reviews the lease agreement to determine legal responsibility for repair of damage caused by the incident. If the lease does not specify either party as responsible, FEMA considers the owner of the facility legally responsible for the costs to restore the facility.

If the lease is between two eligible Applicants, FEMA provides PA funding to the Applicant legally responsible for the restoration.

(e) *Federal Facilities*

Facilities owned and maintained by Federal agencies are ineligible. If a Federal agency constructed a facility and formally designated the Applicant as the legally responsible entity for

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<sup>104</sup> Stafford Act § 406(e)(2), 42 U.S.C. § 5172.

facility operation, maintenance, and repairs, then the facility may be eligible. FEMA reviews the other Federal agency's authority and agreement between the Federal agency and the Applicant to confirm the legally responsible entity.

*(f) Jurisdiction over an Area*

In general, the Applicant only has legal responsibility to conduct Emergency Work activities within its jurisdiction. If the Applicant conducts Emergency Work activities outside its jurisdiction, it must demonstrate its legal basis and responsibility to conduct those activities.

*(g) Conducting Activities on Private Property*

Work on private property is the legal responsibility of the property owner and generally ineligible for PA funding. In rare cases, FEMA may provide PA funding for specific, limited activities. In such cases, at a minimum, the Applicant must have legal authority to conduct the activity. To determine whether a SLTT government has legal authority to conduct activities on private property, FEMA reviews the Applicant's legal basis and specific authority to conduct the activities. See [Chapter 7:I.E. Debris Removal from Private Property](#) and [7:II.C. Emergency Protective Measures on Private Property](#) for additional eligibility requirements.

*(h) Work Under the Authority of Other Federal Agencies*

OFA's have authority to conduct work that may overlap with FEMA's authority. FEMA's authority is broad and most OFA authorities are more specific than FEMA's authorities.

FEMA evaluates its authorities against OFA authorities. Some of the Factors that FEMA considers when evaluating whether an OFA has more specific authority are whether the OFA's authority is specifically and exclusively:

- Available for a particular type of facility, work, or activity;
- Applicable to a Presidential Declaration under the Stafford Act;
- Specific to an incident or type of incident; or
- Delineated under direction by Congress.

In such cases, FEMA does not provide assistance for the facilities or work even if that OFA does not provide funding for the facility or work.<sup>105</sup> This restriction includes any activities or costs related to the work that falls under OFA authorities as the costs are not related to eligible work. The Applicant should apply to the respective agency for assistance with a facility or work under that agency's authority.

### **C. Environmental and Historic Preservation Requirements**

Several statutes, EOs, and regulations establish requirements to protect the environment and preserve the Nation's historic and archaeological resources. FEMA reviews each PA project to ensure the work complies with applicable Federal EHP laws and implementing regulations, and applicable EOs.<sup>106</sup> The Applicant is responsible for complying with applicable Federal, State, Territorial, or Tribal EHP laws even if FEMA is not providing PA funding for all of the work.

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<sup>105</sup> 44 C.F.R. § 206.226(a).

<sup>106</sup> 2 C.F.R. § 200.300.

See [Appendix A: Environmental and Historic Preservation Compliance](#) for a description of frequently encountered EHP statutes, EOs, and regulations.

FEMA provides technical support to Applicants throughout the recovery process to help ensure compliance with all EHP laws, regulations, and EOs, as well as to identify opportunities to incorporate conservation measures in the project area for the protection and preservation of environmental or historic resources.

## II. Facility Eligibility

In general, a facility must be determined eligible for work to be eligible. There are exceptions for some emergency work activities as shown in Figure 7. *Facility Eligibility* and discussed in [Chapter 7. Emergency Work Eligibility](#).

A facility is a building, system, or equipment, built or manufactured, or an improved and maintained natural feature.<sup>107</sup>

An example of a system that qualifies as a facility is a water distribution system. Mechanical, electrical, plumbing, and other systems that are components of a facility in which they operate are considered part of that facility.

A natural feature is improved and maintained if it meets all of the following conditions:

- The natural feature has a designed and constructed improvement to its natural characteristics, such as a terraced slope or realigned channel;
- The constructed improvement enhances the function of the unimproved natural feature; and
- The Applicant maintains the improvement on a regular schedule to ensure that the improvement performs as designed.

Only the section of a natural feature that meets the criteria above is eligible. For example, if only 150 linear feet of a natural channel bank is armored with rip rap and maintained, the eligible facility would be limited to that 150-linear-foot section.

The following are ineligible facilities:

- Unimproved property (e.g., a hillside or slope, forest, natural channel bank); and
- Land used for agricultural purposes.<sup>108</sup>



**Figure 7. Facility Eligibility**

For PNPs, the facility must be eligible in order for the work to be eligible.

For State, Territorial, Tribal, and local governments, the facility must be eligible in order for Permanent Work, temporary repairs, or mold remediation to be eligible. Facility eligibility is not applicable to other Emergency Work.

<sup>107</sup> 44 C.F.R. § 206.201(c).

<sup>108</sup> Ibid.

## A. Public Facility

An eligible public facility is one that a SLTT government owns or has legal responsibility for maintaining, including any:

- Flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility;
- Non-Federal-aid street, road, or highway;
- Other public building, structure, or system, including those used for educational, recreational, or cultural purposes; or
- Park.<sup>109</sup>

When a facility maintained by a Community Development District is not open to the general public or does not provide a service to the general public, the facility is ineligible.

## B. Private Nonprofit Facility

An eligible PNP facility is one that provides educational, utility, emergency, medical, or custodial care, including for senior citizens or individuals with disabilities, and other essential social-type services to the general public (see [Table 1. PNP Eligible Critical Services](#) and [Table 2. PNP Eligible Noncritical, Essential Social Services](#)).<sup>110</sup>

If a PNP operates multiple facilities, or a single facility composed of more than one building, FEMA must evaluate each building independently, even if all are located on the same grounds. Buildings that are part of a complex that includes outdoor facilities (e.g., swimming pools, athletic fields, or tennis courts) are not evaluated separately from the rest of the complex when determining eligibility of the building. For example, an outdoor pool usually has a building for bathrooms and controlling entry. In such cases, FEMA does not evaluate the building for eligibility separately because it is an intrinsic part of the pool complex.

See [Appendix B: Private Nonprofit Facility Eligibility Examples](#), for examples of PNP facilities and corresponding eligibility determinations.

### 1. Mixed-Use Facility

PNP facilities that provide both eligible and ineligible services are considered mixed-use facilities. Eligibility of mixed-use PNP facilities is dependent on the *primary* use of the facility, which is determined by the amount of physical space dedicated to eligible and ineligible services. “Primary use” is the use for which *more* than 50 percent of the physical space in the facility is dedicated. FEMA evaluates the entire structure when determining primary use; it does not separately address individual areas, such as floors, basements, or wings. Common space, such as bathrooms, hallways, lobbies, closets, stairways, and elevators, is not included when calculating mixed-use space.

If FEMA determines that 50 percent or more of physical space is dedicated to ineligible services, the entire facility is ineligible. If the facility is eligible, FEMA prorates Permanent Work funding based on the percentage of physical space dedicated to eligible services. Depending on the specifics of the scenario, FEMA either prorates Emergency Work funding or limits Emergency

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<sup>109</sup> Stafford Act § 102(10), 42 U.S.C. § 5122; 44 C.F.R. § 206.221(h).

<sup>110</sup> Stafford Act § 102(11), 42 U.S.C. § 5122; 44 C.F.R. § 206.221(e).



Work funding to what is eligible, necessary, and reasonable. The Applicant is responsible for the balance of costs to restore the facility and must restore the entire facility to receive funding for repairs to the eligible-use portions of the facility.

Eligible PNP irrigation and eligible PNP public broadcasting facilities are exempt from primary use requirements. However, in consideration of irrigation, FEMA will evaluate whether the facility was designed to provide eligible irrigation and whether it has ever been used for that purpose. If the facility was not designed for an eligible irrigation purpose, and has never been utilized for that purpose, it is not eligible.

*(a) Mixed-Use Space*

In cases where the same physical space is used for both eligible and ineligible services, the primary use is the use for which more than 50 percent of the operating time is dedicated in that shared physical space. If space is available for use, but the Applicant cannot support that it is used for eligible services for more than 50 of the percent of operating time, this criterion is not met.

If FEMA determines that 50 percent or more of the operating time in the shared physical space is dedicated to ineligible services, then FEMA does not include that physical space when evaluating primary use.

*(b) Use by Multiple Entities*

In cases where a PNP Applicant shares use of a facility, it is only eligible if the facility is primarily owned by the PNP Applicant and meets the primary use requirement. FEMA prorates funding for these facilities based on the percentage of physical space that the Applicant owns and dedicates to eligible services. The following guidelines are used to determine the eligibility of such facilities:

- If the eligible PNP owns the entire facility and leases a portion of it to another entity, the facility is eligible provided that the PNP dedicates more than 50 percent of the facility for eligible services. If the PNP leases 50 percent or more of the facility to an ineligible Applicant, or for ineligible services, then the facility is ineligible.
- If the eligible PNP only owns a portion of the facility, it is eligible provided that the PNP owns more than 50 percent of the facility and dedicates more than 50 percent of physical space for eligible services.

## **2. Small Business Administration Loan Requirement**

Following a Major Disaster Declaration, the U.S. Small Business Administration (SBA) can provide loans to individuals and businesses for facility restoration. For PNPs with facilities that provide noncritical, essential social services, FEMA only provides PA funding for eligible Permanent Work costs that an SBA loan will not cover for those facilities. Therefore, noncritical PNPs must also apply for a disaster loan from the SBA and receive a determination for Permanent Work on facilities that:<sup>111</sup>

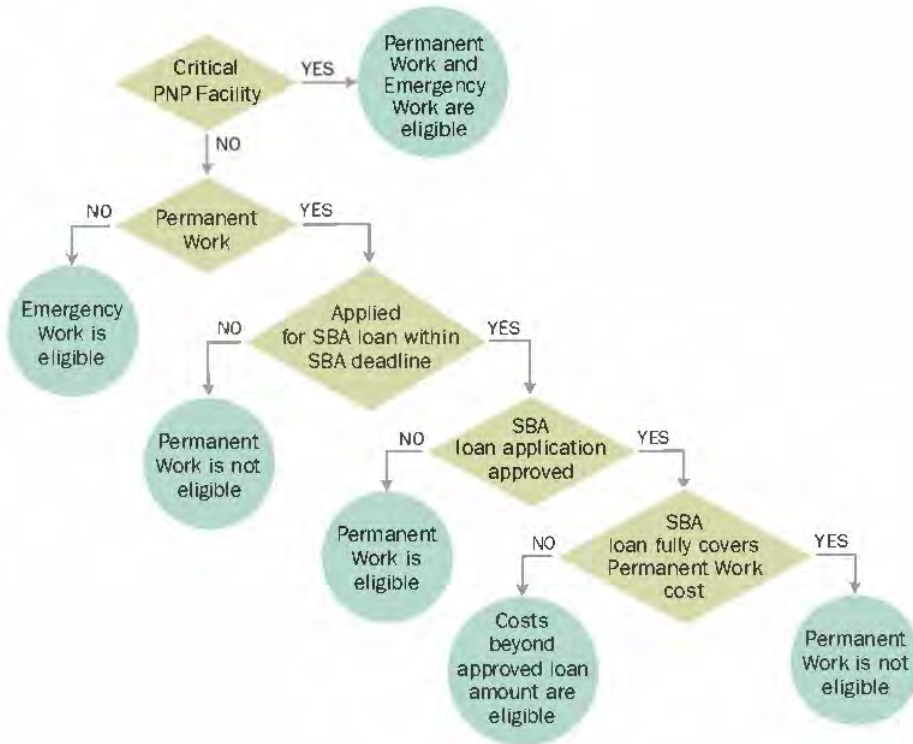
- Provide noncritical services; or

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<sup>111</sup> Stafford Act § 406(a)(3)(A)(ii), 42 U.S.C. § 5172; 44 C.F.R. § 206.226(c). For online applications to SBA, The Applicant should visit the SBA website at [disasterloan.sba.gov/ela/](https://disasterloan.sba.gov/ela/). For additional assistance with the application process, the Applicant should contact the SBA Disaster Customer Service Center at 1-800-659-2955.

- Are mixed-use facilities and the eligible portion of the facility is used to provide services that are entirely noncritical.

If the PNP misses the SBA application deadline, including any SBA approved extension, the Permanent Work is ineligible for FEMA PA funding. If the PNP declines an SBA loan, PA funding is limited to the costs that the loan would not have otherwise covered. This applies even when the PNP cannot accept the terms of the loan, and SBA therefore denies the loan, which may occur when the entity does not meet a collateral requirement. Possible outcomes are shown in Figure 8. *SBA Loan Outcomes*.



**Figure 8. SBA Loan Outcomes**

PNPs do not need to apply for a disaster loan from the SBA for facilities that:

- Provide critical services; or
- Are mixed-use and the eligible portion is either entirely or partially used to provide critical services.

**C. Inactive or Partially Inactive Facility**

To be eligible, a facility must have been in active use at the start of the incident period. Inactive facilities are ineligible, unless one of the following conditions is met:

- The facility was only temporarily inactive for repairs or remodeling (provided a contractor is not responsible for repair of disaster-related damage);
- The Applicant firmly established future active use in an approved budget; or

- The Applicant can clearly demonstrate its intent to begin use within a reasonable amount of time.<sup>112</sup>

The above criteria also apply to facilities that are partially inactive at the start of the incident period. Inactive portions are ineligible unless one of the exceptions noted above applies.

When eligible repairs benefit an area that was not in active use, FEMA prorates funding based on the percentage of the facility that was in active use. For example, if the roof of a partially used building is destroyed, FEMA limits the eligible cost to a prorated amount of the total cost to replace the roof based on the percentage of the building that was in active use.

For PNP mixed-use facilities to be eligible, more than 50 percent of the facility had to be in active use for an eligible purpose at the time of the incident.

#### **D. Facility Scheduled for Repair or Replacement**

Facilities that are not yet under contract but are scheduled for repair or replacement using non-Federal funds are eligible provided that the claimed damage did not exist prior to the incident (FEMA may review procurement and contract documents to validate). If damage existed prior to the incident, only the repair of damage caused by the incident is eligible.

A facility scheduled for replacement within 12 months of the start of the incident period using Federal funds is ineligible. In such a case, the Applicant should coordinate with the agency funding the project to expedite replacement, if possible.

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<sup>112</sup> 44 C.F.R. § 206.226(k)(2).

# CHAPTER 5: DAMAGE AND IMPACT INFORMATION

This chapter provides information on procedures conducted during Phase II, *Impacts and Eligibility*, which include finalizing the list of impacts, logically grouping the impacts and associated damage and work into project applications;<sup>113</sup> conducting site inspections to develop a detailed description of the incident-related damage and dimensions; and collecting project information and documentation.

## I. List of Impacts

The Applicant is required to identify and report all of its incident-related impacts to FEMA within 60 days of the Recovery Scoping Meeting.<sup>114</sup> FEMA may extend the deadline to identify and report the impacts if the Applicant submits a request with justification based on extenuating circumstances beyond the Recipient's or Applicant's control.<sup>115</sup> For example, if a site is inaccessible, FEMA may extend the deadline for that site.

The Applicant needs to submit this identification in the form of a list of impacts that includes all facility damage, debris quantities, and emergency protective measures to address immediate threats that the Applicant is claiming for PA funding. The Applicant lists the information by location with a rough estimate of the associated cost. The list does not include detailed descriptions of impacts, damaged components within a facility, or a final estimate of costs.

Each line item in the list needs to include the following:

- Unique Identifier (e.g., facility name and site) (required);
- Specific location of debris impacts or facility damage (required);
- General description of damage, emergency protective measures, or approximate quantities of debris;
- Approximate cost (required)
- Status of work; and
- Project priority level.



### Terminology

A **site** is defined as an individual building, structure, location, or system section. Examples include each:

- Individual building or structure inclusive of its contents and supplies
- Beach or park inclusive of equipment and other items within the area that are not structures or buildings, such as benches or playground equipment
- Lift or pump station
- Dam
- Section of roadway that has damage within a reasonable distance throughout that section

<sup>113</sup> 44 C.F.R. § 206.201(l).

<sup>114</sup> 44 C.F.R. § 206.202 (d)(1)(ii).

<sup>115</sup> 44 C.F.R. § 206.202 (f)(2).

## II. Grouping Impacts into Projects

This section defines logical grouping of work and damage.<sup>116</sup>

The PDMG works with the Applicant and PDTFL to identify sites and facilities that can be combined into one project. This is a two-step process: 1) Create groups based on categories of work and facility types. 2) Identify sites or facilities that should be formulated into separate projects.

Before grouping work or damage, the PDMG must identify and remove any damaged sites or facilities that are under the authority of another Federal agency. The PDMG must also identify and remove any facilities that were not in use at the time of incident in accordance with [Chapter 4:II.C. Inactive or Partially Inactive Facility](#). The Applicant must either withdraw these sites and facilities from its list of impacts or FEMA will issue a Determination Memorandum.

### A. Initial Emergency Work Grouping

The bullets below identify emergency work that FEMA usually groups together (each bullet stands for one initial grouping):

- All debris removal from public property (Category A);
- All debris removal from waterways (Category A);
- All debris removal from private residential property (Category A);
- All debris removal from commercial property (Category A);
- All private property demolition (Category B);
- All emergency response activities (except those conducted on private property) (Category B);
- Any emergency protective measures performed on private property (Category B);
- All emergency protective measures that involve facility construction or repairs (Category B);
- Each individual temporary facility (Category B); and
- All donated resources for Emergency Work (Category B).

### B. Initial Permanent Work Grouping

The bullets below identify damaged facilities that FEMA considers initially grouping together (each bullet stands for one initial grouping). The list is based on infrastructure categories.

Transportation:

- All roads, bridges, low water crossings, and culverts (Category C);
- All mass transit facilities such as subways and railways (Category G);
- All airports (Category G); and
- All ports and harbors (Category G).

Flood Control:

- All dams and reservoirs (Category D);

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<sup>116</sup> 44 C.F.R. § 206.201(k).

- All canals, drainage channels, and aqueducts (Category D);
- All stormwater retention and detention basins (Category D); and
- All coastal shoreline protection facilities (levees, berms, seawalls, sand revetments, etc.) (Category D).

Education:

- All school campuses (Category E).

Housing:

- All public housing campuses (Category E).

Health:

- All hospital campuses (Category E).

Emergency Service Facilities:

- All police, fire, emergency operation centers, prisons, etc. (Category E).

Other Government Facilities:

- All courthouses, administrative buildings, and other non-emergency buildings (Category E).

Energy:

- All power generation facilities and plants - Include all wind turbines, generators, substations, and other facilities within the confines of the plant. (Category F);
- Entire power transmission and distribution system (Category F); and
- Entire natural gas transmission and distribution system (Category F).

Water/Waste-water:

- All water and wastewater treatment plants (Category F);
- Entire water distribution system (Category F);
- Entire wastewater collection system (Category F); and
- Entire irrigation system (Category F).

Communications/Information Technology:

- All communication systems (Category F).

Natural and Cultural Resources:

- All parks, golf courses, and fish hatcheries (Category G);
- All beaches (Category G); and
- All cemeteries (Category G).

FEMA includes ancillary (support) facilities at a site in the same project as the primary facility at that site. Ancillary facilities may include but are not limited to: buildings, outside structures (e.g. maintenance and storage sheds, restroom facilities, bath houses, pumping stations, etc.), communication towers and antennas, contents, supplies, equipment, vehicles, fences, parking

lots, stairs, ramps, access roads, runways, signage, lighting, sidewalks, gutters, ditches, guard rails, integral ground, catch basins, outfall structures, piers, docks, trails, benches, picnic tables, swimming pools, golf courses, ball fields, etc. Any donated resources for Permanent Work must also be included in the Permanent Work Project.

### **C. Final Grouping**

After initially grouping sites and facilities into one project, identify sites or facilities that need to be separated from the initial grouping and formulated into separate projects. Sites or facilities that need to be separated include those that:

- Are anticipated to require extensive EHP reviews. The PDMG works with EHP staff to identify these sites and facilities;
- Are in a Special Flood Hazard Area;
- Need Architectural/Engineering design funding prior to determining SOW and cost;
- Have 100% of the work completed;
- Are complex and require specialized technical support for project formulation, such as significantly damaged waste water treatment plants, dams, hospitals, or schools;
- Have ineligible work;
- Would make a project too unwieldy to review due to the number of sites and facilities combined (consider separating into two projects or creating separate projects based on geographical locations); and/or
- The Applicant and PDTFL agree have specific circumstances that make it illogical to combine.

PNP Applicants should also separate critical service facilities into separate projects from noncritical service facilities so that projects with critical service facilities are not delayed pending the Small Business Administration determination described in [Chapter 4:II.B.2. \*Small Business Administration Loan Requirement\*](#).

## **III. Site Inspections and Obtaining Damage Information**

FEMA gathers project-specific information by conducting site inspections and obtaining documentation. These activities occur concurrently.

### **A. Damage Information**

FEMA requests information and documentation required to substantiate the eligibility of a project. The Applicant is responsible for providing this information and documentation to support that its facilities, work, and costs are eligible based on the applicable laws, regulations, EOs, and policies. At a minimum, FEMA usually requires the “who, what, when, where, why, and how much” for each item claimed.

The Applicant answers questions for each project, which trigger information and documentation that the Applicant needs to provide. Various documents may provide the information required; therefore, FEMA usually accepts a variety of documentation to substantiate eligibility. If FEMA requires specific information or documentation to support eligibility, FEMA specifies the requirement in checklists throughout the PAPPG; however, these checklists are not all-inclusive lists. FEMA and the Recipient work with the Applicant to evaluate submitted documentation and

determine whether it supports eligibility. If the Applicant does not provide sufficient documentation to support its claim as eligible, FEMA cannot provide PA funding for the work.

## **B. Site Inspections**

Damage information is the foundation of the overall project award (i.e., SOW and cost eligibility are tied to the eligible damage). Therefore, FEMA and the Applicant need to reach agreement on the disaster-related damage description and dimensions, emergency protective measures, and debris impacts before proceeding with SOW development. If there are unresolved issues, FEMA documents the decision in a DM. Applicants should still concur on the portion of the damage that is agreed-upon so that the process can move forward.

FEMA conducts inspections at sites with work to be completed. The purpose of the inspection is to validate, quantify, and document the cause, location, and details of the reported damage and debris impacts. FEMA may also identify EHP issues, project-related conservation opportunities, and PA mitigation opportunities during the site inspection.

To expedite the process, in lieu of FEMA inspections at all sites, the Applicant may submit damage information and documentation for FEMA to review and validate using a sampling methodology. FEMA works with the Recipient and Applicant to determine when sampling and validation is appropriate. Sampling may not be appropriate for some damage sites.



## CHAPTER 6: COST ELIGIBILITY

This chapter provides PA policy on cost eligibility. Although costs are the final component evaluated for eligibility, as shown in Figure 9. *Cost Eligibility*, this criterion applies to all costs claimed. Not all costs incurred as a result of the incident are eligible. To be eligible, costs must be:

- Directly tied to the performance of eligible work;
- Adequately documented;<sup>117</sup>
- Reduced by all applicable credits, such as insurance proceeds and salvage values;<sup>118</sup>
- Authorized and not prohibited under Federal or SLTT government laws or regulations;
- Consistent with the Applicant's internal policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the Applicant; and
- Necessary and reasonable to accomplish the work properly and efficiently.<sup>119</sup>

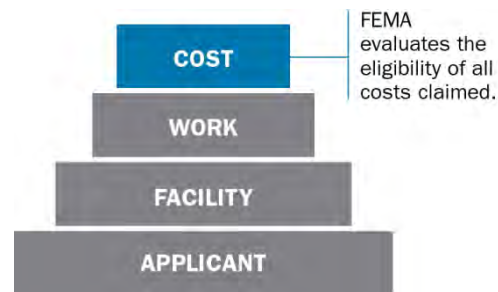


Figure 9. Cost Eligibility

### I. Reasonable Costs

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the Applicant makes the decision to incur the cost.<sup>120</sup>

#### A. Analysis

In conducting a reasonable cost analysis, FEMA performs a preliminary review of the documentation to assess the complexity of the project and expertise required to complete the analysis. If specialized expertise is required, a subject matter expert with the appropriate specialized skills, knowledge, experience, or capability in the appropriate field such as engineering, architecture, or cost estimating conducts the analysis.

FEMA determines reasonableness by evaluating whether the:

- Cost is of a type generally recognized as ordinary and necessary for the type of facility or work.<sup>121</sup> FEMA evaluates the skill level and level of effort necessary to complete the required activity. If the type of employee or skill level is not appropriate for the specific task, FEMA limits PA funding to a rate based on the appropriate employee type or skill level. For complex projects, staff with a higher level of technical proficiency and experience may be appropriate.

<sup>117</sup> 2 C.F.R. § 200.403(g).

<sup>118</sup> Stafford Act § 312, 42 U.S.C. § 5155, and 2 C.F.R. § 200.406.

<sup>119</sup> 2 C.F.R. § 200.403.

<sup>120</sup> 2 C.F.R. § 200.404.

<sup>121</sup> 2 C.F.R. § 200.404(a).

- Applicant participated in ethical business practices, ensuring parties to a transaction are independent of each other, without familial ties or shared interests and on equal footing without one party having control of the other.<sup>122</sup>
- Individuals concerned acted with prudence under the circumstances considering their responsibility to the Applicant, its employees, its students or membership, the public, and the Federal government.<sup>123</sup> If exigent or emergency circumstances existed, FEMA evaluates the length of time the circumstances existed compared to the length of time costs were incurred.
- Applicant deviated from its established practices and policies.<sup>124</sup> FEMA generally considers the Applicant's own labor, equipment, and supply costs reasonable provided the costs are consistent with the entity's policies including, but not limited to, pay rates, labor policies, and cost schedules utilized during its normal operations.
- Applicant complied with procurement requirements (see [Chapter 6:VIII. Procurement and Contracting Requirements](#)). FEMA generally considers contract costs reasonable when the Applicant adheres to full and open competition under applicable Federal procurement requirements, and the scope of services or work in the contract and level of effort is consistent with respect to the eligible SOW. FEMA evaluates reasonableness when price competition is lacking or when the selection was noncompliant with the applicable procurement under grant requirements even though there may have been price competition.
  - Cost or Price Analysis: The cost or price analysis is one component of documentation that FEMA may review as part of its evaluation of reasonable costs. If the Applicant does not submit a cost or price analysis, FEMA may evaluate the elements that would have been part of such analysis.<sup>125</sup> The Applicant may need to provide this information if it is not included in the documentation submitted.
  - Selection Criteria: FEMA evaluates whether the Applicant selected the lowest responsible bidder based on the selection criteria. If the Applicant selected a contractor with a higher bid than others, it must substantiate its selection based on the selection criteria set forth in its Request for Proposal.
- Cost is comparable to the current market price<sup>126</sup> for similar goods or services in the same geographical area. FEMA makes its determination based on one or more of the following:
  - Historical documentation (previous contracts, invoices, or other documentation).
    - FEMA may compare costs to the Applicant's historical costs for similar SOW or items. FEMA considers inflation and other factors such as code or standard changes, availability of in-kind construction material, quantity, delivery schedules, and the economy. FEMA's Cost Estimating Format (CEF) employs a nationally recognized economic inflation factor. Some types of work may have a different inflation rate than others.

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<sup>122</sup> 2 C.F.R. § 200.404(b).

<sup>123</sup> 2 C.F.R. § 200.404(d).

<sup>124</sup> 2 C.F.R. § 200.404(e).

<sup>125</sup> FEMA's *Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200* provides information on how to conduct a cost or price analysis ([www.fema.gov/sites/default/files/2020-07/fema\\_procurement-disaster-assistance-PDAT\\_field-manual.pdf](http://www.fema.gov/sites/default/files/2020-07/fema_procurement-disaster-assistance-PDAT_field-manual.pdf)).

<sup>126</sup> 2 C.F.R. § 200.404(c).

- Average costs in the area.
  - Weighted average unit pricing: FEMA may determine the average costs in the area using weighted average unit prices. These are comprised of the average costs of historical bid tabulations and related specifications from competitive bid pricing solicitations respective to the area and usually includes all factors required to bid public works projects, such as performance bonds, bid bonds, overhead and profit, and general conditions. The Applicant or respective State, Territorial, or regional agency, such as the State's Department of Transportation may provide weighted average unit pricing and related specifications for FEMA's review.
  - Other Applicant's project costs: FEMA may compare the costs with other Applicant's projects of similar SOW and similar circumstances such as event impacts, magnitude, comparable shortages, market factors, and any other unique circumstances that may impact either of the costs.
- Published unit costs from national cost estimating databases. When using this method, FEMA confirms that the cost publication is current and prepares the estimate using its CEF and the appropriate locality adjustment factor.
  - Industry cost estimating resources: When appropriate local data cannot be developed or obtained, FEMA uses industry standard construction cost estimating resources to prepare an estimate against which to evaluate reasonableness of the Applicant's actual costs. These costing methods include, but may not be limited to, RSMeans, BNi Costbooks, Marshall and Swift, and Sweet's Unit Cost Guide, which are widely accepted in the industry and available for nationwide use.
  - Federal, State, or Territorial unit costs: When industry standard construction cost estimating resources do not provide work items that are appropriate or applicable to the construction activities required to complete the project, FEMA considers local cost data from OFAs or State or Territorial agencies responsible for construction of similar facilities in or near the locality.
  - FEMA Cost Codes: FEMA maintains regional and national unit prices (cost codes). FEMA cost codes may be used when a cost is not found in other published unit costs or if the cost codes are otherwise more applicable than other published costs, such as for force account equipment.
- Following factors or other extenuating circumstances existed and caused escalation in costs:
  - Shortages in equipment, materials, supplies, labor, or contractors. When escalating costs are due to shortages, FEMA considers whether the Applicant's work continued beyond the period of shortages and whether there was an opportunity for the Applicant to obtain more reasonable pricing.
  - Project-specific complexities: Complexities may include environmental or historic issues, remote access or location, provision of a unique service with few providers, or elements requiring an extraordinary level of effort.
  - Economy of Scale: FEMA considers the amount of work that may impact the unit price (for example, smaller projects may have higher rates and larger projects may have lower rates due to various efficiencies that are realized with larger projects. Additionally, when hauling is involved, such as with debris projects, some projects may have longer haul routes due to landfill locations or road blockages).

- Applicant's Justification: When a reasonable cost analysis has been conducted and costs appear high for a project, FEMA reviews the Applicant's justification to determine whether there are any additional factors that justify the higher cost as a reasonable amount.

The Applicant is responsible for providing documentation to demonstrate its claimed costs are reasonable. Documentation may include, but is not limited to:

- Documentation showing current market price for similar goods or services, such as:
  - Historical documentation;
  - Average costs in the area; or
  - Published unit costs from national cost estimating databases.
- Documentation supporting necessity of unique services or extraordinary level of effort
- Documentation supporting shortages, challenging procurement circumstances, and length of time shortages or procurement challenges existed, such as news stories or supply chain vendor reports

[Appendix L: Validation of Applicant-Provided Cost Estimates](#) includes a checklist that FEMA staff use when evaluating the reasonableness of costs claimed. After completing the evaluation and ensuring that all appropriate costs and factors are included as described above, if FEMA determines any of the costs to be unreasonable based on its evaluation, FEMA may disallow all or part of the costs by adjusting eligible funding to an amount it determines to be reasonable. When determining the reasonable amount, FEMA may use the least-cost alternative, the lowest bid received by the Applicant, or the pricing of another Applicant's properly procured and selected contractor.

## II. Applicant (Force Account) Labor

FEMA refers to the Applicant's personnel as "force account." FEMA reimburses force account labor based on actual hourly rates plus the cost of the employee's actual fringe benefits. FEMA calculates the fringe benefit cost based on a percentage of the hourly pay rate. Because certain items in a benefit package are not dependent on hours worked (e.g., health insurance), the percentage for overtime is usually different than the percentage for straight-time. Fringe benefits may include:

- Holiday leave;
- Accrued vacation leave;
- Sick leave;
- Social security matching;
- Medicare matching;
- Unemployment insurance;
- Workers compensation;
- Retirement;
- Health insurance;
- Life and disability insurance; and/or
- Administrative leave.

The Applicant needs to submit the following to support labor costs claimed (not an all-inclusive list):

- Summary of actual costs for completed work (required)
- For each individual:
  - Name (required);
  - Job title and function (required);
  - Type of employee (i.e., full-time exempt, full-time non-exempt, part-time, temporary, etc.) (required);
  - Days and hours worked (required);
  - Pay rates and fringe benefit rate (required); and
  - Description of work performed (required) with representative sample of daily logs/activity reports, if available
- Timesheets (representative sample required when requested)
- Fringe benefit calculations (required)
- Pay policy (required)

#### **A. Labor Policies**

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

- Does not include a contingency clause that payment is subject to Federal funding;
- Is applied uniformly regardless of a Presidential declaration; and
- Has set non-discretionary criteria for when the Applicant activates various pay types.

If these requirements are not met, FEMA limits PA funding to the Applicant's non-discretionary, uniformly applied pay rates.

All costs must be reasonable and equitable for the type of work being performed.

FEMA determines whether the number of hours claimed are reasonable and necessary by evaluating:

- The severity of the incident;
- Whether the work was performed at a time when it was necessary to work extraordinary hours based on the circumstances of the incident;
- The function of the employee for which the hours are claimed; and
- The number of consecutive hours the employee worked.

#### **B. Eligibility Criteria Based on Type of Employee and Work Performed**

FEMA's criteria for reimbursing straight-time labor costs differ depending on the type of employee and whether that employee is performing Emergency Work or Permanent Work.

For Permanent Work, both straight-time and overtime labor costs are eligible for both budgeted and unbudgeted employee hours.<sup>127</sup> For Emergency Work, only overtime labor is eligible for budgeted employee hours.<sup>128</sup> For unbudgeted employees performing Emergency Work, both

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<sup>127</sup> Stafford Act § 406(a)(2)(C), 42 U.S.C. § 5172; 44 C.F.R. § 206.228(a)(2)(i).

<sup>128</sup> 44 C.F.R. § 206.228(a)(2)(iii).

straight-time and overtime labor are eligible. Table 5. *Emergency Work Labor Eligibility*, indicates different types of budgeted and unbudgeted employees. Overtime is time worked beyond an employee’s scheduled working hours as defined by the Applicant’s pre-disaster pay policy.

Under the Alternative Procedures authorized by Section 428 of the Stafford Act, straight-time labor costs are eligible for budgeted employees conducting eligible debris removal (Category A) activities.

**Table 5. Emergency Work Labor Eligibility**

| <b>Emergency Work Labor Eligibility</b>   |                 |                      |
|---|-----------------|----------------------|
| <b>Budgeted Employee Hours</b>  | <b>Overtime</b> | <b>Straight-Time</b> |
| Permanent employee  | ☑               |                      |
| Part-time or seasonal employee working during normal hours or season of employment  | ☑               |                      |
| <b>Unbudgeted Employee Hours</b>  | <b>Overtime</b> | <b>Straight-Time</b> |
| Reassigned employee funded from external source                                     | ☑               | ☑                    |
| Essential employee called back from furlough  | ☑               | ☑                    |
| Temporary employee hired to perform eligible work                                   | ☑               | ☑                    |
| Part-time or seasonal employee working outside normal hours or season of employment | ☑               | ☑                    |

**1. Reassigned Employees**

The Applicant may assign an employee to perform work that is not part of the employee’s normal job. For example, a police officer may clear debris. FEMA provides PA funding based on the reassigned employee’s normal pay rate, not the pay level appropriate to the work, because the Applicant’s incurred cost is the employee’s normal pay rate.

**2. Reassigned Employees Funded from an External Source**

Straight-time of a permanent employee funded from an external source (such as a grant from a Federal agency or statutorily dedicated funds) is eligible if the employee is reassigned to perform eligible Emergency Work that the external source does not fund. FEMA must confirm that no duplication of funding exists prior to approval.

**3. Backfill Employees**

The Applicant may need to temporarily replace an employee who is responding to the incident. Overtime costs for the backfill employee are eligible even if the backfill employee is not performing eligible work as long as the employee that he/she is replacing is performing eligible Emergency Work.

FEMA also provides PA funding for straight-time if the backfill employee is a:

- Contracted or temporary employee; or
- Permanent employee called in on a normally scheduled day off (weekend or other off day).

If the backfill employee is called in from scheduled leave, only overtime is eligible.

#### **4. Essential Employees Called Back from Furlough**

Straight-time of essential employees called back to work from a budget-related furlough due to the declared incident is eligible if the costs are not budgeted.

#### **5. Supervisors**

Second-level supervisors and above (e.g., commissioners, mayors, department directors, police and fire chiefs) are usually exempt employees.<sup>129</sup> Therefore, overtime costs related to these types of employees are ineligible, unless the Applicant:

- Demonstrates that the employee was directly involved with a specific project;
- Normally charges that individual's time to specific projects regardless of Federal funding; and
- Incurs overtime costs for the employee in accordance with a labor policy that meets the criteria in [Chapter 6:II.A. Labor Policies](#).

#### **6. Other**

Extraordinary costs (such as call-back pay, night-time and weekend differential pay, and hazardous duty pay) for essential employees who are called back to duty during administrative leave to perform eligible Emergency Work are eligible if costs are paid in accordance with a labor policy that meets the criteria above.

Administrative leave or similar labor costs incurred for employees sent home or told not to report due to emergency conditions are ineligible.

#### **7. Standby Time**

FEMA may provide PA funding for labor costs related to intermittent standby time for staff conducting eligible evacuation or sheltering, search and rescue, or emergency medical care. All of the following criteria must be met:

- Standby use and pay are consistent with the Applicant's labor policy (or contractual obligation based on a labor agreement) and consistent with its practice in non-federally declared incidents;
- The standby time occurred when it was necessary to have resources available to conduct the respective life-saving action;
- The number of hours and individuals were reasonable and necessary based on the number of resources required;
- The employee was conducting the respective life-saving action; and
- All other labor cost eligibility criteria were met.

Examples of when FEMA may reimburse labor costs for standby time include, but are not limited to:

- When bus drivers are deployed to transport evacuees;
- When first responders are deployed for the purpose of evacuating or providing emergency medical care to survivors in order to save lives; and
- When a contract or union agreement requires payment for standby time.

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<sup>129</sup> These employees are exempt from the overtime pay requirements set forth in the Fair Labor Standards Act.

Additionally, the Applicant may be required to pay firefighter costs from portal-to-portal, which may result in paying for 24-hour shifts with periods of rest. FEMA will reimburse costs based on such requirements. In these instances, FEMA limits its reimbursement to costs and timeframes that are reasonable and necessary, not to exceed 14 calendar days from the start of the incident period. The Applicant must provide the data that led to its decisions and actions.

Standby time is separate and distinct from pre-positioning resources, which is addressed in [Chapter 7:II.E. Pre-positioning Resources](#).

### III. Applicant-Owned and Purchased Equipment

FEMA provides PA funding for the use of Applicant-owned (force account) equipment, including permanently mounted generators, based on hourly rates.<sup>130</sup> FEMA may provide PA funding based on mileage for vehicles, if the mileage is documented and is less costly than hourly rates.

There are instances when the Applicant does not have sufficient equipment to effectively respond to an incident. If the Applicant purchases equipment that it justifiably needs to respond effectively to the incident, FEMA provides PA funding for both the purchase price and either:

- The use of the equipment based on equipment rates (without the ownership and depreciation components); or
- The actual fuel and maintenance costs.

FEMA only applies equipment rates to the time the Applicant is actually operating equipment. Although costs associated with transporting equipment (e.g., labor and equipment costs used to transport equipment) to an eligible site are eligible, costs for standby time (time spent on hold or in reserve) are ineligible unless the equipment operator uses the equipment intermittently for more than half of the working hours for a given day. In this case the intermittent standby time is eligible.

The Applicant should submit the following to support Applicant-owned or purchased equipment costs claimed (not an all-inclusive list):

For each piece of equipment:

- Type of equipment and attachments used, including year, make, and model (required);
- Size/capacity (e.g., horsepower, wattage) (required);
- Locations and days and hours used (required) should include usage logs
- Operator name (required when requested); and
- Schedule of rates, including rate components (required if not using FEMA rates)

Purchased Equipment:

- Invoices or receipts (required); and
- Locations and days and hours used (required)

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<sup>130</sup> 44 C.F.R. § 206.228(a)(1).



FEMA provides PA funding for force account equipment usage based on FEMA or SLTT equipment rates in accordance with the specific criteria noted below.

#### **A. FEMA Rates**

FEMA publishes equipment rates applicable on a national basis.<sup>131</sup> FEMA's rate schedule includes any item powered by fuel or attached to any item powered by fuel. FEMA develops equipment rates based on all costs associated with ownership and operation of equipment (except for operator labor). FEMA equipment rate components include depreciation, overhead, equipment overhaul (labor, parts, and supplies), maintenance (labor, parts, and supplies), lubrication, tires, ground engaging component (if applicable), and fuel. Because the rates include maintenance costs, a mechanic's labor costs to maintain Applicant-owned equipment are ineligible.

#### **B. State, Territorial, or Tribal Rates**

State, Territorial, or Tribal rates are those established under State, Territorial, or Tribal guidelines for use in normal day-to-day operations. FEMA provides PA funding based on State, Territorial, or Tribal rates up to \$75 per hour.<sup>132</sup> FEMA only provides PA funding for a rate above \$75 per hour if the Applicant demonstrates that each of the components of the rate is comparable to current market prices.<sup>133</sup>

#### **C. Local Rates**

Local rates are those developed under local government guidelines for use in normal day-to-day operations. FEMA generally provides PA funding for equipment usage based on the lower of either the local rate or the FEMA rate. However, if the local rate is lower, but it does not reflect all of the costs associated with operating the equipment, FEMA may provide PA funding based on the higher FEMA rate. Additionally, if the local rate is higher, the Applicant must document the basis for that rate and obtain approval from FEMA for the higher rate.<sup>134</sup>

If determining the lowest rate for each piece of equipment is overly burdensome because of the number of different types of equipment used, or if the Applicant prefers, FEMA will reimburse all equipment use based on the lower of the two rate schedules, rather than based on a comparison of each individual rate. In these cases, the PA Division at FEMA Headquarters determines which schedule of rates is lower.

#### **D. Equipment with No Established Rate**

If the Applicant uses equipment that has no established SLTT rate, FEMA reimburses that equipment based on the FEMA rate.<sup>135</sup> If FEMA does not have a rate established for the equipment, the Applicant may either submit a rate for approval or request that FEMA provide a rate. If the Applicant submits a rate, it must include documentation demonstrating that each component of the rate is comparable to current market prices. The rate cannot be based on rental

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<sup>131</sup> [www.fema.gov/schedule-equipment-rates](http://www.fema.gov/schedule-equipment-rates).

<sup>132</sup> 44 C.F.R. § 206.228(a)(1)(i).

<sup>133</sup> Per 44 C.F.R. § 206.228(a)(1)(i), reimbursement of rates in excess of \$75 is determined on a case-by-case basis by FEMA. FEMA evaluates the rate for approval based on current market prices.

<sup>134</sup> Ibid.

<sup>135</sup> 44 C.F.R. § 206.228(a)(1)(iii).

rates as such rates include cost components, such as profit, that are above and beyond what is necessary to operate and maintain force account equipment.

## IV. Leased Equipment

When the Applicant leases equipment, FEMA provides PA funding based on the terms of the lease. Leasing costs are eligible if:

- The Applicant performed an analysis of the cost of leasing versus purchasing the equipment;<sup>136</sup> and
- The total leasing costs do not exceed the cost of purchasing and maintaining equipment during the life of the eligible project.

If the leasing costs exceed the cost of purchasing and maintaining the equipment, FEMA determines the amount of eligible costs based on an evaluation of the reasonableness of the costs claimed, including whether the Applicant acted with prudence under the circumstances at the time it leased the equipment.

If the Applicant has a lease-purchase agreement and obtains ownership during completion of eligible work, FEMA provides PA funding for the equipment use based on the hourly equipment rate, as described in [Chapter 6:III. Applicant-Owned Equipment and Purchased Equipment](#).

If the Applicant has a lease-purchase agreement and completes the eligible work prior to obtaining ownership, FEMA provides PA funding based on the cost to lease the equipment.

The Applicant needs to submit the following to support leased equipment costs claimed (not an all-inclusive list):

- Lease agreements (required);
- Invoices or receipts (required);
- Locations and days used (required);
- Hours used (required if lease agreement charges hourly rates); and
- Amount of fuel used, if not included in rental cost (required)

## V. Supplies

The cost of supplies, including materials, is eligible if:

- Purchased and justifiably needed to effectively respond to and/or recover from the incident; or
- Taken from the Applicant's stock and used for the incident.

The Applicant must track items taken from stock with inventory withdrawal and usage records.

FEMA provides PA funding for these items based on invoices, if available. If invoices are not available for items used from stock, FEMA provides PA funding based on the Applicant's established method of pricing inventory.<sup>137</sup> If the Applicant does not have an established method, FEMA provides PA funding based on historical data or prices from area vendors.

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<sup>136</sup> 2 C.F.R. § 200.318(d).

<sup>137</sup> 2 C.F.R. § 200.453(b).

FEMA consults with the U.S. Department of Homeland Security Office of Inspector General Emergency Management Oversight Team in cases where it has difficulty determining a reasonable value.

The Applicant must submit the following to support costs claimed for supplies (not an all-inclusive list):

Supplies from Stock:

- Cost documentation such as original invoices or other historical cost records (required);
- Inventory records (required);
- Type of supplies and quantities used (required – should include support documentation such as daily logs); and
- Location used (required)

Purchased Supplies:

- Receipts or invoices (required);
- Quantities used (required); and
- Justification (required if supplies were not used)

## VI. Disposition of Purchased Equipment and Supplies

The discussion below describes disposition requirements when purchased equipment or supplies (including materials) are no longer needed for federally funded projects.

In the context of disposition, equipment is any tangible personal property (including information technology systems) having a useful life of more than 1 year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by the Applicant for financial statement purposes, or \$5,000.<sup>138</sup> Tangible personal property that does not fall under this definition of equipment is a supply.<sup>139</sup>



### Terminology

**Personal property** means property other than real property.

**Real property** means land, including land improvements, structures, and appurtenances thereto, but excludes moveable machinery and equipment.

### A. Disposition of Purchased Equipment

In accordance with Federal regulations, State and Territorial government Applicants dispose of equipment in accordance with State and Territorial laws and procedures.<sup>140</sup>

When equipment purchased with PA funding are no longer needed for response to or recovery from the incident, Tribal and local governments and PNP Applicants may use the items for other federally funded programs or projects.<sup>141</sup>

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<sup>138</sup> 2 C.F.R. § 200.33.

<sup>139</sup> 2 C.F.R. § 200.94.

<sup>140</sup> 2 C.F.R. § 200.313(b).

<sup>141</sup> 2 C.F.R. § 200.313(c).

When an individual item of equipment is no longer needed for federally funded programs or projects, Tribal and local governments and PNP Applicants must calculate the current fair market value of the individual item of equipment. The Applicant must provide the current fair market value for items that have a current fair market value of \$5,000 or more. FEMA reduces eligible funding by this amount.<sup>142</sup> If the individual item of equipment has a current fair market value less than \$5,000, FEMA does not reduce the eligible funding.<sup>143</sup>



#### Terminology

**Fair market value** is either the selling price or the advertised price for a similar item in a competitive market.

Tribal and local governments and PNP Applicants must comply with all disposition requirements described in 2 C.F.R. 200.313(e), *Disposition*.

### **B. Disposition of Purchased Supplies**

When supplies are no longer needed for federally funded programs or projects, all Applicants, including State and Territorial government Applicants, must calculate the current fair market value of any unused residual supplies (including materials) that FEMA funded for any of its projects and determine the aggregate total.

The Applicant must provide the current fair market value if the aggregate total of unused residual supplies is greater than \$5,000. FEMA reduces eligible funding by this amount.<sup>144</sup> If the aggregate total of unused residual supplies is less than \$5,000, FEMA does not reduce the eligible funding.

## VII. Disposition of Real Property

If the Applicant acquires or improves real property with PA funds, disposition and reporting requirements apply when acquired or improved real property is no longer needed for the originally authorized purpose.<sup>145</sup> The PA Division at FEMA Headquarters provides disposition instructions.<sup>146</sup>

## VIII. Procurement and Contracting Requirements

FEMA provides PA funding for contract costs based on the terms of the contract if the Applicant meets Federal procurement and contracting requirements. Federal procurement and contracting requirements for State and Territorial government agencies are different than those for Tribal and local government agencies and PNPs. This section provides information on Federal procurement and contracting requirements.

FEMA PA staff coordinate with FEMA's Office of Chief Counsel when evaluating whether the Applicant complied with Federal procurement requirements. In the case of noncompliance, FEMA applies an appropriate remedy in accordance with its authorities.<sup>147</sup> FEMA has determined an appropriate remedy under these circumstances is to either deny all costs

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<sup>142</sup> 2 C.F.R. § 200.313(e)(2).

<sup>143</sup> 2 C.F.R. § 200.313(e)(1).

<sup>144</sup> 2 C.F.R. § 200.314(a).

<sup>145</sup> 2 C.F.R. §§ 200.311 and 200.329.

<sup>146</sup> 2 C.F.R. § 200.311(c). Recipients and Applicants must obtain specific disposition instructions from FEMA.

<sup>147</sup> 2 C.F.R. § 200.338.

associated with the contract or, if sufficient information is provided to substantiate a reasonable amount for the eligible work completed, FEMA may reimburse the portion of the costs it determines are reasonable and allowable based on all available information and documentation provided. In addition to monetary remedies, FEMA may also take non-monetary actions against the Applicant as authorized by 2 C.F.R. §§ 200.207 and 200.338.

FEMA's *Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules)* provides additional details regarding Federal procurement and contracting requirements.<sup>148</sup>

## **A. Procurement and Contracting Requirements for State and Territorial Government Entities**

Applicants must comply with Federal procurement requirements as a condition of receiving PA funding for contract costs for eligible work.

### **1. Procurement**

State and Territorial government Applicants<sup>149</sup> must comply with Federal procurement procedures at 2 C.F.R. § 200.317, which include:

- Following the same policies and procedures they would use for procurements with non-Federal funds; and
- Complying with the Environmental Protection Agency (EPA) guidelines in 2 C.F.R. § 200.322, Procurement of recovered materials.

FEMA does not typically review State or Territorial procurement policies or procedures. In certain circumstances, FEMA may review State or Territorial procurement policies or procedures or request that a State or Territorial attorney certify in writing whether the Applicant complied with the State's or Territorial's procurement policies and procedures.

### **2. Contracting**

State and Territorial government Applicants must include required provisions detailed in 2 C.F.R. § 200.326 in all contracts awarded.<sup>150</sup> Some provisions are based on sound contracting practices while others are required by Federal law, EO, and regulations. Some provisions do not apply under the PA Program (e.g. Davis Bacon Act<sup>151</sup> and Rights to Inventions Clause) while others require verbatim language.

Although time and material (T&M) contracts without a ceiling price and cost-plus-percentage-of-cost or percentage-of-construction contracts may be allowed under State or Territorial government standards, the use of these contracts has a high risk of noncompliance with the requirement that all costs be reasonable.<sup>152</sup>

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<sup>148</sup> [www.fema.gov/sites/default/files/2020-07/fema\\_procurement-under-grants-field-manual-supplement\\_1.pdf](http://www.fema.gov/sites/default/files/2020-07/fema_procurement-under-grants-field-manual-supplement_1.pdf).

<sup>149</sup> See [Chapter 3:VI.A. State and Territorial Governments](#) for a description of which Applicants are State or Territorial government entities.

<sup>150</sup> 2 C.F.R. § 200.326.

<sup>151</sup> The Davis Bacon Act requires "prevailing wage" payment to contracted workers based on the local union wage scale defined by the U.S. Department of Labor. If the Applicant incorporates prevailing wage rates as part of its normal practice for all contracts regardless of the funding source, then those rates are eligible.

<sup>152</sup> 2 C.F.R. § 200.403(a).

## **B. Procurement and Contracting Requirements for Tribal and Local Government Agencies and Private Nonprofits**

Tribal and local governments, including Tribal Recipients, and PNPs<sup>153</sup> must comply with:

- Their own documented procurement procedures;
- Applicable SLTT government laws and regulations; and
- Applicable Federal laws and regulations.<sup>154</sup>

If a Federal requirement is different than the SLTT requirement, or the Applicant's own requirements, it must use the more restrictive requirement. Additionally, Territorial governments should consult their legal counsel when a project involves a public building or public works facility as the Buy American Act may apply to the procurement process.

### **1. Pre-procurement Considerations**

Tribal and local governments and PNPs must:

- Establish or update written procurement procedures that reflect applicable SLTT laws and regulations;<sup>155</sup> and
- Maintain required written standards of conduct covering conflicts of interest and governing the performance of employees who engage in the selection, award, and administration of contracts.<sup>156</sup>

Tribal and local governments and PNPs should also create a prequalified list of responsible contractors identified to possess the qualifications and technical abilities to satisfy the Applicant's potential requirement.<sup>157</sup> Although not a contract, many entities have prequalified lists that serve as contract research.

A prequalified contractor is one that the Applicant evaluated and determined to be qualified to perform the work based on capabilities, such as technical and management skills, prior experience, past performance, and availability. A prequalified contractor is not entitled to a "standby" contract. The Applicant must still conduct full and open competition. The Applicant cannot exclude potential bidders or offerors from qualifying during the solicitation period, even if they were not on the prequalified list.

### **2. General Federal Procurement Requirements**

Federal procurement requirements for Tribal and local governments and PNPs are found at 2 C.F.R. § 200.318 through 200.326. The requirements include, but are not limited to:

- Providing full and open competition<sup>158</sup> (Tribal government Applicants may provide preference to Indian organizations or Indian-owned economic enterprises<sup>159</sup> if the

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<sup>153</sup> See [Chapter 3:VI. Applicant Eligibility](#) for a description of which Applicants are Tribal or local governments or PNPs.

<sup>154</sup> 2 C.F.R. § 200.318(a).

<sup>155</sup> Ibid.

<sup>156</sup> 2 C.F.R. § 200.318(c)(1).

<sup>157</sup> 2 C.F.R. § 200.319(d).

<sup>158</sup> 2 C.F.R. § 200.319(a).

<sup>159</sup> Per the Indian Financing Act of 1974, Pub. L. No. 93-262, § 2(e), 88 Stat 77 (codified as amended at 25 U.S.C. § 1452(f)), an Indian organization is the governing body of any federally recognized Tribe or an entity established or

Applicant substantiates that it met the Indian Self-Determination and Education Act requirements).

- Conducting the following steps to ensure the use of small and minority businesses, women's business enterprises, and labor surplus area firms when possible:<sup>160</sup>
  - Place such organizations that are qualified on solicitation lists;
  - Ensure such organizations are solicited whenever they are potential sources;
  - Divide total requirements, when economically feasible, into smaller tasks or quantities;
  - Establish delivery schedules, where the requirement permits, which encourage their participation;
  - Use the services and assistance, as appropriate, of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
  - Require prime contractor to conduct the above steps if subcontracting.

Note that Tribal government Applicants using the Indian Self-Determination and Education Assistance Act preference do not need to separately follow the six socioeconomic steps outlined above.

- Performing a cost or price analysis in connection with every procurement action above the simplified acquisition threshold,<sup>161</sup> including contract modifications. The Applicant must make independent estimates before receiving bids or proposals.<sup>162</sup> Additionally, the Applicant must negotiate profit as a separate element of the price when it performs a cost analysis and for each contract in which there is no price competition.<sup>163</sup>
- Evaluating and documenting the contractor's integrity, compliance with public policy, record of past performance, and financial and technical resources.<sup>164</sup>
- Ensuring that the contractor was not suspended or debarred.<sup>165</sup>
- Prohibiting the use of statutorily or administratively imposed SLTT geographic preferences in evaluating bids or proposals except where expressly encouraged by applicable Federal law.<sup>166</sup>
- Excluding contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals from competing for such procurements to ensure objective contractor performance and eliminate unfair competitive advantage.<sup>167</sup>

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recognized by the governing body. An Indian-owned economic enterprise is any commercial, industrial, or business activity established or organized by a member of a Federal recognized Tribe for the purpose of profit, provided that such Indian ownership constitutes 51 percent or more of the enterprise.

<sup>160</sup> 2 C.F.R. § 200.321.

<sup>161</sup> The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 C.F.R. § 2.101. The threshold is adjusted periodically for inflation.

<sup>162</sup> 2 C.F.R. § 200.323(a).

<sup>163</sup> 2 C.F.R. § 200.323(b).

<sup>164</sup> 2 C.F.R. § 200.318(h).

<sup>165</sup> 2 C.F.R. § 200.213.

<sup>166</sup> 2 C.F.R. § 200.319(b).

<sup>167</sup> 2 C.F.R. § 200.319(a).

- Maintaining records to detail the history of the procurement including, but are not limited to:
  - Rationale for the method of procurement;
  - Selection of contract type;
  - Contractor selection or rejection; and
  - The basis for the contract price.<sup>168</sup>

### 3. Procurement Methods

Tribal and local governments and PNPs must use one of the following procurement methods:<sup>169</sup>

- Micro-purchase;
- Small purchase procedure;
- Sealed bid (formal advertising);
- Competitive proposal; or
- Noncompetitive proposal (sole-sourcing).

#### (a) *Noncompetitive Procurement*

FEMA may reimburse costs incurred under a contract procured through a noncompetitive proposal, also referred to as sole-source, only when one or more of the following circumstances apply:

- The item is only available from one source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (this exception to competitive procurement is only for work specifically related to the circumstance and only while the circumstances exists. Therefore, Applicants need to immediately begin the process of competitively procuring similar goods and services and transition to a competitively procured contract as soon as the circumstances cease to exist);
- FEMA or the Recipient expressly authorizes a noncompetitive proposal in response to a written request from the Applicant; or
- After solicitation of several sources, competition is determined inadequate.<sup>170</sup>



#### Terminology: Procurement Methods

**Micro-purchase:** purchase of supplies or services where the total cost does not exceed the micro-purchase threshold set by the Federal Acquisition Regulation at 48 C.F.R. Subpart 2.1.

**Small purchase procedure:** relatively simple and informal procurement method for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold set by the Federal Acquisition Regulation at 48 C.F.R. Subpart 2.1.

**Sealed bid:** publicly solicited bid awarded via a firm fixed price contract to the lowest responsive and responsible bidder.

**Competitive proposal:** normally conducted with more than one source submitting an offer and generally used when conditions are not appropriate for the use of sealed bids.

**Noncompetitive proposal:** solicitation of a proposal from only one source.

See 2 C.F.R. § 200.320 for Federal rules that apply to each individual method.



#### Terminology

**Exigency:** The existence of a need to avoid, prevent or alleviate serious harm or injury, financial or otherwise, to the Applicant.

**Emergency:** The existence of a threat to life, public health or safety, or improved property requiring immediate action to alleviate the threat.

<sup>168</sup> 2 C.F.R. § 200.318(i).

<sup>169</sup> 2 C.F.R. § 200.320.

<sup>170</sup> 2 C.F.R. § 200.320(f).



For each noncompetitive procurement, the Applicant must identify which of the four circumstances listed above apply and provide all of the following information, documentation, and justification:

- A brief description of the product or service being procured, including the expected amount of the procurement;
- Explanation of why a noncompetitive procurement is necessary. If there was a public exigency or emergency, the justification should explain the specific conditions and circumstances that clearly illustrate why competitive procurement would cause unacceptable delay in addressing the public exigency or emergency. (Failure to plan for transition to competitive procurement cannot be the basis for continued use of noncompetitive procurement based on public exigency or emergency);
- Length of time the noncompetitive contract will be used for the defined SOW, and the impact on that SOW should the noncompetitively procured contract not be available for that amount of time (e.g., how long does the Applicant anticipate the exigency or emergency circumstances to continue; how long it will take to identify requirements and award a contract that complies with all procurement requirements; or how long it would take another contractor to reach the same level of competence);
- The specific steps taken to determine that the Applicant could not have used, or did not use, full and open competition for the SOW (e.g., research conducted to determine that there were limited qualified resources available that could meet the contract provisions);
- Any known conflicts of interest and any efforts that the Applicant made to identify potential conflicts of interest before the noncompetitive procurement occurred. If the Applicant made no efforts, explain why; and
- Any other justification.



#### **Procurement of Real Property**

The purchase or lease of real property is a unique transaction that might not readily allow use of one of the competitive methods of procurement. If the Applicant is unable to conduct a competitive procurement, it may use a noncompetitive method in accordance with the requirements in this section. The appropriate method will depend on the facts and circumstances of each procurement.



#### Example of an Exigent Situation

A tornado impacts a city in June and causes widespread and catastrophic damage, including damage to a city school. The city wants to repair the school and have it ready for use by the beginning of the school year in September. The city estimates, based on experience, that awarding a contract using a sealed bidding process would require at least 90 days, and the city’s engineer estimates that the repair work would last another 60 days. This would extend the project beyond the beginning of the school year. Rather than conducting a sealed bidding process, the city—in compliance with State and local law—wants to sole source with a contractor it has contracted with previously.



#### Example of an Emergency Situation

Severe weather impacts a city and causes widespread and catastrophic damage, including loss of life, widespread flooding, loss of power, damage to public and private structures, and millions of cubic yards of debris across the city, leaving majority of the jurisdiction inaccessible. The city needs to begin debris removal activities immediately to restore access to the community, support search and rescue operations, power restoration, and address health and safety concerns.

If FEMA determines that none of the allowable circumstances existed or did not preclude the Applicant from adhering to competitive procurement requirements, FEMA may disallow all or part of the associated costs.<sup>171</sup>

#### 4. Contract Types

FEMA reimburses costs incurred by Tribal and local governments and PNPs using three types of contract payment obligations: fixed price, cost-reimbursement, and, to a limited extent, T&M. The specific contract types related to each of these are described in FEMA’s *Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules)*.<sup>172</sup>

Tribal and local governments and PNPs must maintain oversight on all contracts to ensure contractors perform according to the conditions and specifications of the contract and any purchase orders.<sup>173</sup>

##### (a) Time and Material Contracts

T&M contracts do not provide incentives to the contractor for cost control or labor efficiency. Therefore, use of T&M contracts are only allowed if all of the following apply:

- No other contract type was suitable;
- The contract has a ceiling price that the contractor exceeds at its own risk; and
- The Applicant maintains a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.<sup>174</sup>

<sup>171</sup> 2 C.F.R. § 200.338.

<sup>172</sup> [www.fema.gov/sites/default/files/2020-07/fema\\_procurement-under-grants-field-manual-supplement\\_1.pdf](http://www.fema.gov/sites/default/files/2020-07/fema_procurement-under-grants-field-manual-supplement_1.pdf).

<sup>173</sup> 2 C.F.R. § 200.318(b).

<sup>174</sup> 2 C.F.R. § 200.318(j).

FEMA generally limits the use of T&M contracts to a reasonable timeframe based on the circumstances during which the Applicant could not define a clear SOW. Therefore, the Applicant should define the SOW as soon as possible to enable procurement of a more acceptable type of contract.

Some entities, such as Rural Electrical Cooperatives, provide the materials necessary to restore the facilities and refer to such contracts as Time and Equipment (T&E) contracts. The limitations and requirements that apply to T&M contracts also apply to T&E contracts.

*(b) Cost-Plus-Percentage-of-Cost or Percentage-of-Construction*

In addition to limiting reimbursement to costs that can be determined to be reasonable, FEMA does not reimburse the increased cost associated with the percentage on a cost-plus-percentage-of-cost calculation or percentage-of-construction cost method.<sup>175</sup> This type of contract billing is prohibited as it does not provide incentive to contractors to control costs because the contractor's profit increases as the costs of performance increase. Instead, it provides a financial interest to the contractor to increase costs so that its profit increases. FEMA identifies these cost methods by determining whether:

- Payment is on a predetermined percentage rate;
- The predetermined percentage rate is applied to actual performance costs;
- The contractor's total payment amount is uncertain at the time of contracting; and
- The contractor's payment increases commensurately with increased performance costs.<sup>176</sup>

## **5. Additional Contracting Considerations**

*(a) Pre-Positioned Contracts*

Some Applicants have pre-positioned contracts, which are contracts awarded before an incident occurs for the potential performance of work. These contracts are also referred to as advance or standby contracts. FEMA may reimburse reasonable costs under a pre-positioned contract if:

- It was originally procured in compliance with Federal procurement requirements;
- The scope of work was adequate to cover the work performed;
- The work performed was eligible; and
- The contract term covers time when work was performed.

*(b) Cooperative Purchasing*

A cooperative purchasing program is a cooperative arrangement for acquiring goods or services that involves aggregating the demand of two or more entities to obtain a more economical purchase.<sup>177</sup> Program membership may provide entities with access to lists of agreements or contracts for goods and services at pre-negotiated rates or prices. Typically, the member then purchases the goods or

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<sup>175</sup> 2 C.F.R. § 200.323(d).

<sup>176</sup> See *Federation Aviation Administration -Request for Advance Decision*, 58 Comp.Gen. 654, 655 (1979), 79-2 CPD 34; *Marketing Consultants International Limited*, 55 Comp.Gen. 554, 562 (1975), 75-2 CPD 384.

<sup>177</sup> Cooperative purchasing programs are distinguishable from joint procurements. A joint procurement is a method of contracting in which two or more purchasers agree from the outset to use a single solicitation and enter into a single contract with a vendor for the delivery of goods or services. Joint procurements must still comply with Federal procurement requirements. However, FEMA sees fewer compliance issues with joint procurements.

services by negotiating with participating vendors and placing purchase orders or entering into contracts based on the pre-negotiated rates or prices. FEMA advises against the use of cooperative purchasing programs due to frequent compliance issues with Federal procurement requirements. [Appendix D: Frequent Compliance Issues with Cooperative Purchasing Programs](#) provides a list of frequent compliance issues with cooperative purchasing programs for procurements above the simplified acquisition threshold. Applicants must document and explain how its use of the program complied with all procurement requirements.

Piggyback contracting is a type of cooperative purchasing and occurs when one entity assigns the contractual rights it has in a contract to another entity. FEMA advises against the use of piggyback contracts. Piggyback contracts are usually not compliant with Federal requirements as the scope of work pertains to the needs of a different entity.

### C. Required Contract Clauses

Applicants must include required provisions detailed in 2 C.F.R. § 200.326 in all contracts awarded.<sup>178</sup> Some provisions are based on sound contracting practices while others are required by Federal law, EO, and regulations.

Required contract provisions include:

- Remedies Clause;
- Termination for Cause;
- Termination for Convenience;
- Equal Employment Opportunity;
- Contract Work Hours and Safety Standards Act;
- Homeland Security Acquisition Regulation Class Deviation 15-01 clauses; “Safeguarding of Sensitive Information” and “Information Technology Security and Privacy Training” for existing and new contracts and solicitations that have a high risk of unauthorized access to or disclosure of sensitive information;<sup>179</sup>
- Clean Air Act;
- Federal Water Pollution Control Act;
- Debarment and Suspension;
- Byrd Anti-Lobbying Amendment Clause;
- Byrd Anti-Lobbying Amendment Certification; and
- Procurement of Recovered Materials.

In addition to the required provisions, FEMA also recommends the following contract provisions be included in all contract awards:

- Changes Clause;

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<sup>178</sup> 2 C.F.R. § 200.326.

<sup>179</sup> “Sensitive Information” is defined in Homeland Security Acquisition Regulation clause 3052 204-71, *Contractor Employee Access*, as any information, which if lost, misused, disclosed, or without authorization is accessed, or modified, could adversely affect the national or homeland security interest, the conduct of Federal programs, or the privacy to which individuals are entitled under 5 U.S.C. § 552a (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense, homeland security or foreign policy.

- Access to Records;
- Department of Homeland Security Seal, Logo, and Flags;
- Compliance with Federal Law, Regulations, and EOs Clause;
- No Obligation by Federal Government; and
- Program Fraud and False or Fraudulent Statements or Related Acts.

Some provisions do not apply under the PA Program (e.g. Davis Bacon Act<sup>180</sup> and Rights to Inventions Clause) while others require verbatim language. [Appendix K: Contract Provisions](#) provides the exact language for the provisions that require verbatim language and provides sample language for some of the other provisions.

#### **D. Documentation Requirements**

The Applicant should submit the following to support contract costs claimed (not an all-inclusive list):

- Procurement policy (required when requested);
- Procurement documents (i.e., requests for proposals, bids, selection process, etc.) (required when requested);
- A cost or price analysis (required for contracts above the simplified acquisition threshold)
- Contracts, change orders, and summary of invoices (required);
- Dates worked (required when requested);<sup>181</sup> and
- Documentation that substantiates a high degree of contractor oversight, such as daily or weekly logs, records of performance meetings (required for T&M contracts when requested).

## **IX. Mutual Aid**

When the Applicant does not have enough resources to respond to an incident, it may request resources from another jurisdiction through a “mutual aid” agreement. FEMA refers to the entity requesting resources as the Requesting Entity. FEMA refers to the entity providing the requested resource as the Providing Entity.

FEMA provides PA funding to the Requesting Entity as it is legally responsible for the work. FEMA does not provide PA funding directly to the Providing Entity. For the work to be eligible, the Requesting Entity must have requested the resources provided.

Some States have a statewide mutual aid agreement that designates the State as being responsible for reimbursing mutual aid costs. In these States, the Providing Entity may request funding directly from the State, with prior consent of the Requesting Entity, in accordance with applicable State laws and procedures. If the Requesting entity and the State approve the request and the State pays the Providing Entity, FEMA provides PA funding to the State. The

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<sup>180</sup> The Davis Bacon Act requires “prevailing wage” payment to contracted workers based on the local union wage scale defined by the U.S. Department of Labors. If the Applicant incorporates prevailing wage rates as part of its normal practice for all contracts regardless of the funding source, then those rates are eligible.

<sup>181</sup> FEMA may request this information to validate work was completed within the project’s approved period of performance and when applicable for Emergency Work, to determine cost share application per [Chapter 6:XIII. Increased Federal Cost Share for a Limited Timeframe](#))

Requesting Entity may be responsible for reimbursing the State for any non-Federal local cost share, depending on specific State requirements.

The Requesting Entity or State, if applicable, must provide a description of the services requested and received, along with documentation of associated costs (e.g., labor, equipment, supplies, or materials) to FEMA in support of a request for PA funding.

#### **A. Post-Incident Agreements**

When the Requesting and Providing Entities do not have a written agreement, OR where such an agreement exists but is silent on reimbursement, the entities may verbally agree on the resources to be provided and on the terms, conditions, and costs of such assistance.

The agreement should be consistent with past practices for mutual aid between the entities. For example, if the Requesting Entity does not normally reimburse a Providing Entity for its costs, it should not agree to do so specifically for the declared incident.

Prior to funding, the Requesting Entity must document the verbal agreement in writing, have it executed by an official of each entity with the authority to request and provide assistance, and submit it to FEMA (preferably within 30 days of the Applicant's Briefing).<sup>182</sup>

#### **B. Eligibility**

Mutual aid resources are eligible when used for Emergency Work, emergency utility restoration (regardless of whether it is deemed Category B or F) or grant management activities [subject to the criteria in FEMA Recovery Policy FP 104-11-2, *Public Assistance Management Costs (Interim)*]. Mutual aid work is subject to the same eligibility criteria as contract work. Costs to transport the Providing Entity's equipment and personnel to the declared area are eligible.

Ineligible work performed by a Providing Entity includes, but is not limited to:

- Preparing to deploy;
- Dispatch operations outside the receiving State, Territory, or Tribe;
- Training and exercises; and
- Support for long-term recovery and mitigation operations.

The Emergency Management Assistance Compact (EMAC) is a national interstate mutual aid agreement that enables States and Territories to share resources in response to an incident. Work performed outside the receiving State or Territory that is associated with the operation of EMAC, including tracking of resources, is ineligible unless the work is associated with the receiving State's or Territory's emergency operations for the incident.



The Providing Entity's straight-time and overtime labor are eligible, including fringe benefits. When the Requesting Entity is a SLTT government and the Providing Entity is another division within the same SLTT government, straight-time for budgeted employees of the Providing Entity is ineligible.

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<sup>182</sup> The Recipient conducts Applicant Briefings to provide PA Program information to potential Applicants. This briefing is described in [Chapter 3:II. Applicant Briefing](#).

If the Providing Entity backfills deployed personnel, overtime for backfill personnel is eligible even if they are not performing eligible work. However, straight-time for backfill personnel is ineligible.

FEMA reimburses the use of equipment provided to a Requesting Entity based on either the terms of the agreement or equipment rates (detailed in [Chapter 6:III. Applicant-Owned Equipment and Purchased Equipment](#)). FEMA provides PA funding to repair damage to this equipment the same way as it provides PA funding to repair damage to Applicant-owned equipment (detailed in [Chapter 7:IV. Damage Caused During Performance of Emergency Work](#)).

The Applicant needs to submit the following to support mutual aid costs claimed (not an all-inclusive list):

- Written agreement (required);
- Services requested and received (required);
- Same information listed for labor, equipment, and supplies (required as applicable); and
- Invoices (representative sample required when requested).

## X. Prisoners

FEMA provides PA funding for prisoner labor costs based on the rate that the Applicant normally pays prisoners. FEMA also provides PA funding for prisoner transportation to the worksite and extraordinary costs of security guards, food, and lodging.<sup>183</sup>

The Applicant should submit the following to support prison labor costs claimed (not an all-inclusive list):

- Estimated hours and rates for work to be completed;
- Prison labor pay policy and pay rate (required); and
- For each individual:
  - Name (required);
  - Days and hours worked (required);
  - Description of work performed (required) should include a representative sample of daily logs or activity reports; and
  - Locations worked (required).

## XI. National Guard

The Governor may activate National Guard personnel to State Active Duty in response to an incident. Labor costs and per diem, if applicable, are eligible for State Active Duty personnel performing eligible work. Both straight-time and overtime are eligible, including fringe benefits.

The U.S. Department of Defense funds National Guard personnel activated under Full-Time National Guard Duty (Title 32) or Active Duty (Title 10). Therefore, Title 32 and Title 10 personnel costs, and any other costs funded by the U.S. Department of Defense, such as training, are ineligible.

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<sup>183</sup> Stafford Act § 406(a)(2)(B), 42 U.S.C. § 5172.

## XII. Direct Federal Assistance

When the impact of an incident is so severe that the SLTT governments lack the capability to perform or contract eligible Emergency Work, the Recipient may request that the Federal government provide this assistance directly. FEMA may task another Federal agency to perform or contract the work provided it is an eligible activity under [Chapter 7. Emergency Work Eligibility](#)<sup>184</sup> unless the work falls under the authority of another Federal agency.<sup>185</sup> FEMA issues a “Mission Assignment” to task the work and refers to it as Direct Federal Assistance (DFA).<sup>186</sup> DFA has the same cost-share provisions applicable to the declaration (as described in [Chapter 1:IV.E. Federal Cost Share](#)).

## XIII. Increased Federal Cost Share for a Limited Timeframe

When the president authorizes an increased Federal cost share for a limited timeframe, FEMA applies it to all eligible costs related to work performed through 11:59 p.m. on the date of expiration. Therefore, the Applicant needs to delineate costs for work performed prior to the deadline versus costs for work performed after the deadline. The following bullets further define how FEMA applies the increased Federal cost share:

- Employees: Costs for hours worked up to the date and time of expiration.
- Purchased Material and Equipment: Cost to purchase each item that the Applicant needed and used to perform eligible work during the increased funding period. In this case, FEMA also applies the increased Federal cost share to the usage cost up to the date and time of expiration.
- Leased Equipment and Facilities: Lease costs up to date and time of expiration. FEMA may calculate the cost based on a proration of time (i.e., if a facility is leased for six months based on a monthly rate and the period for the increased Federal cost share expired 45 days from the start of the lease, FEMA applies the increased Federal cost share to the cost to lease the facility for 45 days based on a proration of the monthly rate).
- Contract Costs: Costs for work performed up to the date and time of expiration. If costs cannot be distinguished by date performed, FEMA may prorate costs based on the percentage of work completed prior to the deadline versus the percentage of work remaining. However, Applicants should work with contractors to delineate dates associated with work.

## XIV. Donated Resources

Individuals and organizations often donate resources to assist with response activities. FEMA does not provide PA funding for donated resources. However, FEMA allows the Applicant to use the value of donated resources (non-cash contributions of property or services)<sup>187</sup> related to eligible Emergency Work to offset the non-Federal cost share of its eligible Emergency Work projects and DFA; and to use the value of donated resources related to eligible work on a Permanent Work Project to offset the non-Federal cost share of that specific Permanent Work

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<sup>184</sup> 44 C.F.R. § 206.208(a).

<sup>185</sup> 44 C.F.R. § 206.208(c)(2).

<sup>186</sup> 44 C.F.R. § 206.208(c)(1).

<sup>187</sup> 2 C.F.R. § 200.96.



Project. FEMA applies the offsets regardless of the cost share arrangements between the Recipient and its Subrecipients.

For Emergency Work specifically, if there is a time-limited 100 percent Federal cost share period (see [Chapter 6:XIII. Increased Federal Cost Share for a Limited Timeframe](#)) and the Applicant uses resources donated during this time period, it may use the value of those donated resources to offset the non-Federal cost share incurred after the 100 percent Federal cost share period expires. If the Applicant uses resources from its stock that were donated during a previous incident or timeframe, it may use the value of those donated resources to offset its non-Federal cost share if the Applicant has not claimed the resources as an offset in a previous incident.

The Applicant may apply the offset if all of the following conditions are met:

- The donated resource is from a third party. A third party includes private entities or individuals, including individuals that are normally paid employees of the Applicant or Federal, State, Territorial, or Tribal government, but are volunteering as unpaid individuals and not on behalf of the employer);
- The donated resource is necessary and reasonable;<sup>188</sup>
- The Applicant uses the resource in the performance of eligible work<sup>189</sup> and within the respective Project's period of performance;<sup>190</sup> and
- The Applicant or volunteer organization tracks the resources and work performed, including description, specific locations, and hours.<sup>191</sup> The Applicant must track the donated resources for Permanent Work to the specific Project for which it is associated.

FEMA considers unpaid individuals who volunteer their labor to the Applicant to be third-party even if they are officially members or employees of the Applicant organization (e.g. volunteer fire fighters at a PNP volunteer fire department performing eligible Emergency Work).

Resources donated to the Applicant by an organization that would normally provide the same resources under its mission, such as the American Red Cross, are eligible as an offset provided the organization is not federally funded. Additionally, if a mutual aid agreement provides for assistance at no cost to the Applicant, the Applicant may use the value of that assistance to offset its non-Federal cost share.

The value of a donated resource is ineligible as an offset toward the non-Federal cost share if the resource is:

- Donated by a Federal agency;
- Donated by another federally funded source;
- Funded through a Federal award;<sup>192</sup>
- Used as an offset to any other Federal award;<sup>193</sup> or
- Used for ineligible work.

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<sup>188</sup> 2 C.F.R. § 200.306(b)(3).

<sup>189</sup> Applicants may not use the value of standby time as a donated resource as no work is being performed.

<sup>190</sup> 2 C.F.R. § 200.309. For Emergency Work, the end of the period of performance is equal to the latest Emergency Work Project's period of performance.

<sup>191</sup> 2 C.F.R. §§ 200.434(d) and 306(b)(1).

<sup>192</sup> 2 C.F.R. § 200.306(b)(5).

<sup>193</sup> 2 C.F.R. § 200.306(b)(2).

Requesting donated resources from contractors during the solicitation phase of a procurement may violate Federal procurement rules as it may be considered overly burdensome or restrictive of competition.<sup>194</sup> To remain compliant, the Applicant can do the following:

- Accept unsolicited donated resources from contractors;
- Maintain a list of donors; and
- Ask contractors that are donating resources to work with other organizations.

If the Applicant accepts donated resources from contractors, it must not do any of the following:

- Solicit donations in its requests for proposals or solicitations for bids;
- Directly solicit donations or requests for proposals from contractors who are actively bidding on its contracts;
- Grant an award to a contractor which has donated resources for the specific work covered by the contract;
- Show favoritism or give the appearance of showing favoritism to a contractor who has donated resources; and
- Limit competition among contractors based on donated resources, especially for smaller contractors (including women or minority owned businesses) that might not be able to afford to donate resources.

#### **A. Offset Amounts**

FEMA applies values to donated resources as follows:

- **Volunteer Labor:** The offset is based on the same straight-time hourly labor rate, and fringe benefits, as a similarly qualified person in the Applicant's organization who normally performs similar work. FEMA does not offset volunteer labor based on overtime or premium rates. If the Applicant does not have employees performing similar work, FEMA credits the non-Federal share based on a rate consistent with those ordinarily performing the work in the same labor market that the Applicant would otherwise compete for that type of work.<sup>195</sup>
- **Equipment:** The offset is based on equipment rates and must not exceed the fair rental value (if loaned) or the fair market value of equipment that is in similar age and condition at the time of donation (if donated with a transfer of title). See [Chapter 6:III. Applicant-Owned Equipment and Purchased Equipment](#) for information on equipment rates.<sup>196</sup>
- **Supplies or Materials:** The offset is based on current commercial rates; which FEMA validates based on invoices from previous purchases or information available from vendors in the area. The amount must not exceed the fair market value at the time of donation.<sup>197</sup>
- **Buildings or Land:** For buildings or land donated permanently (i.e., with a transfer of ownership), the offset is based on the fair market value at the time of donation as established by an independent appraisal and certified by the Applicant.

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<sup>194</sup> 2 C.F.R. § 200.319.

<sup>195</sup> 2 C.F.R. § 200.306(e) and (f).

<sup>196</sup> 2 C.F.R. § 200.306(g), (h), and (i).

<sup>197</sup> 2 C.F.R. § 200.306(g).

- Space: For building or land space donated for temporary use, the offset is based on the fair rental value of comparable privately-owned space in the same locality as established by an independent appraisal.<sup>198</sup>
- Logistical Support: Reasonable logistical support for volunteers doing eligible work, such as donations warehousing and management related to eligible work, may be eligible either for funding (if the Applicant provides the logistical support) or as a donated resource offset (if a third party provides the logistical support), subject to approval by FEMA.

For Emergency Work, FEMA applies the donated resource offset against the combined non-Federal cost share for all the Applicant’s Emergency Work Projects (Category A and B) under the declared incident. The offset may not exceed the total out-of-pocket costs and is capped at the total non-Federal cost share of these projects. FEMA prepares the Emergency Work donated resource project as a Category B Project separate from Emergency Work Projects for the Applicant’s incurred costs. FEMA does not obligate the donated resource Project until after it obligates all Emergency Work Projects for the Applicant.

For Permanent Work, FEMA applies the donated resource offset against the non-Federal cost share of the specific Permanent Work Project for which the resources were donated. The offset may not exceed the total out-of-pocket costs. FEMA caps the offset at the non-Federal cost share of that specific Permanent Work Project. The type and amount of resources donated must directly correlate to, and may not exceed, the type and amount approved in the scope of work of the Permanent Work Project (e.g., if the approved scope of work includes replacement of 10 chairs and 15 chairs are donated, the donated resource offset is limited to 10 chairs). FEMA adjusts the Permanent Work Project to capture any donated resource offsets related to the Project upon receipt of the donated resource information and no later than closeout.

## **B. Documentation Requirements**

The Applicant needs to submit the following to support donated resources (not an all-inclusive list):

For each individual:

- Sign-in sheet (required);
- Name (required);
- Title and function (required for professional services);
- Days and hours worked (required); and
- Location of work and work performed (required).

Equipment:

- Same information listed under [Chapter 6:III. Applicant-Owned Equipment and Purchased Equipment](#) (required); and
- Who donated each piece of equipment (required).

Supplies or materials:

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<sup>198</sup> 2 C.F.R. § 200.306(i)(3).

- Quantity used (required);
- Who donated (required);
- Location(s) used (required); and
- Invoices or other documentation to validate claimed value (required).

## XV. Project Management and Design Services

FEMA provides PA funding for costs related to project management and design activities as part of the project. Project management includes activities performed to manage the actual project. These are activities that would be required regardless of whether the entity is receiving PA funding and differ from management costs, which are costs for activities related to the receipt and administration of PA funding.

Project management activities may include procurement actions, legal review of contracts, monitoring contractor work, construction oversight and inspections, environmental and historic preservation permitting actions, completing load tickets for debris operations. These activities are eligible provided they are tracked and directly related to a specific, eligible project.

Architectural, engineering, and design services for the approved scope of work, including hazard mitigation, are also eligible provided the services are reasonable. Some projects do not need these services or require only basic services, while others require specialized engineering and design.

When evaluating the eligibility of project management and design services, FEMA considers whether the project includes improvements that are ineligible for funding (costs for management and design services associated with improvements or other ineligible work are not eligible).

## XVI. Grant Management and Administration

FEMA provides contributions for management costs that a Recipient or Subrecipient incurs in administering and managing PA awards. For Recipients, FEMA provides PA funding for management costs based on actual costs incurred up to 7 percent of the total award amount. For Subrecipients, FEMA provides PA funding for management costs based on actual costs incurred up to 5 percent of the Subrecipient's total award amount.<sup>199</sup> Additional information is available in FEMA's interim policy, FEMA Recovery Policy FP 104-11-2, *Public Assistance Management Costs (Interim)* and FEMA's *Public Assistance Management Costs Standard Operating Procedures*.<sup>200</sup>

## XVII. Surveys to Assess or Locate Damage or Debris Impacts

The Applicant is responsible for identifying locations of incident-related damage or debris impacts. Costs related to assessing overall impacts of an incident, locating damage or debris impacts, and conducting PDAs are not eligible project costs, but may be eligible as management costs (see [Chapter 6:XVI. Public Assistance Grant Management and Administration](#)).

<sup>199</sup> Stafford Act § 324(a), 42 U.S.C. § 5165b as amended by the Disaster Recovery Reform Act; and 2 C.F.R. §§ 200.56 and 200.412.

<sup>200</sup> [www.fema.gov/sites/default/files/2020-07/pa\\_mgmt\\_costs\\_sop\\_final.pdf](http://www.fema.gov/sites/default/files/2020-07/pa_mgmt_costs_sop_final.pdf).

If, during a survey after the declaration, the Applicant identifies incident-related damage to a facility, the costs related to the inspection of that facility are eligible as management costs provided the facility is eligible.

Further detailed inspections of that damage to determine the extent of damage or quantity of debris and method of repair or removal, including professional evaluations, are eligible as part of the work to restore the facility or work to remove the debris. If the Applicant performs a detailed inspection of a partially damaged system, eligible costs are based on the percentage of the system that was damaged. For example, if after inspecting 500 linear feet of sewer line, the Applicant identified 100 linear feet of line damaged by the incident, only one-fifth of the inspection costs are eligible.

FEMA has specific eligibility criteria for inspecting earthquake damage to buildings constructed with welded steel-moment frames. FEMA bases the eligibility criteria on *Recommended Post Earthquake Evaluation and Repair Criteria for Welded Steel Moment Frame Buildings* (FEMA 352).<sup>201</sup> The criteria are summarized in [Appendix C: Welded Steel Moment Frame](#). Safety inspections are discussed in [Chapter 7:II.S. Safety Inspections](#).

## XVIII. Duplication of Benefits

FEMA is legally prohibited from duplicating benefits from other sources. If the Applicant receives funding from another source for the same work that FEMA funded, FEMA reduces the eligible cost or de-obligates funding to prevent a duplication of benefits.<sup>202</sup>

### A. Insurance Proceeds

FEMA cannot provide PA funding that duplicates insurance proceeds.<sup>203</sup> Consequently, FEMA reduces eligible costs by the amount of:

- Actual insurance proceeds, if known;<sup>204</sup> or
- Anticipated insurance proceeds based on the Applicant's insurance policy, if the amount of actual insurance proceeds is unknown. FEMA subsequently adjusts the eligible costs based on the actual amount of insurance proceeds the Applicant receives.

FEMA requires the Applicant to take reasonable efforts to pursue claims to recover insurance proceeds that it is entitled to receive from its insurer(s). FEMA may limit funding if the insurance policy provides coverage that should be pursued. If the Applicant expends costs to pursue its insurance claim, FEMA offsets the insurance reduction with the Applicant's reasonable costs to pursue the claim if:

- The incurred cost resulted from pursuing insurance proceeds for FEMA-eligible work; and
- The Applicant can provide documentation to show that the incurred cost was attributed to pursuing more insurance proceeds than the initial settlement amount.

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<sup>201</sup> [www.nehrp.gov/pdf/fema352.pdf](http://www.nehrp.gov/pdf/fema352.pdf).

<sup>202</sup> Stafford Act § 312, 42 U.S.C. § 5155, and 2 C.F.R. § 200.406.

<sup>203</sup> Ibid.

<sup>204</sup> 44 C.F.R. §§ 206.252(c) and 253(a).

If the Applicant receives insurance proceeds for ineligible losses (e.g., business interruption), FEMA calculates a relative apportionment of insurance proceeds to determine the insurance reduction based on:

- The proceeds received per type of loss as specified by the insurance policy or settlement documentation;
- Policy limits for categories of loss as specified in the insurance policy; or
- The ratio of total eligible losses to total ineligible losses.

FEMA Recovery Policy (FP) 206-086-1, *Public Assistance Policy on Insurance*, describes insurance reductions in detail.<sup>205</sup>

The Applicant should upload the following documentation in PA Grants Portal at the Applicant Level (not an all-inclusive list):

- Summary of insurance coverage
- Actual insurance proceeds, if available (required before project is closed)
- General Property Insurance Policy (required if applicable):
  - Property policy declaration pages;
  - Schedule of covered locations;
  - Property policy forms and endorsements;
  - Inland marine coverage section; and
  - Equipment breakdown section
- Flood insurance policy (required for flood loss)
- Wind policy, which may include a separate wind only insurance policy issued by a state Wind Pool or Association [required for wind-related loss (hurricane, tornado, severe weather incident)]
- Auto insurance policy (required for vehicle damage)
- Insurance settlement information (required if available):
  - Final Statement of loss;
  - Adjuster's estimates;
  - Settlement checks;
  - Correspondence explaining the settlement amount and allocation; and
  - Letter of denial

## **B. Non-Federal Grants and Cash Donations**

Grants and cash donations from non-Federal sources are subject to the following criteria based on whether the funds are provided toward a specific purpose and whether that specific purpose is otherwise eligible for PA funding.

- If the funds are designated for the same purpose as eligible work, the following apply:
  - The Applicant may use the funds toward its non-Federal cost share.

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<sup>205</sup> [www.fema.gov/sites/default/files/2020-05/FP206-086-1\\_PublicAssistancePolicyInsurance\\_062915.pdf](http://www.fema.gov/sites/default/files/2020-05/FP206-086-1_PublicAssistancePolicyInsurance_062915.pdf).

- If the funds are not used toward the non-Federal cost share, FEMA considers the donation or non-Federal grant a duplication of benefits and reduces eligible costs by the duplicated amount.
- If the funds exceed the amount of the non-Federal cost share, FEMA reduces eligible costs by the excess amount.
- If the funds are designated for non-specific purposes, FEMA does not consider the funds a duplication of benefits. The Applicant may use the funds toward its non-Federal cost share. If the funds exceed the amount of the non-Federal share, the Applicant can apply the excess amount toward ineligible work.
- If the funds are designated for a specific purpose that is ineligible, FEMA does not allow the Applicant to apply the funds toward its non-Federal cost share.

### **C. Third-Party Liability**

When a third party<sup>206</sup> causes damage (e.g., an oil spill) or increases the cost of repair or cleanup and the Applicant requests FEMA funding for the costs, FEMA requires the Applicant to make reasonable efforts to pursue claims to recover costs it is entitled to receive from the third party.

If the costs recovered are not adequate despite the Applicant's good faith effort, FEMA reduces eligible costs based on the recovered amount. If the Applicant receives funds from the third party for eligible and ineligible work or losses, FEMA determines the offset amount based on:

- The proceeds received for eligible losses as specified by the settlement documentation; or
- The ratio of total eligible losses to total ineligible losses.

### **D. Other Federal Awards**

If the Applicant receives funds from another Federal agency for the same purpose as PA funding, it is a duplication of benefits. FEMA cannot duplicate funds provided by another Federal agency.

## **XIX. Duplication of Funding Between FEMA Programs**

FEMA provides assistance under other Programs, such as its IA programs and Hazard Mitigation Grant Program (HMGP), that could duplicate assistance that is available under the PA Program. FEMA must ensure it does not duplicate funds in areas where its programs overlap.

For IA, individuals may receive assistance for work that, under certain circumstances, is also eligible under PA when a SLTT government has legal authority to perform the work. For example, a homeowner may receive IHP assistance for debris clearance from a privately-owned road and the local government may request PA funding for debris clearance from the same road for emergency vehicle access. FEMA must ensure it does not provide PA funding for the same work to two different entities.

For HMGP, FEMA can provide funding for a wide range of mitigation measures, including measures that may also be eligible under the PA Program. FEMA must ensure that PA funds do not duplicate HMGP funds.

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<sup>206</sup> A third party is a private entity or individual that is not involved in the Federal award, i.e., not the Applicant or Federal, State, Territorial, or Tribal Government.

## XX. Interest on Loans

Applicants may need to obtain a loan to complete work. Financing costs for a loan is only eligible when it meets the conditions established in 2 C.F.R. § 200.449.

## XXI. Ineligible Costs

The Stafford Act authorizes FEMA to provide PA funding for specific work performed as a result of the incident. It does not authorize FEMA to provide PA funding for all losses or costs resulting from the incident. The following costs are ineligible because the Stafford Act does not authorize FEMA to provide PA funding for these items.

### A. Loss of Revenue

FEMA cannot provide PA funding for revenue lost due to the incident. The following are examples of when loss of revenue may occur because of an incident:

- Hospitals release noncritical patients to make room for survivors;
- Hospitals sustain damage that reduces pre-existing capacity;
- Waiving toll fees on a toll road, even if for evacuation purposes;
- Waiving the normal fee for ferry service to encourage alternate transportation;
- Waiving tipping fees;
- A utility system is shut down; and
- Events are cancelled due to an entity using a venue for incident-related activities, such as sheltering.

### B. Loss of Useful Service Life

FEMA cannot provide PA funding for the projected loss of useful service life of a facility. For example, if a road has been inundated by flood waters for an extended timeframe, FEMA cannot provide PA funding for the value of the projected loss of useful life of the road due to the long-term effects the inundation might have on the road. Similarly, FEMA cannot fund the value of the loss of landfill capacity due to incident-related debris.

### C. Tax Assessments

SLTT governments may conduct tax assessments to re-assess real property values after an incident. Costs related to conducting these assessments are ineligible because the assessments are neither essential to addressing an immediate threat to life or improved property, nor connected with the permanent restoration of eligible facilities.

### D. Increased Operating Costs

Increased costs of operating a facility or providing a service are generally ineligible, even when directly related to the incident. However, short-term increased costs that are directly related to accomplishing specific emergency health and safety tasks as part of emergency protective measures may be eligible, as discussed in [Chapter 7:II.F. Expenses Related to Operating a Facility or Providing a Service](#).



# CHAPTER 7: EMERGENCY WORK ELIGIBILITY

FEMA is authorized to provide PA funding for Emergency Work,<sup>207</sup> including emergency protective measures and debris removal. This chapter includes PA policy for Emergency Work, which is work that must be done immediately to:

- Save lives;
- Protect public health and safety;
- Protect improved property; or
- Eliminate<sup>208</sup> or lessen an immediate threat of additional damage.<sup>209</sup>

“Immediate threat” is the threat of additional damage or destruction from an incident that can reasonably be expected to occur within 5 years of the declared incident.<sup>210</sup>



**Figure 10. Emergency Work Eligibility**

For flood incidents specifically, an immediate threat is a threat from a 5-year flood (a flood that has a 20 percent chance of occurring in any given year). For other incidents, an immediate threat means imminent danger from an incident that can reasonably be expected to occur within 5 years of the declared incident. The declared incident must have caused the immediate threat to exist. However, the threat itself can be from any type of incident; it is not limited to the type of incident that caused the initial damage or threat.

The deadline to complete Emergency Work is 6 months from the declaration date unless the Recipient or FEMA authorize an extension.<sup>211</sup> Although regulations allow 6 months to complete Emergency Work, eligible Emergency Work is that which is necessary to address an immediate threat (as shown in Figure 10. *Emergency Work Eligibility*). FEMA considers the urgency with which the Applicant proceeds with work when evaluating eligibility. The Applicant should not delay in following its normal policies and procedures when taking actions to address threats to life, public health and safety, and improved property.

For PNP Applicants, eligible Emergency Work is generally limited to that associated with an eligible PNP facility as follows:

- Debris removal from the facility property; and

<sup>207</sup> 44 C.F.R. § 206.201(b).

<sup>208</sup> While the regulatory definition of the term “Emergency Work” includes the term “avert,” the regulatory language used for the specific eligibility criteria for debris removal and emergency protective measures includes the term “eliminate,” not “avert.”

<sup>209</sup> In addition to addressing immediate threats to life, health and safety, and improved property, debris removal may be authorized to ensure economic recovery of the affected community.

<sup>210</sup> 44 C.F.R. § 206.221(c).

<sup>211</sup> 44 C.F.R. §§ 206.204(c) and (d).

- Emergency protective measures to prevent damage to the facility and its contents.

In limited circumstances, PNPs may be eligible for other types of Emergency Work when essential components of a facility are urgently needed to save lives or protect health and safety (see [Chapter 7:II.D. Emergency Protective Measures Conducted by Private Nonprofit Organizations](#) for details).

For SLTT Applicants, evaluating facility eligibility is not necessary for most Emergency Work. For these Applicants, eligibility of Emergency Work is primarily based on evaluation of an immediate threat and legal authority to perform the work. The Applicant must provide the following:

- Detailed description of work performed (required);
- Description of immediate threat (required if requested); and
- Records demonstrating presence of immediate threat (e.g., technical reports, safety inspector reports, photographs) (required if requested).

#### Environmental and Historic Preservation Considerations

The Applicant should make every effort to inform the Recipient and FEMA of necessary Emergency Work prior to performing the work, when appropriate, to afford FEMA the opportunity to perform EHP reviews and consultations. The Applicant is responsible for obtaining all required EHP permits from the appropriate agencies before proceeding with Emergency Work. FEMA EHP staff is available to assist the Applicant with ensuring the work is compliant with EHP laws, regulations, and EOs.

When performing Emergency Work, the Applicant should avoid new ground disturbance when possible. If the Applicant cannot avoid new ground disturbance, it must consider impacts to natural and cultural resources and obtain all necessary permits. To facilitate EHP review, the Applicant should provide:

- Site map (including geographical coordinates in latitude, longitude in decimal degrees) showing the location of all proposed areas where the Applicant will conduct site work or construction and the extent of ground disturbance (including any staging areas, access roads, parking, landscaping, grading, or utilities);
- Construction dates and photographs of all facilities in the project area;
- Any known environmental issues or historic preservation concerns, such as, but not limited to, threatened and endangered species including their critical habitat, location in floodplain or wetlands, presence of asbestos within the facility, or facility's location in an archaeologically sensitive area;
- Environmental assessments;
- Historic property designations or surveys, including archaeological surveys; and
- Copies of permits and correspondence with regulatory agencies, including but not limited to:
  - State, Territorial, or Tribal Historic Preservation Officer (SHPO/THPO) (historic properties);

- U.S. Army Corps of Engineers (work in navigable waters, work involving dredging or discharging dredged materials or fill in waterways or wetlands);
- U.S. Fish and Wildlife Service (federally listed threatened and endangered species, migratory birds, bald and golden eagles, work in Coastal Barrier Resource System areas, work in or near waterways or wetlands);
- National Oceanic and Atmospheric Administration (federally listed threatened and endangered species, work in essential fish habitat, work in National Marine Sanctuaries);
- EPA (work involving underground injection, work with the potential to increase contamination of sole source aquifers); and
- State, Territorial, or Tribal environmental agencies (permits for burning, staging, or disposing of debris).

## I. Debris Removal (Category A)

Debris removal activities, such as clearance, removal, and disposal, are eligible as Category A if the removal is in the public interest based on whether the work:

- Eliminates immediate threats to lives, public health, and safety;
- Eliminates immediate threats of significant damage to improved public or private property;
- Ensures economic recovery of the affected community to the benefit of the community at large;<sup>212</sup> or
- Mitigates risk to life and property by removing Substantially Damaged<sup>213</sup> structures and associated structures and appurtenances as needed to convert property acquired using HMGP funds to uses compatible with open space, recreation, or wetlands management practices. Such removal must be completed within 2 years of the declaration date unless extended by the FEMA Assistant Administrator of the Recovery Directorate.<sup>214</sup>

Debris includes, but is not limited to, vegetative debris, construction and demolition debris, sand, mud, silt, gravel, rocks, boulders, white goods, and vehicle and vessel wreckage.

For a PNP, eligible debris removal is limited to that associated with an eligible facility, including debris on the property of the eligible facility.

Removal of debris from improved public property and public rights-of-way (ROWs), including Federal-aid roads,<sup>215</sup> is eligible. If SLTT governments authorize residents to place incident-

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<sup>212</sup> This condition is generally restricted to debris removal from large commercial areas when a significant percentage of the commercial sector of a community is impacted and coordinated debris removal is necessary to expedite restoration of the economic viability of the affected community.

<sup>213</sup> Substantial Damage is damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

<sup>214</sup> Stafford Act § 407, 42 U.S.C. § 5173; 44 C.F.R. § 206.224(a).

<sup>215</sup> The term “Federal-aid roads” means the highways on the Federal-aid highway system and all other public roads not classified as local roads or rural minor collectors. The Federal-aid highway system means the National Highway System and the Dwight D. Eisenhower National System of Interstate and Defense Highways (the Interstate System).

related debris on public ROWs, FEMA provides PA funding to remove the debris from the ROWs for a limited timeframe.

The Applicant needs to provide:

- Estimated debris quantities by type (required for all uncompleted work);
- Photographs of debris impacts, if available;
- Location of temporary reduction sites and permanent disposal sites (required);
- Copies of permits for reduction and disposal sites (required);
- Quantities of debris removed, reduced, disposed, and recycled (by type) with load tickets to support quantities (required if contracted, FEMA reviews a representative sample);
- Tower logs (required if contracted, FEMA reviews a representative sample);
- Documentation to substantiate legal responsibility (required);
- The basis of the immediate threat determination (required);
- Location of debris (required); and
- Documentation to substantiate the debris was deposited by the incident and was not pre-existing (e.g., waterway soundings that show pre-and post-incident levels) (required).

Removal of debris placed on the public ROWs from commercial properties is ineligible unless it is pre-approved by FEMA (see [Chapter 7:I.F.2\(c\). Removal from Commercial Property \(Requires FEMA's Pre-approval\)](#)). Additionally, removal of materials related to the construction, repair, or renovation of either residential or commercial structures is ineligible.

Debris removal from the following is ineligible:

- Federally maintained navigable channels and waterways;
- Flood control works under the authority of the Natural Resources Conservation Service (NRCS). Flood control works under the specific authority of NRCS are those that are part of the Watershed and Flood Prevention Operations (WFPO) Program under PL 83-566;<sup>216</sup>
- Agricultural land; and
- Natural, unimproved land, such as heavily wooded areas and unused areas.<sup>217</sup>



#### Terminology

**Flood control works** are those structures such as levees, flood walls, flood control channels, and water control structures designed and constructed to have appreciable effects in preventing damage by irregular and unusual rises in water levels.

Removing debris to restore the pre-disaster capacity of engineered facilities may be eligible as Permanent Work if the Applicant can substantiate the pre-disaster capacity and maintenance of that facility as described in [Chapter 8:IX.B.1. Restoring the Capacity of Channels, Basins, and Reservoirs](#).

Removal and disposal of pollutants and hazardous substances are eligible as Category B work in accordance with [Chapter 7:II.K. Hazardous Materials](#).

<sup>216</sup> [www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/landscape/wfpo](http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/landscape/wfpo).

<sup>217</sup> 44 C.F.R. § 206.224(b).

## Environmental and Historic Preservation Considerations

Although debris removal is usually statutorily excluded from NEPA review,<sup>218</sup> FEMA must ensure compliance with other Federal laws, regulations, and EOs prior to funding the work. Accordingly, FEMA must ensure that the Applicant's debris removal operations avoid impacts to such resources as floodplains, wetlands, federally listed threatened and endangered species and their critical habitats, and historic properties (including maritime or underwater archaeological resources if waterways are impacted). The Applicant must stage debris at a safe distance from property boundaries, surface water, floodplains, wetlands, structures, wells, and septic tanks with leach fields. Additional coordination may be necessary for debris removal from waterways, stump removal, and use of fill.

The Applicant should contact applicable Federal, State, Territorial, and Tribal regulatory agencies to ensure compliance with requirements and permits for debris-related operations. Upon completion of debris removal and disposal, site remediation may be necessary at staging sites and other impacted areas. See more detailed discussion of EHP considerations above in Chapter 7, I.

### **A. Alternative Procedures for Debris Removal**

The Applicant may elect to participate in the Alternative Procedures for debris removal and receive reimbursement for straight-time for the Applicant's budgeted employees that conduct debris removal activities. The Applicant opts-in by including straight-time in their debris removal (Category A) project claims.

### **B. Hazardous Limbs, Trees, and Stumps**

Eligible vegetative debris may include tree limbs, branches, stumps, or trees that are still in place, but damaged to the extent they pose an immediate threat. These items are ineligible if the hazard existed prior to the incident, or if the item is in a natural area and does not extend over improved property or public-use areas, such as trails, sidewalks, or playgrounds.

Contractors typically charge debris removal based on a unit price for volume (cubic yards) or weight (tons). A hazardous tree or stump may be collected individually. When these items are collected individually, contractors often charge a price per tree or stump based on its size. FEMA encourages Applicants to procure branch or limb removal from trees on a one-time charge per tree basis as opposed to a unit price per limb or branch to facilitate more cost-effective operations. FEMA has specific eligibility criteria and documentation requirements for funding these items based on a price per each item instead of by volume or weight. If the Applicant does not provide sufficient documentation, it jeopardizes its PA funding.

Bracing a tree is eligible (as Category B) only when doing so is less costly than removal and disposal. If the Applicant chooses to brace a tree rather than remove it, the tree is ineligible for removal later if it dies.

Pruning, maintenance, trimming, and landscaping are ineligible.

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<sup>218</sup> Stafford Act § 316, 41 U.S.C. § 5159.

## **1. Broken Limb or Branch Removal**

Removal of broken limbs or branches that are 2 inches or larger in diameter (measured at the point of break) that pose an immediate threat are eligible. An example is a broken limb or branch that is hanging over improved property or public-use areas, such as trails, sidewalks, or playgrounds if it could fall and cause injury or damage to improved property.

FEMA does not fund removal of broken limbs or branches located on private property unless:

- The limbs or branches extend over the public ROW;
- The limbs or branches pose an immediate threat; and
- The Applicant removes the hazard from the public ROW (without entering private property).

Only the minimum cut necessary to remove the hazard is eligible. For example, cutting a branch at the trunk is ineligible if the threat can be eliminated by cutting it at the closest main branch junction.

## **2. Tree Removal**

FEMA considers incident-damaged trees to be hazardous and eligible if the tree has a diameter of 6 inches or greater measured 4.5 feet above ground level, and the tree:

- Has a split trunk;
- Has a broken canopy; or
- Is leaning at an angle greater than 30 degrees.

For trees that have 50 percent or more of the root-ball exposed, removal of the tree and root-ball and filling the root-ball hole are eligible. For contracted removal of a tree with a root-ball, FEMA will not reimburse two separate unit costs to remove the tree and its root-ball.

For trees that have less than 50 percent of the root-ball exposed, FEMA only provides PA funding to flush cut the item at ground level and dispose of the cut portion based on volume or weight. Grinding any residual stump after cutting the tree is ineligible.

## **3. Stump Removal**

For stumps that have 50 percent or more of the root-ball exposed, removal of the stump and filling the root-ball hole are eligible. If grinding a stump in-place is less costly than extraction, grinding the stump in-place is eligible.

Stump removal in areas with known or high potential for archaeological resources usually requires that FEMA further evaluate and consult with SHPO or THPO. If the Applicant discovers any potential archeological resources during stump removal, the Applicant must immediately cease work and notify FEMA.

### *(a) Contracted Stump Removal*

FEMA only reimburses contracted costs charged on a per-stump basis if:

- The stump is 2 feet or larger in diameter measured 2 feet above the ground; and
- Extraction is required as part of the removal.

The Applicant needs to ensure the price for stump removal includes extraction, transport, disposal, and filling the root-ball hole.

For stumps that have less than 50 percent of the root-ball exposed, FEMA only provides PA funding to flush cut the item at ground level and dispose of the cut portion based on volume or weight. Grinding any residual stump is ineligible.

For stumps smaller than 2 feet in diameter, or for stumps of any size that do not require extraction, FEMA only provides PA funding based on volume or weight as removal of these stumps does not require special equipment. If the Applicant claims reimbursement of these stumps on a per stump basis, FEMA limits PA funding based on a unit price for volume or tons, calculated using [Appendix E: Stump Conversion Table](#).

If the Applicant incurs additional costs in picking up stumps 2 feet or larger in diameter that the contractor did not extract, it should complete [Appendix F: Hazardous Stump Worksheet](#) and present documentation to substantiate the costs as reasonable based on the equipment required to perform the work.

#### **4. Documentation Requirements for Hazardous Limbs, Trees, and Stumps**

The Applicant must retain, and provide when requested, all of the following documentation to support the eligibility of contracted work to remove tree limbs, branches, stumps, or trees that are still in place:

- Specifics of the immediate threat with the location (geographical coordinates in latitude, longitude) and photograph or video documentation that establishes the item is on public property (required, FEMA reviews a representative sample);
- Quantity removed (Note: If a contractor charged an individual price for each limb, tree, or stump removed, FEMA requires the diameter of each item removed. For stumps, the measurement must be 2 feet up the trunk from the ground. For trees, it must be 4.5 feet up from the ground.) (required);
- Quantity, location, and source of material to fill root-ball holes (required); and
- Equipment used to perform the work (required).

#### **C. Waterways**

Debris removal from waterways that is necessary to eliminate the immediate threat to life, public health and safety, or improved property is eligible. Removal of debris in a waterway that does not meet this criterion is ineligible, even if the debris is deposited by the incident.

The EPA and U.S. Coast Guard (USCG) have the specific authority to remove hazardous materials, as described in the previous section. EPA is responsible for removing such material from inland water zones and USCG is responsible for coastal water zones. Debris removal from waterways usually requires coordination with the U.S. Army Corps of Engineers (USACE) for the use of a Nationwide permit and with the National Marine Fishery Service (NMFS) and U.S. Fish and Wildlife Service (USFWS) to ensure compliance with Section 7 of the Endangered Species Act (ESA).

## 1. Navigable Waterways

If the Applicant has legal responsibility for maintenance of a navigable waterway, removal and disposal of debris that obstructs the passage of vessels is eligible to a maximum depth of 2 feet below the low-tide draft of the largest vessel that utilized the waterway prior to the incident. Any debris below this zone is ineligible unless it is necessary to remove debris extending upward into an eligible zone.

If a tree is still rooted to an embankment and is floating or submerged, the cost to cut the tree at the water's edge is eligible.

Debris removal from federally maintained navigable waterways is ineligible. USCG and the USACE have specific authorities for removal of hazardous substances, vessels, and other obstructions from federally maintained navigable waterways.

## 2. Non-navigable Waterways, Including Flood Control Works and Natural Waterways

Debris deposited by the incident may obstruct a natural waterway (that is, a waterway that is not improved or maintained) or a constructed channel, including flood control works. In these cases, removal of the debris from the channel is eligible if the debris poses an immediate threat, such as when the debris:

- Obstructs, or could obstruct, intake structures;
- Could cause damage to structures, such as bridges and culverts; or
- Is causing, or could cause, flooding to improved public or private property during the occurrence of a 5-year flood.

Removal of the obstruction is eligible in **streams** where debris removal might also be eligible under the NRCS Emergency Watershed Protection Program (EWP)<sup>219</sup> unless NRCS provides assistance for the debris removal. However, FEMA, the Recipient, and the Applicant need to coordinate with NRCS first to ensure that any work performed does not jeopardize other assistance that may be eligible under the EWP.

Debris removal from **flood control works** that are under the specific authority of NRCS is ineligible for PA funding, even if NRCS does not have sufficient funding or does not provide assistance. Flood control works under the specific authority of NRCS are those that are part of the WFPO Program under PL 83-566.<sup>220</sup>

For flood control works that are eligible for the USACE Rehabilitation and Inspection Program (RIP),<sup>221</sup> debris



### NRCS EWP and USACE RIP

The **NRCS EWP** is an emergency recovery program designed to relieve imminent hazards to life and property caused by floods, fires, windstorms, and other natural occurrences. Activities include, but are not limited to, providing financial and technical assistance to:

- Remove debris from stream channels, road culverts, and bridges
- Reshape and protect eroded banks
- Correct damaged drainage facilities
- Establish cover on critically eroding lands
- Repair levees and structures
- Repair conservation practices

The **USACE RIP** provides rehabilitation assistance for flood risk reduction structures.

<sup>219</sup> [www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/landscape/ewpp](http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/landscape/ewpp).

<sup>220</sup> [www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/landscape/wfpo](http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/landscape/wfpo).

<sup>221</sup> [www.usace.army.mil/Missions/CivilWorks/LeveeSafetyProgram/LeveeInspections.aspx](http://www.usace.army.mil/Missions/CivilWorks/LeveeSafetyProgram/LeveeInspections.aspx).



removal is eligible for PA funding. USACE does not reimburse Applicants for debris removal but conducts this activity directly when necessary.

### **3. Identifying Debris Impact Locations**

The Applicant is responsible for identifying debris deposited by the incident that poses an immediate threat. Random surveys to look for debris, including surveys performed using side scan sonar, are ineligible. However, if the Applicant identifies an area of debris impacts and demonstrates the need for a survey to identify specific immediate threat, FEMA may provide PA funding for the survey in that location, including the use of side scan sonar.

#### **D. Privately Owned Vehicles and Vessels on Public Property**

Removal of privately-owned vehicles and vessels from public property is eligible if all of the following conditions are met:

- The vehicle or vessel blocks access to a public-use area;
- The vehicle or vessel is abandoned;
- The Applicant follows applicable SLTT government ordinances or laws for private vehicle or vessel removal; and
- The Applicant documents the handling of the vehicle or vessel.

The Applicant needs to retain documentation to support it met these criteria.

A limited timeframe for vehicle and vessel storage is eligible if it is necessary to remove the item prior to being able to identify the owner. If the owner is identified, the Applicant should work with private property owners to pursue and recover storage and removal costs and credit FEMA the Federal share of any funds received.

#### **E. Disposal**

FEMA provides PA funding for various costs related to disposing of debris. The Applicant should dispose of debris in an efficient and cost-effective manner.

Vegetative debris is bulky and can consume a significant volume of landfill space. To minimize the use of landfill space, FEMA encourages the Applicant to reduce the volume of vegetative debris before burying. Costs to reduce vegetative debris using methods such as mulching, grinding, or burning are eligible.

When removing sand, disposal of sand spoils on a public beach may be eligible as part of the debris removal project when it is the most cost-effective method of disposal.

Certain types of construction and demolition debris are reusable or recyclable. The Applicant should conserve landfill space by separating materials for reuse or recycling.

#### **1. Recycling Revenue**

If the Applicant receives revenue for recycling debris, FEMA reduces PA funding by the amount of revenue received. The Applicant may deduct costs for administering and marketing the sale of the salvageable materials from the fair market value.

If a contract allows the contractor to take possession of salvageable material and benefit from its sale to lower bid prices, there is no salvage value to be recovered at the end of the project. Therefore, the Applicant has no further obligation to FEMA.

## 2. Temporary Staging Sites

Establishing and operating a temporary staging site necessary for debris separation and reduction is eligible. The cost to lease property is eligible. Additionally, if the terms of the lease require that the Applicant restore the leased property back to its condition prior to the Applicant's use, the costs related to that restoration are also eligible as part of the Category A project. If leased, the Applicant must provide the lease agreement.

## 3. Hand-Loaded Trucks and Trailers

FEMA has determined that, for vegetative debris, hand-loaded trucks and trailers achieve approximately half the compaction level of mechanically loaded trucks and trailers. Therefore, FEMA only provides PA funding for 50 percent of the vegetative debris in hand-loaded trucks and trailers.

Similarly, trucks without solid tailgates cannot be compacted to full capacity. Therefore, FEMA only funds up to a maximum of 85 percent of the debris in trucks without solid tailgates.

The Applicant must document the types and total quantity of hand-loaded debris, and the types and total quantity of debris hauled in trucks without solid tailgates and provide this information to FEMA to ensure appropriate reductions are taken for this debris.

## 4. Landfills and Tipping Fees

Landfill tipping fees usually include fixed and variable costs, along with special taxes or fees assessed by the jurisdiction in which the landfill is located. Eligible tipping fee costs are limited to the variable and fixed costs that are directly related to landfill operations, such as recycling tax. The components of tipping fees that are not directly related to landfill operations, such as special taxes or fees related to other government services or public infrastructure, are ineligible as part of the tipping fee. When providing PA funding for tipping fees, FEMA removes any ineligible components.

The Applicant may use a significant portion of the available capacity of a landfill to dispose of incident-related debris. Although FEMA provides PA funding for tipping fees, it cannot provide PA funding for the value of the loss of landfill capacity due to incident-related debris.



### Eligible Tipping Fee Components

#### Eligible fixed costs include:

- Equipment
- Construction
- Permits
- Landfill closure
- Post-closure activities
- Amortized costs for facilities that support the landfill

#### Eligible variable costs include:

- Labor
- Supplies
- Maintenance
- Operation of utilities
- Operation of gas recovery systems

## F. Monitoring Contracted Debris Removal Operations

FEMA requires the Applicant to monitor all contracted debris operations to ensure that the quantities and work claimed are accurate and eligible. This includes documenting debris quantities by types, quantities reduced, reduction methods, and pickup and disposal locations. If the Applicant does not monitor contracted debris removal operations, it jeopardizes its PA funding for that work.

The Applicant may use force account resources (including temporary hires), contractors, or a combination of these for monitoring. It is not necessary, or cost-effective, to have Professional Engineers or other certified professionals perform debris monitoring duties. FEMA considers costs unreasonable when associated with the use of staff that are more highly qualified than necessary for the associated work. If the Applicant uses staff with professional qualifications to conduct debris monitoring, it must document the reason it needed staff with those qualifications.

FEMA provides training to the Applicant's force account debris monitors (including its temporary hires) upon request.

Eligible activities associated with debris monitoring include, but are not limited to:

- Field supervisory oversight;
- Monitoring contracted debris removal at both the loading and disposal sites
- Compiling documentation, such as load tickets and monitor reports, to substantiate eligible debris; and
- Training debris monitors on debris removal operations, monitoring responsibilities and documentation processes, and FEMA debris eligibility criteria.

## G. Debris Removal from Private Property

Debris removal from private property (PPDR) is the responsibility of the property owner and is usually ineligible under the PA Program. In limited circumstances, based on the severity of the impact of an incident and whether debris on private property is so widespread that it threatens public health and safety or the economic recovery of the community, FEMA may determine that debris removal from private property is eligible under the PA Program. In such cases, FEMA works with the SLTT governments to designate specific areas where debris removal from private property, including private waterways, is eligible. The debris removal must be in the public interest, not merely benefiting an individual or a limited group of individuals. Figure 11. *Debris on Private Property* is an example of the level of debris impacts that may warrant FEMA assistance for PPDR.



**Figure 11. Debris on Private Property**

## 1. Approval Process

The Applicant must submit a written request to FEMA identifying the specific properties or areas of properties where private property debris removal activities will occur. Once FEMA receives the request, it engages with the Recipient and Applicant to review the request and conduct site inspections. With exception of debris removal from commercial property, the Applicant does not need to wait for FEMA approval to start work. However, for the Applicant to receive PA funding, FEMA must determine that the PPDR work at each property is eligible.

FEMA only approves PA funding for PPDR if the Applicant demonstrates all of the following with sufficient documentation:

### (a) *Legal Authority and Indemnification*

FEMA accepts a written statement from an authorized Applicant official that:

- Certifies the Applicant has legal authority and responsibility to remove debris from private property;
- Cites all applicable sources of authority (law, ordinance, code, contract, etc.); and
- Indemnifies the United States for any claim arising from the debris removal.

### (b) *Public Interest.*

The Applicant must demonstrate that the PPDR was in the public interest.<sup>222</sup> This includes:

- The basis for the determination that removing the debris from the private property locations requested was in the public interest. The determination must be made by the State, Territorial, Tribal, county, or municipal government's public health authority or other public entity that has legal authority to make a determination that disaster-generated debris on private property constitutes an immediate threat to life, public health, or safety, or to the economic recovery of the community at large.
- The established, specific legal requirements for declaring the existence of a threat to public health and safety.

FEMA evaluates the submission to determine if it concurs that PPDR is in the public interest and provides a written response specifying any properties or area of properties for which it approves funding for debris removal.

## 2. Removal from Private Roads

Private roads are those that are not owned or operated by or otherwise the legal responsibility of a Federal or SLTT entity (including orphan roads, roads in gated communities, homeowners' association roads, etc.). If the public has unrestricted access (no locks, gates, or guards) and



### Clarification of Demolition versus Debris

If more than one wall of a structure is standing and not in immediate danger of collapsing, FEMA considers the removal of that structure to be demolition and not debris removal. Demolition is subject to additional requirements and **must** comply with [Chapter 7:II.U. Demolition of Private Structures](#).

<sup>222</sup> Stafford Act § 407, 42 U.S.C. § 5173; 44 C.F.R. § 206.224(b).

frequently uses the private road, then removal and disposal of the debris, including debris placed at the curbside by residents, is in the public interest and the Applicant is not required to submit documentation demonstrating the debris removal is in the public interest. This does not include debris on private driveways or parking lots. It also does not include removal and disposal activities from private roads in areas with restricted access (roads behind locks, gates, or guards) or private roads that are unrestricted but rarely used by the public. The Applicant must provide further documentation to establish that removal is in the public interest in these areas and, though not required, Applicants should consider obtaining approval from FEMA prior to starting removal and disposal. Debris clearance (push or cut and toss) for emergency access may be eligible as Category B work if it meets the criteria in [Chapter 7:II.J. Emergency Access](#).

### **3. Removal from Private Residential Property**

Debris removal from residential property is usually not in the public interest because the debris does not typically present an immediate health and safety threat to the general public. If the incident generates debris quantities and/or types of debris on residential property that is so widespread or of such magnitude that it creates an immediate threat to public health and safety, debris removal may be in the public interest. To determine if removal of debris from private residential property is in the public interest, FEMA evaluates the public health determination (see [Chapter 7:I.E.1\(b\). Public Interest](#), and will consider:

- Whether the debris is located in open areas accessible to the public (e.g., in a yard with no fence barrier next to a public sidewalk), located in maintained areas, or creating a health and safety hazard (such as a rodent infestation);
- Volume of debris;
- Height of debris;
- Number of houses and blocks with large volumes of debris; and
- Amount of the public population affected.

Given these additional considerations, Applicants should consider obtaining approval from FEMA prior to starting work.

### **4. Removal from Commercial Property (Requires FEMA's Pre-approval)**

Removal of debris from commercial properties, such as industrial parks, golf courses, cemeteries, apartments, condominiums, and trailer parks is generally ineligible because commercial enterprises are expected to retain insurance that covers debris removal. In very limited, extraordinary circumstances, FEMA may provide an exception. In such cases, the Applicant must meet the requirements of [Chapter 7:I.E.1. Approval Process](#) and FEMA must approve the work prior to the Applicant removing the debris.

### **5. Duplication of Benefits**

The Applicant needs to work with private property owners to pursue and recover insurance proceeds and credit FEMA the Federal share of any insurance proceeds received. In some circumstances, FEMA may provide IA assistance to individuals for debris removal; consequently, FEMA PA staff coordinate closely with IA staff to ensure FEMA does not fund the same work under both programs.

## II. Emergency Protective Measures (Category B)

Emergency protective measures conducted before, during, and after an incident are eligible if the measures:

- Eliminate or lessen immediate threats to lives, public health, or safety; OR
- Eliminate or lessen immediate threats of significant additional damage to improved public or private property in a cost-effective manner.<sup>223</sup>

FEMA may require certification by Federal or SLTT government officials that a threat exists, including:

- Identification and evaluation of the threat; and
- Recommendations of the work necessary to cope with the threat.<sup>224</sup>

### Environmental and Historic Preservation Considerations

Although emergency protective measures are usually statutorily excluded from NEPA review, FEMA **must** ensure compliance with other Federal laws, regulations, and EOs prior to funding the work. Accordingly, FEMA **must** ensure that the Applicant's emergency protective measures avoid impacts to such resources as floodplains, wetlands, federally listed threatened and endangered species and their critical habitats, and historic properties. Additional coordination may be necessary for projects such as, but not limited to, new construction related to the temporary relocation of emergency services, mosquito abatement, disposal of contaminated sandbags, or the construction of temporary levees, roadways, or bridges. See more detailed discussion of EHP considerations above in Chapter 7:I.

#### **A. Saving Lives and Protecting Public Health and Safety**

Emergency protective measures save lives or protect public health or safety. Eligible emergency protective measures and costs include, but are not limited to:

- Transporting and pre-positioning equipment and other resources for response;
- Flood fighting;
- EOC-related costs;
- Emergency access;
- Supplies and commodities;
- Medical care and transport;
- Evacuation and sheltering, including that provided by another State or Tribal government;
- Childcare;
- Safety inspections;
- Animal carcass removal;<sup>225</sup>

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<sup>223</sup> 44 C.F.R. § 206.225(a)(3).

<sup>224</sup> 44 C.F.R. § 206.225(a)(2).

<sup>225</sup> FEMA may fund the removal of animal carcasses as Category A if the removal is part of the Applicant's overall debris disposal operation as opposed to a separate and distinct operation.

- Demolition of structures<sup>226</sup>;
- Search and rescue to locate survivors, household pets, and service animals requiring assistance;
- Firefighting;
- Security, such as barricades, fencing, or law enforcement;
- Use or lease of temporary generators for facilities that provide essential community services;
- Dissemination of information to the public to provide warnings and guidance about health and safety hazards using various strategies, such as flyers, public service announcements, or newspaper campaigns;
- Searching to locate and recover human remains;
- Storage and interment of unidentified human remains; and
- Mass mortuary services.

The following are eligible under limited circumstances based on specific criteria described in each of the referenced sections:

- Expenses related to operating a facility or providing an emergency service (see [Chapter 7:II.F. Expenses Related Operating a Facility or Providing a Service](#));
- Mosquito abatement (see [Chapter 7:II.Q. Mosquito Abatement](#));
- Temporary relocation of essential services (see [Chapter 7:II.V. Temporary Relocation of Essential Services](#)); and
- Snow-related activities when specifically authorized in the declaration (see [Chapter 7:II.W. Snow-Related Activities](#)).

## **B. Protecting Improved Property**

Eligible emergency protective measures to protect improved property<sup>227</sup> include, but are not limited to:

- Constructing emergency berms or temporary levees to provide protection from floodwaters or landslides;
- Emergency repairs necessary to prevent further damage, such as covering a damaged roof to prevent infiltration of rainwater;
- Buttressing, shoring, or bracing facilities to stabilize them or prevent collapse;
- Emergency slope stabilization;
- Mold remediation;
- Removal and storage of contents from eligible facilities for the purpose of minimizing additional damage;
- Extracting water and clearing mud, silt, or other accumulated debris from eligible facilities if the work is conducted expeditiously for the purpose of addressing an immediate threat (if the work is only necessary to restore the facility, it is Permanent Work, not Emergency Work);

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<sup>226</sup> FEMA usually reimburses demolition of a public structure as part of the Permanent Work project to replace the facility.

<sup>227</sup> 44 C.F.R. § 206.221(d). Improved property means a structure, facility or item of equipment which was built, constructed or manufactured. Land used for agricultural purposes is not improved property.

- Taking actions to save the lives of animals that are eligible for replacement (see [Chapter 8:IX.C.5. Animals](#)).

### **C. Emergency Protective Measures on Private Property**

In limited circumstances, FEMA may determine that emergency protective measures conducted on private property are eligible under the PA Program if:

- The immediate threat is widespread, affecting numerous homes and businesses such that it is a threat to the health and safety of the general public;
- The Applicant has legal authority to perform the work; and
- The Applicant obtained rights-of-entry and agreements to indemnify and hold harmless the Federal government.

Situations where this may occur are generally limited to:

- Demolition of unsafe private structures that endanger the public ([Chapter 7:II.U. Demolition of Private Structures](#));
- Installation of fiber-reinforced sheeting to cover damaged roofs, commonly referred to as Operation Blue Roof (DFA only) ([Chapter 7:II.X.1. Operation Blue Roof](#));
- Provision of emergency access ([Chapter 7:II.J. Emergency Access](#));
- Pumping of flooded basements;
- Pumping of septic tanks or decontamination of wells causing a pollution threat ([Chapter 7:II.K. Hazardous Materials](#));
- Residential electric meter repair ([Chapter 7:II.R. Residential Electrical Meter Repair](#));
- Safety inspections ([Chapter 7:II.S. Safety Inspections](#)); and
- Stabilizing a slope ([Chapter 7:II.X.2. Slope Stabilization](#)).

Upon submittal of its claim, the Applicant must include the following support documentation for the work to be eligible:

- A detailed explanation documenting the Applicant's legal authority and responsibility to enter private property;
- The basis for the determination that a threat exists to the general public; and
- Copies of the rights-of-entry and agreements to indemnify and hold harmless the Federal government.

If the above criteria are not met, the private property owner may be eligible for assistance under FEMA's IA Programs. FEMA PA and IA staff coordinate closely to ensure FEMA does not fund the same work under both programs.

### **D. Emergency Protective Measures Conducted by Private Nonprofit Organizations**

For PNPs, eligible emergency protective measures are generally limited to activities associated with preventing damage to an eligible facility and its contents.

Emergency services are usually the responsibility of SLTT governments. Therefore, PNPs are generally not legally responsible for those services and FEMA does not provide PA funding to PNPs for the costs associated with providing those services. When a PNP provides emergency services at the request of, and certified by, the legally responsible government entity, FEMA



provides PA funding through that government entity as the eligible Applicant. These services include:

- Fire and rescue activities;
- Animal control;
- Emergency ambulance service for evacuation;
- 211 call services, if tracked and related to eligible work; and
- Other similarly urgent governmental services.

PNPs that own or operate a medical or custodial care facility are eligible for direct reimbursement of costs related to patient evacuation. In limited circumstances, FEMA may also reimburse a PNP directly when essential components of a facility are urgently needed to save lives or protect health and safety, such as an emergency room of a PNP hospital or a PNP sewage or water treatment plant.

Additionally, if a PNP volunteer fire department operates based on established agreements with a SLTT government that designates the volunteer fire department as an official recognized entity legally authorized to provide emergency services in areas of coverage specifically designated by the SLTT government, FEMA may reimburse the volunteer fire department directly as an eligible Applicant.

#### **E. Pre-positioning Resources**

Costs related to pre-positioning resources specifically for the declared incident are eligible if the resources are used in the performance of eligible Emergency Work.

Additionally, costs related to pre-positioning resources outside of the declared area are eligible when related to conducting search and rescue, evacuation, sheltering, or providing emergency medical care during the evacuation period (such as ambulances, buses, and staff) provided the resources were ultimately used for the declared area.

#### **F. Expenses Related to Operating a Facility or Providing a Service**

The Applicant may incur increased costs related to operating a facility or providing a service as a result of the incident because of an increased demand for the services the facility provides.

These additional costs are only eligible if:

- The services are specifically related to eligible emergency actions to save lives or protect public health and safety or improved property;
- The costs are for a limited timeframe based on the emergency or exigency of the circumstances; and
- The Applicant tracks and documents the additional costs.

Increased operating costs that may be eligible for a limited time, include but are not limited to, costs for:

- Generators at a hospital or police station;
- Water testing and treatment, including supplies, in the immediate aftermath of the incident to counter a specific threat;
- Fuel for increased use of a pumping station; and
- EOC facility costs (e.g., utilities).

Increased operating costs that are ineligible, even for a limited time, include but are not limited to, costs for:

- Patient care, except as noted in [Chapter 7:II.N. Medical Care](#);
- Administrative activities;
- Provision of food, except as noted in [Chapter 7:II.L. Supplies and Commodities](#); and [M. Meals](#);
- Costs related to staff that were retained to work additional hours, but did not perform eligible Emergency Work (e.g., staff working additional shifts due to other staff's inability to get to work);
- Obtaining electrical power from an alternate source;
- Obtaining water from an alternate source;
- School make-up days, including contracted costs for bus service for make-up days;
- Provision of school bus service including fuel or mileage for transporting students from alternate locations or to alternate schools or temporary facilities; and
- Modification or construction of a new landfill to add landfill capacity.

For PNPs, operating costs are generally ineligible even if the services are emergency services, unless the PNP performs an emergency service at the request of and certified by the legally responsible government entity. In such case, FEMA provides PA funding through that government entity as the eligible Applicant.

#### **G. Emergency Public Transportation and Communication (DFA only)**

A SLTT government may provide emergency communication services and public transportation when existing systems are damaged to the extent vital functions of community life or incident response are disrupted. The costs of these services are ineligible for reimbursement.<sup>228</sup> However, FEMA may provide short-term DFA for these services.<sup>229</sup>

#### **H. Flood Fighting**

Flood fighting activities may include, but are not limited to, sandbagging, dewatering behind a levee by breaching or pumping, or increasing the height of a levee. These activities are eligible if necessary to reduce an immediate threat to life, public health and safety, or improved property. These activities are eligible even if they are associated with a facility that is eligible for the USACE RIP, as USACE cannot reimburse the Applicant for flood fighting. However, they are ineligible if associated with flood control works under the specific authority of NRCS.

The repair of deliberate breaches made by the Applicant to accomplish dewatering is eligible as part of the Emergency Work Project.

Dewatering agricultural and natural areas behind levees and other water control structures is ineligible.

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<sup>228</sup> Transportation costs for the purpose of evacuation are eligible for reimbursement as described in [Chapter 7:II.O. Evacuation and Sheltering](#).

<sup>229</sup> Stafford Act §§ 418 and 419, 42 U.S.C. §§ 5185 and 5186; 44 C.F.R. §§ 206.225(c) and (d).

## I. Emergency Operations Centers

The Applicant may use its EOC to direct and coordinate resources and response activities for a period of time. Response activities conducted at EOCs are eligible provided they are associated with eligible work. Costs associated with operating the EOC are also eligible, including, but not limited to:

- Increased utility costs;
- Costs to lease a facility;
- Supply costs; and
- Meal costs, as described in [Chapter 7:II.M. Meals](#).

## J. Emergency Access

There are times when the incident causes damage or debris blockage to access routes to an essential community service, or to a community with survivors. If the extent of damage or blockage makes these areas inaccessible, work related to providing access is eligible. This includes clearing debris from or conducting emergency repairs to an access facility, such as a road or bridge. Eligible work is limited to that necessary for the access to remain passable. Any debris removal or additional debris clearance is Category A and funded based on the criteria in [Chapter 7:I. Debris Removal \(Category A\)](#).



### Debris Clearance versus Debris Removal

Debris Clearance is the clearance of debris to allow passage only. It does not include hauling or disposing of the debris. Debris clearance is often referred to as “cut and toss” or “push”.

Debris Removal includes hauling and disposing of debris at a temporary or final disposal site.

Private roads are those that are not owned or operated by or otherwise the legal responsibility of a local, county, Tribal, Territorial, State, or Federal entity. Clearance of debris from private roads—including orphan roads, roads in gated communities, homeowners’ association roads, etc. is in the public interest if the debris impairs emergency access by local emergency responders, ambulances, fire, and police. For example, downed trees may be cut and moved off the roadway. Eligible work is limited to that necessary for roads to remain passable but might include removal and disposal during the initial pass as necessary to ensure emergency access. The Applicant is not required to submit documentation demonstrating that debris clearance is in the public interest.

The Applicant must complete all necessary legal processes or obtains rights-of-entry and agreements to indemnify and hold harmless the Federal Government.

Emergency repairs to privately-owned roads, including those within gated communities, are eligible only when all of the following conditions are met:

- There is no other access point;
- Repair of the damage economically eliminates the need for temporary housing; and
- The Applicant completes all legal processes and obtains rights-of-entry and agreements to indemnify and hold harmless the Federal Government.

Upon submittal of its claim, the Applicant must include documentation supporting that it met the conditions above in order for the work to be eligible.

## **K. Hazardous Materials**

Removal and disposal of pollutants and hazardous substances are eligible. Eligible activities include:

- Separation of hazardous materials from other debris;
- Specialized procedures for handling and disposing of hazardous materials;
- Control or stabilization of the hazardous material;
- Pumping water contaminated with the hazardous material; and
- Clean-up and disposal of the hazardous material.

Testing for contaminants in water, air, or soil necessary to ensure elimination of the immediate threat is eligible in accordance with [Chapter 7:II.F. Expenses Related to Operating a Facility or Providing a Service](#). However, testing for the purpose of long-term cleanup actions is ineligible.

The Applicant must comply with Federal and SLTT government environmental requirements for handling hazardous materials. Before handling or disposing of hazardous materials, the Applicant should contact the appropriate Federal or SLTT agency to obtain required permits, notify proper agencies of hazardous materials storage, and to coordinate the creation of any required facility specific Emergency Response Plans for spills, safety and proper handling. Additionally, appropriate certified hazardous waste specialists should handle, capture, recycle, reuse, or dispose of hazardous materials. When providing PA funding for work involving the handling of hazardous materials, FEMA must ensure compliance with the Resource Conservation and Recovery Act (RCRA).

Additionally, the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) authorizes the Federal Government to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment. Under CERCLA and the Clean Water Act (CWA), EPA<sup>230</sup> and the USCG have the authority to respond to actual or potential discharges of oil, hazardous substances, pollutants, and contaminants that may present an imminent and substantial danger to public health or welfare. EPA has responsibility for responses in the inland zone<sup>231</sup> and the USCG has responsibility for responses in the coastal zone.<sup>232</sup> Response actions may include containment, stabilization, decontamination, collection (e.g., orphan tanks, drums), and disposal.

## **L. Supplies and Commodities**

The purchase of supplies and commodities required for emergency protective measures is eligible.

Costs related to the Applicant purchasing supplies or using its own stock to perform Emergency Work are eligible and reimbursed in accordance with [Chapter 6:III.5. Supplies](#). Examples

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<sup>230</sup> See Recovery Policy 9523.8, *Mission Assignments for ESF#10*, for discussion on U.S. Environmental Protection Agency (EPA) and U.S. Coast Guard (USCG) authority with respect to removal of hazardous waste: [www.fema.gov/sites/default/files/2020-07/fema\\_ESF\\_10\\_Oil-Hazardous-Materials.pdf](http://www.fema.gov/sites/default/files/2020-07/fema_ESF_10_Oil-Hazardous-Materials.pdf).

<sup>231</sup> The inland zone is the environment inland of the coastal zone, excluding the Great Lakes and specified ports and harbors on inland rivers. Precise boundaries are identified in Federal regional contingency plans.

<sup>232</sup> The coastal zone includes coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of coastal States, including islands, transitional and intertidal areas, salt marshes, wetlands, and beaches.

include, but are not limited to, safety equipment, personal protective equipment, radios, power tools, sand, and tarps.

Purchasing and packaging life-saving and life-sustaining commodities and providing them to the impacted community are eligible. Examples of such commodities include, but are not limited to, food, water, ice, personal hygiene items, cots, blankets, tarps, plastic sheeting for roof damage, and generators, as well as food and water for household pets and service animals. The cost of delivering these same commodities to unsheltered residents in communities where conditions constitute a level of severity such that these items are not easily accessible for purchase is also eligible. This includes food and water for household pets whose owners are in shelters.



The cost of leasing distribution and storage space for the commodities is also eligible.

### **M. Meals**

Applicants often provide meals for emergency workers. Provision of meals, including beverages and meal supplies, for employees and volunteers engaged in eligible Emergency Work, including those at EOCs, is eligible provided the individuals are not receiving per diem and one of the following circumstances apply:

- Meals are required based on a labor policy or written agreement that meets the requirements of [Chapter 6. Cost Eligibility](#);
- Conditions constitute a level of severity that requires employees to work abnormal, extended work hours without a reasonable amount of time to provide for their own meals; or
- Food or water is not reasonably available for employees to purchase.

FEMA only reimburses the cost of meals that are brought to the work location and purchased in a cost-effective and reasonable manner, such as bulk meals. FEMA does not reimburse costs related to group outings at restaurants or individual meals.<sup>233</sup>

### **N. Medical Care**

When the emergency medical delivery system within a declared area is destroyed, severely compromised or overwhelmed, FEMA may fund extraordinary costs associated with operating emergency rooms and with providing temporary facilities for emergency medical care of survivors. Costs associated with emergency medical care should be customary for the emergency medical services provided. Costs are eligible for up to 30 days from the declaration date unless extended by FEMA.

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<sup>233</sup> FEMA reimburses meal costs as part of a contract in accordance with the contract terms provided it meets the requirements in [Chapter 4:VIII. Procurement and Contracting Requirements](#).

Eligible medical care includes, but is not limited to:

- Triage and medically necessary tests and diagnosis;
- Treatment, stabilization, and monitoring;
- First-aid assessment and provision of first aid;
- A one-time 30-day supply of prescriptions for acute conditions or to replace maintenance prescriptions;
- Vaccinations for survivors and emergency workers to prevent outbreaks of infectious and communicable diseases;
- Durable medical equipment;
- Consumable medical supplies;
- Temporary facilities, such as tents or portable buildings for treatment of survivors;
- Leased or purchased equipment for use in temporary medical care facilities;
- Security for temporary medical care facilities; and
- Use of ambulances for distributing immunizations and setting up mobile medical units.



### Terminology

**Durable medical equipment** is reusable medical equipment necessary for the treatment of an illness or injury or to prevent a patient's further deterioration. The equipment includes, but is not limited to:

- Oxygen equipment
- Wheelchairs
- Walkers
- Hospital beds
- Crutches
- Other medical equipment

**Consumable medical supplies** are medical supplies that are ingested, injected, or applied or are for one-time use only, including, but not limited to:

- Medical supplies
- Medications
- Diapers
- Adult incontinence briefs
- Bandages

Long-term medical treatment is ineligible. FEMA determines the reasonableness of these costs based on Medicare's cost-to-charge ratio (a ratio established by Medicare to estimate a medical service provider's actual costs in relation to its charges).

FEMA does not provide PA funding for these costs if underwritten by private insurance, Medicare, Medicaid, or a pre-existing private payment agreement.<sup>234</sup> The Applicant must take reasonable steps to provide documentation on a patient-by-patient basis verifying that insurance coverage or any other source funding including private insurance, Medicaid, or Medicare, has been pursued and does not exist for the costs associated with emergency medical care and emergency medical evacuations.

Ineligible costs include:

- Medical care costs incurred once a survivor is admitted to a medical facility on an inpatient basis;
- Costs associated with follow-on treatment of survivors beyond 30 days of the declaration; and
- Administrative costs associated with the treatment of survivors.

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<sup>234</sup> Stafford Act § 312, 42 U.S.C. § 5155.

## O. Evacuation and Sheltering

Evacuation and sheltering of survivors are eligible activities. This includes household pets and service and assistance animals, but not exhibition or livestock animals.

### 1. Evacuation

Transportation to evacuate (and subsequently return) survivors, household pets, service animals, assistance animals, luggage, and durable medical equipment is eligible. This includes emergency medical transportation. The mode of transportation should be customary and appropriate for the work required.

Eligible activities include, but are not limited to:

- Transferring patients from inoperable, compromised, or overwhelmed eligible medical or custodial care facilities to another medical facility or to a shelter;
- Transferring patients back to original medical or custodial care facility, when appropriate;
- Transporting survivors, including shelterees, who require emergency medical care to and from the nearest existing or temporary medical care facility equipped to adequately treat the medical emergency. Transport may include emergency air, sea, or ground ambulance services if necessary;
- Use of equipment such as buses, trucks, or other vehicles (including accessible vehicles) to provide one-time transportation to evacuate survivors and their household pets and service and assistance animals to emergency shelters from pre-established pick-up locations. This includes standby time for drivers and contracted equipment while waiting to transport survivors;
- Paratransit transportation services, such as vans, minibuses, and buses, (including accessible vehicles) to transport senior citizens, individuals with disabilities (including mobility disabilities) or access and functional needs, individuals in nursing homes and assisted-living facilities, and homebound individuals impacted by the incident;
- Tracking of evacuees, household pets, service animals, luggage, and durable medical equipment. This includes the use of animal microchips for the purpose of tracking evacuated animals;
- Food and water provided during transport;
- Emergency medical care provided during transport, including emergency medical personnel and supply costs;
- Stabilization of individuals injured during evacuation; and



#### Terminology

**Household pets** are domesticated animals that:

- Are traditionally kept in the home for pleasure rather than for commercial purposes
- Can travel in commercial carriers
- Can be housed in temporary facilities

Examples are dogs, cats, birds, rabbits, rodents, and turtles.

Household pets do not include reptiles (except turtles), amphibians, fish, insects, arachnids, farm animals (including horses), or animals kept for racing purposes.

**Service animals** are dogs that are individually trained to do work or perform tasks for people with disabilities or access and functional needs.

**Assistance animals** are animals that work, provide assistance, or perform tasks for the benefit of a person with a disability, or provide emotional support that alleviates identified symptoms or effects of a person's disability.

Although dogs are the most common type of assistance animal, other animals can also be assistance animals.

- Costs incurred in advance of an incident necessary to prepare for evacuations in threatened areas. Costs may include mobilization of ambulances and other transport equipment. Contracts for staging ambulance services must be part of the State, Territorial, Tribal, or regional evacuation plan. Costs of staging ambulances are eligible even if the incident does not impact the area normally served by those ambulances. PA funding for activating, staging, and using ambulance services ends when any of the following occurs:



- FEMA, and the State, Territorial, or Tribal government, determines that the incident did not impact the area where it staged ambulances;
- Evacuation and return of medical patients and individuals with disabilities or access and functional needs is complete; or
- The immediate threat caused by the incident has been eliminated and the demand for services has returned to normal operation levels.

FEMA does not provide PA funding for ambulance services that are covered by private insurance, Medicare, Medicaid, or a pre-existing private payment agreement.<sup>235</sup>

## 2. Sheltering

FEMA provides PA funding to SLTT government Applicants for costs related to emergency sheltering for survivors. Typically, such sheltering occurs in facilities with large open spaces, such as schools, churches, community centers, armories, or other similar facilities. FEMA refers to these shelters as congregate shelters.

Eligible costs related to sheltering include, but are not limited to, the items listed below, as necessary based on the type of shelter and the specific needs of the shelterees. If any of the items listed are donated, including labor, the Applicant may offset the non-Federal share of its eligible Emergency Work Projects in accordance with [Chapter 6:XIV. Donated Resources](#). Sheltering and caring for household pets is only eligible while the pet owner is in an emergency shelter.

### (a) Shelter Facility Costs

Eligible shelter facility costs include, but are not limited to:

- Facility lease or rent, including space for food preparation;
- Utilities such as power, water, and telephone;
- Minor facility modifications if necessary to make the facility habitable, compliant with the Americans with Disabilities Act (ADA), functional as a childcare facility, or functional as an animal shelter;
- Restoration to return the facility to its condition prior to use;
- Generator costs; and
- Secure storage space for medical supplies.

If an eligible SLTT government Applicant owns or leases the shelter facility, and a volunteer agency operates the shelter, the facility costs described above are eligible. However, the labor

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<sup>235</sup> Ibid.



costs for the volunteer agency's workers are ineligible (except as a donated resource in accordance with the criteria in [Chapter 6:XIV. Donated Resources](#)).

*(b) Shelter Staff Costs*

Eligible shelter staff costs include, but are not limited to:

- Medical staff;
- Personal assistance service staff;
- Veterinary and animal care staff;
- Public Information Officer;
- Social workers;
- Food service workers;
- Custodial and facilities staff; and
- National Guard personnel (See [Chapter 6:XI. National Guard](#)).

*(c) Shelter Supplies and Commodities*

Eligible shelter supplies and commodities include, but are not limited to:

- Hot and cold meals, snacks, beverages, and related supplies for survivors;
- Cooking and serving supplies;
- Food, water, and bowls for household pets and service and assistance animals;
- Durable medical equipment;
- Consumable medical supplies;
- Medication for animal decontamination and parasite control;
- Infant formula, baby food, and diapers;
- Refrigerators, microwaves, and crock pots;
- Cots, cribs, linens, blankets, pillows, tables, and chairs;
- Crates, cages, leashes, and animal transport carriers;
- Personal hygiene kits with items such as shampoo, soap, toothpaste, a toothbrush, towels, and washcloths;
- Animal cleaning tables and supplies;
- Televisions or radios – one per 50 shelterees;
- Basic cable service;
- Computers – one per 25 shelterees;
- Internet service, including Wi-Fi;
- Washers and dryers – one of each per 50 shelterees; and
- Toys and books.

*(d) Shelter Services*

Shelter services are only eligible for the time the facility is actively used to shelter survivors. Eligible shelter services include, but are not limited to:

- Shelter management;
- Supervision of paid and volunteer staff;
- Cleaning the shelter, linens, and animal crates;
- Shelter safety and security;

- Use of equipment, such as ambulances, buses, trucks, or other vehicles, to provide sheltering support;
- Phone banks for survivors;
- Care for survivors with disabilities or access and functional needs, including the provision of the following personal assistance services:
  - Grooming, eating, walking, bathing, toileting, dressing, and undressing;
  - Transferring (e.g., movement between a cot and wheelchair or wheelchair to restroom facilities);
  - Maintaining health and safety;
  - Assistance with self-administering medications; and
  - Communicating or accessing programs and services;
- Emergency medical and veterinary services for sheltered survivors, household pets, and service and assistance animals, including:
  - Emergency and immediate life stabilizing care, including necessary prescriptions (not to exceed 30-day supply);
  - Triage, medically necessary tests, diagnosis, treatment, stabilization, and monitoring;
  - First-aid assessment;
  - Provision of first aid and health information;
  - Care for evacuees with chronic conditions;
  - Administering vaccinations to shelterees and workers for transmissible or contagious diseases, including, but not limited to, tetanus and hepatitis;
  - Administering vaccinations to household pets, and service and assistance animals, for transmissible or contagious diseases, including, but not limited to, Bordetella (kennel cough). The vaccinations need to be effective while the animal is in the shelter;
  - Medical waste disposal;
  - Mental-health care;
  - Outpatient costs for sheltered survivors requiring emergency life-sustaining treatment not available at the shelter for the period of time that a survivor is housed in the shelter. Eligible outpatient services are limited to:
    - Physician services in a hospital outpatient department, urgent care center, or physician's office;
    - Related outpatient hospital services and supplies, including X-rays, laboratory and pathology services, and machine diagnostic tests; and
    - Local professional transport services to and from the nearest hospital equipped to adequately treat the emergency.
- Sheltering self-evacuees (self-evacuee transportation costs are ineligible); and
- Costs paid to the American Red Cross (ARC) or other Non-governmental Organizations (NGO) to operate shelters under a written agreement (costs that ARC or other NGOs incur under their own organizational mission – i.e., independent of any Federal or SLTT request – are ineligible for reimbursement).

(e) *Non-congregate Sheltering*

Generally, FEMA does not provide PA funding for emergency sheltering in non-congregate environments, which are locations where each individual or household has living space that offers some level of privacy (e.g., hotels, motels, casinos, dormitories, retreat camps, etc.). In limited circumstances, such as when congregate shelters are not available or sufficient, FEMA may reimburse costs related to emergency sheltering provided in non-congregate environments. FEMA's Assistant Administrator for Recovery has the authority to approve this policy exception. The Applicant must submit a request for PA funding for costs related to emergency, non-congregate sheltering and obtain FEMA approval prior to sheltering survivors in non-congregate facilities. At a minimum, the Applicant should include the following information in its request:

- Justification for the necessity of non-congregate sheltering;
- Whether the State, Territorial, or Tribal government has requested Transitional Sheltering Assistance;
- The type of non-congregate sheltering available and which type the Applicant intends to utilize;
- An analysis of the available options with the associated costs of each option; and
- The timeframe requested (i.e., date of activation and length of time).<sup>236</sup>



**Transitional Sheltering Assistance Program**

FEMA's Transitional Sheltering Assistance (TSA) is a type of short-term non-congregate sheltering assistance provided as Direct Federal Assistance. The intent of TSA is to provide temporary sheltering for survivors transitioning from emergency shelters to temporary or permanent housing solutions. Additional information is available in FEMA's Individual Assistance Program and Policy Guide at [www.fema.gov/assistance/individual/program-policy-guide](http://www.fema.gov/assistance/individual/program-policy-guide).

FEMA limits any approval to that which is reasonable and necessary to address the needs of the incident (usually no more than 30 days). FEMA determines the eligible costs based on the contractual agreement, including reimbursement for repairing damage if it is the Applicant's legal responsibility based on the agreement. The Applicant must obtain FEMA approval for any time extensions, which should include a detailed justification for the continued need and a revised analysis of options, including the costs for each option.

If FEMA approves the request, the Recipient must provide sufficient data and documentation to establish eligibility (including the need for non-congregate sheltering resulting from the disaster, reasonableness, and costs). Sufficient documentation includes:

- The number of non-congregate shelterees:
  - By age groups 0-2, 3-6, 7-12, 13-17, 18-21, 22-65, and 66+;
  - With disabilities or access and functional needs;
  - Registered for assistance from FEMA's IA Programs; and
  - Referred to State, Territorial, Tribal, or non-governmental organization programs for assistance;
- Number of household pets, and assistance and service animals sheltered, and the type of shelter provided (e.g., stand alone, co-located, or co-habitational);
- Length of stay per "household unit"; and

<sup>236</sup> 44 C.F.R. §§ 206.225(a)(2) and 206.202(c) and (d).

- Number of meals and other services provided.

As with any activity, lack of full documentation may result in FEMA determining that some or all of the costs are ineligible.

### 3. Childcare Services

FEMA reimburses SLTT governments for the cost of providing licensed childcare services to support sheltered populations. This includes the cost of the labor, facility, supplies, and commodities. Additionally, FEMA may provide PA funding for the cost of childcare services that the eligible Applicant provides to other survivors, and beyond the period of emergency sheltering, with certification that temporary childcare is necessary to meet immediate threats to life, public health and safety, or property.

Childcare includes services such as:

- Day care for children; and
- Before- and after-school care.

The Applicant may provide these services within a shelter facility or in a separate facility, as appropriate. FEMA PA and IA staff coordinate to ensure no duplication with IHP assistance.

### 4. Host-State or Host-Tribe Evacuation and Sheltering

If the impacted State or Tribe (Impact-State or Impact-Tribe)<sup>237</sup> has evacuation and sheltering needs beyond its ability to address within its jurisdictional area, it may request assistance either from another State or Tribal government (Host-State or Host-Tribe)<sup>238</sup> through mutual aid agreements such as EMAC, or from FEMA.

If the Impact-State/Tribe requests assistance directly from another State or Tribal government, FEMA reimburses costs based on the mutual aid agreement as described in [Chapter 6:IX. Mutual Aid](#). FEMA may also provide PA funding to the Host-State/Tribe directly, even if the Impact-State/Tribe already requested assistance directly from that Host-State/Tribe, provided that:

- The Impact-State/Tribe requested the assistance;
- The Host-State/Tribe agrees to accept evacuees based on need—without restriction;
- An authorized official from the Host-State/Tribe transmits a written agreement to FEMA; and



<sup>237</sup> Impact-State or Impact-Tribe means the State or Tribal Government for which the President declared an Emergency or Major Disaster and requested FEMA assistance because of a need to evacuate and/or shelter affected individuals outside the State.

<sup>238</sup> Host-State or Host-Tribe means a State or Tribal Government that by agreement with FEMA provides sheltering or evacuation support to evacuees from an Impact-State or Impact-Tribe.

- The Governor or Tribal Chief Executive of the Host-State/Tribe signs the FEMA/Host-State or FEMA/Host-Tribe Agreement pursuant to the terms and conditions in 44 C.F.R. § 206.44, FEMA-State Agreements, to establish the Host-State/Tribe as the Recipient.<sup>239</sup>

If the Impact-State/Tribe requests assistance from FEMA, FEMA determines whether potential Host-States/Tribes have sufficient capability to meet some or all of the sheltering and evacuation needs of the Impact-State/Tribe. If FEMA determines a Host-State/Tribe has sufficient capability and the Host-State/Tribe meets the three conditions described above, FEMA provides PA funding to the Host-State/Tribe directly.<sup>240</sup>

When FEMA provides PA funding directly to the Host-State/Tribe, FEMA reimburses 100 percent of the Host-State/Tribe's eligible costs, including straight-time and benefits of the Host-State/Tribe's permanent employees<sup>241</sup> so that it does not have any out-of-pocket costs. In these cases, the Impact-State/Tribe is responsible for the non-Federal cost share and must subsequently reimburse FEMA for the non-Federal cost share of the eligible costs incurred by the Host-State/Tribe. The non-Federal cost share is based on the Category B cost-share amount designated in the declaration. The Impact-State/Tribe cannot offset its non-federal cost share with the Host-State/Tribe's volunteer labor.

In addition to the other eligible evacuation and sheltering costs described in this chapter, FEMA also reimburses the Host-State/Tribe for the following:

- Straight-time and benefits of entities' employees that provide assistance under a mutual aid agreement or a contract with the Host-State/Tribe such as a local government or PNP;
- Costs to provide the requested shelter capacity, even if the shelter was underused or not used at all;
- Costs related to arrest and incarceration of evacuees who commit unlawful acts in the Host-State/Tribe congregate shelter, including costs incurred by on-duty law enforcement officers in order to detain, take into custody, or make an arrest (costs of chemical tests, processing, charging, booking, and holding such persons are ineligible costs). Costs to transport a detainee back to the shelter is eligible if the individual was not charged;
- When patients in hospitals in the Impact-State/Tribe are evacuated, transported, and admitted into hospitals in the Host-State/Tribe through mission assignment with HHS, and the patients are treated and discharged but require follow-on care while awaiting transport, and shelters are not available, the costs that the Host-State/Tribe's hospital incurs for hotel rooms during patients' follow-on care until the patients can be transported back to the Impact-State/Tribe, provided that Medicare, Medicaid, or private insurance does not cover these costs;
- Bus or shuttle transport to pick up evacuees at the airport, train station, or bus terminal when the expected plane, train, or bus is re-routed, canceled, or rescheduled;
- Ambulance costs for hospital-to-hospital transfers, provided it is a transfer within the Host-State/Tribe;
- When the Impact-State/Tribe determines that it is safe for re-entry, it coordinates with the Host-State/Tribe and FEMA to return evacuees, household pets, and service and

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<sup>239</sup> 44 C.F.R. § 206.202(f)(1)(i).

<sup>240</sup> 44 C.F.R. § 206.208(c)(3).

<sup>241</sup> 44 C.F.R. § 206.202(f)(1)(ii).

assistance animals to the Impact-State/Tribe by air, rail, or bus. Return transportation costs are eligible along with food, water, and security during transport;

- Return transportation costs for family members of the Impact-State/Tribe evacuee who was admitted to a hospital after the congregate shelters close;
- When evacuees are discharged from a hospital after all congregate shelters have closed and transportation cannot be arranged for departure on the same day discharged, FEMA reimburses up to 5 nights of hotel lodging while awaiting return transport; and
- FEMA reimburses a State agency from the Impact-State/Tribe for transportation costs and related expenses to transport deceased evacuees and accompanying family members to the Impact-State/Tribe. The cost of the State/Tribe-mandated embalming or cremation of the body prior to return are also eligible.

The Host-State/Tribe must determine whether any ambulance or medical service costs are covered by a patient's private insurance, Medicare, Medicaid, or a pre-existing private payment agreement as FEMA deducts this amount from the Host-State/Tribe's eligible cost.

Fees that the Host-State/Tribe waives for the use of State parks by self-evacuees with recreational vehicles (RVs) are ineligible. Additionally, purchase and distribution of gas cards, bus passes, cash vouchers, debit cards, food vouchers, or direct payments to evacuees are ineligible.

#### **P. Infectious Disease Incident**

The HHS Centers for Disease Control and Prevention (CDC) has primary authority to enable support and assistance to SLTT governments in response to an infectious disease incident. FEMA may provide assistance for the rescue, evacuation, and movement of persons; movement of supplies; and care, shelter, and other essential needs of affected human populations. Any assistance provided by FEMA in response to an infectious disease incident is done in coordination with the CDC. The Office of Response and Recovery Fact Sheet FP 104-009-001, *Infectious Disease Event*, provides additional details.<sup>242</sup>

#### **Q. Mosquito Abatement**

Mosquito abatement measures may be eligible when a SLTT government public health official validates in writing that a mosquito population poses a specific health threat as discussed further in [Appendix G: Mosquito Abatement](#). FEMA consults with the CDC to determine the eligibility of mosquito abatement activities. FEMA only provides PA funding for the increased cost of mosquito abatement. This is the amount that exceeds the average amount based on the last 3 years of expenses for the same period.

#### **R. Residential Electrical Meter Repair**

In rare cases, to reduce the number of survivors needing shelter, FEMA may provide limited PA funding to a SLTT government to repair residential electrical meters. To receive PA funding, the SLTT government must:

- Issue a finding of an immediate threat to safety due to loss of power caused by damaged meters or weather heads;

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<sup>242</sup> [www.fema.gov/sites/default/files/2020-10/fema\\_infectious-disease-fact-sheet\\_orr\\_05-13-2016.pdf](http://www.fema.gov/sites/default/files/2020-10/fema_infectious-disease-fact-sheet_orr_05-13-2016.pdf).

- Request participation in this program; and
- Receive FEMA approval for each identified property.

Only residential properties are eligible for this program. Commercial properties, including apartment complexes, are ineligible.

If approved, the applicable SLTT government must:

- Obtain a signed right-of-entry from each residential property owner;
- Take reasonable measures to document any known insurance proceeds;
- Contract with licensed electricians to perform electrical meter repair;
- Coordinate the work with the property owner, the power company, and the contracted electricians; and
- Be responsible for payment of the non-Federal share.

Eligible work is limited to that associated with repairing damage to items otherwise installed and maintained by a homeowner's electrician, including the weather head, service cable, and meter socket.

FEMA generally provides PA funding up to \$800 per meter per residential dwelling. This amount includes equipment, materials, labor, and inspection fees to restore the meter to current local codes. It is also inclusive of limited debris clearance when necessary to access the damaged meter or weather head. Removal and disposal of the debris is ineligible. Eligible work is limited to that completed within 30 days from the declaration date unless extended by FEMA.

FEMA does not provide PA funding for repair costs if it is not safe to restore power to the residence or if other impacts would restrict the dwelling from being habitable even after power restoration.

FEMA PA and IA staff coordinate closely to ensure FEMA does not fund the same work under both programs.

## **S. Safety Inspections**

Post-incident safety inspections for public and private facilities are eligible, as well as posting appropriate placards (e.g., "red-tagging" a building that is unsafe).

The specific purpose of the inspection must be to determine whether the facility is safe for entry, occupancy, and lawful use. The Applicant must clearly substantiate that the purpose of the inspection was for safety and not to assess damage. Building inspections are ineligible if the purpose of the inspection is to:

- Determine whether the building is Substantially Damaged for the purpose of compliance with the community's floodplain management ordinance;
- Determine whether the building needs to be elevated or relocated, in accordance with the community's floodplain management ordinance; or
- Ensure that repairs are completed in accordance with the community's building code or standard.

## **T. Animal Carcasses**

Removal and disposal of animal carcasses, including interim processing,<sup>243</sup> is eligible. If the removal and disposal is conducted as part of the overall debris removal operations, the work may be funded as Category A.

FEMA may require certification from the SLTT government health department, HHS, or the U.S. Department of Agriculture (USDA) that a threat to public health and safety exists.

When few in number, smaller animal carcasses (e.g., rodents, skunks, or possums) do not usually pose an immediate threat to public health or safety. Removal and disposal of these carcasses is ineligible.

FEMA does not provide PA funding when another Federal agency has authority to provide assistance for carcass removal and disposal. NRCS has authority to remove animal carcasses and to provide technical assistance to the Applicant under its EWP program. The USDA's Farm Service Agency may provide assistance for farmland debris cleanup. The EPA and USCG have authority to provide technical assistance and to remove animal carcasses contaminated with oil, hazardous substances, pollutants, or contaminants.<sup>244</sup>

## **U. Demolition of Private Structures**

Emergency demolition of structures located on private property may be eligible when partial or complete collapse is imminent, and that collapse poses an immediate threat to the general public.

In some instances, restricting public access to an unsafe structure and the surrounding area, such as securing the area with a fence, is sufficient to alleviate the immediate threat and is more cost-effective than demolition. In these cases, demolition is ineligible.

If a structure is condemned prior to the incident, emergency protective measures related to that structure are ineligible.

FEMA reviews the Applicant's demolition process for compliance with all applicable EHP laws, regulations, and EOs.

### **1. Conditions for Eligibility**

For demolition to be eligible, the Applicant must:

- Certify that the structures are unsafe and pose an immediate threat to lives or public health and safety;
- Provide documentation to confirm its legal authority and responsibility to enter private property and demolish privately-owned unsafe structures. This includes:
  - Citation of the law, ordinance, code, or emergency powers for which it is exercising its legal authority to demolish privately-owned unsafe structures. The authority cited must be applicable to the structural condition representing the immediate threat and not merely the Applicant's uniform level of services.

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<sup>243</sup> Interim processing may include burning, incinerating, rendering, mounding, composting, or other pre-processing activities.

<sup>244</sup> See Recovery Policy 9523.8, *Mission Assignments for ESF#10*, for discussion on EPA and USCG authority with respect to removal of hazardous waste: [www.fema.gov/sites/default/files/2020-07/fema\\_ESF\\_10\\_Oil-Hazardous-Materials.pdf](http://www.fema.gov/sites/default/files/2020-07/fema_ESF_10_Oil-Hazardous-Materials.pdf).



- Confirmation that a legally authorized official of the Applicant has ordered the exercise of public emergency powers or other appropriate authority to enter onto private property in the designated area in order to demolish privately-owned unsafe structures and remove the resulting debris; and
- Indemnify the Federal Government and its employees, agents, and contractors from any claims arising from the demolition of privately-owned unsafe structures and removal of the resulting debris.

Before FEMA will provide PA funding, the Applicant must provide confirmation that it satisfied all legal processes and obtained permission requirements from the property owners (rights-of-entry) and agreements to indemnify and hold harmless the Federal Government. Additionally, the Applicant must provide documentation to support that it obtained all necessary permits and complied with EHP requirements.

## **2. Commercially Owned Structures**

Demolition of structures owned by commercial enterprises, including businesses, apartments, condominiums, and mobile homes in commercial trailer parks, are generally ineligible as it is expected that the commercial enterprises retain insurance that cover the cost of demolition. In very limited, extraordinary circumstances, FEMA may provide an exception. In such cases, the Applicant must meet the requirements of [Chapter 7:I.G. Debris Removal from Private Property](#).

## **3. Eligible Work**

If FEMA approves the demolition of private structures, eligible work associated with the demolition includes, but is not limited to:

- Capping wells;
- Pumping and capping septic tanks;
- Filling open below-grade structures, such as basements and swimming pools;
- Testing for hazardous materials;
- Securing utilities;
- Obtaining permits and licenses; and
- Performing title searches.

Fees for permits, licenses, and titles issued directly by the Applicant are ineligible unless the Applicant demonstrates that the fees are above and beyond its normal administrative costs. Overtime labor directly related to issuing these permits, licenses, and titles for facilities that are eligible for demolition is eligible.

The following work is also eligible and may be funded as Category A if the removal and disposal is conducted as part of the overall debris removal operations:

- Removing demolition debris, including personal effects; and
- Removing hazardous materials, such as asbestos and household hazardous waste.

The Applicant should work with the property owner to pursue and recover insurance proceeds and credit FEMA the Federal share of any insurance proceeds recovered. In some circumstances, the property owner may be eligible for IA funding. FEMA PA and IA staff coordinate closely to ensure FEMA does not fund the same work under both programs.

#### **4. Ineligible Work**

Ineligible work associated with the demolition of private structures includes, but is not limited to:

- Removal or covering of concrete pads and driveways except for structures in a FEMA-funded buyout program; and
- Removal of slabs or foundations that do not present a health or safety hazard, except for structures in a FEMA-funded buyout program through the HMGP (the removal of Substantially Damaged structures and associated facilities acquired through HMGP may be eligible as Category A, Debris Removal).

#### **V. Temporary Relocation of Essential Services**

If the Applicant provides essential community services at a facility that is unsafe, inaccessible, or destroyed as a result of the incident, temporary relocation of these services to another facility is eligible.<sup>245</sup> Essential community services are those services of a governmental nature that are necessary to save lives, protect property and the public, and preserve the proper function and health of the community at large. These services differ from the list of eligible PNP essential social services. FEMA evaluates the criticality of the service and safety of the facility to determine the need for temporary relocation. FEMA does not incorporate funds from temporary facilities into fixed cost projects.

##### **1. Eligible for Temporary Relocation:**

Essential community services provided by an eligible Applicant are eligible to be relocated. The following services are considered essential community services (these differ from the list of PNP essential social services):

- Education;
- Election and polling;
- Emergency, including police, fire, and rescue;
- Homeless and domestic violence shelters;
- Emergency medical care;
- Prison;
- Utility; and
- Other facilities that provide public health and safety services of a governmental nature.

Services provided in administrative and support facilities essential to the provision of the essential community service are also eligible for relocation. These include administration buildings, student housing, hospital and prison laundry and cooking facilities, parking, and storage if items are needed on-site. Athletic fields and student unions are not considered essential administrative or support services and are ineligible.

If the Applicant provides the service at a leased, private facility prior to the incident, the service is still eligible to be relocated.

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<sup>245</sup> Stafford Act § 403(a)(3)(D), 42 U.S.C. § 5170b.

## **2. Ineligible for Temporary Relocation**

Facilities that do not provide essential community services are ineligible for temporary relocation. These include facilities and services such as museums, zoos, community centers, shelter workshops, performing arts centers, recreation and parking, athletic stadiums, houses of worship, housing and residential services, custodial care, assisted living, senior citizen centers, alcohol and drug rehabilitation, childcare, libraries, research and warehouse facilities, burial, vocational, academic, athletic, political training, and student union buildings.

## **3. Determining Eligibility of Temporary Relocation**

FEMA determines the eligibility of relocating services to another facility based on the safety of the damaged facility as follows:

- If the facility can be made usable with the performance of emergency protective measures or minor repairs, a temporary facility may not be eligible.
- If the damage is to the extent that it cannot be occupied safely, and restoration cannot be completed without suspending operations of the facility for an unacceptable period of time, then a temporary facility may be eligible.
- If the facility is not damaged but lacks a critical utility or operational item, such as potable water, electricity, or road access, and a temporary facility will restore services to the community before the restoration of the disrupted critical utility or operational item at the current site, then a temporary facility may be eligible.

The capacity of the temporary facility must not exceed the pre-disaster capacity of the facility that housed the displaced services. The Applicant must use the temporary facility to provide the eligible service to the same extent and manner as was provided prior to the incident.

Relocation to a site that requires ground disturbance or alteration of an existing property requires EHP review before the Applicant implements the action.

FEMA does not require the Applicant to obtain and maintain insurance for temporary facilities.

If the Applicant has a facility that does not meet eligibility requirements for temporary relocation and the facility's damage is to such an extent that the contents are at risk, FEMA may provide PA funding for temporary space to store the contents as an emergency protective measure if the space is:

- Limited to an area necessary to house the contents;
- Used solely for storage; and
- Not intended for public access, alternate office space, exhibits, or other purposes.

FEMA is not responsible for damage that may occur to contents in temporary storage.

## **4. Lease, Purchase, or Construct**

When deciding whether to rent or purchase space and equipment, the Applicant should choose the most economical option that meets its needs. The Applicant must provide FEMA with a cost analysis,<sup>246</sup> which should include at least three options with cost estimates based on the timeline to restore the original facility. Cost estimates for leasing a facility must account for the entire timeline of the project. FEMA generally reimburses the least costly option of leasing,

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<sup>246</sup> 2 C.F.R. § 200.318(d).

purchasing, or constructing a temporary facility. However, FEMA also considers whether the least costly option is practical when determining eligibility (e.g., if the least costly option for a temporary school is to lease a building in another county, and the next least costly option is to install modular buildings on the current campus, FEMA may reimburse the cost of the modular buildings).

If the Applicant relocates a service from a facility it owns, the lease costs of a temporary facility are eligible if leasing is the least costly option. If the Applicant was leasing the damaged facility and had to temporarily relocate to another leased facility, the increase in rent is eligible.

Purchasing or constructing a temporary facility is eligible if FEMA confirms that it is the least costly option. With exception of modular or manufactured units, the Applicant must obtain FEMA approval prior to purchasing or constructing the facility.

## **5. Safe Rooms for Temporary School Facilities**

Funding for accessible safe rooms as part of a temporary school facility may be eligible if the damaged school contained a safe room or other space that served as a storm shelter and there are no other cost-effective, reasonable alternatives available to address the safety needs of the students and faculty. If approved, the safe room capacity is based on student population and the number of faculty who are expected to use the temporary school facility. The capacity of the safe room cannot exceed the pre-disaster capacity of the safe room in the damaged school. The safe room should be available no later than the opening day of classes at the temporary facility.

If the Applicant wishes to seek funding for a safe room as part of a temporary school facility, it must obtain prior approval from FEMA. The request needs to include:

- A description of the safe room or safe space that was used as a storm shelter prior to the incident;
- The population of students and faculty that need access to the safe room;
- Verification that no other cost-effective reasonable alternatives are within proximity that can be used as a safe space for the school population; and
- An indication that the Applicant will have the safe room installed and operational when school resumes and students occupy the temporary classroom space.

Safe rooms provided as part of a temporary school facility must comply with the requirements of *Safe Rooms for Tornadoes and Hurricanes, Guidance for Community and Residential Safe Rooms* (FEMA P-361).<sup>247</sup>

The timeframe for providing PA funding for the temporary safe room space coincides with the approved timeframe for providing PA funding for the temporary school facility.

## **6. Temporary Relocation Costs**

Eligible work or costs associated with the provision of temporary facilities include, but are not limited to:

- Rental or purchase of equipment necessary to continue the services in the temporary facility;
- Reasonable alterations of the temporary facility, if required to make the space functional based on the pre-disaster use of the damaged facility;

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<sup>247</sup> [www.fema.gov/sites/default/files/2020-07/safe-rooms-tornadoes-hurricanes.pdf](http://www.fema.gov/sites/default/files/2020-07/safe-rooms-tornadoes-hurricanes.pdf).

- Restoration of the temporary facility to its pre-disaster condition when no longer needed
- Moving expenses to and from the temporary facility;
- Minimal life-safety or other building upgrades required by an applicable code or standard in effect at the time the temporary facility is purchased or leased; and
- Public outreach and messaging costs necessary to inform the public that the service will temporarily be provided at a different location.

FEMA does not provide PA funding for utility, maintenance, or operating costs in a temporary facility, even if these costs increase.

## 7. Time Limitations

The regulatory time limitation for temporary facilities (Emergency Work) is 6 months from the declaration date.<sup>248</sup>

Depending on the extent of damage to the facility, the Applicant may be unable to restore the facility to its pre-disaster design and function within 6 months. Normally, the Recipient has the authority to extend the deadline for Emergency Work for up to 6 additional months.<sup>249</sup> However, for temporary facilities, only FEMA has authority to approve any time extensions to the project deadline.

FEMA considers the timeframe necessary to restore the damaged facility when evaluating time extensions for temporary facilities. If the Applicant requests funding for a temporary facility and knows at that time that the restoration of the original facility will exceed 6 months, FEMA may approve additional time and funding up to 12 months. If the Applicant needs additional time beyond this 12-month deadline, it must submit a written time extension request that includes the status of work and a timeline for completion.

FEMA only approves additional time if the Applicant begins construction on the damaged facility within 12 months of the declaration date, unless circumstances beyond the control of the Applicant prevented the start of construction within this 12-month timeframe.

### (a) Improved Project

If FEMA approves an Improved Project for a facility for which it also approved temporary relocation of the services to a temporary facility, the temporary facility is only eligible for PA funding for the estimated amount of time necessary to restore the facility to its pre-disaster design and function. If the actual time to restore the facility with the improvements extends beyond this timeframe and causes the Applicant to continue its use of the temporary facility, FEMA does not reimburse any cost associated with that continued use. However, FEMA may reimburse costs associated with relocating its services back into the facility as part of the approved temporary facility project.

### (b) Alternate Project

If FEMA approves an Alternate Project for a facility for which it also approved temporary relocation of the services to a temporary facility, FEMA does not reimburse any temporary facility costs incurred after the date the Applicant requests that Alternate Project.

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<sup>248</sup> 44 C.F.R. § 206.204(c)(1).

<sup>249</sup> 44 C.F.R. § 206.204(c)(2)(ii).

(c) *Alternative Procedures Project*

If FEMA approves an Alternative Procedures Project for a facility for which it also approved temporary relocation of the services to a temporary facility, continued PA funding for the temporary facility is dependent upon the SOW of the Alternative Procedures Project.

## **8. Disposition Requirements**

If the Applicant purchased or constructed a temporary facility, it must return to FEMA the Federal share of the equity in the facility. The Applicant must report the equity to FEMA when the approved deadline has expired or when the facility is no longer needed for the authorized purpose, whichever occurs first.

If FEMA only funded a portion of the cost of the facility, the Applicant must return to FEMA the Federal share of FEMA's proportionate equity in the facility. The amount due FEMA is computed by applying FEMA's percentage of participation in the cost of the purchase or construction to the fair market value or sale proceeds, taking into consideration reasonable out-of-pocket costs related to the sale.

The Applicant may either retain the facility or sell it. If the Applicant disposes of real property (land or structures) acquired with PA funding and acquires replacement real property using funds from the same PA project, it may use the net proceeds of the sale to offset the cost of the replacement property.

## **W. Snow-Related Activities**

When the President declares an incident as a Snowstorm or specifically authorizes snow assistance in a declaration for a Severe Winter Storm, FEMA provides PA funding for impacts related to snow, but the assistance is limited.<sup>250</sup> See [Appendix H: Snow Assistance](#), for detailed information.

### **1. Limited Time Period**

Snow-related activities are eligible for a continuous 48-hour period to address the most critical emergency needs.<sup>251</sup> Each Applicant designates the beginning of its 48-hour period. However, a State or Territorial agency that conducts snow-related activities in multiple locations throughout the State or Territory, such as a Department of Transportation, may use different 48-hour periods for different locations.

Once FEMA approves a project for the Applicant's designated 48-hour period, the Applicant cannot change its selected period.

If the Applicant awards a contract for periods greater than the 48-hour period, PA funding is limited to the costs incurred during the 48-hour period.

The FEMA Assistant Administrator of the Recovery Directorate may extend the eligible period by 24 hours in counties, parishes, or Tribal government areas where the snowfall exceeds the historical record snowfall by at least 50 percent.

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<sup>250</sup> 44 C.F.R. § 206.227.

<sup>251</sup> 44 C.F.R. § 206.227.

## 2. Eligible Work

Eligible work includes:

- Snow-related activities (for limited time as discussed above):
  - Snow removal;
  - Snow dumps;
  - De-icing;
  - Salting; and
  - Sanding of roads and other eligible facilities.
- Other emergency protective measures (not restricted to the limited time) including, but not limited to, search and rescue and sheltering.

Limited snow-related activities necessary to carry out emergency protective measures, such as clearing snow in the *immediate* area of a downed power line, are eligible outside of the limited time period and in counties declared but not designated for snow assistance.

For Severe Winter Storm Declarations that do not specifically authorize snow assistance, FEMA only provides PA funding for limited snow-related activities that are necessary to perform otherwise eligible work. For example, snow removal necessary to repair downed power lines is eligible, while normal snow removal from roads (including salting and sanding) is ineligible.

## X. Emergency Repair or Stabilization

Emergency repair or stabilization of an eligible facility is eligible as Emergency Work if it eliminates or lessens an immediate threat.<sup>252</sup> Work performed under an exigent circumstance that restores the pre-disaster design and function of the facility in accordance with codes and standards is Permanent Work,<sup>253</sup> not Emergency Work.

Emergency repair of a facility is ineligible if another Federal agency has the specific authority to provide assistance for the facility (even if the repair is temporary),<sup>254</sup> such as for:

- Federal-Aid highways – Federal Highway Administration (FHWA); or
- Flood control works – USACE and NRCS.

For Tribal governments specifically, although the Bureau of Indian Affairs' (BIA) or FHWA may have authority to provide temporary emergency repairs of Tribal roads, such roads may be eligible for PA funding provided the Tribal Government does not receive funding from BIA or FHWA for the work.

### 1. Operation Blue Roof (DFA Only)

Operation Blue Roof provides homeowners with plastic sheeting to cover damaged roofs until arrangements can be made for permanent repairs. The purpose of Operation Blue Roof is to protect property, reduce temporary housing costs, and allows residents to remain in their homes while recovering from the incident. Therefore, only dwellings that can be safely occupied after

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<sup>252</sup> 44 C.F.R. § 206.201(b).

<sup>253</sup> 44 C.F.R. § 206.201(j).

<sup>254</sup> 44 C.F.R. § 206.226(a).

blue roof installation are eligible. The costs of these services are ineligible for reimbursement. However, FEMA may provide DFA for these services.<sup>255</sup>

## **2. Slope Stabilization**

If a landslide or other slope instability is triggered by the incident and poses an immediate threat to life, public health and safety, or improved public or private property, emergency protective measures to stabilize the slope may be eligible.

FEMA only provides PA funding for the least costly option necessary to alleviate the threat. FEMA limits eligible stabilization measures to the area of the immediate threat, not the entire slope. Work must be reasonable relative to the size and scope of the area of instability.

FEMA may authorize funding for post-disaster inspections and limited geotechnical investigations to determine if the instability creates an unsafe condition that poses an immediate threat.

Eligible emergency protective measures include, but are not limited to:

- Emergency drainage measures;
- Emergency ground protection to better stabilize the mass (rip rap, sheeting);
- Partial excavation at the head of a sliding mass to reduce its driving force;
- Backfilling or buttressing at the toe of a sliding mass using measures such as gabions, rock toes, cribwalls, binwalls, and soldier pile walls; and
- Installation of barriers to redirect debris flow.

## **3. Mold Remediation**

The incident may cause facilities to be inundated or exposed to wet and humid weather conditions for extended periods of time. These conditions may cause growth and spreading of mold in structures and on contents, causing threats to public health and increasing the repair cost.

The following remediation activities may be eligible as emergency protective measures:

- Wet vacuuming, damp wiping, or vacuuming with High-Efficiency Particulate Air (HEPA) equipment of the interior space;
- Removal of contaminated gypsum board, plaster (or similar wall finishes), carpet or floor finishes, and ceilings or permanent light fixtures; and
- Cleaning of contaminated heating and ventilation (including ductwork), plumbing, and air conditioning systems or other mechanical equipment.

Pre-remediation mold sampling is only eligible when the sampling reveals the presence of mold. Post-remediation sampling is eligible to confirm that remediation is complete.

The Applicant may use a variety of mold cleanup methods to remediate mold damage based on the extent of damage and type of damaged material. [Appendix I: Mold Remediation](#), provides information for consideration when developing a SOW for mold remediation. The Applicant must follow applicable SLTT government guidelines for mold sampling and remediation.

FEMA only provides PA funding for mold sampling performed by an indoor environmental professional, such as a Certified Industrial Hygienist, Certified Indoor Environmental

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<sup>255</sup> See [www.usace.army.mil/Media/Fact-Sheets/Fact-Sheet-Article-View/Article/475463/temporary-roofing/](http://www.usace.army.mil/Media/Fact-Sheets/Fact-Sheet-Article-View/Article/475463/temporary-roofing/) for additional information.



Consultant, or Certified Microbial Consultant. The indoor environmental professional should not be employed by the remediation company to avoid a conflict of interest. FEMA considers technical evaluations performed by licensed professionals when determining the eligibility of mold remediation.

For mold remediation to be eligible, mold must not be a result of poor facility maintenance or failure to take protective measures to prevent the spread of mold in a reasonable time after the incident. If the Applicant can document and justify why it did not take measures to prevent further contamination, or why measures taken were insufficient to prevent further damage, mold remediation may be eligible.

Examples of extenuating circumstances include:

- Disruption of power;
- Facility is underwater;
- Facility is inaccessible;
- Heating, ventilation, and air conditioning (HVAC) equipment is damaged; and
- Insufficient resources to remediate the entire facility.

FEMA evaluates whether the facility had pre-existing water infiltration conditions when determining whether mold remediation is eligible. For this evaluation, FEMA considers whether there is evidence of:

- Improperly sealed windows or exterior vents;
- Standing water against an exterior wall;
- Poorly maintained drains or gutters with rust or vegetative growth;
- Absence of rain gutters; and
- Leaking ceiling tiles.

#### **4. Emergency Berms on Beaches**

If a natural or engineered beach has eroded to a point where flooding from a 5-year storm<sup>256</sup> could damage improved property, cost-effective emergency protective measures on the beach that protect the improved property against damage from that 5-year storm are eligible.

Eligible measures typically include the construction of emergency sand berms to protect against additional damage from a 5-year storm. Emergency sand berms are not intended to permanently restore the beach; they are intended only to provide protection from immediate threats. The Applicant may construct emergency berms with sand recovered from the beach or with imported sand. If the Applicant constructs the berms with imported sand, FEMA will only provide PA funding if the sand is from a source that meets applicable environmental regulations and one of the following circumstances exists:

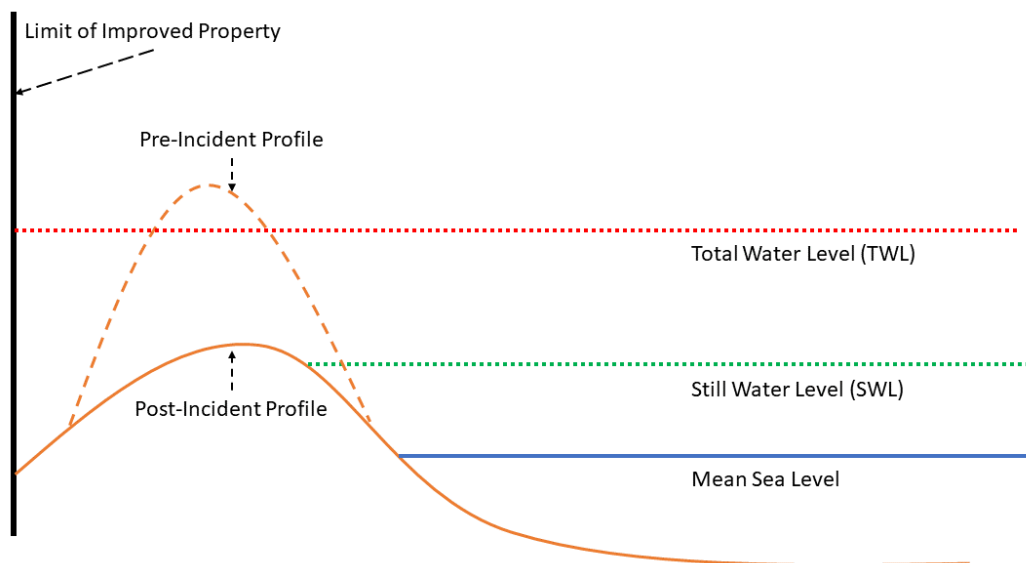
- Recoverable quantities are insufficient; or
- SLTT government regulations prohibit placement of the recovered sand.

To show that a 5-year storm could damage improved property, the Applicant must demonstrate that the stillwater level plus wave runup elevation as determined by computer modeling for a 5-year storm exceeds the post-incident elevation of the primary dune.

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<sup>256</sup> 44 C.F.R. § 206.221(c). For flood incidents specifically, an immediate threat is a threat from a 5-year flood (a flood that has a 20 percent chance of occurring in any given year).

The 5-year Stillwater Level (SWL) is equal to the average water surface elevation of the rise in seawater level (surge) resulting from a 5-year storm, plus wave setup and the astronomical tide. The 5-year Total Water Level (TWL) is equal to the elevation of the wave runup predicted for a 5-year storm plus the SWL. Locations where the elevation of the post-incident profile is less than the TWL are eligible for placement of an emergency berm. See Figure 12 below.



**Figure 12. Determining Eligibility of Emergency Berms on Beaches**

Based on the average expected erosion for a 5-year storm, FEMA only provides PA funding for emergency berms constructed with up to 6 cubic yards per linear foot of sand above the 5-year stillwater level or the berm’s pre-incident profile, whichever is less. In some cases, placing sand below the 5-year stillwater level may be necessary to provide a base for berm. The placement of that sand is also eligible as part of the emergency protective measure.

Placement of dune grass on an emergency dune or berm is only eligible if it is required by permit and is an established, enforced, uniform practice that applies to the construction of all emergency berms within the Applicant’s jurisdiction, regardless of the circumstance. The Applicant must include the grass placement cost in the dune or berm construction cost when evaluating cost-effectiveness. Any maintenance of the dune grass after the initial installation is ineligible.

### III. Damage Caused During Performance of Emergency Work

The Applicant may damage improved property, supplies, or equipment during the performance of eligible emergency response activities or debris removal operations.

The repair of damage to public property, supplies, or equipment is eligible as part of the respective Emergency Work (Category A or B) Project<sup>257</sup> if the damage was:

- Due to severe conditions resulting from the incident;
- Unavoidable; and
- Not due to improper or excessive use.

Replacement of damaged crops, trees, shrubs, or other ground cover is ineligible, unless the replacement meets the criteria in [Chapter 8:IX.E. Parks, Recreational, Other \(Category G\)](#).

For equipment damage, FEMA requires maintenance records to demonstrate that the equipment was regularly maintained and in good operational order prior to the incident, and details regarding when, where, and how the damage occurred.

Repair of damage to private property is only eligible if the above criteria is met and one of the following:

- The property is an easement and the Applicant is legally responsible for repairing the damage it causes to the easement; or
- The Applicant leased the property either for sheltering or for a temporary debris staging site, and the lease agreement establishes that the Applicant is legally responsible for the repair.

Damage caused by snow-related activities conducted outside of the authorized period, as described in [Chapter 7:II.W. Snow-Related Activities](#), is ineligible.

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<sup>257</sup> Although the repairs may be Permanent Work, FEMA includes it on the Emergency Work project as damage resulting from the emergency work.

# CHAPTER 8: PERMANENT WORK ELIGIBILITY

Permanent Work (Categories C–G) is work required to restore a facility to its pre-disaster design (size and capacity) and function in accordance with applicable codes and standards.<sup>258</sup> Emergency repair or stabilization to eliminate or lessen an immediate threat is Emergency Work. All Permanent Work is subject to the eligibility of the facility as described in [Chapter 4:II. Facility Eligibility](#) and shown in Figure 13. *Permanent Work Eligibility*. This chapter provides PA Policy for Permanent Work.

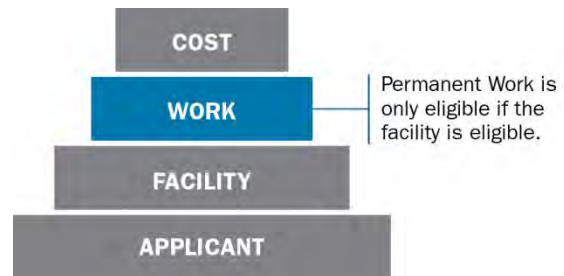


Figure 13. Permanent Work Eligibility

Pre-disaster design means the size or capacity of a facility as originally constructed or subsequently modified. It does not mean the capacity at which the Applicant was using the facility at the time of the incident if different from the most recent designed capacity.<sup>259</sup>



### Example of Restoring to Pre-disaster Design

If a school designed for a capacity of 100 students is damaged beyond repair, the eligible funding for the replacement facility is limited to that necessary for 100 students, even if more than 100 students were attending the school prior to the incident.

Pre-disaster function is the function for which the facility was originally designed or subsequently modified. For example, if the Applicant designed and constructed an administrative building, but later altered it in accordance with applicable construction codes or standards to use as a school, the pre-disaster function would be as a school. If the facility was serving an alternate function at the time of the incident, but was not altered to provide that function, FEMA provides PA funding to restore the facility either to the original pre-disaster function, OR pre-disaster alternate function, whichever costs less.<sup>260</sup>



### Example of Restoring to Pre-disaster Function

If the Applicant is using an office building as a storage facility at the time of an incident, and it is less costly to restore the facility as a storage facility, only those repairs necessary to restore it as a storage facility are eligible.

Any special lighting or wall and floor finishes that are typical of an office building are not necessary for a storage facility and, therefore, are ineligible.

<sup>258</sup> 44 C.F.R. § 206.201(j). Although this section of 44 C.F.R. does not reference function as part of the definition of Permanent Work, 44 C.F.R. § 206.203(d)(2) states that if the Applicant does not restore the function, it is an Alternate Project. See [Chapter 8:VIII. Capped Projects](#) for discussion on Alternate Projects.

<sup>259</sup> 44 C.F.R. § 206.201(k).

<sup>260</sup> 44 C.F.R. § 206.226(k)(1).

FEMA may approve changes to the pre-disaster design or construction method (including materials) if the changes are required due to access issues, site conditions, or to tie into existing infrastructure. The changes must not impact the capacity or function of the facility. The Applicant must show that the changes are reasonable based on the type and extent of restoration and are consistent with the Applicant's general construction practices.

In cases where ineligible damage, such as a pre-existing condition, if not repaired, may compromise repair of eligible damage, FEMA may make PA funding for repair of the eligible damage contingent upon the Applicant repairing the ineligible damage. For example, FEMA may determine that repairs to a damaged bridge deck are eligible. However, the deck cannot be repaired unless the Applicant replaces rotting timbers that support the deck.

While PA funding is always based on pre-disaster size, capacity, and function, FEMA has developed procedures under Section 428 of the Stafford Act to maximize the ability of Applicants to drive their own recovery. Under this process, Section 428 Alternative Procedures are considered for all large Permanent Work Projects. This approach standardizes a single process for the development and consideration of fixed cost estimates as the first option for all Permanent Work Projects. This ensures Applicants have awareness of the opportunities and benefits provided by the Alternative Procedures, including: flexibility in meeting post-disaster recovery needs, as opposed to being limited to rebuilding back to what existed prior to the disaster; ability to share funds across all Alternative Procedures Permanent Work Projects; ability to retain and use excess funds to reduce risk and improve future disaster operations (subject to timely closeout); and eligibility for cost-effective hazard mitigation on Replacement Projects. Applicants will be able to agree to a fixed cost estimate or choose to pursue funding under standard, actual cost procedures.

## I. Environmental and Historic Preservation Considerations

The Applicant needs to make every effort to afford FEMA the opportunity to perform EHP reviews prior to starting any work that has potential to impact the environment or historic properties, including archaeological resources. This includes, but is not limited to, demolition, site preparation, and ground disturbing activities. FEMA must ensure that the project complies with appropriate EHP laws, regulations, and EOs. If the Applicant starts this work prior to FEMA's completion of the EHP review, it jeopardizes PA funding for the entire project.<sup>261</sup>

Permanent Work Projects that restore a damaged facility essentially to pre-disaster design are excluded from National Environmental Policy Act (NEPA) review through a statutory exclusion (STATEX).<sup>262</sup> All others require NEPA review. Many qualify for one of the Categorical Exclusions (CATEXs) under NEPA which apply to actions that typically have little or no impact on the environment, as long as there are no "extraordinary circumstances" as defined by DHS.<sup>263</sup> An example of an extraordinary circumstance is a potentially significant impact on species, habitats, historic properties, or environmentally sensitive areas protected under Federal law. If any extraordinary circumstances apply, the project does not qualify for a CATEX. Although

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<sup>261</sup> Stafford Act § 316, 41 U.S.C. § 5159; 2 C.F.R. § 200.300.

<sup>262</sup> Stafford Act § 316, 41 U.S.C. § 5159.

<sup>263</sup> See FEMA Instruction 108-1, Section 3.2 and DHS Instruction 023-01-001-01, [Appendix A: Environmental and Historic Preservation Compliance](#).

many projects are statutorily excluded from NEPA review or covered by a CATEX, Permanent Work Projects require review for compliance with other EHP laws, regulations, and EOs.

Projects that involve changes in the location, footprint, alignment, or size of a facility may not meet a CATEX and may adversely affect or have impacts on wetlands; floodplains, flood heights, or upstream/downstream velocities; federally listed threatened and endangered species and their critical habitats; essential fish habitats; historic properties, including archaeological sites; and other environmental or historic resources. If a project does not meet a CATEX, it will require a higher level of NEPA analysis. The most common higher-level analysis is referred to as an environmental assessment (EA).<sup>264</sup> In rare circumstances, a project may require an environmental impact statement (EIS),<sup>265</sup> the highest level of analysis, which requires a much more detailed analysis than an EA. FEMA is responsible for NEPA compliance and identifying the required level of review.<sup>266</sup> FEMA may conduct the EA or EIS. If the Applicant chooses to conduct the EA or EIS, it must obtain FEMA approval prior to initiating the EA or EIS and submit the EA or EIS to FEMA for review and approval prior to construction. When the Applicant conducts the EA or EIS, FEMA reimburses the associated cost based on the cost share of the project.

FEMA may be required to consult with Federal, State, Territorial, and Tribal government resource agencies before the Applicant begins work. These agencies may include, but are not limited to, USFWS and NMFS for impacts to federally listed threatened and endangered species; USFWS for impacts to Coastal Barrier Resource System zones and bald or golden eagles; NMFS for impacts to essential fish habitat or marine mammals; USACE for projects in navigable waters or that involve dredging or filling in U.S. waters; and SHPO or THPO for effects to historic properties. If the Applicant begins construction work before FEMA completes its EHP review, the Applicant jeopardizes PA funding for that project. FEMA may not be able to conduct consultation with resource agencies after the Applicant initiates work on a project because it forecloses on an agencies' ability to comment on, or consider, alternatives that would avoid, minimize, or mitigate adverse impacts to the environment or effects to historic properties.

Similar to NEPA, Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to consider actions on historic properties. While some Permanent Work Projects meet allowances within a Statewide Programmatic Agreement or only require a consultation letter to a SHPO/THPO, projects that adversely affect historic properties, including archaeological sites, may require the negotiation of a Memorandum of Agreement (MOA) or a project specific Programmatic Agreement to resolve adverse effects. Depending on the historic property, its level of significance, the level of controversy or if it is a National Historic Landmark (NHL), in addition to SHPO/THPO, FEMA may be required to invite the Advisory Council on Historic Preservation (ACHP) and the National Park Service (NPS) to participate in consultation. These Section 106 agreements to resolve adverse effects may have significant time and cost implications.

Consultations undertaken pursuant to the ESA will typically include required conservation measures for threatened and endangered species and their habitat. Applicants should address environmental planning at the beginning of the project scoping and project development stages

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<sup>264</sup> FEMA Instruction 108-1, Section 3.2.

<sup>265</sup> Ibid.

<sup>266</sup> The National Environmental Policy Act of 1969, as amended, Public Law 91-190, 42 U.S.C. §§ 4321-4347.

to help avoid delays and additional costs at the EHP compliance stage. Early environmental planning should include consideration of potential project-related conservation and mitigation measures. When EHP laws, regulations, or EOs require actions to mitigate adverse effects, the Applicant is responsible for all costs associated with performing the required mitigation measures, unless such actions are directly related to the restoration of disaster-related damage.

FEMA is responsible for reviewing connected actions associated with a proposed project, even if FEMA is not funding the connected action. Actions are connected if they: automatically trigger other actions; cannot or will not proceed unless other actions are taken previously or simultaneously; or are interdependent parts of a larger action and depend on the larger action for their justification.

Some projects, such as Improved or Alternate Projects, may involve significant changes to the pre-disaster configuration of a facility (e.g., location, footprint, or size). FEMA conducts EHP compliance reviews on the actual SOW to be performed, prior to approving the project.

To facilitate EHP review, the Applicant should provide:

- Site map (including geographical coordinates in latitude, longitude) showing the location of all proposed areas where the Applicant will conduct site work or construction and the extent of ground disturbance (including any staging areas, access roads, parking, landscaping, grading, or utilities);
- Construction dates and photographs of all facilities in the project area;
- Photographs of all facilities in the project that may be affected by the project;
- Any known environmental issues or historic preservation concerns, such as, but not limited to, threatened and endangered species including their critical habitat, location in floodplain or wetlands, presence of asbestos within the facility, or facility's location in an archaeologically sensitive area;
- Environmental assessments;
- Historic property designations or surveys, including archaeological surveys;
- Available information about the presence of any resources protected under Federal law (see [Appendix A: Environmental and Historic Preservation Compliance](#) for a list of frequently-encountered laws); and
- Copies of permits and correspondence with regulatory agencies, including but not limited to:
  - SHPO/THPO (historic properties, including archeological sites);
  - USACE (work in navigable waterways, dredging or discharging dredged materials or fill in waterways or wetlands, culvert repair, culvert installation, culvert upsizing, riprap work, bridge work, work involved in a stream, or work in a wetland);
  - USFWS (federally listed threatened and endangered species, migratory birds, bald and golden eagles, work in Coastal Barrier Resource System areas, work in or near waterways or wetlands);
  - National Oceanic and Atmospheric Administration (federally listed threatened and endangered species, essential fish habitat, work in National Marine Sanctuaries);

- EPA (work involving underground injection, work with the potential to increase contamination of sole source aquifers); and
- State, Territorial, or Tribal environmental agencies.

## II. Requirement to Obtain and Maintain Insurance

Applicants that receive PA funding for permanent work to replace, repair, reconstruct, or construct a facility must obtain and maintain insurance to protect the facility against future loss.<sup>267</sup> This requirement applies to insurable facilities or property (buildings, contents, equipment, and vehicles), including those funded as an Alternate, Improved, or Alternative Procedures Project. FP 206-086-1 *Public Assistance Policy on Insurance*, describes these requirements in detail.<sup>268</sup>

The Applicant must insure facilities with the types and extent of insurance reasonably available, adequate, and necessary to protect against future loss to the property.<sup>269</sup> The type of insurance refers to the hazard(s) that caused the damage and extent refers to the amount of insurance required, which is calculated based on the eligible costs prior to any reductions (including the non-Federal share reduction).

The Applicant is not required to obtain and maintain insurance on facilities with \$5,000 or less in eligible costs (prior to any reductions).<sup>270</sup>

The Applicant may request that FEMA modify the insurance requirement when:

- The required insurance is not reasonably available;
- An alternative to the insurance requirement provides adequate protection against future loss to the property; or
- The required insurance is not necessary to protect against future loss to the property.

Additionally, FEMA does not require greater types and amounts of insurance than are certified as reasonably available, adequate, or necessary by the appropriate State or Territorial Insurance Commissioner.<sup>271</sup> The State or Territorial Insurance Commissioner cannot waive Federal insurance requirements but may certify the types and extent of insurance reasonable to protect against future loss to an insurable facility.<sup>272</sup>

The Applicant may comply with the insurance requirement for both flood and non-flood hazards with coverage available through commercial property insurance, which may include blanket insurance policies, standard flood insurance policies, insurance pools, or a combination of these sources.<sup>273</sup> In some cases, with FEMA approval, the Applicant may comply with the insurance requirement using a self-insurance plan.<sup>274</sup>

If the Applicant does not comply with the requirement to obtain and maintain insurance, FEMA will deny or deobligate PA funds related to the noncompliance from the current disaster.

<sup>267</sup> Stafford Act § 311, 42 U.S.C. § 5154; 44 C.F.R. § 206 Subpart I.

<sup>268</sup> [FEMA FP 206-086-1 Public Assistance Policy on Insurance](#).

<sup>269</sup> Stafford Act § 311, 42 U.S.C. § 5154; 44 C.F.R. § 206 Subpart I.

<sup>270</sup> 44 C.F.R. § 206.253(d).

<sup>271</sup> 44 C.F.R. § 206.253(c).

<sup>272</sup> 44 C.F.R. §§ 206.252(d) and 206.253(c).

<sup>273</sup> 44 C.F.R. § 206.253(b)(2).

<sup>274</sup> Stafford Act § 311(c), 42 U.S.C. § 5154(c); 44 C.F.R. Part 75.



Additionally, the facilities for which the Applicant failed to comply are ineligible for future PA funding.

#### **A. Insurance Reductions and Impact on Facility Eligibility in Subsequent Disasters**

If the Applicant does not maintain the required insurance from a previous disaster, then the facility is ineligible for PA funding in a subsequent disaster, regardless of the hazard(s) that caused the damage.<sup>275</sup>

When the Applicant receives PA funding for a facility damaged by the same hazard in a subsequent disaster, FEMA reduces funding in this subsequent disaster by the amount of insurance required from the previous disaster. If FEMA or the State or Territorial Insurance Commissioner certification modified the Applicant's insurance requirement, FEMA reduces funding by the modified insurance amount. If the Applicant's anticipated or actual insurance proceeds are higher than the amount of insurance required in the previous disaster, FEMA reduces funding by the anticipated or actual amount of insurance proceeds to avoid a duplication of benefits.

### **III. Codes and Standards**

FEMA provides PA funding to restore facilities based on pre-disaster design and function in conformity with current applicable codes, specifications, and standards.<sup>276</sup> The Applicant needs to provide documentation to support the eligibility of code or standard upgrades, including, but not limited to, the requirement to apply the codes or standards and to support they were formally adopted, implemented, and uniformly applied.

#### **A. Eligibility Criteria**

Facility repairs and new construction may “trigger” upgrade requirements established by codes or standards. Upgrades required by Federal or SLTT repair or replacement codes or standards are eligible only if the code or standard:<sup>277</sup>

- Applies to the type of restoration required;
- Is appropriate to the pre-disaster use of the facility;
- Is reasonable, in writing, formally adopted by the SLTT government, and implemented by the Applicant on or before the declaration date, OR is a legal Federal requirement;
- Applies uniformly; and
- Was enforced during the time it was in effect.

##### **1. Applies to the Type of Restoration Required**

Codes and standards must apply to the type of restoration required. Codes and standards for new construction are often different than codes and standards for repair work. If FEMA determines a facility is eligible for replacement, compliance with current codes and standards for new construction is eligible. If FEMA determines a facility is ineligible for replacement, only code-required upgrades applicable to repairs are eligible.

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<sup>275</sup> Stafford Act § 311(b), 42 U.S.C. § 5154(c); 44 C.F.R. § 206.253(f).

<sup>276</sup> Stafford Act § 406(e), 42 U.S.C. § 5172(e); 44 C.F.R. § 206.226(d).

<sup>277</sup> 44 C.F.R. § 206.226(d).

A code or standard may include a trigger that requires:

- Upgrades to all structural components; or
- In addition to upgrading all structural components, bringing the non-structural components into conformance with current codes or standards for new construction.

If an upgrade to an entire structural or non-structural system within a building is triggered, the upgrade is only eligible if there is a direct relationship between the upgrade work and eligible damage.<sup>278</sup> Only upgrade work within the same system as the damage is eligible.

FEMA evaluates the eligibility of the work to upgrade or change the configuration of damaged systems for reasonableness with respect to the type and extent of damage.



#### **Examples of Codes or Standards that do Not Apply to the Restoration Required**

The Applicant requests PA funding for the repair of a damaged building and the construction of a parking garage. The Applicant states that while there was no parking garage prior to the incident, zoning codes and other local ordinances require one. Because parking improvements have no relationship to the disaster-related repairs, they do not apply to the type of restoration required and are ineligible.

Similarly, if a code or standard that applies to new construction or the rehabilitation of an entire road requires the construction of paved shoulders, drainage swales, and berms, the construction of these improvements is ineligible for a project involving repairs to discrete damaged portions of the road shoulders.

## **2. Appropriate to Pre-disaster Use**

Codes and standards must be appropriate to the pre-disaster use of the facility. FEMA determines the eligibility of code-required upgrades based on the facility's pre-disaster design or actual use at the time of the disaster. The least costly of the following is eligible:

- Pre-disaster use of the facility, if serving the same function for which it was originally designed; or
- Alternate use of the facility, if serving an alternate function at the time of the incident.



#### **Example of a Code or Standard that is Not Appropriate to the Pre-disaster Use of the Facility**

The original design of a facility was a warehouse; however, the Applicant was using the facility as a classroom before the incident. Restoring the facility as a classroom in conformance with classroom codes or standards would not be eligible if it would cost more than restoring the facility as a warehouse in accordance with code or standards applicable to a warehouse.

## **3. Reasonable**

Codes and standards must be reasonable. When determining reasonableness, FEMA:

- Examines the general reasonableness of the code or standard and the trigger for application of the code or standard;

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<sup>278</sup> 44 C.F.R. § 206.223(a)(1).

- Determines whether the upgrade and trigger relate to the type of restoration required by the damage and whether the upgrade and trigger are justified based on the extent of damage;
- Considers whether the upgrade and the trigger are technically defensible from an engineering perspective; and
- Determines whether the cost of the upgrade is reasonable.

FEMA may determine a very large upgrade based on a very low trigger to be unreasonable.



#### **Example of Reasonableness**

Installation of a code or standard-required new sprinkler system throughout a building is eligible if that building is replaced. However, installation of that sprinkler system is ineligible if the eligible work only involved repair of the building, even if required by the code or standard, unless it is reasonable based on the eligible repair.

#### **4. Written, Formally Adopted, and Implemented**

Codes and standards must be in writing, formally adopted by the SLTT government, and implemented by the Applicant on or before the declaration date, OR be a legal Federal requirement, such as an ADA or seismic safety requirement. An appropriate legislative body or regulatory authority within the jurisdiction must:

- Approve the code or standard;
- Make it a matter of public record; and
- Formally incorporate it into the building code or other applicable ordinance.

The code or standard must apply to the facility in question. For example, if a State has jurisdiction over a particular type of work and formally adopts a code or standard related to that work, a Tribal or local government in that State does not necessarily have had to formally adopt the code or standard for it to apply to its facility. The Tribal or local government meets the above requirement if it shows that it implements the code or standard consistently.

FEMA does not recognize codes or standards adopted by a PNP specifically for its facilities when determining whether compliance with codes or standards is eligible. FEMA also does not accept codes or standards adopted by agencies or divisions of SLTT governments that are not authorized to set codes or standards within the broad governmental jurisdiction of the SLTT government.



#### **Example of a Standard that is Not in Writing, Formally Adopted, and Implemented**

FEMA approves funding to replace a culvert that was washed out by a flood. The State natural resources department denies the Applicant's permit application for replacing the culvert, and recommends the Applicant construct a bridge instead. The decision of the permitting officials is discretionary and not based on a written and formally adopted code or standard; therefore, the bridge construction is ineligible.

## 5. Applies Uniformly

Codes and standards must apply uniformly to all similar types of facilities, whether private or public, eligible or ineligible, in the Applicant's jurisdiction or (if applicable) in a particular hazard zone within its jurisdiction.

For FEMA to find that a code or standard and its triggers are uniformly applied, the code or standard must meet all of the following conditions. The code or standard must:

- Provide for uniform accountability in the event of noncompliance;
- Not be subject to discretionary enforcement by public officials; and
- Not allow for selective application.

A code or standard must meet three tests to demonstrate that it is not selectively applied:

- The upgrade is generally triggered regardless of the cause of damage and is also triggered for renovations or improvements.
- The code or standard is applied regardless of the source of funding for the work.
- The code or standard is not applied selectively based on the availability of funds.



### Example of a Standard that Does Not Apply Uniformly

A local jurisdiction has authority over all facilities, both public and private. A statewide code or standard imposes seismic retrofit requirements for all public buildings, but not for privately-owned buildings. The seismic retrofitting is ineligible as it does not apply uniformly to all similar types of facilities within the Applicant's jurisdiction.

## 6. Enforced

The code or standard must have been enforced during the time it was in effect. FEMA may provide PA funding for costs related to an upgrade based on confirmation of previous enforcement and in reliance on continued enforcement. If the local jurisdiction subsequently violates this criterion, no further work to comply with the code or standard is eligible within the local jurisdiction.

If FEMA determines a jurisdiction has had no reasonable opportunity to enforce the code or standard, the upgrade may be eligible. A reasonable opportunity to enforce may be lacking when a code or standard is new or when a facility affected by the code or standard has not been damaged during the time the code or standard was in effect.



### Example of a Code or Standard that Was Not Enforced While in Effect

The City's Building Code requires foundation upgrades when installing new or repairing old trailers. Prior to the incident the City allowed for the installation of several new trailers without the code-required foundation upgrades. After the incident, the Applicant requests funding to upgrade the foundation of several damaged trailers citing the City's Building Code. The upgrades to the foundation of the damaged trailers are ineligible because the Applicant had not been enforcing the standard.

## **B. FEMA Consensus-Based Codes, Specifications and Standards**

For buildings, electric power, roads, bridges, potable water supply, and wastewater, FEMA requires that Applicants incorporate specific codes, specifications, and standards in accordance with FEMA Recovery Interim Policy FP 104-009-11 *Consensus-Based Codes, Specifications and Standards for Public Assistance*.<sup>279</sup>

## **C. Ineligible Upgrades**

Upgrades recommended by design standards, guidelines, policies, industry practices, or other non-mandatory provisions are ineligible if the provisions do not meet all of the criteria noted in [Chapter 8:III.A. Codes and Standards, Eligibility Criteria](#). Upgrades that are deemed ineligible but enhance a facility's ability to resist similar damage in a future incident, may be eligible as mitigation (See [Chapter 8:IV. Hazard Mitigation](#)).

## **D. Historic Preservation Compliance**

### **1. Federal Requirement**

If the facility is listed in, or meets the criteria to be listed in, the National Register of Historic Places, and an applicable code or standard requires repair in a certain manner, costs associated with work to comply with that code or standard are eligible, even if repair costs exceed replacement costs. This is an exception to the regulatory requirement that when a facility is eligible for replacement, FEMA limits eligible costs to the less expensive of repairs or replacement (see [Chapter 8:V.C. Repair vs. Replacement, Eligible Funding](#)).<sup>280</sup>

### **2. State, Territorial, or Tribal Government Requirement**

If a State, Territorial, or Tribal historic building code or standard requires specific work be performed, FEMA evaluates the code or standard using the eligibility criteria in [Chapter 8:III.A. Codes and Standards, Eligibility Criteria](#). Most State historic building codes and standards encourage code officials to allow *less* intrusive alternatives to requirements of the prevailing codes or standards, but do not require any particular work be performed. As a result, the codes and standards usually fail to meet the eligibility criteria.

## **E. Floodplain Management and Wetland Protection**

When providing PA funding for a project in or impacting a floodplain or wetland, the following requirements apply.

For any structure (walled or roofed buildings, including mobile homes and gas or liquid storage tanks)<sup>281</sup> built, replaced, or Substantially Improved in a Special Flood Hazard Area (SFHA), the Applicant must, at a minimum, either elevate or floodproof the lowest floor (including the basement) to or above the 100-year base flood elevation (BFE).<sup>282</sup> The BFE is based on the best

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<sup>279</sup> Stafford Act § 406(e)(1)(A)(ii), 42 U.S.C. § 5172 as amended by the Disaster Recovery Reform Act. The interim policy is available [here](#).

<sup>280</sup> 44 C.F.R. § 206.226(f)(2) and (3).

<sup>281</sup> 44 C.F.R. § 9.4.

<sup>282</sup> 44 C.F.R. § 9.11(d)(3)(i) and (iii).

available information in accordance with FEMA Policy 104-008-2: *Guidance on the Use of Available Flood Hazard Information*.<sup>283</sup>

If the structure contains a critical action and is in the 100 or 500-year floodplain, the Applicant must, at a minimum, elevate the lowest floor (including the basement) to or above the 500-year flood elevation.<sup>284</sup> If the structure in the 100 or 500-year floodplain is nonresidential, the Applicant may opt to floodproof to the required level instead of elevating.<sup>285</sup>

Critical actions are actions for which even a slight chance of flooding is too great and are further defined in 44 C.F.R. § 9.4, which includes examples of actions that FEMA deems critical. The minimum floodplain of concern for critical actions is the 500-year floodplain (also referred to as the critical action floodplain). If an action is not specified in 44 C.F.R. § 9.4, FEMA utilizes the U.S. Water Resource Council Floodplain Management Guidelines<sup>286</sup> to determine whether a proposed action is deemed a critical action by considering the following:

- The potential for additional impacts if the proposed project is flooded in a future incident (e.g., the facility contains volatile or toxic materials);
- The ability for occupants of buildings such as hospitals, schools, and nursing homes to evacuate in time to avoid loss of life and injury given the flood warning lead-time available in a future incident; and
- The potential for emergency services and utilities to become inoperative, or essential and irreplaceable records to be lost if a facility is flooded in a future incident.

Further, if the structure is substantially improved in a Coastal High Hazard Area, the Applicant must elevate the facility to the BFE (the 500-year



The term “**critical action**” should not be confused with a PNP “critical service.”



### Terminology

FEMA publishes **Flood Insurance Rate Maps** that identify the following:

- **Special Flood Hazard Area:** The land area subject to inundation during a flood having a 1 percent chance of occurring in a given year (also referred to as the base flood or 100-year flood).
- **Base Flood:** The flood which has a one percent chance of being equaled or exceeded in any given year (also known as a 100-year flood). This term is used in the National Flood Insurance Program (NFIP) to indicate the minimum level of flooding to be used by a community in its floodplain management regulations.
- **Base Flood Elevation:** The computed elevation to which floodwater is anticipated to rise during the base flood.
- **Coastal High Hazard Area:** The area subject to high velocity waters including, but not limited to, hurricane waves or tsunamis. On a Flood Insurance Rate Map (FIRM), this appears as zone V1-30, VE or V.
- **Floodway:** The portion of the floodplain which is effective in carrying flow, within which this carrying capacity must be preserved and where the flood hazard is usually highest, i.e., where water depths and velocities are the greatest. It is that area which provides for the discharge of the base flood so the cumulative increase in water surface elevation is no more than one foot.

<sup>283</sup> [www.fema.gov/sites/default/files/2020-04/Available Flood Hazard Information Policy 104-008-2.pdf](http://www.fema.gov/sites/default/files/2020-04/Available_Flood_Hazard_Information_Policy_104-008-2.pdf).

<sup>284</sup> 44 C.F.R. § 9.11(d)(3)(i) and (ii).

<sup>285</sup> 44 C.F.R. § 9.11(d)(3)(iii).

<sup>286</sup> [www.energy.gov/nepa/downloads/floodplain-management-guidelines-implementing-co-11988-water-resources-council-1978](http://www.energy.gov/nepa/downloads/floodplain-management-guidelines-implementing-co-11988-water-resources-council-1978).

flood elevation for critical actions) (including wave height) on open works (walls columns, piers, piles, etc.) and anchor it properly.<sup>287</sup> New construction is prohibited in a Coastal High Hazard Area and within regulatory floodways unless the structure has a functionally dependent use; or facilitates open space use.<sup>288</sup>

#### **F. Requirement for Communities Participating in the National Flood Insurance Program**

A community that participates in the National Flood Insurance Program (NFIP) must adopt and enforce a floodplain management ordinance that meets or exceeds the minimum NFIP requirements.<sup>289</sup> Such an ordinance must contain construction requirements for new construction or Substantial Improvement of buildings located in a SFHA. In addition to other requirements, the ordinance must require that new or Substantially Improved buildings be elevated so that the lowest floor is at or above the BFE or floodproofed to a level equal to or above the BFE (some communities have more restrictive ordinances that require elevation or floodproofing to greater levels.)

Work required for compliance with the floodplain ordinance is eligible provided the ordinance meets the eligibility criteria for codes and standards and the Substantial Improvements are disaster-related repairs. If the cost to repair a facility in accordance with the floodplain ordinance is greater than the cost to replace the facility in accordance with the ordinance, the eligible cost is capped at the replacement cost.

#### **G. Accessibility for Individuals with Disabilities**

The ADA and other disability rights laws such as the Architectural Barriers Act (ABA) require that all newly constructed facilities be accessible to and usable by individuals with disabilities<sup>290</sup> and that repairs that might affect the ability of individuals with disabilities to use the facility comply with accessibility standards.<sup>291</sup> In some circumstances, FEMA provides PA funding for accessibility compliance requirements.

FEMA provides PA funding regardless of whether the facility was in compliance prior to the incident, provided the Applicant was not cited for a violation. If the Applicant was notified of being in violation of a requirement prior to the incident and did not bring the facility into compliance, then accessibility requirements related to the violation are ineligible.

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<sup>287</sup> 44 C.F.R. § 9.11(d)(2) and (7).

<sup>288</sup> 44 C.F.R. § 9.11(d)(1)

<sup>289</sup> 44 C.F.R. § 60.3.

<sup>290</sup> 42 U.S.C. § 12101 et seq.; 28 C.F.R. § 35.151(a)

<sup>291</sup> 42 U.S.C. § 12147(a); 28 C.F.R. § 35.151(b).

Some special provisions apply when ADA requirements “threaten or destroy the historic significance of qualified historic buildings and facilities.”<sup>292</sup> FEMA addresses these provisions during its consultation with the SHPO or THPO and incorporates them into the agreement regarding the repairs to the building.

FEMA may also provide PA funding for additional SLTT government ADA requirements that meet the eligibility criteria for codes or standards, as described in [Chapter 8:III.A. Codes and Standards, Eligibility Criteria.](#)

### **Facilities Eligible for Repair**

If the primary function area sustained eligible disaster damage, FEMA may provide PA funding for reasonable changes required by an eligible code or standard to increase accessibility to undamaged elements that serve the primary function area and the path of travel to the primary function area such as an accessible entrance, accessible routes to the primary function area, restroom access, accessible drinking fountains, and other elements.

To be eligible for PA funding, the required alterations must have a reasonable and technically supportable relationship to the damaged elements of the facility. As a result, there may be alterations required that are ineligible for PA funding.

PA funding for alterations to the path of travel requirements cannot exceed the ADA requirement of 20 percent of the total cost to repair the primary



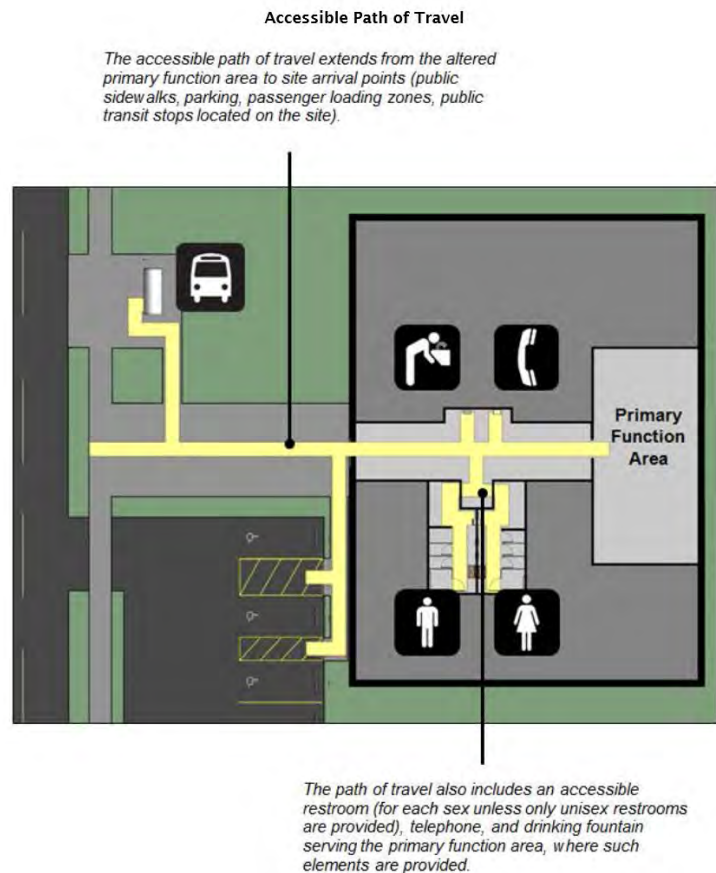
### **Terminology**

A **primary function area** is the area where a major activity occurs for which the facility is intended. Examples include the dining area of a cafeteria, meeting rooms of a conference center, and public offices providing governmental services to the public.

**Path of travel** includes a continuous, unobstructed way of pedestrian passage to the primary function area. This includes interior and exterior approaches such as hallways, doorways, sidewalks, streets, parking areas, and public transit drop points. See Figure 14. *Path of Travel.*

**Service facilities** to the primary function area include restrooms, telephones, and drinking fountains.

See [www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/guide-to-the-ada-standards](http://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/guide-to-the-ada-standards).



**Figure 14. Path of Travel**

<sup>292</sup> 28 C.F.R. § 36.405.



function area.<sup>293</sup> The 20 percent calculation is defined at 28 C.F.R. § 35.151(b)(4)(iii). If the costs for ADA upgrades exceed the 20 percent, the Applicant must prioritize the accessible elements as described in 28 C.F.R. § 35.151 (b)(4)(iv).

If the Applicant engages in repairs that are ineligible for PA funding, the cost of requirements triggered by those repairs are ineligible.

## H. Permit Requirements

If a Federal or SLTT government permitting agency requires additional work based on a code or standard that does not meet the eligibility criteria in [Chapter 8:III.A. Codes and Standards, Eligibility Criteria](#), the cost of the additional work is only eligible if the work:

- Does not change the pre-disaster size, capacity, or function of the facility;
- Applies to the type of repair or restoration required;
- Is reasonable based on the type and extent of damage; and
- Is an established, enforced, uniform practice that applies to all similar types of facilities within the Applicant's jurisdiction, regardless of the circumstance.

## IV. Hazard Mitigation





Hazard mitigation is any sustained action taken to reduce or eliminate long-term risk to people and property from natural hazards and their effects. FEMA has authority to provide PA funding for cost-effective hazard mitigation measures for facilities damaged by the incident.<sup>294</sup>

In addition to providing funding for hazard mitigation under the PA Program, FEMA also provides hazard mitigation funding under its Hazard Mitigation Assistance (HMA) programs. FEMA's Federal Insurance and Mitigation Administration administers the HMA programs, which are briefly described in Figure 15. *FEMA Hazard Mitigation Programs*. The eligibility criteria, procedures, and timelines for implementation of the hazard mitigation measures funded under the HMA programs differ from the hazard mitigation measures funded under the PA Program.

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<sup>293</sup> For calculation purposes, the total costs of the primary function area repair include the repair costs of the roof, HVAC system, mechanical rooms, janitorial closets, locker rooms, and private offices directly associated with the repair of the primary function area.

<sup>294</sup> Stafford Act § 406(e), 42 U.S.C. § 5172; 44 C.F.R. § 206.226(e).

| Stafford Act Section<br><b>406</b>   | Stafford Act Section<br><b>404</b>   | National Flood<br>Insurance Act of 1968<br><b>NFIA</b>  | Stafford Act Section<br><b>203</b> |
|--|--|---|------------------------------------|
| <b>PA Program</b>  | <b>HMA Programs</b>  |   |                                    |
| <i>Disaster-related program</i><br> <b>PA:</b> Mitigation of incident-caused damage<br><br>Funding: Available for disaster-damaged facilities only* | <i>Disaster-related program</i><br> <b>HMGP:</b> Multi-hazard, statewide mitigation<br><br>Funding: Available for damaged and non-damaged facilities based on a percentage of dollars obligated to the PA and IA programs | <i>Non-disaster-related programs</i><br> <b>FMA:</b> Flood mitigation for insured properties<br> <b>PDM:</b> Multi-hazard, project-specific |                                    |
| NOTE: PA = Public Assistance<br>HMA = Hazard Mitigation Assistance<br>HMGP = Hazard Mitigation Grant Program   |  | FMA = Flood Mitigation Assistance<br>PDM = Pre-Disaster Mitigation<br>IA = Individual Assistance  |                                    |

\* See exception for Alternative Procedure Projects in Chapter 2, Section VII.G.4(c).

**Figure 15. FEMA Hazard Mitigation Programs**

FEMA refers to PA-funded hazard mitigation as PA mitigation and mitigation funded under HMGP as HMGP mitigation.

The Applicant may use both PA mitigation and HMGP mitigation funds to implement mitigation measures on the same facility, but not for the same work. The Applicant cannot use funds from one of these mitigation programs to meet the non-Federal cost share of work funded under the other mitigation program.

This document provides details regarding PA mitigation funding. FEMA’s *Hazard Mitigation Assistance Guidance* provides further details on HMGP mitigation funding and the HMA programs.<sup>295</sup>

#### **A. Public Assistance Hazard Mitigation**

FEMA evaluates proposed PA mitigation measures for eligibility, cost-effectiveness, technical feasibility and effectiveness, and compliance with EHP laws, regulations, and EOs. In addition, FEMA ensures that the mitigation does not negatively impact the facility’s operation or surrounding areas or create susceptibility to damage from another hazard.



### Hazard Mitigation Grant Program

The Recipient manages HMGP and is responsible for soliciting applications from STTL government agencies. Projects submitted to the Recipient must be in accordance with the Recipient’s Hazard Mitigation Plan, address severe detrimental impacts, and have the greatest potential to reduce future losses. Eligible projects include acquisition of hazard-prone property, retrofitting existing buildings and facilities, elevation of flood-prone structures, infrastructure protection measures, and hazard mitigation planning. SLTT government agencies should direct questions regarding HMGP to the State, Territorial, or Tribal Hazard Mitigation Officer: [www.fema.gov/state-hazard-mitigation-officers](http://www.fema.gov/state-hazard-mitigation-officers).

<sup>295</sup> [www.fema.gov/grants/mitigation/hazard-mitigation-assistance-guidance](http://www.fema.gov/grants/mitigation/hazard-mitigation-assistance-guidance).

To be eligible for PA funding, the mitigation measures must directly reduce the potential of future damage to the damaged portion(s) of the facility. Generally, eligible PA mitigation measures are those the Applicant performs on the damaged portion(s) of the facility. If the Applicant proposes mitigation measures that are distinct and separate from the damaged portion(s) of the facility, FEMA evaluates the proposal and determines eligibility on a case-by-case basis considering how the mitigation measure protects the damaged portion(s) of the facility and whether the mitigation measure is reasonable based on the extent of damage. Some examples of such measures include:

- Constructing floodwalls around damaged facilities;
- Installing new drainage facilities (including culverts) along a damaged road;
- Adding fire suppression systems at facilities damaged by wildfire; and
- Dry floodproofing both damaged and undamaged buildings that contain components of a system that are functionally interdependent (i.e., when the entire system is jeopardized if any one component of the system fails).

If FEMA determines mitigation measures to undamaged portions ineligible as PA mitigation the Applicant may request HMGP funding from the State, Territorial, or Tribal government to provide protection to undamaged portions, while utilizing PA mitigation funds to provide protection to damaged portions.

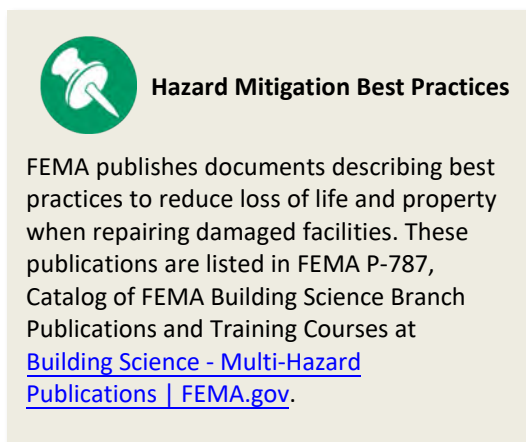
PA mitigation opportunities usually present themselves during facility repair. However, in cases where the Applicant needs to repair a facility in an expedited manner, it may miss an opportunity to implement mitigation measures during repair. If the Applicant implements mitigation measures after the PA-funded repair is complete, the mitigation work may still be eligible for PA funding; however, FEMA will not provide PA funding for any duplicative work triggered by the subsequent mitigation.

In some instances, the Applicant may implement mitigation measures after the incident occurs but before the incident is declared or before FEMA has the opportunity to evaluate the measure for eligibility. In these cases, the mitigation work may still be eligible for PA funding if it is cost-effective and FEMA confirms compliance with applicable EHP laws, regulations, and EOs.

If FEMA approves PA funding for mitigation and the Applicant does not complete the PA mitigation work, FEMA will deobligate the PA mitigation funds.

### **Cost-effective Evaluation**

PA mitigation measures must be cost-effective.<sup>296</sup> FEMA considers PA mitigation measures to be cost-effective if any of the following criteria are met:



**Hazard Mitigation Best Practices**

FEMA publishes documents describing best practices to reduce loss of life and property when repairing damaged facilities. These publications are listed in FEMA P-787, Catalog of FEMA Building Science Branch Publications and Training Courses at [Building Science - Multi-Hazard Publications | FEMA.gov](#).

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<sup>296</sup> 44 C.F.R. § 206.226(e).

- The cost for the mitigation measure does not exceed 15 percent of the total eligible repair cost (prior to any insurance reductions) of the facility or facilities for which the mitigation measure applies;
- The mitigation measure is specifically listed in [Appendix J: Cost-Effective Public Assistance Hazard Mitigation Measures](#), AND the cost of the mitigation measure does not exceed 100 percent of the eligible repair cost (prior to any insurance reductions) of the facility or facilities for which the mitigation measure applies; and
- The Recipient or Applicant demonstrates through an acceptable benefit-cost analysis (BCA) methodology that the measure is cost-effective. FEMA's BCA software<sup>297</sup> provides appropriate BCA methodologies.

Many mitigation measures that do not meet the first two requirements above prove to be cost-effective based on a BCA. If the mitigation measure is not cost-effective based on the first two criteria, FEMA, the Recipient, and the Applicant work together to develop a BCA to determine whether it is cost-effective.

A BCA is based on a comparison of the total estimated cost for the PA mitigation measure to the total value of expected benefits to society. FEMA's BCA methodology considers common project benefits, which include reductions in the magnitude or frequency of:

- Damage to the facility and its contents;
- The need for emergency protective measures;
- The need for temporary facilities;
- Loss of function;
- Casualties (typically included only for earthquake, tornado, and wildfire mitigation); and
- Previous impacts regardless of whether the impacts occurred in Federal declarations (only if documented).

## **B. Public Assistance Mitigation Funds for Capped Projects**

### **1. Improved Project**

If the capped amount for an Improved Project includes PA mitigation funds and the Applicant either does not complete the PA mitigation work, or replaces or relocates the original facility, FEMA deobligates the PA mitigation funds.

### **2. Alternate Project**

If the SOW to restore a facility includes PA mitigation, and the Applicant elects to proceed with an Alternate Project, FEMA does not include costs related to the PA mitigation in the capped amount for the Alternate Project.

### **3. Alternative Procedures Project**

When the Applicant is restoring the function, but changing the pre-disaster capacity of a facility, the proposed PA mitigation SOW is developed based on the actual SOW to be performed; however, the cost-effectiveness is evaluated based on the fixed-cost amount accepted for the pre-disaster restoration SOW. If the capacity is increased, the proposed hazard mitigation SOW and cost is limited to the SOW and cost necessary to mitigate to the pre-disaster capacity of the

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<sup>297</sup> [www.fema.gov/grants/guidance-tools/benefit-cost-analysis](http://www.fema.gov/grants/guidance-tools/benefit-cost-analysis).

damaged facility. If the Applicant does not complete the approved PA mitigation, FEMA deobligates the portion of the fixed-cost amount related to hazard mitigation.

## V. Repair vs. Replacement

When evaluating whether a damaged facility is eligible for replacement, FEMA compares the repair cost with the replacement cost and evaluates the feasibility of repairing the facility.<sup>298</sup>

A facility is considered repairable when:

- The cost to repair the disaster-related damage does not exceed 50 percent of the cost to replace the facility based on its pre-disaster size, capacity, and function; and
- It is feasible to repair the facility so that it can perform the pre-disaster function as well as it did prior to the incident.<sup>299</sup>

The comparison of the repair cost to the replacement cost results in a fraction that expresses repair as a percentage of replacement. The percentage is calculated with the repair cost as the numerator and the replacement costs as the denominator. FEMA refers to this as the “50% Rule.”

The purpose of the 50% Rule is to make an early determination on whether it is more prudent to repair or replace a facility. It is not intended to be a full calculation of all eligible project costs.

### A. Calculation

The repair cost (numerator) is the cost of repairing disaster-related damage only and includes costs related to compliance with codes and standards that apply to the repair of the damaged elements only.<sup>300</sup> The numerator does not include costs associated with:

- Upgrades of non-damaged elements even if required by codes or standards (e.g., elevation of an entire facility triggered by repair);
- Demolition beyond that which is essential to repair the damaged elements;
- Site work;
- Soft costs;
- Contents;
- Hazard mitigation measures; or
- Emergency Work.

The replacement cost (denominator) is the cost of replacing the facility based on its pre-disaster design (size and capacity) and function in accordance with applicable codes or standards. The denominator does not include costs associated with:

- Demolition;
- Site work;

<sup>298</sup> 44 C.F.R. § 206.226(f).

<sup>299</sup> 44 C.F.R. § 206.226(f)(1).

<sup>300</sup> This includes consensus-based codes, specifications, and standards.



#### Terminology

**Soft costs** are those not considered as direct construction costs, including:

- Architectural costs
- Engineering costs
- Project management costs
- Financing
- Legal fees
- Other pre-/post-construction expenses

**Site Work** is any exterior work at the site. Examples include:

- Excavation
- Backfill
- Erosion control
- Utility installation
- Paving

- Soft costs;
- Contents;
- Hazard mitigation measures; or
- Emergency Work.

Although certain costs are not included in the 50% Rule calculation to determine whether the facility is eligible for replacement, the costs may be eligible for PA funding subject to all other eligibility requirements.

## B. Written Request

The Applicant should submit its request for replacement within one year of the Declaration. The request should include both repair and replacement cost estimates with supporting documentation, prepared in accordance with the requirements described in [Chapter 9:II.E.2. Applicant Estimates](#).

FEMA professionally licensed engineers and architects, qualified cost estimators, construction managers, and staff with other technical expertise, as necessary, develop or review and validate the estimates used in the 50% Rule calculations. For any replacement requests over \$5 million, FEMA submits the estimates to an independent third-party for an additional review of the estimates. FEMA considers the results of the third-party review prior to approving replacement.

## C. Eligible Funding

If the estimated repair cost exceeds 50 percent of the estimated replacement cost,<sup>301</sup> the actual replacement cost is eligible. The Applicant may elect to repair the facility in conformance with applicable codes and standards. In this case, FEMA limits the eligible cost to the estimated cost of repair or replacement, whichever is less.<sup>302</sup>

If the facility is not eligible for replacement based on the 50% Rule but the **total** estimated repair cost exceeds the **total** estimated replacement cost (not the estimated costs used for the 50 percent calculation), FEMA caps the total eligible cost at the **total** estimated replacement cost.

Relocation is only eligible for PA funding if it meets the requirements of [Chapter 8:VI. Relocations](#). If compliance with a code or standard is not feasible without relocating a facility and



### Floodplain Management Ordinance Compliance

The costs to comply with a local floodplain management ordinance that requires elevation or floodproofing of a Substantially Damaged facility in an SFHA are eligible for PA funding. These costs are not included in the repair cost of the 50% Rule calculation but are included in the replacement cost of the calculation. Therefore, the repair cost for the 50% Rule calculation is estimated without regard to whether the facility receives a substantial damage determination or whether the facility contains a critical action.

<sup>301</sup> For repair versus replacement, the term “replacement cost” means the cost of replacement in accordance with applicable codes and standards.

<sup>302</sup> 44 C.F.R. § 206.226(f)(2).

relocation is not eligible for PA funding based on Chapter 8:VI. *Relocations*, then FEMA caps the funding without including the costs related to relocation and considers it an Improved Project.

Demolition of a facility that is eligible for replacement is eligible as part of the work to replace the facility. Eligible costs include removal of the associated demolition debris.

PA mitigation funding cannot be applied to replacement facilities, unless the facility is part of an Alternative Procedures Project (described in [Chapter 8:VIII. Capped Projects](#)) or the mitigation measure is listed in [Appendix J: Cost Effective Public Assistance Hazard Mitigation Measures](#).

As discussed in [Chapter 8:III.D.1. Historic Preservation Compliance, Federal Requirement](#), if an applicable code or standard requires that a historic facility be restored in a certain manner and does not allow other options, the cost to restore the facility in accordance with the code or standard is eligible and may exceed the estimated replacement cost.<sup>303</sup> A historic facility is defined as one listed in, or eligible for listing in, the National Register of Historic Places.



#### Substantial Damage Determination

A floodplain manager's Substantial Damage determination is part of the NFIP eligibility process and is separate and distinct from the PA eligibility process for determining whether a facility is eligible for replacement or relocation.

FEMA determines whether replacement costs are eligible for PA Program based on the criteria in [Chapter 8:V. Repair vs. Replacement](#). FEMA determines whether relocation costs are eligible for PA funding based on the criteria in [Chapter 8:VI. Relocation](#) and [8:IV. Hazard Mitigation](#).

#### D. Replacement of Components of a Facility or System

FEMA does not apply the 50% Rule to a facility's structural or mechanical components (e.g., windows, roofs, HVAC; electrical, plumbing). For example, FEMA does not apply the 50% Rule to a damaged HVAC system to determine whether the system should be repaired or replaced because it is a component of a building. If the HVAC system is repairable, as determined by an inspector or engineer with appropriate technical expertise, FEMA limits its funding to the repair of the system.

For facilities that are systems composed of multiple components that are easily segregated, FEMA applies the 50% Rule to individual components of the system, rather than the entire system. The following are examples of facilities that are systems to which FEMA applies the 50% Rule calculation to individual components:

- Drainage channel or irrigation system: a section from damaged node to damaged node, which is where there are intersections or connecting points.
- Water or sewer line system: a section of piping from damaged manhole to damaged manhole, a lift station, or a manhole structure.
- Water or wastewater treatment plant: a control building, clarifier, or sedimentation pond.
- Roadway: each damaged roadway section.

Electrical distribution systems are evaluated for replacement based on the criteria in [Chapter 8:IX.D.2. Power: Transmission and Distribution System Conductor Replacement](#).

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<sup>303</sup> 44 C.F.R. § 206.226(f)(3).

The following are examples of facilities to which FEMA applies the 50% Rule to the entire facility:

- Bridges;
- Culverts;
- Buildings;
- Pumping stations;
- Piers;
- Pools, including integral pumping;
- Bath houses or rest rooms;
- Equipment;
- Lighting structures; and
- Signs.

## VI. Relocation

FEMA may approve funding for and require restoration of an Applicant's destroyed (i.e., eligible for replacement) facility at a new location. FEMA only provides PA funding when all of the following conditions apply:

- The facility is subject to repetitive heavy damage because of its location. For example, facilities located in a SFHA or wildland-urban interface<sup>304</sup> and subject to repetitive heavy flood or fire damage;
- Project approval is not barred by other regulations;<sup>305</sup> and
- The overall project, including all costs, is cost-effective. If the cost to relocate the facility is less than the eligible cost to replace the facility at its original location (the value of the land at the original site is not included as part of this evaluation) then the project is cost effective. In instances where the cost of relocation exceeds the cost to replace the facility at its original location FEMA may use its BCA process and software to determine cost effectiveness.

An applicable Federal or SLTT code or standard, such as a floodplain management regulation, may also require that a damaged facility be relocated away from a hazardous area (e.g. floodway). If the facility is destroyed (i.e. eligible for replacement), FEMA determines whether relocation is cost-effective in the same manner as described above.

If the Applicant requests relocation of a facility that FEMA is not requiring to be relocated, FEMA may provide funding for the relocation if it is more cost-effective than replacing it at the current location. In the case of a request for relocation, FEMA evaluates the cost effectiveness as a PA mitigation measure using its BCA process and software<sup>306</sup> to compare the benefits of the damage prevented to the facility at its original location against the cost of replacement and relocation at the new location.

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<sup>304</sup> The wildland-urban interface (WUI) is the area between wildland and urban land.

<sup>305</sup> 44 C.F.R. § 206.226(g)(1).

<sup>306</sup> [www.fema.gov/grants/guidance-tools/benefit-cost-analysis](http://www.fema.gov/grants/guidance-tools/benefit-cost-analysis).



If relocation is not feasible, cost effective, or eligible for PA funding the Applicant may request an Improved, Alternate, or Alternative Procedures Project as detailed in [Chapter 8:VIII. Capped Projects](#).

#### **A. Eligible Work and Funding**

Eligible work associated with relocation includes land acquisition and construction of necessary support facilities, such as roads, parking lots, and utilities. Demolition and removal of the original facility are also eligible if deemed necessary.<sup>307</sup> FEMA limits PA funding to the amount necessary to make the relocated facility and its associated components operational.

FEMA considers the proximity of the new site to utilities (water, sewer, and electric) and approves the least costly solution. Construction of an off-site support facility is only eligible if it is a utility that would serve the relocated facility exclusively.

For land acquisition, if the facility was located on 10 acres of land at the time of the incident, and FEMA determines that 10 acres is not necessary for the operation of the facility, FEMA limits PA funding to the necessary amount of land.

In situations where the Applicant owns the facility, but not the land or the support facilities at the original location, the cost to purchase the land or build support facilities is ineligible.

When FEMA requires relocation, FEMA does not provide future PA funding for repair or replacement of the original facility or for other facilities at the original site unless the facility facilitates an open space use.<sup>308</sup> For example, if the Applicant converts the original site to a park, FEMA may provide PA funding in the future for park components, such as benches, tables, restrooms, or gravel roads.

#### **B. Sale or Lease of Property at Original Site**

The Applicant may sell or lease the original facility or the land on which a relocated facility was originally located. The Applicant must inform the purchaser of the property that FEMA will not provide future PA funding for repair or replacement of the original facility or for other facilities at the original site unless the facility facilitates an open space use.

The property which the facility is relocated to, and the relocated facility itself, are subject to the real property provisions of 2 C.F.R. part 200 including disposition and reporting requirements under 2 C.F.R. §§ 200.311 and 329, respectively.

If the Applicant takes an action, such as demolition, using PA funds at the original site, FEMA must complete an EHP review before the action occurs.

## **VII. Facility Located in or Impacting a Floodplain**

When FEMA provides PA funding for restoration of a facility located in or impacting a floodplain, FEMA is required to ensure minimization of harm to or within the floodplain.

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<sup>307</sup> 44 C.F.R. § 206.226(g)(2).

<sup>308</sup> 44 C.F.R. § 206.226(g)(3).

## **A. 8-Step Decision-making Process**

FEMA is responsible for determining whether a PA project will have an adverse impact on the 100-year floodplain (500-year floodplain for critical actions). To make this determination, FEMA initiates the 8-step decision-making process defined in 44 C.F.R. § 9.6. As part of this process FEMA evaluates the impacts the project may have on the floodplain and practicable alternatives for environmental, social, economic, technical, and legal factors, as defined in 44 C.F.R. § 9.9. Some alternatives may not be eligible for PA funding. For example, if the 8-step review process identifies relocation of a facility as a practicable alternative to repairing it in the SFHA, but the facility is ineligible for relocation as described in [Chapter 8:VI. Relocations](#), then costs associated with relocating the facility are ineligible for PA funding. FEMA considers whether each alternative identified is eligible for PA funding and, if not, whether the Applicant has funding available to proceed with the alternative without PA funding.

Projects in the 100-year floodplain (500-year floodplain for critical actions) are only eligible if, as a result of completing the 8-step process, FEMA is unable to identify a practicable alternative to restoring the facility within the floodplain. The 8-step process is not required for projects where the repair cost is less than \$5,000.<sup>309</sup>

## **B. Facility Located in a Special Flood Hazard Area**

SFHAs<sup>310</sup> are areas that are subject to inundation during a 100-year flood (a flood having a 1 percent chance of occurrence in a given year).

### **1. National Flood Insurance Program**

For an NFIP-insurable facility located in an SFHA, FEMA must reduce PA funding when the facility is:

- Located in an area that FEMA has identified as an SFHA for more than 1 year;
- Damaged by flooding; and
- Uninsured for flood loss.

If the Applicant believes that its property is incorrectly identified on a Flood Insurance Rate Map (FIRM) as being located within the SFHA, it may request a Letter of Map Amendment or Letter of Map Revision from FEMA within 6 months of the declaration. If the Applicant's request is approved and FEMA determines that the property is not located in an SFHA, FEMA may reinstate PA funding. Costs incurred in pursuit of a Letter of Map Amendment or Letter of Map Revision are ineligible for PA funding.

If the Applicant does not have flood insurance for the facility or carries inadequate flood insurance for the insurable facility, FEMA reduces eligible project costs by the lesser of:

- The maximum amount of insurance proceeds that could have been obtained from an NFIP standard flood insurance policy for the building and its contents,<sup>311</sup> or
- The value of the building and its contents at the time of the incident.

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<sup>309</sup> 44 C.F.R. § 9.5(c)(13).

<sup>310</sup> 44 C.F.R. § 206.251.

<sup>311</sup> 44 C.F.R. § 206.252(a).

FEMA does not apply this reduction to PNP facilities in communities that do not participate in the NFIP.<sup>312</sup> However, for FEMA to provide PA funding for the PNP facility, the community must agree to participate in the NFIP within 6 months of the declaration and the PNP must purchase the required flood insurance; or the PNP must obtain and maintain flood insurance from another source.<sup>313</sup>



#### Intent of Permanent Work Alternative Procedures

The intent of the PA Alternative Procedures for Permanent Work is to provide the Applicant with a flexible avenue to drive its own recovery outcomes. Instead of driving the Applicant's recovery within the confines of what the PA Program can fund, PA staff develop projects and identify the amount of PA funds that are available for Applicants to use toward a strategic recovery outcome. The Recipient and Applicant may also work together with various Federal agencies and other stakeholders to identify other available sources of funding that may also be applied to achieve the desired outcome.

## VIII. Capped Projects

FEMA provides three options that provide flexibility for the Applicant to use PA funding differently than restoring the pre-disaster design and function of the facility. For these options, FEMA caps the amount of PA funding based on the estimated amount to restore the damaged facility to its pre-disaster design and function, including current eligible codes and standards as defined in [Chapter 8:III. Codes and Standards](#).<sup>314</sup>

The three capped project options are:

- Alternative Procedures Project under Section 428 (Large Projects only):<sup>315</sup> This type of project offers the maximum amount of flexibility with how the Applicant may use PA funding, including use of excess funds which are not eligible under the Improved or Alternate Project options. The Applicant may use funds across all Permanent Work Alternative Procedures Projects with no requirement to rebuild communities back to what existed prior to the disaster. Alternative Procedures Projects are subject to acceptance of a fixed-cost offer within the deadlines described in [Chapter 9:II.E.6\(a\). Fixed Cost Offer Deadlines](#).
- Improved Project: The Applicant may wish to make improvements to a damaged facility that are not required by eligible codes or standards. A project that restores the pre-disaster function of a facility and incorporates improvements or changes to the pre-disaster design is an Improved Project.
- Alternate Project: The Applicant may determine that the public welfare is not best served by restoring the function of the damaged facility. When this occurs, the Applicant must obtain FEMA's approval to apply PA funding toward a different facility (or facilities). FEMA refers to this as an Alternate Project.<sup>316</sup> The Alternate Project must be a

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<sup>312</sup> 44 C.F.R. § 206.252(b).

<sup>313</sup> Ibid.

<sup>314</sup> This includes consensus-based codes, specifications, and standards.

<sup>315</sup> Stafford Act § 428, 42 U.S.C. § 5189f.

<sup>316</sup> 44 C.F.R. § 206.203(d)(2).

permanent project that benefits the general public, serving the same general area that was being served by the original facility.

Capped projects may involve significant changes to the pre-disaster configuration of a facility (e.g., location, footprint, or size). FEMA conducts EHP compliance reviews on the actual proposed SOW to be performed, prior to approving the project.

## **A. Capped Project Funding**

### **Alternative Procedures Project Funding Under Section 428**

FEMA caps Federal funding for an Alternative Procedures Project based on the aggregate Federal share of the approved estimated cost:

- To restore the damaged facilities to pre-disaster design and function in accordance with eligible codes and standards; and
- For cost-effective PA mitigation measures associated with the actual restoration SOW that the Applicant will perform.

### **Improved Project Funding**

FEMA limits Federal funding for an Improved Project to the lesser of the following:

- The Federal share of the approved estimate to restore the damaged facility to its pre-disaster design and function; or
- The Federal share of the actual costs of completing the Improved Project.<sup>317</sup>

FEMA only increases eligible funding for an Improved Project if the Applicant identifies an error or omission in the original SOW or cost estimate related to restoring the facility to its pre-disaster design and function.

### **Alternate Project Funding**

FEMA limits Federal funding for an Alternate Project to the lesser of:

- The Federal share of the approved estimate to restore the damaged facility to its pre-disaster design and function; or
- The Federal share of the actual cost of completing the Alternate Project.<sup>318</sup>

## **B. Use of Capped Project Funds**

FEMA has different requirements for how the Applicant can use the funds related to each type of capped project.

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<sup>317</sup> 44 C.F.R. § 206.203(d)(1).

<sup>318</sup> 44 C.F.R. § 206.203(d)(2)(ii) and (iii).

## 1. Use of Alternative Procedures Project Funds

FEMA will complete a fixed-cost estimate for all large Permanent Work Projects. FEMA will transmit this estimate as a fixed-cost offer to the Applicant for consideration. When the Applicant accepts a fixed cost offer for a Large Project in accordance with [Chapter 9:II.E.6\(a\). Fixed Cost Offer Deadlines](#), FEMA considers it an Alternative Procedures Project and the Applicant is:

- Not required to rebuild back to what existed prior to the disaster;
- Allowed to share funds across all Alternative Procedures Permanent Work Projects;
- Not required to track costs to specific work items or facilities as funds can be shared across all Alternative Procedures Permanent Work Projects;
- Allowed to retain and use excess funds to reduce risk and improve future disaster operations (subject to timely closeout); and
- Eligible for cost-effective hazard mitigation on Replacement Projects.

The Applicant may use Alternative Procedures Permanent Work Project funds, including any excess funds across all of its Alternative Procedures Permanent Work Projects.

The Applicant may request to use the funds for any of the activities defined as eligible under the *Use of Fixed-Cost Funds* column in the table below. Once FEMA approves, and the Applicant completes, the SOW associated with these activities, the Applicant may use any excess funds for the expanded list of eligible activities listed under the *Use of Excess Funds* column.

Any excess funds remaining after the approved SOW is complete may be used for cost-effective activities that reduce the risk of future damage, hardship, or suffering from a major disaster, and activities that improve future PA operations or planning. The Applicant must submit a proposed SOW for use of any excess funds, along with a project timeline to the Recipient within 90 days of completing its last Alternative Procedures Project. The Recipient must forward the request to FEMA within 180 days of date the last Alternative Procedures Project was completed. FEMA evaluates the proposed use of excess funds for reasonableness to ensure prudent use of funds. FEMA also evaluates the submitted project timeline and approves an appropriate deadline for work completion, not to exceed the overall disaster period of performance.

The following table lists examples of eligible and ineligible types of work and costs when using fixed-cost funds and excess funds.

| <b>Type of Work or Cost (all work or costs listed must otherwise be eligible for PA)</b> | <b>Use of Fixed-Cost Funds</b> | <b>Use of Excess Funds</b> |
|--|--------------------------------|----------------------------|
| Restoration of disaster-damaged facilities and equipment                                 | Eligible                       | Eligible                   |



### Example of an Alternative Procedures Project

A county road crosses a watercourse and its adjacent floodplain using five culverts. During the incident, floodwaters overtop the road and damage the crossings, either by washing out the culverts or by damaging the roadway and headwalls. FEMA approves a Project to repair or replace each culvert crossing, including hazard mitigation measures to increase the size of the culverts. The Applicant requests that the aggregate funding for the five crossings be used to replace the current configuration with one bridge.

|  |            |            |
|--|------------|------------|
| Alternate Projects (e.g., purchasing equipment, constructing new facilities, improvements to undamaged facilities such as shelters and emergency operation centers) in declared areas  | Eligible   | Eligible   |
| Cost-effective hazard mitigation measures for undamaged facilities   | Ineligible | Eligible   |
| Covering future insurance premiums, including meeting obtain and maintain (O&M) insurance requirements, on damaged or undamaged facilities   | Ineligible | Eligible   |
| Work on facilities that are ineligible due to a failure to meet previous O&M requirements  | Ineligible | Ineligible |
| Conducting or participating in training for response or recovery activities, including Federal grants management or procurement courses  | Ineligible | Eligible   |
| Planning for future disaster response and recovery operations, such as developing or updating plans (e.g., Debris Management Plans, Hazard Mitigation Plans, Pre- disaster Recovery Plans, Emergency Management Plans), integrating these plans into other plans, preparedness activities, exercises, and outreach | Ineligible | Eligible   |
| Salaries for PA or emergency management staff. This may include but is not limited to, staff performing PA award or subaward administration, monitoring, and closeout activities for other PA disaster awards, and staff developing or updating disaster plans   | Ineligible | Eligible   |
| Paying down debts  | Ineligible | Ineligible |
| Covering operating expenses  | Ineligible | Ineligible |
| Covering budget shortfalls   | Ineligible | Ineligible |
| Covering the non-Federal cost share of FEMA projects or other Federal awards   | Ineligible | Ineligible |

Obtain-and-maintain requirements for insurance apply to work funded with excess funds, as appropriate.

If the Applicant does not accept the fixed-cost offer, the project will be processed utilizing standard procedures and final funding will be based on actual costs. The flexible use of funds and the use of excess funds are not available under standard procedures.

## 2. Use of Improved Project Funds

The Applicant may use Improved Project funds to improve the damaged facility. The facility must have the same function and at least the same capacity that existed immediately prior to the disaster. The following are examples of Improved Projects:

- Laying asphalt on a gravel road;
- Replacing a firehouse that originally had two bays with a firehouse that has three bays;
- Incorporating requirements dictated by a code or standard that does not meet PA eligibility criteria; and

- Relocating a facility when FEMA is not requiring the relocation.

The Applicant must obtain approval from the Recipient.<sup>319</sup> If the Improved Project significantly changes the pre-disaster configuration of the facility, the Recipient must forward the request to FEMA to ensure that the Improved Project complies with appropriate EHP laws, regulations, and EOs.

The Applicant can combine PA funds with funding from another Federal agency to construct the Improved Project. However, the Applicant cannot use funding from another Federal agency toward the non-Federal cost share of the PA-funded project, unless the legislation for the other grant allows such use. CDBG<sup>320</sup> is an example of a Federal program that, in certain circumstances, allows use of its funding to meet the non-Federal share of another Federal grant program.

### 3. Use of Alternate Project Funds

The Applicant may use Alternate Project funds toward a project that does not restore the pre-disaster function of the damaged facility. This includes:

- Repair, expand, mitigate, or construct a facility that would otherwise be an eligible facility under the PA Program;<sup>321</sup>
- Demolish facilities;
- Purchase capital equipment that has a useful life of at least 1 year and is equal to, or greater than, \$5,000 per unit;
- Fund project shortfalls due to mandatory flood insurance reductions taken from PA Program funding for repairs to buildings in SFHAs (see [Chapter 8:VII.B.1. National Flood Insurance Program](#));
- Supplement funds for an Improved Project; and
- Conduct cost-effective hazard mitigation measures, regardless of whether the facility was damaged by the incident and whether the measures reduce the risk of future damage from the same type of incident or of the same type of damage caused by the incident. Alternate Project funds may be use used for hazard mitigation provided that:
  - Funding does not duplicate other FEMA mitigation funding; and
  - Measures reduce the risk of future damage to a facility that is otherwise eligible either under the PA or HMA programs. If the measures are the same type as those eligible for HMA funding, they must meet a need for governmental services and functions or eligible PNP services and functions in the area affected by the incident.

If the Alternate Project involves construction, the Applicant must obtain FEMA approval prior to the start of construction as FEMA must ensure that it complies with appropriate EHP laws, regulations, and EOs.<sup>322</sup>

The Applicant may not use Alternate Project funds to:

- Meet budget shortfalls;
- Create a new community plan;

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<sup>319</sup> 44 C.F.R. § 206.203(d)(1).

<sup>320</sup> [www.hud.gov/program\\_offices/comm\\_planning/communitydevelopment](http://www.hud.gov/program_offices/comm_planning/communitydevelopment).

<sup>321</sup> 44 C.F.R. § 206.203(d)(2)(iv).

<sup>322</sup> 44 C.F.R. § 206.203(d)(2)(v).

- Landscape;
- Pay for operating expenses;<sup>323</sup>
- Purchase supplies, furniture, or equipment costing less than \$5,000 per unit;
- Pay the non-Federal share of any PA project;<sup>324</sup>
- Fund buyouts for mitigation, such as acquisition of flood-prone property to create open space;
- Supplement funds on projects that utilize other Federal agency grants; or
- Fund a project located in a FEMA-designated floodway.

### C. Disposition of Original Facility

For Alternate and Alternative Procedures Projects, if the Applicant does not repair, replace, or sell the damaged facility for which the capped project funding was based, and that facility is unsafe if not repaired, the Applicant must render the facility safe and secure (e.g., by restricting access, locking doors and windows, constructing a fence around the property) or demolish it.

If the Applicant receives funds for salvaged components of the facility, FEMA adjusts the capped project by the value or anticipated fair market value of salvaged materials less the estimated costs necessary to demolish the facility, grade the site, or make the facility safe and secure.

For any action at the original site, such as demolition, that is completed using PA funds, FEMA must conduct an EHP review. However, if the Applicant completes the work at the original site using non-PA funds, a FEMA EHP review is not required.

If the Applicant opts to keep a damaged facility for a later use, the facility may be eligible for PA funding in future incidents, provided the Applicant repaired the facility in accordance with current codes and standards, and completed any mitigation measures that FEMA included in the original SOW prior to the incident.

## IX. Eligibility Considerations by Facility

This section details the types of facilities captured within each category of work along with specific eligibility criteria related to one or more of the facilities within each category. See [Appendix N: Work Eligibility Considerations by Type of Facility](#) for a summary of eligibility by facility type.

### A. Roads and Bridges (Category C)

Roads may be paved, gravel, or dirt. Road components include, but may not be limited to:

- Surfaces;
- Bases;
- Shoulders;
- Ditches;
- Drainage structures, such as culverts;
- Low water crossings; and

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<sup>323</sup> Ibid.

<sup>324</sup> Ibid.



- Associated facilities, such as lighting, sidewalks, guardrails, and signs.

Bridge components include, but may not be limited to:

- Decking;
- Guardrails;
- Girders;
- Pavement;
- Abutments;
- Piers;
- Slope protection;
- Approaches; and
- Associated facilities, such as lighting, sidewalks, and signs.

Permanent Work to restore roads and bridges is eligible unless restoration is under the specific authority of another Federal Agency such as FHWA. However, for Tribal governments specifically, although BIA or FHWA may have authority to provide Permanent restoration of public Tribal roads, such roads may be eligible for PA funding provided the Tribal Government does not receive funding from BIA or FHWA for the same work.

FHWA has authority to restore public roads under the Emergency Relief (ER) Program.<sup>325</sup> Roads that are eligible for ER assistance are identified as Federal-aid routes, which include highways on the Federal-aid highway system and all other public roads not classified as local roads or rural minor collectors. The ER Program is activated separately from Presidential declarations under the Stafford Act and may not be activated for all incidents. Federal-aid routes are ineligible for Permanent Work even if the ER Program is not activated or if the program is activated but FHWA does not provide funding for the work. FHWA also has authority to assist with restoration of transportation facilities under the Emergency Relief for Federally Owned Roads Program (ERFO).<sup>326</sup>

Private roads are those that are not owned or operated by or otherwise the legal responsibility of a Federal or SLTT entity (including orphan roads, roads in gated communities, homeowners' association roads, etc.). These roads are ineligible. However, roads owned by a Tribal government may be eligible even if they are not open to the general public.

Work to repair scour or erosion damage to a channel or stream bank is eligible if the repair is necessary to restore the structural integrity of an eligible road, culvert, or bridge. Earthwork in a channel or stream embankment that is not related to restoring the structural integrity of an eligible facility is ineligible.

## 1. Maintenance

The incident may cause minor damage to roads that result in damage similar to that which may occur over time from other causes, such as the age of the road, traffic flow, and frequent rain. Costs related to maintenance of roads are ineligible. Therefore, distinguishing between pre-existing damage and damage caused by the incident is often difficult. For the repair of this type

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<sup>325</sup> [www.fhwa.dot.gov/programadmin/erelief.cfm](http://www.fhwa.dot.gov/programadmin/erelief.cfm).

<sup>326</sup> [fh.fhwa.dot.gov/programs/erfo/](http://fh.fhwa.dot.gov/programs/erfo/).

of damage to be eligible, the Applicant must demonstrate that the damage was directly caused by the incident.

When evaluating eligibility of reported road damage, in addition to evaluating how the incident caused the damage, FEMA reviews maintenance records or documentation establishing that the Applicant has a routine maintenance program. In the absence of maintenance records, FEMA reviews material purchase invoices and activity logs and inspects other sections of the Applicant's road system to confirm the performance of regular maintenance activities.

Work to repair potholes or fatigue cracking is usually ineligible as this type of damage is rarely caused directly by one incident.

## **B. Water Control Facilities (Category D)**

Water control facilities are those facilities built for the following purposes:

- Channel alignment;
- Recreation;
- Navigation;
- Land reclamation;
- Irrigation;
- Maintenance of fish and wildlife habitat;
- Interior drainage;
- Erosion prevention;
- Flood control; or
- Storm water management.

They include:

- Dams and reservoirs;
- Levees and floodwalls;
- Lined and unlined engineered drainage channels;
- Canals;
- Aqueducts;
- Sediment and debris basins;
- Storm water retention and detention basins;
- Coastal shoreline protective devices;
- Irrigation facilities;
- Pumping facilities; and
- Navigational waterways and shipping channels.

## 1. Restoring the Capacity of Channels, Basins, and Reservoirs

Restoring the pre-disaster carrying or storage capacity of engineered channels, debris and sediment basins, storm water detention and retention basins, and reservoirs may be eligible, but only if the Applicant provides documentation to establish:

- The pre-disaster capacity of the facility; and
- That the Applicant maintains the facility on a regular schedule.

If the Applicant chooses to remove non-incident-related material along with that deposited as a result of the incident, the project is considered an Improved Project.

## 2. Flood Control Works

Flood control works are those structures such as levees, flood walls, flood control channels, and water control structures designed and constructed to have appreciable effects in preventing damage by irregular and unusual rises in water levels.

Generally, flood control works are under the authority of USACE or NRCS and restoration of damaged flood control works under the authority of another Federal agency is ineligible. Flood control works under the specific authority of NRCS are those that are part of the Watershed and Flood Prevention Operations (WFPO) Program under PL 83-566.<sup>327</sup>

Secondary levees riverward of a primary levee are ineligible, unless the secondary levee protects human life.

## C. Buildings and Equipment (Category E)

Buildings, including:

- All structural and non-structural components, including mechanical, electrical, and plumbing systems;
- Contents and equipment within the building; and
- Furnishings.

Equipment includes:

- Vehicles; and
- Construction equipment.

Repair or replacement of buildings and equipment is eligible.



### Documentation Supporting Pre-disaster Capacity

Survey data that is either *recent* or covers a multi-year period to substantiate the amount of new material reasonably attributable to the incident.



### Documentation Supporting Regular Maintenance

Written maintenance plan and/or activity logs documenting regular intervals of activity. Applicant logs documenting clearance of blockages in response to resident complaints are not sufficient to substantiate a regular maintenance schedule.

<sup>327</sup> [www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/landscape/wfpo](http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/landscape/wfpo).

## 1. Buildings

A Public Housing Authority facility is only eligible for Permanent Work if Congress does not appropriate funds to HUD for emergency capital needs for the facility.

For buildings and building systems, distinguishing between damage caused by the incident and pre-existing damage may be difficult. Before making an eligibility determination, FEMA considers each of the following:

- Evidence of regular maintenance;
- Evidence of pre-disaster condition, such as interior water stains from a leaky roof (in such cases, FEMA evaluates whether the roof was repaired prior to the incident);
- The severity and impacts of the incident; and
- Whether the Applicant took prudent actions to prevent additional damage.

Mold remediation and removal of mud, silt, or other accumulated debris is eligible as Permanent Work when conducted in conjunction with restoration of the facility.

### (a) *Earthquake Damage to Welded Steel Moment Frame Buildings*

FEMA has specific eligibility criteria for evaluating and repairing earthquake damage to buildings constructed with welded steel moment frames. FEMA bases the eligibility criteria on *Recommended Post Earthquake Evaluation and Repair Criteria for Welded Steel Moment Frame Buildings* (FEMA 352).<sup>328</sup>

The repair of the damaged frame connections to pre-earthquake design in accordance with FEMA 352, Chapter 6, is eligible, but only if FEMA approves a specific SOW for the repairs prior to the Applicant performing the work. Repair of the architectural finishes and fire retardants removed in the area of the damage are also eligible.

## 2. Equipment and Supplies

Repairing damaged—or replacing destroyed—equipment and supplies with the same number of equivalent items is eligible.<sup>329</sup> Equivalent items are similar in age, condition, and capacity.

The Applicant may replace equipment or supplies with different items used for the same general purpose. However, FEMA caps the eligible cost at the estimated amount for items equivalent to those damaged.

When equipment is not repairable, FEMA uses “blue book” values or similar price guides to estimate the eligible cost.

When a used item is not reasonably available (within a reasonable cost, time, or distance) or does not meet applicable national consensus standards, the purchase of a new item with similar capacity is eligible.

If the cost to replace the item is less than the cost to repair it, FEMA limits PA funding to the replacement cost.



### Terminology

**Consensus standards** are standards that have been adopted by a nationally recognized standards-producing organization.

<sup>328</sup> [www.nehrp.gov/pdf/fema352.pdf](http://www.nehrp.gov/pdf/fema352.pdf).

<sup>329</sup> 44 C.F.R. § 206.226(h).

### 3. Files

Eligible activities associated with the recovery of files include, but are not limited to:

- Recovery of damaged hard copies;
- Stabilizing the damaged hard copies;
- Sanitizing damaged hard copies;
- Photocopying or scanning damaged hard copies to re-establish files; and
- Recovering data from water-damaged computer hard drives.

Recovery of damaged hard copies includes labor and materials, such as bags, boxes, and containers. Stabilizing damaged hard copies includes freeze-drying. Photocopying or scanning includes labor and materials such as new folders and paper.

Not all activities are eligible. Examples of ineligible activities include:

- Establishing new information databases;
- Manually entering data that was lost in damaged computers;
- Scanning re-established hardcopy files into computers to create digital files; and
- Deciphering photocopies of damaged hard copies.

### 4. Research-Related Contents

Reagents and specimen collections are eligible for replacement based on the following criteria.

The number of units of each reagent eligible for replacement is equal to the number lost OR to the number necessary to restore basic research activity, whichever is less.

FEMA reimburses the purchase price from commercial sources or other institutions, whichever is less. The replacement of reagents that are so unique that they are considered an outcome of a research program is ineligible.

Replacing a representative, but not necessarily a whole portion, of a specimen collection may be eligible. To be eligible for replacement, the specimen types should be available for purchase from commercial sources or other institutions and support an ongoing eligible educational or medical program.

### 5. Animals

Animals housed or exhibited in an eligible facility are eligible for replacement with the same number of comparable animals if they are:

- Injured to the extent they are no longer able to function for the intended purpose;
- Killed;
- A destroyed specimen; or
- A damaged specimen that is not recoverable.



#### Terminology

A **reagent** is a substance used in a chemical reaction to detect, measure, examine, or produce other substances. Some reagents are very common and available for purchase from commercial sources.

A **specimen** is a portion or quantity of material for use in testing, examination, or study, including blood plasma and flesh tissue.

A **specimen collection** is a repository of specimens related to biomedical, marine, or agricultural research.

The animal is ineligible for replacement if a comparable animal is not available for purchase or the Applicant is unable to obtain a comparable one at a reasonable cost.

Eligible animals may include, but are not limited to:

- Police animals;
- Trained and certified rescue dogs;
- Animals in museums, zoos, or publicly owned nature centers;
- Fish in fish hatcheries;
- Taxidermy specimens (animals preserved and mounted in lifelike representations);
- Animals used by rehabilitation facilities as part of diagnosis or treatment; and
- Laboratory animals used in an active research program.

The replacement of animals on loan to an eligible facility at the time they are destroyed is eligible if the Applicant substantiates legal responsibility.

Additionally, FEMA may provide PA funding for actions taken to save the lives of these animals as a Category B emergency protective measure.

*(a) Determining Costs*

The estimated cost to replace an animal is usually determined through market surveys. Costs associated with acquiring donated, loaned, or wild animals as replacement animals are eligible if they do not exceed the estimated cost of purchasing a comparable animal.

When a destroyed animal is replaced through a donation or loan of a comparable animal, costs associated with the purchase of another comparable animal are ineligible.

For laboratory animals, eligible costs associated with replacement include, but are not limited to, the replacement cost of a laboratory animal that is as genetically close as possible to, but does not exceed, the genetic progression of the lost animal AND can be reasonably procured commercially. If an identically genetic animal is not available, the eligible cost is based on a readily procured animal that is as genetically close as possible to the original animal. The Applicant, using its scientific research staff, an independent member of the scientific community, or a certified expert, needs to make reasonable decisions on the genetic likeness of the replacement lab animals.

Ineligible costs associated with replacing laboratory animals include:

- The cost of reproducing a new animal with all the characteristics of the lost animal to re-establish research;
- The cost of using a laboratory to perform a breeding program to advance benchmark stock to the genetic changes lost because of the incident;
- The cost associated with surgery required to replace a surgically altered animal; and
- The cost associated with the replacement of a laboratory animal when an animal of similar genetic characteristics can be obtained at no cost from other researchers or institutions.

If the Applicant requests, and the Recipient approves, other than in-kind and exact number of replacement animals, FEMA caps the Federal share based on the estimated in-kind replacement costs.

## 6. Irreplaceable Collections and Individual Objects

Collections and individual objects are artifacts, specimens, artworks, archives, public records, and other items that are often considered irreplaceable because of their artistic, educational, historic, legal, scientific, or social significance. They are nonliving and, therefore, do not include animals or plant material, and are usually one-of-a-kind. Eligible collections and individual objects may be in storage or on display in a public or PNP facility and may include items located outdoors, such as sculptures and public art installations.

Stabilization of damaged collections or individual objects is eligible. Stabilization is a series of treatment measures to maintain the integrity of a collection or object and to minimize deterioration. Stabilization involves taking the minimum steps necessary to return a collection or object to a condition in which it can function in the same capacity as it did prior to the incident. This includes:

- Treating damaged items through proper environmental controls, such as temperature and humidity; and
- Chemical or mechanical cleaning to stabilize items to prolong their existence, maintain their integrity, and minimize further deterioration from the damaging effects of the incident.

Additional treatment beyond stabilization is eligible if it is necessary to maintain the integrity of the collection or object and return it to its pre-disaster function.

In some cases, costs associated with restoring an item to pre-disaster—but not original—condition may be eligible. For example, repairing a tear in a painting that was a direct result of the incident may be eligible, whereas costs to remove signs of pre-disaster aging, such as layers of old varnish, are ineligible.

Costs associated with the development of a treatment plan for a damaged collection or individual object are eligible. Treatment needs to be conducted by qualified



### Documentation Supporting Classification as Collection or Individual Object

Documentation of collections and individual objects generally include accession, catalog, and inventory documentation. Applicants should submit all associated documentation along with a clear title to all items.



### Terminology

**Archives** are materials created or received by a person, family, or organization, public or private, and preserved because of the enduring value they contain, or as evidence of the functions and responsibilities of their creator, especially those materials maintained using the principles of provenance, original order, and collective control.

**Accession** is formal process used to legally accept and record a specimen or artifact as a collection item.

A **catalog** is a full record of information specific to an item and cross-referenced to other records and files, including identification and documentation of the material.

**Stabilization** is a series of treatment measures intended to maintain the integrity of a collection or object and to minimize deterioration. It involves the minimum steps necessary to return a collection or object to a condition in which it can function in the same capacity as it did prior to the disaster.

**Conservation** is the preservation of a collection or object for the future. Conservation activities include examination, documentation, treatment, and preventive care, supported by research (e.g., scholarly and technological, x-rays, paint sampling) and education.

**Special library collections** typically include unique, rare printed books, first editions (often author-signed), manuscripts, archives, artifacts, photos, engravings, graphics, music, and ephemera, as well as limited edition print runs of special collections of maps or other important topics.

conservation professionals with the appropriate specialty and in accordance with the American Institute for Conservation Code of Ethics and Guidelines for Practice.<sup>330</sup> FEMA, in consultation with the Recipient and Applicant, may recommend no treatment when non-intervention best serves to promote the preservation of damaged items.

Collections and individual objects damaged to the extent that stabilization is not practicable or possible are considered destroyed. Replacement of destroyed collections or individual objects is ineligible.

Restoring materials, equipment, and exhibition furnishings associated with the storage, display, preservation, or exhibition of collections and individual objects is eligible. These may include, but are not limited to:

- Equipment regulating temperature or humidity;
- Exhibit panels;
- Models; and
- Video and audio equipment.

## **7. Library Books and Publications**

Replacement of damaged or destroyed library books and publications is eligible based on the pre-disaster inventory of the quantities of the books and publications. Re-shelving, cataloging, and other work incidental to the replacement of library books and publications is also eligible.<sup>331</sup>

However, special library collections, including rare books, manuscripts, and other fragile materials, are only eligible for treatment, not replacement.

## **D. Utilities (Category F)**

Utilities include:

- Water storage facilities, treatment plants, and delivery systems;
- Power generation, transmission, and distribution facilities, including, but not limited to, wind turbines, generators, substations, and power lines;
- Natural gas transmission and distribution facilities;
- Sewage collection systems and treatment plants; and
- Communication systems.

### **1. Right-of-Way Clearance**

The Applicant may need to clear its ROW to obtain access to repair a utility. It is the Applicant's responsibility to maintain its ROW. FEMA may fund limited clearance of incident-related debris from the ROW to enable access to the facility. Additionally, if trees in the vicinity of the facility were damaged by the incident and an arborist confirms that the trees cause an immediate threat of further damage to the facility (e.g., overhead power lines), FEMA may provide PA funding to remove those trees. Any further clearance of debris in the ROW is ineligible for FEMA funding.

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<sup>330</sup> [www.culturalheritage.org/about-conservation/code-of-ethics](http://www.culturalheritage.org/about-conservation/code-of-ethics).

<sup>331</sup> 44 C.F.R. § 206.226(i).



## 2. Power: Transmission and Distribution System Conductor Replacement

For electrical transmission or distribution systems, determining the disaster-related damage to some components, such as poles, guys, and cross-arms, can usually be accomplished by visual inspection. However, determining the full extent of disaster-related damage to conductors is more challenging, particularly with older systems. A conductor is eligible for replacement when it is stretched beyond the point where it can be effectively repaired and re-sagged to meet appropriate clearances, sag, and tension, and to meet pre-disaster reliability.

A conductor is only eligible for replacement (reconductoring) when the Applicant cannot effectively repair it because one of the following exists within a line section:

- Twenty-five percent or more of the conductor spans have visible damage, such as broken strands, splices, or sleeves (installed as a result of the incident) or severe pitting, burns, or kinks;
- Thirty percent or more of the line spans are visually stretched (out of sag), or do not meet clearance requirements such as conductor-to-conductor or conductor-to-ground clearance;
- Forty percent or more of the supporting poles need to be replaced or plumbed (straightened). A pole is considered to be in need of straightening if it is leaning such that it is unsafe to climb;
- Forty percent or more of the supporting structures (other than poles) have damage such as broken cross-arms, braces, ties, insulators, guys, pulled anchors, or bent pins. If more than one element of the support structure is damaged, it still only counts as one damaged support structure. If a pole is counted under the previous bullet, FEMA does not count the supporting structure under this criterion;
- Sixty-five percent or more of any combination of the damage described in the bullets above; or
- Evidence provided by a licensed Professional Engineer that demonstrates the conductor is damaged beyond repair.



### Conductor Spans

The number of conductor spans is calculated by multiplying the number of conductors per span by the number of spans.

For example, a three-phase line section with three spans has 12 conductor spans:

$$4 \text{ conductors} \times 3 \text{ spans} = 12$$

If a single conductor span has damage in more than one location, it only counts as one damaged conductor span. Similarly, if more than one conductor is damaged, it still only counts as one damaged span.



### Terminology

A **line section** is a group of contiguous spans selected for evaluation. A span is the distance between two poles or structures.

The Applicant has flexibility in defining a line section. A line section can be:

- A single span
- All the spans between two dead-end structures
- All the spans on a feeder
- All the spans on a tap
- Any other group of contiguous spans that are evaluated together

If the Applicant provides sufficient documentation establishing the pre-disaster condition and a line section of its system meets one of the six criteria above, that line section is eligible to be reconductored.

The use of #2 Aluminum Conductor Steel Reinforced (ACSR) is considered a lower cost alternative to replacing conductor with equal or lesser amperage capacity such as copper weld conductor, hard and soft drawn copper wire, smaller ACSR, and Amerductor. Therefore, if a conductor with equal or lesser amperage capacity to #2 ACSR is eligible for reconductoring, the line section is eligible to be replaced with #2 ACSR. When the Applicant replaces conductor with #2 ACSR, adjustments to other components of the electric distribution and transmission systems to accommodate #2 ACSR, including, but not limited to, adjusting span lengths between utility poles and increasing pole heights and standards to meet appropriate design requirements are eligible. The Applicant does not need to cite a code or standard for this additional work even though the appropriate design requirements may come from Federal or SLTT codes or standards, including National Electrical Safety Code or Rural Utilities Service (RUS) standards.

If the Applicant prefers to reductor a line with conductor of lesser amperage capacity than #2 ACSR, such as #4 ACSR (including associated adjustments in span lengths and pole heights), FEMA provides PA funding for the work if the cost is less than the cost of reductoring with #2 ACSR (including associated adjustments in span lengths and pole heights).

If the Applicant plans to upgrade its conductor to an amperage capacity above #2 ACSR, and there is no code or standard requiring the upgrade that meets the eligibility requirements discussed in B, the additional upgrades are ineligible and the Applicant must request an Improved Project.

If the damage does not meet the criteria for replacement, only the repair of the damaged line section(s) is eligible.



#### **Documentation Supporting Pre-disaster Condition of a Conductor**

To document the pre-disaster condition of a conductor, the Applicant should provide the following information:

- A signed, dated, and stamped letter from a licensed professional engineer who has direct experience with the damaged electrical transmission or distribution system certifying the pre-disaster capacity and condition of the conductor along with records providing satisfactory evidence of the pre-disaster capacity and condition of the conductor. Records may include, but are not limited to, maintenance records, contract documents, work orders, inspection logs, or a description of past inspection and maintenance activities certified by a licensed professional engineer.
- If available, copies of construction work plans demonstrating the utility's past practices and current and future projects.
- If required by RUS, a copy of any corrective action plans submitted to RUS in compliance with 7 C.F.R. §1730.25, Corrective action (RUS borrowers only).
- Staking sheets.

If the Applicant provides the information above, FEMA does not require further documentation to establish pre-disaster condition. The Applicant is not precluded from substantiating the pre-disaster condition with other documentation if it is unable to provide the documentation described above.

## **E. Parks, Recreational, Other (Category G)**

Eligible publicly owned facilities in this category include:

- Mass transit facilities such as railways;
- Beaches;
- Parks;
- Playground equipment;
- Swimming pools;
- Bath houses;
- Tennis courts;
- Boat docks;
- Piers;
- Picnic tables;
- Golf courses;
- Ball fields;
- Fish hatcheries;
- Ports and harbors; and
- Other facilities that do not fit in Categories C–F.

Unimproved natural features are ineligible.

Plantings (such as trees, shrubs, and other vegetation) are eligible when they are part of the restoration of an eligible facility for the purpose of erosion control, to minimize sediment runoff, or to stabilize slopes, including dunes on eligible improved beaches.

Grass and sod replacement are eligible if it is an integral part of the restoration of an eligible recreational facility. Vegetation replacement is also eligible if necessary to restore the function of the facility (e.g., if vegetation is a component of a sewage filtration system).

Plantings required to mitigate environmental impacts, such as those required to address impacts to wetlands or endangered species habitat, are only eligible if required by a Federal or SLTT code or standard or permit that meets the criteria described in [Chapter 8:III.H. Permit Requirements](#).

Long-term monitoring to ensure vegetative growth is ineligible even if it meets the requirements above.

Plantings ineligible for replacement include, but are not limited to:

- Replacement of trees, shrubs, and other vegetation;
- Replacement of destroyed crops; and
- Cosmetic or aesthetic vegetation, such as landscaping around public facilities or in median strips along roadways. This restriction applies even when the vegetation is damaged during performance of eligible work, such as when repairing underground utilities within landscaped areas.

## 1. Beaches

Replacement of sand on beaches is only eligible under certain conditions.<sup>332</sup> A beach is considered an eligible facility when all of the following conditions exist:

- The beach is not a federally constructed shoreline under the specific authority of USACE (i.e., not a specifically authorized and constructed Coastal Storm Risk Management Project);<sup>333</sup>
- The beach was constructed by the placement of imported sand—of proper grain size—to a designed elevation, width, and slope;<sup>334</sup> and
- The Applicant has established and adhered to a maintenance program involving periodic renourishment with imported sand to preserve the original design or a specific engineered design that is justified and clearly stated in the maintenance program.<sup>335</sup> Placement of sand under the following circumstances does not meet this requirement:
  - Emergency or “one-time” nourishment, even if to a design;
  - Emergency or “as-needed” renourishments when the beach has eroded to a critical condition where all original nourishment is gone;
  - Partial renourishments or “hot-spot” nourishments; or
  - Renourishment using material from a channel maintenance project when dredge spoils do not meet compatibility design criteria and the amount placed is dependent on the amount dredged, not the beach design.



### Documentation Supporting Eligibility of a Beach

To document eligibility of a beach as a designed and maintained facility, the Applicant **must** provide the following information (all required unless the beach was previously determined eligible, in which case FEMA may request only a portion of this information):

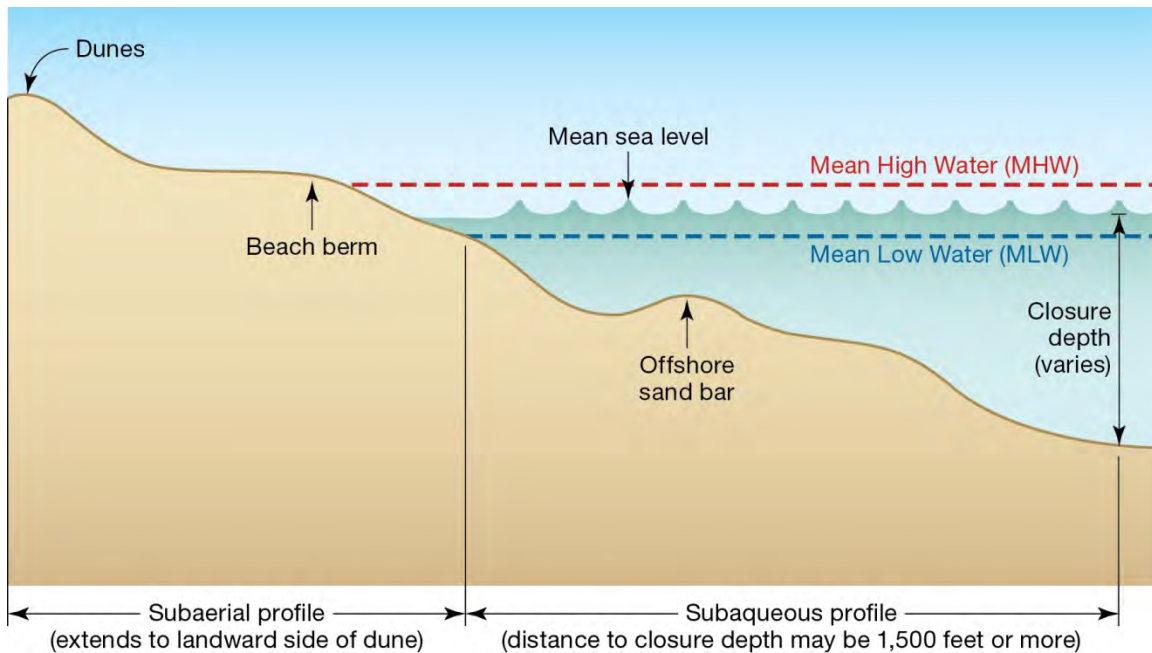
- Design studies, plans, construction documents, and as-builts for the original nourishment;
- Documentation and details of the maintenance plan, including how the need for renourishment is determined and funded; and
- Renourishment history, design studies, and as-builts for every renourishment, including construction documents if applicable.

<sup>332</sup> 44 C.F.R. §§ 206.226(j) and 206.201(c).

<sup>333</sup> 44 C.F.R. § 206.226(a).

<sup>334</sup> 44 C.F.R. § 206.226(j)(2)(i).

<sup>335</sup> 44 C.F.R. § 206.226(j)(2)(ii).



**Figure 16. Typical Beach Profile**

The amount of sand eligible for replacement is limited to the amount lost due to the incident. The Applicant needs to substantiate the amount of sand claimed with pre-and post-incident profiles that extend at least to the seaward edge of the sub-aqueous nearshore zone (Depth of Closure) (see Figure 16. *Typical Beach Profile*). If pre-storm profiles are not available, documentation may include design documents and renourishment history. The Applicant needs to adjust quantities to account for any erosion that occurred between the pre- and post-incident profiles.

Replacing sand that eroded prior to the incident is ineligible. However, the Applicant is encouraged to renourish the project to achieve the design profile.

## F. Landslides and Slope Stabilization

If an eligible facility is located on a slope and is damaged as a result of a landslide or slope instability triggered by the incident, FEMA determines the stability of the slope that supports the facility before it approves PA funding to restore the facility. Restoration of the integral ground that supports the facility may also be eligible. The impact of slope stability on eligibility is as follows:

- If the site is stable, permanent restoration of the facility and its integral ground is eligible.
- If the site is unstable and there is no evidence of pre-disaster instability after the facility was constructed, permanent restoration of the facility and its integral ground is eligible, including measures to stabilize the integral ground.
- If the site is unstable and there is evidence of pre-disaster instability after the facility was constructed, restoration of the facility's integral ground is ineligible. Restoration of the



### Terminology

**Integral ground** refers to only the ground necessary to physically support a facility.

Integral ground may be natural or improved ground upon which an eligible facility is located and that is essential to support the structural integrity and utility of the facility.

facility is eligible only upon the Applicant stabilizing the site and restoring the integral ground.

Site inspections and limited geotechnical assessments to determine site stability and to obtain a technical opinion of the cause of the slope failure are eligible.

Permanent repair to stabilize natural ground that is not integral to an eligible facility's function is ineligible.

FEMA may approve permanent relocation of the facility if the facility is subject to repetitive heavy damage and relocation is cost-effective. Eligible costs for relocation are described in Chapter 8:VI. *Relocation*.

The Applicant may request an Alternate Project if restoration of the facility is not feasible because of soil instability.

# CHAPTER 9: SCOPE OF WORK AND COST DEVELOPMENT

Once FEMA, the Recipient, and the Applicant agree on the damage description and dimensions, either the Applicant submits the SOW and cost for FEMA review and validation, or FEMA submits the project to its CRC to develop the SOW and cost. This is Phase III of the PA Program delivery process, *Scoping and Costing*, and is described in this chapter.

## I. Scope of Work Development

For completed work, the Applicant must describe the completed SOW for each of the projects and provide supporting documentation.

For Emergency Work, the SOW includes work required to address immediate threats and to remove debris and must include quantitative information. For Permanent Work, the SOW includes a description of how the Applicant plans to repair, or has repaired, the damage, including repair dimensions and hazard mitigation description and dimensions.

The Applicant should provide the following for each site (not an all-inclusive list):

- Whether the work is complete;
- Who performed, or will perform, the work (e.g., force account, contract, etc.);
- Proposed or completed, repair scope of work, including PA mitigation measures; and
- Technical studies, reports, and assessments.

## II. Cost Development

FEMA or the Recipient assists the Applicant with preparing project applications based on actual or estimated costs.

### A. Project Thresholds

FEMA establishes a minimum project threshold for each Federal fiscal year. The threshold applies to incidents declared within that fiscal year and is based on the Consumer Price Index. If a project application totals less than the minimum threshold<sup>336</sup> after the Applicant has accounted for all project costs—including insurance proceeds and other reductions to avoid duplication of benefits—the project is ineligible.<sup>337</sup>

The minimum threshold applies to each project application and not to each damage line item. FEMA does not combine work among several sites onto one project application for the **sole** purpose of reaching the minimum threshold. Because of the administrative cost involved, FEMA does not process project applications under the minimum threshold unless the



#### Small Project Preparation

If the Applicant prepares its own Small Projects, it **must** submit them to FEMA for validation within 60 days of the Recovery Scoping Meeting.

<sup>336</sup> The minimum threshold is available at: <https://www.fema.gov/assistance/public/applicants/per-capita-impact-indicator>.

<sup>337</sup> 44 C.F.R. § 206.202(d)(2).

Applicant is eligible, is disputing the SOW or costs, and is planning to appeal an amount that would increase the project amount to at least the minimum threshold. The minimum threshold does not apply to Donated Resources or Management Costs; however, these projects are only eligible when the donated resources or management costs are related to an eligible project that meets the minimum threshold.

FEMA also establishes a dollar threshold each Federal fiscal year for the implementation of Simplified Procedures under Section 422 of the Stafford Act. This threshold defines a project as large or small.<sup>338</sup>

- A Large Project has costs equal to or greater than the threshold.
- A Small Project has costs below the threshold.<sup>339</sup>

The threshold applies to incidents declared within that fiscal year. FEMA administers funding for Large and Small Projects differently. For Large Projects that are not capped, FEMA adjusts any estimated costs to the actual incurred amount so that the final approved funding is based on actual costs.<sup>340</sup> For Small Projects, FEMA does not adjust estimated costs to the actual incurred amount.<sup>341</sup> FEMA determines whether a project is large or small based on the final approved amount of eligible costs after any cost adjustments, including insurance reductions.

## **B. Expedited Projects for Emergency Work**

FEMA may provide expedited funding for Emergency Work Projects (Category A or B) that meet or exceed the Large Project threshold. FEMA funds Expedited Projects at 50 percent of the Federal share of the estimated project cost. Requests for Expedited Projects must be submitted to FEMA within 60 days of the Applicant's Recovery Scoping Meeting. To support its request, the Applicant must provide enough information for FEMA to validate that the work and costs are eligible. FEMA will work to obligate funding within 90 days of receipt of the request. Therefore, the PA Group Supervisor notifies the CRC as soon as possible after receiving a request.

The Applicant must substantiate its legal responsibility for the work. The Applicant needs to provide the following broken down by the Applicant's monthly (or bi-weekly) operational periods (if Category A or B has an increased Federal cost share for a limited timeframe, the Applicant needs to separate work anticipated to be completed within the increased cost share timeframe from work anticipated to be completed after the increased cost share period (See [Chapter 6:XIII. Increased Federal Cost Share for a Limited Timeframe](#)):

- A detailed description of the work and documentation to substantiate that the work is eligible. This includes:
  - Description of immediate threat;
  - Detailed description of work activities;
  - Work locations; and
  - Additionally, for debris: estimated quantities by type of debris substantiated with photographs or video, temporary staging and disposal locations with copies of permits and reduction methods.

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<sup>338</sup> The project threshold amount is available at: [www.fema.gov/assistance/public/applicants/per-capita-impact-indicator](http://www.fema.gov/assistance/public/applicants/per-capita-impact-indicator).

<sup>339</sup> Stafford Act § 422, 42 U.S.C. § 5189; 44 C.F.R. § 206.203(c).

<sup>340</sup> 44 C.F.R. § 206.205(b).

<sup>341</sup> 44 C.F.R. § 206.205(a).



- The total estimated cost with documentation to support the basis of the estimate and substantiate that the cost estimate is reasonable. This includes:
  - Insurance documentation
  - For Force Account labor or other hourly labor costs such as mutual aid labor:
    - Number of personnel;
    - Average hours per day;
    - Average days per week;
    - Average pay rate;
    - Lodging and per diem rates; and
    - Mutual Aid Agreement, Memorandum of Understanding or other written agreement
  - For Force Account equipment:
    - Amount of equipment by type;
    - Average hours per day;
    - Average days per week; and
    - Hourly rate
  - For rented equipment:
    - Rental agreement with pricing
  - For contract work:
    - Request for proposals, bid documents, contracts;
    - If bids have not yet been received, the Applicant may submit a unit price estimate; and
    - Debris monitor information

FEMA estimates the work based on cost information provided by the Applicant. If the Applicant does not provide sufficient cost information, FEMA may use average historical pricing. For contracted work, FEMA uses the unit cost from the contract if it determines the costs are reasonable; however, this is only for the purpose of expediting funding based on an estimate. FEMA reviews the Applicant's procurement and contracting for compliance and addresses any noncompliance prior to final reconciliation and closeout of the project.

FEMA provides the Federal cost share for the remaining 50 percent of the project cost once the Applicant provides all of the documentation required to support the estimated project cost for a non-Expedited Project.

### **C. Costs for Projects with All Work Completed**

For projects with all work complete, the PDMG works with the Applicant to:

- Answer programmatic, EHP, insurance, and hazard mitigation questions;
- Identify information and documentation requirements; and
- Address contextual information needed for supporting the Applicant's claim for completed work.

Once work on a project is 100% complete, the Applicant must submit documentation for the project within 90 days of the Recovery Scoping Meeting or within 90 days of the work completion date, whichever is later, regardless of whether the project has been obligated. FEMA makes its eligibility determination and processes the project based on the documentation

received within the 90-day deadline.<sup>342</sup> FEMA denies assistance for work and costs that are not supported with documentation by this deadline. There may be cases where, during review of the documentation submitted, FEMA determines additional information or explanation is required. In this instance, FEMA may generate an RFI specifying a deadline for response.

For Small Projects, FEMA may accept certification in lieu of documentation and may process the projects based on estimated costs even if all work is completed.<sup>343</sup> However, with exception of the scenarios listed in [Chapter 12:I.A. Small Projects](#), Small Project estimates are not subsequently adjusted to reflect actual costs.

The Applicant must still retain documentation for Net Small Project Overrun appeals and audits.



#### Terminology

**Work Completion Date** is the date the Applicant completes all work associated with the approved SOW including meeting all compliance requirements. It does not include invoice payments, warranty periods, or grant management activities (e.g., compiling and submitting documentation, financial reconciliation, requesting payment, etc.).

### D. Estimating Emergency Work Projects with Work to be Completed

Emergency Work Projects are often difficult to estimate due to the type of work conducted. Unlike Permanent Work, where a detailed SOW is usually determined and estimated with unit pricing in advance, the detailed scope of work to address Emergency Work is often unknown and therefore, difficult to estimate in advance. Additionally, emergency response activities do not generally have established unit pricing and have a lot of variables that can impact pricing. If the Applicant provides sufficient information, FEMA may process Emergency Work Projects based on estimates.

### E. Estimating Permanent Work Projects with Work to be Completed

When work is not yet complete, FEMA determines the amount of PA funding based on the estimated cost to restore the damaged facility to its pre-disaster design and function, including eligible codes and standards. The amount may include a reasonable amount of anticipated soft costs but does not include costs that are only related to, or only triggered by, changes to the pre-disaster design or function of the damaged facility. These include, but are not limited to, costs related to:

- Engineering and design;
- EHP compliance; and
- Work required by codes or standards.

If FEMA developed the SOW, it also develops the associated cost estimate.

#### 1. Projects Requiring Engineering Analysis

Some projects may require an engineering analysis to determine the method of repair. In these cases, FEMA may provide PA funding for engineering and design services.

<sup>342</sup> 44 C.F.R. § 206.205(b)(1) and 2 C.F.R. § 200.343.

<sup>343</sup> Stafford Act § 422, 42 U.S.C. § 5189; 44 C.F.R. § 206.205(a).

## 2. Applicant Estimates

FEMA accepts an Applicant-submitted cost estimate if the estimate:

- Is prepared by a licensed Professional Engineer or other estimating professional, such as a licensed architect or certified professional cost estimator<sup>344</sup> who certifies that the estimate was prepared in accordance with industry standards;
- Includes certification that the estimated cost directly corresponds to the repair of the agreed upon damage;
- Is based on unit costs for each component of the SOW and not a lump sum amount;
- Contains a level of detail sufficient for FEMA to validate that all components correspond with the agreed-upon SOW;
- Is based on the current phase of design or construction inclusive of any known costs;
- Includes actual costs for work completed at the time the cost estimate is developed; and
- Is reasonable.

FEMA evaluates Applicant-submitted estimates for reasonableness based on the criteria in [Chapter 6.I. Reasonable Costs](#) using the checklist in [Appendix L: Validation of Applicant-Provided Cost Estimates](#).

## 3. FEMA Estimates

When FEMA develops cost estimates for sites with Permanent Work that is less than 90 percent complete and total costs are expected to meet or exceed the Large Project threshold, FEMA uses the CEF in accordance with the CEF Instruction Guide<sup>345</sup>. The CEF Instructional Guide defines various factors and the range of percentage values that FEMA may apply to projects. In rare cases, a factor may need to be reviewed or adjusted. FEMA Headquarters has access to technical assistance to review the appropriate ranges for factors. Only FEMA Headquarters has the authority to approve the use of factors that exceed the CEF specified range or approve additional factors. FEMA will include the CEF contingency factor “Applicant Reserve for Change Orders” but will not include any additional factors or risk premiums associated with capped projects (Improved, Alternate, or Alternative Procedures Projects).

## 4. Expert Panel Review

A FEMA-funded,<sup>346</sup> independent third-party panel of cost estimating experts may review project estimates. FEMA does not use this panel for appeals. The review is limited to issues pertaining to the estimated cost and the panel does not make decisions related to the eligibility of work. However, it may make determinations about whether cost elements are required to execute the SOW. The panel may review cost documentation for completed work, if necessary.

- All project estimates with an estimated Federal share of \$25 million or greater are reviewed by the independent panel.
- FEMA may request the independent panel review for any cost estimate.
- The Applicant may request the panel review the estimate for any project with an estimated Federal share of at least \$5 million.

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<sup>344</sup> In lieu of a license or certification, an individual with professional experience and proficiency in the field of cost estimating may prepare and sign the cost estimate.

<sup>345</sup> [www.fema.gov/pdf/government/grant/pa/cef\\_instruct.pdf](http://www.fema.gov/pdf/government/grant/pa/cef_instruct.pdf).

<sup>346</sup> The expert panel is fully funded by FEMA and does not require a non-Federal cost share.

## 5. Insurance Reductions

FEMA reduces the estimate to account for insurance coverage based on:

- Actual insurance proceeds, if known; or
- Anticipated insurance proceeds based on the Applicant’s insurance policy, if the amount of actual proceeds is unknown.

## 6. Fixed-Cost Offer for Alternative Procedures Projects

FEMA professionally licensed engineers and architects, qualified cost estimators, construction managers, and staff with other technical expertise, as necessary, develop or review and validate estimates for all large Permanent Work Projects. FEMA transmits the estimates as fixed-cost offers to the Applicant via PA Grants Manager for consideration. If the Applicant accepts the fixed-cost offer for a Large Project, it is considered an Alternative Procedures Project.

FEMA approves the fixed-cost amount upon obligation of the project.<sup>347</sup> Once the fixed-cost amount is obligated, FEMA considers it reasonable and eligible, as long as there is no evidence of fraud and the Applicant complies with Federal grant conditions.

The following table summarizes the differences between the Alternative Procedures policy and the standard PA policy:

| Alternative Procedures Project  | Standard Project   |
|---|--|
| Fixed-cost project with use of excess funds.  | Actual cost project. No retention of excess funds associated with the approved estimate. |
| May use funds across all Alternative Procedure Permanent Work Projects.   | Can only use funds toward the specific work identified in each specific project.         |
| After FEMA approves a SOW, approval is only required for changes that involve buildings or structures aged 45 years or older, ground disturbing activities, or work in or near water.   | After FEMA approves a SOW, approval is required for any change to the SOW.               |
| Do not need to track costs associated with changes to the SOW (see <a href="#">Chapter 12:I.C. Alternative Procedures Permanent Work Projects</a> for closeout requirements)  | Must track costs associated with all changes to the SOW.                                 |
| Do not need to track costs to specific work items. Only need to track the total costs associated with the all of its Alternative Procedures Permanent Work Projects. (see <a href="#">Chapter 12:I.C. Alternative Procedures Permanent Work Projects</a> for closeout requirements) | Must track costs specific to each work item within each individual project.              |
| Do not need to track work to specific Alternative Procedures Projects. Only need to substantiate that   | Must track all work to each individual project.  |

<sup>347</sup> Obligation constitutes FEMA’s acceptance of the fixed amount.

|  |  |
|--|--|
| the work is related to the approved SOW covered across the projects. |  |
|--|--|

Once the Applicant accepts a fixed cost offer, it may not revert back to a project funded based on actual costs. FEMA does not adjust the fixed amount even if the Applicant discovers hidden damage while conducting approved work. Prior to closing the project, FEMA adjusts the fixed estimate to account for actual insurance proceeds as described in [Chapter 6:XVIII.A. Insurance Proceeds](#). Once FEMA and the Applicant agree to a fixed-cost, FEMA will not adjust funding on the basis of reasonableness or eligibility provided the Applicant completes the approved scope of work. This does not preclude de-obligations on the basis of noncompliance with grant conditions, such as environmental or historic preservation; duplication of benefits, including insurance; or evidence of fraud.

If the estimated amount is less than the Applicant is willing to accept as a fixed cost, the Applicant may decline the offer and FEMA will process the project using standard procedures. In these cases, FEMA obligates the project based on the estimated amount in the offer and adjusts funding based on actual eligible costs at closeout.

(a) *Fixed Cost Offer Deadlines*

The Applicant has up to 18 months from the disaster declaration date to accept a fixed-cost offer for each project (also subject to 30-day deadline from receipt). If the Applicant is requesting hazard mitigation funding, it must determine the actual SOW and hazard mitigation measures to be performed within the 30-day and 18-month deadlines.

Each time FEMA transmits a fixed-cost offer, the Recipient and Applicant have a combined total of 30 calendar days from the date of FEMA’s transmittal of the fixed-cost offer to accept the offer (not to exceed the 18-month deadline). FEMA processes projects without accepted fixed-cost offers by the 30-day and 18-month deadlines using standard PA policies and procedures and adjust funding based on actual eligible costs at closeout.

Time extensions to accept fixed-cost offers must be approved by FEMA’s Assistant Administrator for Recovery.

### III. Compliance Reviews

The CRC conducts a series of reviews for program compliance. The Insurance Specialist reviews the Applicant’s insurance documentation, calculates required reductions, and documents insurance obtain and maintain requirements as a condition of the award. FEMA EHP staff review the SOW to determine if the SOW has a potential of impacting environmental or historic resources, FEMA EHP staff review the SOW to determine if modifications would reduce potential impacts. and document the EHP requirements as a condition of the award.

# CHAPTER 10: OBLIGATION AND RECOVERY TRANSITION

This Chapter describes the final review and obligation process, the Recovery Transition Meeting, and provides an overview of PA considerations for transitioning field operations back to the Regional office, a PA Processing Center, or a Long-Term Recovery Office. It also includes PA policy on appeals and provides a summary of arbitration. Recipients and FEMA conduct final project reviews in Phase IV: *Final Reviews*. FEMA obligates Projects and transitions recovery roles and responsibilities in Phase V of the PA Program delivery process, *Obligation and Recovery Transition*.

## I. Final Review and Obligation

### A. Recipient Review

Project applications are routed to the Recipient for review before FEMA conducts the final review. The Recipient reviews project applications to ensure that all of the Applicant's incident-related impacts, repair methods, and costs are properly addressed.

### B. Final Review

The PAGS performs the Final Review to verify the work and costs described in the project application are eligible before obligating funds. The final reviewer ensures the cost share is accurate.

If the Federal cost share is greater than \$1 million, the final reviewer submits the project application to the Million Dollar Review queue. FEMA notifies Congress and the Department of Homeland Security of project applications with a Federal cost share greater than \$1 million before obligation (including subsequent project amendments). FEMA refers to this as the Large Project Notification (LPN) process.

If the Federal share is less than \$1 million, the final reviewer submits the project application into a queue where FEMA obligates the Federal share of the eligible project cost to the Recipient.<sup>348</sup> Once obligated, the Project constitutes the official record of the approved SOW for the Project.

### C. Obtaining Funds

Strategic Funds Management is FEMA's process for obligating PA funding based on the Applicant's schedule to execute the work. If a Permanent Work Project is greater than \$1 million and the Applicant does not need funds for more than 180 days from the time the Project is ready for obligation, FEMA obligates funds based on the project completion schedule. FEMA's *Strategic Funds Management – Implementation Procedures for the Public Assistance Program* (FEMA SOP 9570.24) addresses this obligation process in detail.<sup>349</sup>

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<sup>348</sup> 44 C.F.R. § 206.202(e).

<sup>349</sup> [www.fema.gov/sites/default/files/2020-07/fema\\_9570.24\\_startegic-funds-mgmt\\_SOP\\_12-21-2012.pdf](http://www.fema.gov/sites/default/files/2020-07/fema_9570.24_startegic-funds-mgmt_SOP_12-21-2012.pdf).

The Recipient is responsible for notifying the Applicant that funds are available<sup>350</sup> and for distributing the funds to the appropriate Subrecipient.<sup>351</sup> Funds that FEMA has obligated are available to the Recipient to pass through to the appropriate Subrecipient.<sup>352</sup>

## II. Recovery Transition Meeting

The PDMG coordinates with the Recipient to schedule a Recovery Transition Meeting once the Applicant has signed all of its projects in PA Grants Portal. The transition meeting prepares the Applicant for FEMA's transition of PA Operations from the JFO to the Regional office. The PDMG or Recipient representative contacts the Applicant to coordinate meeting logistics, review discussion topics, and identify appropriate Applicant attendees. FEMA, the Recipient, and the Applicant attend the Recovery Transition Meeting.

FEMA uses this meeting to:

- Ensure all claimed damage is sufficiently and accurately documented;
- Discuss record retention requirements;
- Explain deadlines for completion of work and appeals, including Net Small Project Overruns;
- Ensures the Applicant understands the terms and conditions of the projects (e.g., requirements for environmental and historic preservation, procurement, minimum standards, disposition, etc.);
- Transition primary point-of-contact from field personnel to the Recipient; and
- Discuss questions or concerns.

## III. Transition Field Operation to Regional or Recovery Office

This section provides an overview of PA considerations for transitioning from the JFO and CRC environment, in which project application development is the predominant activity, to the post-JFO environment (e.g., Regional Office or Long-Term Recovery Office), where program management and closeout are predominant.

A JFO closes when most FEMA program and FCO goals have been met. The FCO coordinates with the FEMA Region, FEMA Headquarters, the PAGS, and other program leads to determine closure. PA considerations include the number of remaining:

- Project applications to be written;
- Project applications in each review queue; and
- Recovery Transition Meetings.

Once the JFO closes, PA operations are transferred to the Regional Office or to a Recovery Operation. The Region regains primary responsibility for ongoing operations and the CRC maintains its support role to the region until all project applications for the incident have been processed through obligation.

The need for a PA Recovery Operation exists when the JFO is ready to close but too much work remains for the Region to assume full responsibility for the operation or if the Regional Office is

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<sup>350</sup> 44 C.F.R. § 206.200(b)(2)(i).

<sup>351</sup> 44 C.F.R. § 206.202(a).

<sup>352</sup> 44 C.F.R. § 206.200(b)(2)(ii).

located too far from the incident location. In this situation, a Recovery Operation is set up to finish remaining project amendments, complete required reviews, resolve outstanding issues, and obligate remaining funds. PA Recovery Operations may include the following:

- PA Processing Center: Established by the respective Regional Office after a small to medium sized disaster when IA is no longer active in the disaster area and the FCO has demobilized; the PAGS may still be active in the Processing Center with oversight provided by the Regional Office; and
- Long-Term Recovery Office: Established by FEMA Headquarters after a large disaster.

Transition from a Recovery Operation to the Regional Office varies by region. It typically occurs when project formulation is complete and outstanding issues have been resolved.



# CHAPTER 11: POST AWARD MONITORING

This chapter provides PA policy and procedures on Phase VI: *Post Award Monitoring and Amendments*. This includes reporting requirements, post award changes in SOW, work completion deadlines, and audits.

## I. Large Project Quarterly Progress Reports

The Large Project Quarterly Progress Report (QPR) is a tool for FEMA and the Recipient to track the progress of Large Projects. FEMA requires the Recipient to report on the status of all open Large Projects on a quarterly basis.<sup>353</sup> Recipients must submit QPRs to FEMA no later than 30 days after the end of each quarter (see Table 6, *Deadlines for Submitting Quarterly Progress Reports*).

The Subrecipient must submit the following for each incomplete Large Project on a quarterly basis:

- Total expenditures to date;
- Status of the project (either construction phase or percent complete);
- Whether the work is complete (per definition in [Chapter 11:V. Work Completion Deadlines](#));
- Projected or actual work completion date (per definition in [Chapter 11:V. Work Completion Deadlines](#)); and
- Any circumstances that could delay the project.

In addition to verifying and submitting the Subrecipient's information above, the Recipient must submit the following for each open Large Project on a quarterly basis:

- Total amount disbursed to the Subrecipient;
- Whether final payment was made;
- Whether time extensions were approved; and
- Latest approved work completion deadline.

**Table 6: Deadlines for Submitting Quarterly Progress Reports**

| Quarter | Dates                   | Report Due Date |
|---------|-------------------------|-----------------|
| 1       | October 1 – December 31 | January 30      |
| 2       | January 1 – March 31    | April 30        |
| 3       | April 1 – June 30       | July 30         |
| 4       | July 1 – September 30   | October 30      |

## II. Financial Status Reports

Recipients submit Federal Financial Status Reports (FFRs) (SF-425s) quarterly to the respective FEMA Regional Office.<sup>354</sup> The FFR provides the status of funds for the prime award, the

<sup>353</sup> 44 C.F.R. § 206.204(f).

<sup>354</sup> 2 C.F.R. § 200.327.

Recipient's expenditure drawdowns, and whether the Recipient is meeting its cost-share requirements.

### III. Federal Funding Accountability and Transparency Act

The Federal Funding Accountability and Transparency Act (FFATA) requires Recipients to register in the FFATA Subaward Reporting System (FSRS) and report on all awards and subawards equal to or greater than \$25,000.

### IV. Post Award Change in Scope of Work

While proceeding with the project, the Applicant must ensure that it uses PA funding only for eligible work as identified in the Project). The Applicant may identify a need to change the SOW. The Applicant should engage the Recipient and FEMA as soon as it identifies a change to the SOW to allow FEMA time to review changes for eligibility and EHP compliance requirements prior to commencement of work. If the Applicant begins work associated with a change before FEMA review and approval, it jeopardizes PA funding.

A change requires a written request with detailed justification and documentation to support the eligibility of the requested revision.<sup>355</sup> If the request involves previously unreported damage, the Applicant must also provide documentation demonstrating how the incident caused the damage. The Recipient must forward the request to FEMA with its written recommendation.<sup>356</sup> Table 7: *Information to Support SOW Changes*, indicates the information necessary for FEMA to evaluate a request for a change in SOW.

FEMA engages subject matter experts for technical assistance when necessary to reach a determination of whether the requested change is eligible for PA funding.

Changes in SOW due to one of the following reasons are generally eligible:

- Alternate repair method is more cost-effective than the original proposed repair method;
- Original repair method is not technically feasible;
- Increase in previously approved quantities due to errors and omissions;
- Hidden damage discovered during construction and is disaster-related; or
- The Applicant wishes to pursue an Improved or Alternate Project.

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<sup>355</sup> 44 C.F.R. § 206.204(e) and 2 C.F.R. § 200.308.

<sup>356</sup> 44 C.F.R. § 206.204(e).

**Table 7. Information to Support SOW Changes**

| Information to Support SOW Changes   |
|--|
| <p><b>Change in SOW requests should be submitted prior to the approved project deadline and include the following (not an all-inclusive list):</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> Detailed changes to SOW and cost (required)</li><li><input type="checkbox"/> Reason for changes (required)<ul style="list-style-type: none"><li>• If more cost-effective repair: both cost estimates</li><li>• If original SOW not feasible: supporting documentation such as technical reports</li><li>• If hidden damage (must be found during performance of eligible work):<ul style="list-style-type: none"><li>○ Documentation substantiating the damage is related to the declared incident;</li><li>○ Photographs documenting damage; and</li><li>○ Change orders</li></ul></li></ul></li><li><input type="checkbox"/> Construction timeline / project schedule<ul style="list-style-type: none"><li>• Time extension, if necessary (include information in Table 8. <i>Information to Support a Time Extension</i>)</li></ul></li></ul> |

**A. Scope of Work Changes on Permanent Work Alternative Procedures Projects**

For Alternative Procedures Projects, once the SOW is approved and a fixed-cost offer is accepted:

- The Applicant must notify FEMA prior to making SOW changes that involve:
  - Buildings or structures that are 45 years of age or older,
  - Ground disturbing activities, or
  - Work in or near waterways.

With exception of buildings or structures that are 45 years of age or older, the Applicant does not need to notify FEMA when it intends to make changes that substantially conform to the approved SOW. Changes that substantially conform include items, such as:

- Substitutions in material type (e.g., pre-cast concrete vs. steel beam, stainless steel vs galvanized fasteners); or
- Interior floor plan reconfigurations (e.g., adding, moving or removing rooms/features).

If the Applicant wishes to change the SOW to the extent that it changes the hazard mitigation, such changes must be approved within the 18-month deadline and the fixed-cost offer amount will be adjusted to reflect the cost of the revised hazard mitigation SOW.

## V. Work Completion Deadlines

FEMA only provides PA funding for work completed and costs incurred<sup>357</sup> within regulatory deadlines (see Figure 17. *Work Completion Deadlines*). The deadline for Emergency Work is 6 months from the declaration date. The deadline for Permanent Work is 18 months from the declaration date.<sup>358</sup> FEMA considers these timeframes to be a project's approved POP.

| Deadlines for Completion of Work |        |
|----------------------------------|--------|
| Type of Work                     | Months |
| Emergency Work                   | 6      |
| Permanent Work                   | 18     |

**Figure 17. Work Completion Deadlines**

Work completion is defined as the completion of all work associated with the approved SOW including meeting all compliance requirements. It does not include invoice payments, warranty periods, or PA grant management and administration activities (e.g., compiling and submitting closeout documentation, financial reconciliation, requesting payment, etc.). If the Applicant determines it needs additional time to complete work, it must submit a written request for a time extension to the Recipient with the following information:

- Documentation substantiating delays beyond its control;
- A detailed justification for the delay;
- Status of the work; and
- The project timeline with the projected completion date.<sup>359</sup>

The Recipient has authority to extend deadlines for individual projects based on extenuating circumstances. Except for temporary relocation projects, the Recipient may extend Emergency Work up to an additional 6 months and Permanent Work up to an additional 30 months.<sup>360</sup> The Recipient must notify FEMA when it approves a time extension either via FEMA's systems and reporting mechanisms or written notification.<sup>361</sup>

FEMA has authority to extend individual project deadlines beyond these timeframes if extenuating circumstances justify additional time.<sup>362</sup>

The prime award POP begins on the first day of the incident period and initially extends four years from the declaration date. Project extensions cannot exceed the Recipient's prime award POP. Therefore, the Recipient must request FEMA approval for an extension to the prime award POP if it anticipates project work to extend beyond the end of the prime award POP.<sup>363</sup>

FEMA generally considers the following to be extenuating circumstances beyond the Applicant's control:

- Permitting or EHP compliance related delays due to other agencies involved;
- Environmental limitations (such as short construction window);

<sup>357</sup> 2 C.F.R. § 200.309 and 44 C.F.R. § 206.204(d)(2).

<sup>358</sup> 44 C.F.R. § 206.204(c)(1).

<sup>359</sup> 44 C.F.R. § 206.204(d)(2).

<sup>360</sup> 44 C.F.R. § 206.204(c)(2)(ii).

<sup>361</sup> Per 2 C.F.R. § 200.308(d)(2), for non-construction Emergency Work, the Recipient must notify FEMA at least 10 days prior to the project deadline.

<sup>362</sup> 44 C.F.R. § 206.204(d).

<sup>363</sup> The FEMA Chief Financial Officer must approve the request.

- Inclement weather (site access prohibited or adverse impact on construction); and
- Lack of availability of materials, equipment, or contractors to complete work.

FEMA generally considers the following to be circumstances within the control of the Applicant and not justifiable for a time extension:

- Permitting or environmental delays due to Applicant delays in requesting permits;
- Lack of funding;
- Change in administration or cost accounting system; and
- Compilation of cost documentation.

Although FEMA only provides PA funding for work performed on or before the approved deadline, the Applicant must still complete the approved SOW for funding to be eligible.<sup>364</sup> FEMA deobligates funding for any project that the Applicant does not complete. If the Applicant completes a portion of the approved SOW and the completed work is distinct from the uncompleted work, FEMA only deobligates funding for the uncompleted work. For example, if one project includes funds for three facilities and the Applicant restores only two of the three facilities, FEMA only deobligates the amount related to the facility that the Applicant did not restore.

Table 8: *Information to Support a Time Extension*, indicates the information that the Applicant should submit to support a request for a time extension.

**Table 8. Information to Support a Time Extension**

| Information to Support a Time Extension  |
|--|
| <p><b>Request should be submitted prior to current approved deadline, be specific to one project, and include the following information with supporting documentation:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Dates and provisions of all previous time extensions</li> <li><input type="checkbox"/> Construction timeline / project schedule in support of requested time (required)</li> <li><input type="checkbox"/> Basis for time extension request (required) <ul style="list-style-type: none"> <li>• Delay in obtaining permits <ul style="list-style-type: none"> <li>○ Permitting agencies involved and application dates</li> </ul> </li> <li>• Environmental delays or limitations (e.g., short construction window, nesting seasons) <ul style="list-style-type: none"> <li>○ Correspondence with various agencies</li> <li>○ Specific details</li> </ul> </li> <li>• Inclement weather (prolonged severe weather conditions prohibited access to the area, or adversely impacted construction) <ul style="list-style-type: none"> <li>○ Specific details</li> </ul> </li> <li>• Other reason for delay <ul style="list-style-type: none"> <li>○ Specific details</li> </ul> </li> </ul> </li> </ul> |

## VI. Audits

Recipients and Subrecipients are subject to Federal and non-Federal audits. Records are subject to audit by State or Territorial government auditors, FEMA, the U.S. Department of Homeland

<sup>364</sup> 44 C.F.R. § 206.204(d)(2).

Security Office of Inspector General, and the U.S. Government Accountability Office (GAO).<sup>365</sup> FEMA may adjust project funding due to audit findings.

#### **A. Single Audits**

A Recipient or Subrecipient that expends \$750,000 or more in Federal funds during its fiscal year must perform a single or program-specific audit.<sup>366</sup>

#### **B. Government Accountability Office**

The GAO is the investigatory arm of Congress and is under the direction of the Comptroller General of the United States. GAO is an independent, nonpartisan agency that investigates how the Federal Government spends taxpayer dollars. Its mission is to help improve the performance and accountability of the Federal Government. Although the GAO usually audits FEMA programs, it has authority to audit any project.

#### **C. Office of the Inspector General**

The Department of Homeland Security's Office of Inspector General (OIG) conducts independent audits and investigations on FEMA programs, operations, activities, and functions; how Recipients and Subrecipients expend Federal funds; and oversight of non-Federal audits such as single audits. The OIG evaluates activities to identify, deter, and address fraud, waste, and abuse. The OIG has authority to audit any project, including Alternative Procedures Projects.

#### **D. Recovery of Improper Payments**

FEMA conducts audit assessments on drawdowns to recover payments identified as improper as required by the Improper Payments Elimination and Recovery Improvement Act (IPERIA). FEMA's *Public Assistance Recovery of Improper Payments Standard Operating Procedure* (SOP 9570.16)<sup>367</sup> provides additional information.

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<sup>365</sup> 2 C.F.R. § 200.336.

<sup>366</sup> 2 C.F.R. § 200.501.

<sup>367</sup> [www.fema.gov/sites/default/files/2020-06/fema\\_sop9570.16\\_improper-payment-recoupment-plan\\_02-28-2014.pdf](http://www.fema.gov/sites/default/files/2020-06/fema_sop9570.16_improper-payment-recoupment-plan_02-28-2014.pdf).

# CHAPTER 12: FINAL RECONCILIATION AND CLOSEOUT

Phase VII: *Final Reconciliation and Closeout* is the final stage of PA Program delivery process. This chapter provides PA policy and procedural requirements for reconciliation and closeout of Projects, Subrecipients, and the PA award.<sup>368</sup>

## I. Project Reconciliation and Closeout

FEMA requires timely and complete project-level information from the Recipient as work is completed to facilitate efficient and effective closeout of the Recipient's prime award. This section defines requirements for project-level closeout. To initiate project-level closeout, the Subrecipient must inform the Recipient that its project is complete and the date the work was completed. To ensure a timely closeout process, the Subrecipient should notify the Recipient immediately as it completes each Large Project and when it has completed its last Small Project. Subrecipients should not wait for the Quarterly Progress Report to inform the Recipient as it must meet the 90-day closeout deadlines defined throughout this section.

### A. Small Projects

Once FEMA obligates a Small Project, FEMA does not adjust the approved amount of an individual Small Project. This applies even when FEMA obligates the Project based on an estimate and actual costs for completing the eligible SOW differ from the estimated amount. To close Small Projects, the Recipient must submit a Small Project Completion Certification and certify that:

- The Subrecipient completed the approved SOWs for all of its Small Projects in accordance with the FEMA-State/Territory/Tribe Agreement; and
- It made all payments in accordance with the FEMA-State/Territory/Tribe agreement.<sup>369</sup>

FEMA only adjusts the approved amount on individual Small Projects if one of the following conditions applies:

- The Subrecipient did not complete the approved SOW;
- The Subrecipient requests additional funds related to an eligible change in SOW; or
- The Project contains inadvertent errors or omissions.

In these cases, FEMA only adjusts the specific cost items affected.

If the total actual cost of all of a Subrecipient's Small Projects combined exceeds the total amount obligated for all of the Small Projects, the Subrecipient may request additional funding. The Subrecipient must request the additional funding through the appeal process, described in [Chapter 3: V.C. Appeal Rights and Requirements](#), within 60 days of work completion on its last Small Project.<sup>370</sup> FEMA refers to this as a Net Small Project Overrun (NSPO) appeal. The appeal

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<sup>368</sup> The language in this document supersedes the language in the December 2013 *Public Assistance Program Management and Grant Closeout Standard Operating Procedure* (SOP) 9570.14.

<sup>369</sup> 44 C.F.R. § 206.205(a).

<sup>370</sup> 44 C.F.R. § 206.204(e)(2).

must include actual cost documentation for all Small Projects that FEMA originally funded based on estimate amounts.<sup>371</sup>

If the Subrecipient is not appealing for an NSPO, the Recipient must submit the certification to FEMA within 180 days from the latest Small Project work completion date or the latest approved deadline of the Subrecipient's Small Projects, whichever is sooner. The Recipient must submit certification of completion of all of its own Small Projects within 90 days of the latest Small Project work completion date or the approved deadline of its last Small Projects, whichever is sooner.<sup>372</sup>

Once FEMA receives the Recipient's certification and completes the necessary review, FEMA closes the respective Small Projects and notifies the Recipient in writing.

## **B. Large Projects**

FEMA closes Large Projects individually as each is completed.<sup>373</sup> With exception of Capped Projects, the final eligible amount for a Large Project is the actual documented cost incurred to complete the eligible SOW.<sup>374</sup>

The Subrecipient must provide documentation to support the actual costs within 90 days of work completion.<sup>375</sup> The Recipient must submit a Large Project Expenditure Report and Completion Certification and must certify that:

- All incurred costs are associated with the approved SOW;
- The Subrecipient completed all work in compliance with the FEMA-State/Territory/Tribe Agreement; and
- It made all payments in accordance with 2 C.F.R. § 200.305.<sup>376</sup>

The Recipient must submit its certification of the Subrecipient's completion of each Large Project with the final claim for PA funding for the Project and supporting documentation to FEMA within 180 days of the work completion date or the Project deadline, whichever occurs first.<sup>377</sup> The Recipient must submit its certification for each of its own Large Projects within 90 days of the work completion date or the Project deadline, whichever occurs first. If work on a Large Project is complete prior to obligation, the Applicant must still submit actual cost documentation within the 90 days of work completion. However, the Recipient's certification and final payment of claim is due within 180-days from the date of obligation.

At a minimum, Large Project closeout packages must include:

- A cost breakdown identifying the individual elements that comprise the total actual costs claimed;
- Subrecipient's accounting of Project expenditures and dates of expenditures (such as a report from its accounting system);

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<sup>371</sup> 44 C.F.R. § 206.204(e).

<sup>372</sup> 2 C.F.R. § 200.343.

<sup>373</sup> 44 C.F.R. § 206.205(b).

<sup>374</sup> 44 C.F.R. § 206.203(c)(1).

<sup>375</sup> 44 C.F.R. § 206.205(b)(1) and 2 C.F.R. § 200.343.

<sup>376</sup> 44 C.F.R. § 206.205(b)(1).

<sup>377</sup> 2 C.F.R. § 200.343. FEMA allows 180 days based on the combined allowance of 90 days for the Subrecipient and 90 days for the Recipient.



- All applicable documentation to support the actual costs as identified in [Chapter 6. Cost Eligibility](#);
- Documentation sufficient for FEMA to validate the work performed was consistent with the approved SOW;
- Documentation to substantiate compliance with all terms and conditions of the award (e.g., EHP compliance documentation and insurance policies showing additional coverage obtained); and
- A summary explaining the documentation submitted.

Prior to closing Projects, FEMA:

- Verifies there are no outstanding appeals or arbitration cases;
- Reviews the invoices and other documentation related to the work performed to validate it was consistent with the approved SOW, including completion of any approved PA mitigation;
- Determines whether the Subrecipient completed the work within the approved deadline (FEMA limits reimbursement to costs incurred within the deadline);
- Ensures no duplication of funding exists (e.g., with insurance or costs in any other related Projects);
- Validates compliance with cost principles, including, but not limited to:
  - Equipment and property disposition;
  - Procurement and contracting; and
  - Reasonableness of costs (FEMA limits reimbursement to what it can determine to be reasonable).
- Validates compliance with all terms and conditions of the award, including, but not limited to:
  - Code and standard requirements;
  - EHP requirements; and
  - Insurance obtain and maintain requirements.
- FEMA reviews and verifies the accuracy of the actual costs and evaluates and reconciles any cost overruns or underruns. If the information is extensive, such as payroll records or trip tickets, FEMA selects and reviews a representative sample of the documents. If FEMA successfully validates the sample, it considers all of the records to be correct. However, if FEMA identifies errors it works with the Recipient to correct the errors and reviews a larger sample. If necessary, based on the number or significance of the errors, FEMA may return the final claim for correction and resubmittal. For Projects with funding changes, FEMA prepares a project amendment and obligates additional funds or reduces funding based on actual costs to complete the eligible SOW.<sup>378</sup>

If the Project included approved PA mitigation measures; FEMA does not re-evaluate the cost-effectiveness of the PA mitigation based on the final actual cost. If during the review, FEMA determines that the Subrecipient performed work that was not included in the approved SOW, the Subrecipient jeopardizes its funding. FEMA designates the project as an Improved Project,

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<sup>378</sup> 44 C.F.R. § 206.205(b)(2).

reviews the additional SOW for EHP compliance, and either deobligates or caps funding at the original estimated amount, depending on the outcome of the review.<sup>379</sup>

For Capped Projects, the Subrecipient must provide documentation to support that it used the funds in accordance with the eligibility criteria described in [Chapter 8:VIII.B. Use of Capped Project Funds](#).

If the Applicant did not comply with all Federal requirements (e.g., procurement and contracting, codes and standards, EHP, insurance, etc.), FEMA may deobligate either all or a portion of the funding.

Once FEMA completes its review and funding adjustments, FEMA closes the Project and notifies the Recipient in writing.

### **C. Alternative Procedures Permanent Work Projects**

Work must be completed by the end of the latest Alternative Procedures Project period of performance and the Recipient must certify that all incurred costs are associated with the approved SOW and that the Subrecipient completed all work in accordance with FEMA regulations and policies. The Recipient must submit its certification to FEMA within 180 days of the Subrecipient completing its last Alternative Procedures Project or the latest Alternative Procedure Project deadline, whichever occurs first, in order for the Subrecipient to retain and use any excess funds.

The closeout certification must include a final report of Alternative Procedures Project costs and documentation to support the following:

- Summary of actual work completed;
- Mitigation measures achieved, if applicable;
- Compliance with EHP requirements;
- Compliance with the obtain and maintain insurance requirement;
- Summary of total actual costs to complete the Alternative Procedure Projects;
- Compliance with Federal procurement procedures; and
- Actual insurance proceeds received.

Subrecipients do not need to track costs to specific work items. Subrecipients only need to substantiate and certify that all claimed costs are related to the overall work deemed eligible for the Alternative Procedure Projects.

### **D. Subrecipients**

The Recipient needs to request that FEMA close each Subrecipient once all of its respective Projects have been completed and closed for the disaster. The Recipient may either request this in the same submittal as the Subrecipient's last Project closeout request or may submit a separate request. The request should include a Project Completion Certification Report as it lists all of the Subrecipient's Projects.

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<sup>379</sup> 44 C.F.R. § 206.203(d)(1).

If all of the Subrecipient's Projects are closed and there are no outstanding audits, FEMA closes the Subrecipient and notifies the Recipient in writing.

## II. Stafford Act Section 705

Stafford Act Section 705 imposes a 3-year limit on FEMA's authority to recover payments made to SLTT government Recipients and Subrecipients unless there is evidence of fraud. Section 705 does not apply to PNPs. To ensure consistent application of the provisions contained in Section 705, FEMA issued Recovery Policy (FP 205-081-2), *Stafford Act Section 705, Disaster Grant Closeout Procedures*, which describes the limitations and requirements in detail.<sup>380</sup>

## III. Public Assistance Award Closeout

The Recipient must submit its final FFR (SF-425) with a written request to close the PA award. FEMA and the Recipient certify that all work was completed, all eligible costs have been reimbursed, and financially reconciled. The PA program is programmatically closed when FEMA ensures that all PA Projects awarded for the incident met statutory and regulatory requirements. For FEMA to close the PA award, the following conditions should be met:

- FEMA has issued final determinations on all appeals;
- FEMA has obligated all eligible PA funding;
- The Recipient and Subrecipients have completed all PA Projects and have met the statutory and regulatory requirements governing the program, including compliance with EHP requirements and insurance purchase requirements;
- The Recipient has passed through all obligated funds appropriately and submitted its final expenditure report to FEMA;
- FEMA has adjusted the funding level for the program, as appropriate; and
- Both FEMA and the Recipient have completed all administrative actions related to the PA Program.

The Recipient must liquidate all obligations within 90 days of the end of the prime award period of performance.

## IV. Documentation Retention Requirements

Subrecipients must maintain all source documentation for each Project<sup>381</sup> for 3 years after the date of transmission of the final expenditure report for project completion as certified by the Recipient.<sup>382</sup> The Recipient must keep all financial and program documentation<sup>383</sup> for 3 years after the date it submits the final SF-425. There are several exceptions to this timeframe that may require longer retention periods, including exceptions relating to real property and equipment disposition, audits, and litigation.<sup>384</sup> Additionally, SLTT government laws may require longer retention periods.

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<sup>380</sup> [www.fema.gov/sites/default/files/2020-04/FP\\_205-081-2\\_Stafford\\_Act--Section\\_705\\_Policy.pdf](http://www.fema.gov/sites/default/files/2020-04/FP_205-081-2_Stafford_Act--Section_705_Policy.pdf).

<sup>381</sup> 2 C.F.R. § 200.302(b)(3).

<sup>382</sup> Stafford Act § 705(b)(1), 42 U.S.C. § 5205. See FEMA Policy 205-081-2, *Stafford Act Section 705, Disaster Grant Closeout Procedures* for additional details.

<sup>383</sup> 2 C.F.R. § 200.302(b)(3).

<sup>384</sup> 2 C.F.R. § 200.333.

## ABBREVIATIONS AND ACRONYMS

|        |   |
|--------|---|
| ACSR   | Aluminum Conductor Steel Reinforced                                 |
| ADA    | Americans with Disabilities Act                                     |
| BCA    | Benefit-Cost Analysis   |
| BFE    | Base Flood Elevation  |
| BIA    | Bureau of Indian Affairs  |
| CAA    | Clean Air Act   |
| CATEX  | Categorical Exclusion   |
| CBRA   | Coastal Barrier Resources Act                                       |
| CBRS   | Coastal Barrier Resource System                                     |
| CDC    | Centers for Disease Control and Prevention                          |
| CERCLA | Comprehensive Environmental Response Compensation and Liability Act |
| C.F.R. | Code of Federal Regulations   |
| CRC    | Consolidated Resource Center  |
| CWA    | Clean Water Act   |
| CZMA   | Coastal Zone Management Act   |
| DFA    | Direct Federal Assistance   |
| DMP    | Debris Management Plan  |
| EA     | Environmental Assessment  |
| EHP    | Environmental and Historic Preservation                             |
| EIS    | Environmental Impact Statement                                      |
| EMAC   | Emergency Management Assistance Compact                             |
| EO     | Executive Order   |
| EOC    | Emergency Operation Center  |
| EPA    | U.S. Environmental Protection Agency                                |
| ER     | Emergency Relief (Program)  |
| ERFO   | Emergency Relief for Federally Owned Roads (Program)                |
| ESA    | Endangered Species Act  |
| EWP    | Emergency Watershed Protection Program                              |
| FCO    | Federal Coordinating Officer  |
| FHWA   | Federal Highway Administration                                      |
| FIRM   | Flood Insurance Rate Map  |

|       |  |
|-------|--|
| FMAG  | Fire Management Assistance Grant                 |
| FP    | FEMA Recovery Policy                             |
| FSR   | Financial Status Report                          |
| GPS   | Global Positioning System                        |
| HEPA  | High-Efficiency Particulate Air                  |
| HHS   | U.S. Department of Health and Human Services     |
| HHW   | household hazardous waste                        |
| HMA   | Hazard Mitigation Assistance                     |
| HMGP  | Hazard Mitigation Grant Program                  |
| HMP   | Hazard Mitigation Proposal                       |
| HUD   | U.S. Department of Housing and Urban Development |
| HVAC  | heating, ventilation, and air conditioning       |
| IBD   | Infrastructure Branch Director                   |
| IA    | Individual Assistance                            |
| IHP   | Individuals and Households Program               |
| JFO   | Joint Field Office                               |
| NCEI  | National Centers for Environmental Information   |
| NEPA  | National Environmental Policy Act                |
| NFIP  | National Flood Insurance Program                 |
| NHPA  | National Historic Preservation Act               |
| NMFS  | National Marine Fisheries Service                |
| NRCS  | Natural Resources Conservation Service           |
| NWS   | National Weather Service                         |
| PA    | Public Assistance                                |
| PAGS  | Public Assistance Group Supervisor               |
| PDA   | Preliminary Damage Assessment                    |
| PNP   | Private Nonprofit                                |
| PDMG  | Program Delivery Manager                         |
| PDTFL | Program Delivery Task Force Leader               |
| RA    | Regional Administrator                           |
| RCRA  | Resource Conservation and Recovery Act           |
| RIP   | Rehabilitation and Inspection Program            |
| ROW   | Right-of-Way                                     |

|        |                                      |
|--------|--------------------------------------|
| RPA    | Request for Public Assistance        |
| RUS    | Rural Utilities Service              |
| SBA    | U.S. Small Business Administration   |
| SFHA   | Special Flood Hazard Area            |
| SHPO   | State Historic Preservation Officer  |
| SI     | Site Inspector                       |
| SOW    | Scope of Work                        |
| STATEX | Statutory Exclusion                  |
| T&M    | time and materials                   |
| TFL    | Task Force Leader                    |
| THPO   | Tribal Historic Preservation Officer |
| USACE  | U.S. Army Corps of Engineers         |
| U.S.C. | United States Code                   |
| USCG   | U.S. Coast Guard                     |
| USDA   | U.S. Department of Agriculture       |
| USFWS  | U.S. Fish and Wildlife Service       |

# REFERENCES AND RESOURCES

## Public Assistance Program References

- <https://www.fema.gov/assistance/public>
- Archived Policy Documents: [Archives: FEMA Public Assistance Policy | FEMA.gov](#)
- Archived Publications: [Archive: Public Assistance Publications | FEMA.gov](#)
- *Cost Estimating Format (CEF) for Large Projects Standard Operating Procedure* (FEMA SOP 9570.8): <https://www.fema.gov/assistance/public/cost-estimating-tool>
- *Damage Assessment Operations Manual*: [Damage Assessment Operations Manual \(fema.gov\)](#)
- *Debris Estimating Field Guide* (FEMA 329): [www.fema.gov/pdf/government/grant/pa/fema\\_329\\_debris\\_estimating.pdf](http://www.fema.gov/pdf/government/grant/pa/fema_329_debris_estimating.pdf)
- *Direct Reimbursement for Host-State Evacuation and Sheltering Costs* (FEMA SOP 9570.1): [www.fema.gov/9570.1-host-state-sheltering\\_sop.pdf](http://www.fema.gov/9570.1-host-state-sheltering_sop.pdf)
- *Environmental and Historic Preservation (EHP) Fact Sheet for Debris Removal Activities*: <https://www.fema.gov/grants/guidance-tools/environmental-historic>
- Equipment Rates: [www.fema.gov/schedule-equipment-rates](http://www.fema.gov/schedule-equipment-rates)
- *Infectious Disease Event Fact Sheet* (FP 104-009-001): [Infectious Disease Event, Fact Sheet \(www.fema.gov\)](#)
- Mission Assignments for ESF #10 (FEMA 9523.8): [www.fema.gov](http://www.fema.gov)
- FEMA Recovery Interim Policy, *Consensus-Based Codes, Specifications and Standards for Public Assistance* (FP 104-009-11): [Consensus-Based Codes and Standards V2.1 - DRRRA 1235\(b\) \(fema.gov\)](#)
- FEMA Recovery Policy, *Public Assistance Management Costs (Interim)* (FP 104-11-2): [www.fema.gov/sites/default/files/2020-07/pa\\_management\\_costs\\_interim\\_policy.pdf](http://www.fema.gov/sites/default/files/2020-07/pa_management_costs_interim_policy.pdf)
- *Field Manual* (Procurement Information for FEMA Public Assistance Award Recipients and Subrecipients): [Field Manual PDAT \(fema.gov\)](#)
- *Public Assistance Building Back Better Fact Sheet*: [Public Assistance Building Back Better \(fema.gov\)](#)
- *Public Assistance Fact Sheet*: [Policy, Guidance and Fact Sheets | FEMA.gov](#)
- *Public Assistance Management Costs Interim Policy Fact Sheet*: [https://www.fema.gov/sites/default/files/2020-07/fema\\_pa\\_management-costs-interim\\_policy.pdf](https://www.fema.gov/sites/default/files/2020-07/fema_pa_management-costs-interim_policy.pdf)
- *Public Assistance Management Costs Standard Operating Procedures*: [PA Management Costs SOP \(fema.gov\)](#)
- *Private Nonprofit Houses of Worship Fact Sheet*: [Private Nonprofit Houses of Worship FAQ \(fema.gov\)](#)
- *Public Assistance Debris Removal Tips Fact Sheet*: [www.fema.gov/sites/default/files/2020-07/fema\\_pa\\_debris-removal-tips.pdf](http://www.fema.gov/sites/default/files/2020-07/fema_pa_debris-removal-tips.pdf)
- *Public Assistance Policy on Insurance* (FP 206-086-1): [www.fema.gov/sites/default/files/2020-05/FP206-086-1\\_PublicAssistancePolicyInsurance\\_062915.pdf](http://www.fema.gov/sites/default/files/2020-05/FP206-086-1_PublicAssistancePolicyInsurance_062915.pdf)

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- *Public Assistance Recovery of Improper Payments Standard Operating Procedures* (FEMA SOP 9570.16): [SOP 9570.16 Improper Payment Recoupment \(fema.gov\)](#)
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- *Safe Rooms for Tornadoes and Hurricanes, Guidance for Community and Residential Safe Rooms* (FEMA P-361): [www.fema.gov/sites/default/files/2020-07/safe-rooms-tornadoes-hurricanes.pdf](#)
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- *Strategic Funds Management – Implementation Procedures for the PA Program* (FEMA SOP 9570.24): [www.fema.gov/2020-07/fema\\_9570.24\\_startegic-funds-mgmt.pdf](#)
- *Validation of Small Projects* (FEMA SOP 9570.6): [SOP Validation 7-2-cover.doc \(fema.gov\)](#)

### **Forms**

- Application for Federal Assistance (SF-424) and Assurances (SF 424-D): [www.grants.gov/forms/sf-424-family.html](#)
- Federal Financial Status Report (FFR) (SF-425): [www.grants.gov/forms/post-award-reporting-forms.html](#)
- Request for Public Assistance: [www.fema.gov/assistance/public/apply](#)

### **Statutes**

- *The Robert T. Stafford Disaster Relief and Emergency Assistance Act, as Amended* (Stafford Act), Title 42 of the United States Code (U.S.C.) § 5121 et seq.
- [www.fema.gov/robert-t-stafford-disaster-relief-and-emergency-assistance-act-public-law-93-288-amended](#)
- Federally Recognized Tribe List Act of 1994: [http://uscode.house.gov/statutes/pl/103/454.pdf](#)

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- Title 2 of the Code of Federal Regulations (C.F.R.), Grants and Agreements: [www.ecfr.gov/cgi-bin/text-idx?SID=6bb67f6254dbbfb229adddfa247ca4eb&mc=true&tpl=/ecfrbrowse/Title02/2tab\\_02.tpl](#)
- 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards: [www.ecfr.gov/cgi-bin/text-idx?SID=6bb67f6254dbbfb229adddfa247ca4eb&mc=true&node=pt2.1.200&rgn=div5](#)
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- 44 C.F.R. Part 201, Mitigation Planning: [www.ecfr.gov/cgi-bin/text-idx?SID=e9db96b738b11340c696c4ee451d3865&mc=true&node=pt44.1.201&rgn=div5](http://www.ecfr.gov/cgi-bin/text-idx?SID=e9db96b738b11340c696c4ee451d3865&mc=true&node=pt44.1.201&rgn=div5)
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### **Environmental Protection Laws and Executive Orders**

- Clean Air Act (CAA): [www.epa.gov/air/caa/](http://www.epa.gov/air/caa/)
- Clean Water Act (CWA): [www.epa.gov/laws-regulations/summary-clean-water-act](http://www.epa.gov/laws-regulations/summary-clean-water-act)
- Coastal Barrier Resources Act (CBRA): [www.fws.gov/ecological-services/habitat-conservation/cbra/Act/index.html](http://www.fws.gov/ecological-services/habitat-conservation/cbra/Act/index.html)
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- National Environmental Policy Act (NEPA): [www.epa.gov/nepa](http://www.epa.gov/nepa)
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- Wild and Scenic Rivers Act: [www.rivers.gov/wsr-act.php](http://www.rivers.gov/wsr-act.php)
- Executive Order (EO) 11988, Floodplain Management: <https://www.fema.gov/emergency-managers/practitioners/environmental-historic/laws/descriptions#11988>
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- EO 12898, Environmental Justice: <https://www.fema.gov/emergency-managers/practitioners/environmental-historic/laws/descriptions#12898>

### **Historic Preservation Laws and Tools**

- Advisory Council on Historic Preservation: [www.achp.gov](http://www.achp.gov)
- American Institute for Conservation Code of Ethics and Guidelines for Practice: [www.culturalheritage.org/about-conservation/code-of-ethics](http://www.culturalheritage.org/about-conservation/code-of-ethics)
- National Historic Preservation Act (NHPA): [www.nps.gov/history/local-law/nhpa1966.htm](http://www.nps.gov/history/local-law/nhpa1966.htm)
- National Register of Historic Places: [www.nps.gov/subjects/nationalregister/index.htm](http://www.nps.gov/subjects/nationalregister/index.htm)

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- Americans with Disabilities Act (ADA): [www.ada.gov](http://www.ada.gov)
- EO 13717, Establishing a Federal Earthquake Risk Management Standard: [www.gpo.gov/fdsys/pkg/FR-2016-02-05/pdf/2016-02475.pdf](http://www.gpo.gov/fdsys/pkg/FR-2016-02-05/pdf/2016-02475.pdf)

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- Hazard Mitigation Assistance (HMA) Programs: [www.fema.gov/grants/mitigation](http://www.fema.gov/grants/mitigation)
- HMA Guidance: [Hazard Mitigation Assistance Guidance | FEMA.gov](http://www.fema.gov/hazard-mitigation-assistance-guidance)
- Hazard Mitigation Grant Program (HMGP): [www.fema.gov/grants/mitigation](http://www.fema.gov/grants/mitigation)
- State Hazard Mitigation Officer: [www.fema.gov/grants/mitigation/state-contacts](http://www.fema.gov/grants/mitigation/state-contacts)
  
- Individual Assistance (IA) Programs: [www.fema.gov/assistance/individual](http://www.fema.gov/assistance/individual)
  - Individuals and Households Program (IHP): [www.fema.gov/assistance/individual/program](http://www.fema.gov/assistance/individual/program)
- National Disaster Recovery Framework (NDRF): [www.fema.gov/emergency-managers/national-preparedness/frameworks/recovery](http://www.fema.gov/emergency-managers/national-preparedness/frameworks/recovery)
- National Response Framework (NRF): [www.fema.gov/emergency-managers/national-preparedness/frameworks/response](http://www.fema.gov/emergency-managers/national-preparedness/frameworks/response)

### **Other Federal Agencies**

- Bureau of Indian Affairs (BIA): [www.indianaffairs.gov](http://www.indianaffairs.gov)
- Federal Highway Administration (FHWA): [www.fhwa.dot.gov](http://www.fhwa.dot.gov)
  - FHWA Emergency Relief Program (ERP): [www.fhwa.dot.gov/programadmin/erelief.cfm](http://www.fhwa.dot.gov/programadmin/erelief.cfm)
- National Oceanic and Atmospheric Administration (NOAA): [www.noaa.gov](http://www.noaa.gov)
  - National Marine Fisheries Service (NMFS): [www.nmfs.noaa.gov](http://www.nmfs.noaa.gov)
  - National Centers for Environmental Information (NCEI), formerly known as the National Climatic Data Center (NCDC): [www.ncei.noaa.gov](http://www.ncei.noaa.gov)
  - NWS Cooperative Network Stations: [www.nws.noaa.gov/om/coop/](http://www.nws.noaa.gov/om/coop/)
- Natural Resources Conservation Service (NRCS): [www.nrcs.usda.gov](http://www.nrcs.usda.gov)
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- National Weather Service (NWS): [www.weather.gov](http://www.weather.gov)
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- U.S. Coast Guard (USCG): [www.uscg.mil](http://www.uscg.mil)
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- U.S. Department of Homeland Security (DHS): [www.dhs.gov](http://www.dhs.gov)
  - DHS Office of Inspector General (OIG): [www.oig.dhs.gov](http://www.oig.dhs.gov)
- U.S. Department of Housing and Urban Development (HUD): [www.hud.gov](http://www.hud.gov)
  - Community Development Block Grant Program:  
[www.hud.gov/program\\_offices/comm\\_planning/communitydevelopment/programs](http://www.hud.gov/program_offices/comm_planning/communitydevelopment/programs)
- U.S. Department of Labor: [www.dol.gov](http://www.dol.gov)
- U.S. Environmental Protection Agency (EPA): [www.epa.gov](http://www.epa.gov)
- U.S. Fish and Wildlife Service (USFWS): [www.fws.gov](http://www.fws.gov)
- U.S. Government Accountability Office (GAO): [www.gao.gov](http://www.gao.gov)

# TERMS AND DEFINITIONS

## **Acquisition cost**

The net invoice price of equipment including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose it was acquired. Other charges such as the cost of installation, transportation, taxes, duty, or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the Recipient's regular accounting practices.

## **Animal**

Any living or dead member of the animal kingdom, including any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate or any part thereof.

## **Applicant**

A non-Federal entity submitting an application for assistance under the Recipient's Federal award.

## **Assistance Animal**

An animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provide emotional support that alleviates identified symptoms or effects of a person's disability. Although dogs are the most common type of assistance animal, other animals can also be assistance animals.

## **Award (Federal)**

The financial assistance that a non-Federal entity receives either directly from a Federal awarding agency or indirectly from a pass-through entity; or the cost-reimbursement contract under the Federal Acquisition Regulation that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity.

## **Backfill Employee**

A replacement employee who performs the regular duties of other personnel.

## **Coastal zone**

The coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of coastal States, including islands, transitional and intertidal areas, salt marshes, wetlands, and beaches.

## **Cost-to-charge ratio**

A ratio established by Medicare to estimate a medical service provider's actual costs in relation to its charges.

## **Critical action**

An action for which even a slight chance of flooding is too great. The minimum floodplain of concern for critical actions is the 500-year floodplain (also referred to as the critical action floodplain).

**Current fair market value**

The value of equipment and supplies determined by selling them in a competitive market or by researching advertised prices for similar items on the used market.

**Duplication of Benefits**

Funding received from two sources for the same item of work.

**Educational institution**

Any elementary school as defined by section 801(c) of the Elementary and Secondary Education Act of 1965; any secondary school as defined by section 801(h) of the Elementary and Secondary Education Act of 1965; or any institution of higher education as defined by section 1201 of the Higher Education Act of 1965.

**Emergency**

Any occasion or instance for which the President determines Federal assistance is needed to supplement SLTT efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

**Emergency Protective Measure**

An action taken by a community before, during, and after an incident to save lives, protect public health and safety, and prevent damage to improved public and private property.

**Emergency Work**

Work that must be done immediately to save lives, protect improved property, protect public health and safety, or avert or lessen the threat of a major disaster.

**Equipment**

Tangible personal property, including information technology systems, having a useful life of more than 1 year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000.

**Facility**

Any publicly or privately-owned building, works, system or equipment—built or manufactured—or an improved and maintained natural feature. Land used for agricultural purposes is not a facility.

**Federal agency**

Any department, independent establishment, government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, but not including the American National Red Cross.

**Federal share**

The portion of the total project costs that are paid by Federal funds.

**Final expenditure report**

The report the Recipient submits to FEMA for all of a Subrecipient's Projects, certifying that the grant terms and conditions have been met and project costs are reconciled.

**Flood control work**

A structure such as a levee, flood wall, flood control channel, or water control structure that was designed and constructed to have appreciable effects in preventing damage by irregular and unusual rises in water level.

**Flood fighting**

An activity or measure (e.g., sandbagging, buttressing) intended to prevent or stop flooding, at levels above flood stage, or to prevent structural failure.

**Force account**

An Applicant's own labor forces and equipment.

**Fringe benefits**

A percentage of the actual wages that pays for employee benefits.

**Immediate threat**

The threat of additional damage or destruction from an event that can reasonably be expected to occur within 5 years.

**Improved property**

A structure, facility, or item of equipment that was built, constructed, or manufactured. Land used for agricultural purposes is not improved property.

**Incident period**

The time span during which the disaster-causing incident occurs.

**Indian Tribal Government**

Any federally recognized governing body of 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 Tribe List Act of 1994, Title 25 of the U.S. Code (U.S.C.) 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

**Indirect cost**

A cost incurred for a common or joint purpose benefiting more than one cost objective that is not readily assignable to the cost objectives specifically benefited.

**Inland zone**

The environment inland of the coastal zone excluding the Great Lakes and specified ports and harbors on inland rivers. Precise boundaries are identified in Federal regional contingency plans.

**Large Project**

A project for which the final obligated (Federal and non-Federal) amount is equal to or *greater* than the annually adjusted cost threshold for small project grants.

**Local government**

A county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government; an Indian Tribe or authorized tribal organization, or Alaska Native village or organization that does not meet the definition of Indian Tribal Government; or a rural community, unincorporated town or village, or other public entity, for which an application for assistance is made by a State or political subdivision of a State.

**Major disaster**

Any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, for which the President determines causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as Amended to supplement the efforts and available resources of SLTT governments and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

**Management cost**

Any indirect cost, any direct administrative cost, and any other administrative expense associated with a specific project under a major disaster or emergency.

**Museum**

A facility that preserves and exhibits a documented collection of artistic, historic, scientific, or other objects.

**Non-Federal entity**

An institution of higher education, nonprofit organization, local government, Indian Tribe, or State that carries out a Federal award as a Recipient or Subrecipient.

**Pass-through entity**

A non-Federal entity that provides a subaward to a Subrecipient to carry out part of a Federal program.

**Period of performance**

The time during which the non-Federal entity may incur new obligations to carry out the work authorized under the Federal award.

**Permanent Work**

Restorative work that must be performed through repairs or replacement to restore an eligible facility on the basis of its pre-disaster design and current applicable codes and standards.

**Personal property**



Property other than real property. It may be tangible, having physical existence, or intangible.

**Pet (household)**

A Domesticated animal that is traditionally kept in the home for pleasure rather than for commercial purposes, can travel in a commercial carrier, and can be housed in a temporary facility. Examples are dogs, cats, birds, rabbits, rodents, and turtles. Household pets do not include reptiles (except turtles), amphibians, fish, insects, arachnids, farm animals (including horses), or animals kept for racing purposes.

**Pre-disaster design**

The size or capacity of a facility as originally designed and constructed or subsequently modified by changes or additions to the original design. It does not mean the capacity at which the facility was being used at the time the major disaster occurred if different from the most recent designed capacity.

**Pre-disaster function**

The function the facility was performing immediately prior to the disaster.

**Private nonprofit organization**

Any nongovernmental agency or entity that currently has an effective ruling letter from the U.S. Internal Revenue Service, granting tax exemption under Sections 501(c), (d), or (e) of the Internal Revenue Code, or satisfactory evidence from the State that the nonrevenue producing organization or entity is a nonprofit one organized or doing business under State law.

**Private roads**

Roads that are not owned or operated by or otherwise the legal responsibility of a Federal or SLTT entity (including orphan roads, roads in gated communities, homeowners' association roads, etc.).

**PNP custodial care facility**

A building, structure, or system, including those for essential administration and support, that is used to provide institutional care for persons who require close supervision and some physical constraints on their daily activities for their self-protection, but do not require day-to-day medical care.

**PNP educational facility**

Classrooms plus related supplies, equipment, machinery, and utilities of an educational institution necessary or appropriate for instructional, administrative, and support purposes.

**PNP emergency facility**

A building, structure, equipment, or system used to provide emergency services, such as fire protection, ambulance, or rescue, to the general public, including the administrative and support facilities essential to the operation of such emergency facilities, even if not contiguous.

**PNP medical facility**

A hospital, outpatient facility, rehabilitation facility, or facility for long-term care as such terms are defined in Section 645 of the Public Health Service Act (42 U.S.C. 291o) and any similar facility offering diagnosis or treatment of mental or physical injury or disease, including the administrative and support facilities essential to the operation of such medical facilities even if not contiguous.

**Project**

A logical grouping of work required as a result of the declared major disaster or emergency.

**Providing entity**

The entity providing mutual aid assistance to a requesting entity pursuant to a local or statewide mutual aid agreement.

**Public entity**

An organization formed for a public purpose whose direction and funding are provided by one or more political subdivisions of the State.

**Public facility**

Any of the following facilities owned by a SLTT government: any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; any non-Federal aid, street, road, or highway; and any other public building, structure, or system, including those used for educational, recreational, or cultural purposes; or any park.

**Real property**

Land, including land improvements, structures, and appurtenances thereto, but excludes moveable machinery and equipment.

**Recipient**

A non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program.

**Reasonable cost**

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. In other words, a reasonable cost is a cost that is both fair and equitable for the type of work being performed.

**Rehabilitation facility**

A facility that primarily provides diagnosis and treatment for rehabilitation of injuries, disabilities, or illness. (Consistent with the definition of “comprehensive outpatient rehabilitation facility” in 42 U.S.C. § 1395x(cc)(2)).

**Request for Public Assistance**

The form a public entity or PNP organization uses to apply for assistance under the Public Assistance Program.

**Requesting Entity**

An entity that requests mutual aid assistance from a Providing Entity for work resulting from a declared fire, emergency, or major disaster within its legal jurisdiction.

**Service animal**

A dog that is individually trained to do work or perform tasks for people with disabilities or access and functional needs.

**Simplified acquisition threshold**

The dollar amount below which a non-Federal entity may purchase property or services using small purchase methods. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 C.F.R. Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. As of the publication of this part, the simplified acquisition threshold is \$150,000, but this threshold is periodically adjusted for inflation.

**Small Project**

A project for which the final obligated (Federal and non-Federal) amount is less than the annually adjusted cost threshold for small project grants.

**Special Flood Hazard Area**

The land area subject to inundation during a flood having a 1 percent chance of being equaled or exceeded in a given year (also referred to as the base flood or 100-year flood). Special Flood Hazard Areas are shown on FIRMs published by FEMA.

**State**

Any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

**Subaward**

An award provided by a pass-through entity to a Subrecipient for the Subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.

**Subrecipient**

A non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program. It does not include an individual that is a beneficiary of such program. A Subrecipient may also be a Recipient of other Federal awards directly from a Federal awarding agency.

**Substantial Damage**

Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**Supply**

Any tangible personal property other than that meeting the definition of equipment.

**Trust land**

Land, the title to which is held by the United States in trust for an Indian Tribe or individual, or which is held by an Indian Tribe or individual subject to a restriction by the United States against alienation. “Trust or restricted interest in land” or “trust or restricted interest in a parcel of land” means an interest in trust land. Collectively referred to as “trust lands.”

**Wetland**

An area that is saturated by water with a frequency sufficient to support or, under normal hydrologic conditions would support, a prevalence of vegetation or aquatic life typically adapted to saturated or seasonally saturated soil conditions (e.g., swamp, fresh and saltwater marsh, bog, fen).

**Zoo**

Any facility maintained under the care of a Doctor of Veterinary Medicine, in which live animal(s) are kept for public exhibition or education. Aquariums and wildlife or zoological parks may meet this definition.

## APPENDIX A: ENVIRONMENTAL AND HISTORIC PRESERVATION COMPLIANCE

The following statutes and Executive Orders (EOs) are commonly encountered Federal requirements that were established to protect the environment and preserve the Nation's historic and archaeological resources. FEMA reviews each Public Assistance (PA) project to ensure the work complies with applicable Federal environmental and historic preservation (EHP) laws, their implementing regulations, and applicable EOs. Compliance with all Federal and SLTT laws is a requirement of every FEMA award. SLTT laws, such as hazardous material management laws, vary by location and are not included in this appendix.

FEMA prepares a Greensheet at the beginning of each emergency or disaster declaration with specific information relevant to each State and area. The Greensheet briefly discusses the relevant laws and project types that might trigger application of those laws and informs the Applicant that failure to comply with Federal and SLTT laws may jeopardize funding.

### **National Environmental Policy Act**

Section 102 of the National Environmental Policy Act (NEPA) requires Federal agencies to integrate environmental values into their decision-making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions.<sup>385</sup> The White House Council on Environmental Quality publishes its NEPA regulations in Title 40 of the Code of Federal Regulations (C.F.R.) Parts 1500–1508. The U.S. Department of Homeland Security publishes policies and procedures for implementing NEPA and provide specific processes that FEMA must follow before funding a project. The NEPA process ensures consideration of environmental consequences of the project before decisions are made and involves the public.

### **National Historic Preservation Act**

Section 106 of the National Historic Preservation Act (NHPA) requires FEMA to consider the effects an undertaking will have on historic properties and provide the Advisory Council on Historic Preservation the opportunity to comment on the effects of the undertaking.<sup>386</sup> Historic properties include buildings or groups of buildings (districts), structures, objects, landscapes, archaeological sites, and traditional cultural properties included in, or eligible for inclusion in, the National Register of Historic Places.<sup>387</sup>

### **Endangered Species Act**

The Endangered Species Act (ESA) requires Federal agencies to use their authorities to conserve federally listed threatened and endangered species (listed species) and critical habitats. FEMA must also consult with the U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration's (NOAA's) National Marine Fisheries Service (NMFS), also known as NOAA Fisheries, to ensure that proposed projects will not jeopardize the continued

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<sup>385</sup> 42 U.S.C. § 4332.

<sup>386</sup> 16 U.S.C. § 470f.

<sup>387</sup> [www.nps.gov/subjects/nationalregister/index.htm](http://www.nps.gov/subjects/nationalregister/index.htm).

existence of any listed species or result in the destruction or adverse modification of critical habitat for listed species.<sup>388</sup>

### **Clean Water Act**

The Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants in the waters of the United States (e.g., rivers and streams, lakes and ponds, coastlines, wetlands, estuaries). The CWA makes it unlawful to discharge any pollutant from a specific source into navigable waters without the appropriate CWA permits from the U.S. Army Corps of Engineers (USACE) or State regulatory agency.<sup>389</sup> In addition, the CWA requires authorization for dredging or filling in waters (including disposal of dredged material).

### **Rivers and Harbors Act**

The Rivers and Harbors Act requires that authorization be obtained from USACE to construct any structure in or over any navigable water, including authorization for projects involving constructing or modifying bridges and causeways over navigable waters or constructing any dam or dike in a navigable water. Typically, requests for this type of authorization are handled together with requests for authorization of projects under Section 404 of the CWA.

### **Safe Drinking Water Act**

The purpose of the Safe Drinking Water Act is to protect public health by ensuring the quality of drinking water. The law authorizes the U.S. Environmental Protection Agency (EPA) to, among other things, set standards for the levels of individual contaminants allowed in drinking water and designate as aquifers that are the sole or principal source of drinking water for an area as sole source aquifers. For any financial assistance project that has the potential to contaminate an aquifer and that is located in the identified review area for a sole source aquifer, FEMA must consult with the EPA before funding the project.

### **Clean Air Act**

The Clean Air Act (CAA) protects the Nation's air through the reduction of smog and atmospheric pollution. Air quality compliance often requires certain measures be implemented, such as dust abatement, vehicle emissions control, fuel storage, and distribution procedures. There may be additional requirements in nonattainment areas (defined as those areas that do not meet national standards for air quality and, therefore, require more rigorous compliance measures).<sup>390</sup>

### **Coastal Barrier Resources Act**

The Coastal Barrier Resources Act (CBRA)<sup>391</sup> established the John H. Chafee Coastal Barrier Resources System (CBRS), which consists of relatively undeveloped coastal barriers along the Atlantic, Gulf, Great Lakes, and Caribbean coasts. CBRA minimizes adverse impacts to these areas by restricting Federal assistance that encourages development within the CBRS. USFWS

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<sup>388</sup> 16 U.S.C. § 1536, Endangered Species Act Section 7.

<sup>389</sup> 33 U.S.C. § 1251 et seq.

<sup>390</sup> 42 U.S.C. § 7401 et seq.

<sup>391</sup> 16 U.S.C. § 3501 et seq.

publishes maps designating these areas.<sup>392</sup> FEMA must consult with USFWS prior to providing PA funding for work within the CBRs.<sup>393</sup>

### **Migratory Bird Treaty Act**

The Migratory Bird Treaty Act makes it unlawful to pursue, hunt, take, capture, kill, or sell migratory birds listed in the statute without a waiver from USFWS.<sup>394</sup> FEMA consults with USFWS regarding projects likely to trigger compliance with this Act.

### **Bald and Golden Eagle Protection Act**

The Bald and Golden Eagle Protection Act prohibits any person from pursuing, capturing, killing, wounding, disturbing, or otherwise taking bald eagles or golden eagles, including their parts (e.g., feathers), nests, or eggs, unless authorized by a permit from the USFWS. The prohibition on disturbance applies to nests and previously used nest sites when eagles are not present if, were an eagle to return, such alterations would lead to injury, death or nest abandonment.

### **Magnuson-Stevens Fishery Conservation and Management Act**

The Magnuson-Stevens Fishery Conservation and Management Act is the primary law for managing and maintaining sustainable fisheries in waters of the United States. The Magnuson-Stevens Fishery Conservation and Management Act protects essential fish habitat, which includes the waters and substrate necessary to maintain healthy fisheries. FEMA must consult with NMFS when any proposed PA project could have an adverse effect on essential fish habitat (defined as any impact that reduces quality or quantity of essential fish habitat).<sup>395</sup>

### **Marine Mammal Protection Act**

The Marine Mammal Protection Act prohibits, with certain exceptions, the “take” of marine mammals in U.S. waters or by U.S. citizens on the high seas. The law prohibits attempts to hunt, capture, kill, or harass any marine mammals. The law authorizes NMFS or USFWS (depending on the species in question) to issue incidental take permits and incidental harassment authorizations.

### **National Marine Sanctuaries Act (NMSA)**

The National Marine Sanctuaries Act, which is part of the Marine Protection, Research and Sanctuaries Act, authorizes the Secretary of Commerce to designate and manage areas of the marine environment as National Marine Sanctuaries (NMS), which NOAA administers. Activities within each NMS are governed by regulations. A sanctuary resource is defined as any living or nonliving resource of a NMS that contributes to the conservation, recreational, ecological, historical, educational, cultural, archeological, scientific, or aesthetic value of the sanctuary. The National Marine Sanctuaries Act prohibits destroying, injuring, or causing the

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<sup>392</sup> 16 U.S.C. §§ 3501 and 3503. The U.S. Fish and Wildlife Service publishes Coastal Barrier Resource System maps at: [www.fws.gov/ecological-services/habitat-conservation/cbra/Maps/index.html](http://www.fws.gov/ecological-services/habitat-conservation/cbra/Maps/index.html).

<sup>393</sup> 16 U.S.C. § 3505.

<sup>394</sup> 16 U.S.C. §§ 703–712.

<sup>395</sup> 16 U.S.C. §§ 1801–1884.

loss of any sanctuary resource. A permit is required to conduct any activity within a sanctuary that is otherwise prohibited.

### **Coastal Zone Management Act**

The Coastal Zone Management Act (CZMA) provides for the management of the Nation's coastal resources. The CZMA establishes a voluntary partnership between the Federal Government and coastal and great lakes States. It requires participating States to develop State coastal zone management plans. PA projects located in, or near, established coastal zone management areas must be consistent with the enforceable policies of the State's federally approved coastal zone management program.<sup>396</sup> Before approving a project in a coastal zone management area, FEMA consults with the State agency overseeing the implementation of the CZMA plan to ensure the project is consistent with the program's provisions.

### **Farmland Protection Policy Act**

The Farmland Protection Policy Act is intended to minimize the extent to which Federal programs contribute to the conversion of prime or unique farmland, or land of statewide or local importance, to nonagricultural uses and to ensure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, local, and private programs and policies to protect farmland. The Farmland Protection Policy Act and U.S. Department of Agriculture (USDA) implementing procedures require FEMA to evaluate whether projects it funds irreversibly convert such farmland to nonagricultural uses and to consider alternative actions that could avoid adverse effects. For projects that have the potential to irreversibly convert such farmland, FEMA must consult with the USDA Natural Resources Conservation Service (NRCS) to identify potential impacts to that farmland.<sup>397</sup>

### **Wild and Scenic Rivers Act**

The Wild and Scenic Rivers Act protects the free-flowing condition of rivers that are part of the National Wild and Scenic Rivers System (System) or are under study for inclusion in the System because of their scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values (the rivers under study are listed on the Nationwide Rivers Inventory or have been formally identified as Study Rivers). If a proposed project is located on a river covered by the Wild and Scenic Rivers Act (including a designated river, a Study River, or a river on the Nationwide Rivers Inventory), FEMA must review it for compliance with the Wild and Scenic Rivers Act and consult with the managing agency for the affected designated river.<sup>398</sup>

### **Resource Conservation and Recovery Act**

The Resource Conservation and Recovery Act (RCRA) established a framework for Federal, State, and local cooperation for controlling the management of hazardous and non-hazardous solid waste. EPA's role is to establish minimum regulatory standards, usually implemented by the States, which can establish their own requirements for solid waste management. RCRA

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<sup>396</sup> 16 U.S.C. § 1451 et seq.

<sup>397</sup> 7 U.S.C. § 4201 et seq.

<sup>398</sup> 16 U.S.C. § 1271 et seq.



requires the safe disposal of waste materials, promotes the recycling of waste materials, and encourages cooperation with local agencies.<sup>399</sup>

### **Comprehensive Environmental Response, Compensation and Liability Act**

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), also known as Superfund, authorizes the Federal Government to respond to releases or threatened releases of hazardous substances into the environment through short-term removals and long-term remedial response actions. Superfund also triggered the development of the National Priorities List, a list of national priorities among the sites with known or threatened releases of hazardous contaminants. The 1986 amendments to CERCLA included the Emergency Planning and Community Right-to-Know Act (EPCRA) which, among other things, creates mechanisms to help local communities plan for chemical emergencies.

### **Executive Order 11988, Floodplain Management**

EO 11988, Floodplain Management, requires Federal agencies to minimize or avoid, to the extent possible, the long- and short-term adverse impacts associated with occupancy and modifications of floodplain and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. It requires Federal agencies to use a systematic decision-making process to evaluate the potential effects of projects located in, or affecting, floodplains; document each step of the process; and involve the public in the decision-making process. This process is designed to:

- Reduce flood loss risks;
- Minimize the impacts of floods on human safety, health, and welfare; and
- Restore and preserve the natural and beneficial functions of floodplains.

FEMA publishes its implementing regulations for EO 11988 in 44 C.F.R. Part 9, Floodplain Management and Protection of the Wetlands. These regulations set forth the policy, procedures, and responsibilities to implement and enforce the EO, including the decision-making process, which is referred to as the 8-step process.<sup>400</sup>

### **Executive Order 11990, Protection of Wetlands**

EO 11990, Protection of Wetlands, requires Federal agencies to avoid to the extent possible, the long- and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative. To meet these objectives, EO 11990 requires Federal agencies to use a systematic decision-making process to evaluate the potential effects of projects in, or affecting, wetlands; document each step of the process; and involve the public in the decision-making process.

FEMA publishes its implementing regulations for EO 11990, Protection of Wetlands in 44 C.F.R. Part 9, Floodplain Management and Protection of the Wetlands. These regulations set forth the policy, procedures, and responsibilities to implement and enforce the EO, including the decision-making process, which is referred to as the 8-step process.

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<sup>399</sup> 42 U.S.C. § 6901 et seq.

<sup>400</sup> 44 C.F.R. § 9.6, Decision-making process.

**Executive Order 12898, Environmental Justice**

EO 12898, Environmental Justice, requires Federal agencies to identify and address any disproportionately high and adverse human health or environmental effects on minority and low-income populations as a result of their actions.

**Executive Order 13112, Invasive Species**

EO 13112, Invasive Species, requires agencies to use their programs and authorities to help prevent the introduction, establishment, and spread of invasive species; respond to invasive species outbreaks; restore native species in areas invaded by invasive species; promote public education related to invasive species control; and avoid authorizing, funding, or carrying out activities that promote the introduction, establishment, or spread of invasive species.

## APPENDIX B: PRIVATE NONPROFIT FACILITY ELIGIBILITY EXAMPLES

Below are examples of private nonprofit (PNP) facility eligibility determinations.

### **Facility owned by PNP – PNP Leases Portion of Space to For-Profit Service**

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 for 70 percent of the floor space, excluding the common area floor space, as defined in this policy.

#### Analysis:

The building is ineligible because the eligible services were offered in less than 50 percent of the building space.

### **PNP Recreational Center Providing Eligible Services**

The PNP Springtown Recreation Center claims that it provides eligible essential social 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 families of domestic abuse, and shelter workshops. These programs are provided by the recreation center staff and offered 5 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 determines eligibility and the level of assistance. Therefore, even though the entire facility is used for eligible purposes, FEMA prorates PA funding based on the proportion of the total time it is used for eligible services.

### **Support Facility Owned by PNP**

A parking garage is owned by an eligible PNP hospital to support its nearby hospital facility. The ground floor is leased to retail businesses and totals 15 percent of the total space of the garage.

#### Analysis

Title 44 of the Code of Federal Regulations (C.F.R.) § 206.221(e), *Private nonprofit facility*, authorizes assistance for administrative and support facilities essential to the operation of medical facilities and emergency facilities, which in this example includes the parking garage. Because the hospital uses more than 50 percent of the parking garage, the facility is eligible based on primary use. FEMA assistance would be prorated based on the percentage of space used for the eligible parking purpose. The parking garage is eligible only because of its association with the hospital.

### **Facilities Owned by PNP Homeowners' Association**

The Woodlands Homeowners' Association is a PNP organization responsible for providing certain services for a 200-home development. The Homeowners' Association's facilities 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 social 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 serves 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.

### **Recreational Center – Primarily Athletic Services**

Westover Recreation Center sponsors a number of activities.

The center is available for rental Friday, Saturday, and Sunday evening to companies, religious groups, clubs, and civic organizations. It is offered as a location for league parties, office parties, seminars, conferences, and holiday celebrations. The center has rooms set aside for seniors' bridge and other card games, along with occasional workshops for photography, pottery and ceramics, and art.

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-square-foot gymnasium/basketball court.

#### *Analysis*

Although Westover Recreation Center 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.

"Facilities established or primarily used for athletic (or) recreational activities are ineligible 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. For these reasons, a PNP facility similar to Westover would not be eligible.

### **Mixed Use Community Center – Nominal Fee**

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 a wide-screen TV, darkroom, pianos for practice, ceramics lab, woodshop, computer room, 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. Classes are offered in piano, bridge, arts and crafts, and cooking. The center sponsors numerous seniors' activities, which include trips, luncheons, and recreational and educational activities. A lunch program is offered for seniors and their spouses. Some exercise classes are also offered. Health screenings and immunizations are regularly offered. Door-to-door transportation is provided to those who need it.

#### Analysis

By virtue of the wide range of community activities, Somerset Community Center would be an eligible community center. Although it does offer athletic and recreational activities, these are minimal in the time and space allocated to them; therefore, it is not a recreational center. The nominal fee makes it a service to the public.

#### **School Operated by a Religious Institution**

The Community Church operates a State-certified private 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 campus consists of three buildings: one used primarily for the secular curriculum, one used primarily for religious instruction, and a chapel primarily used for religious worship. Admissions to the school are restricted to members of Community Church.

#### Analysis

Evaluate the three buildings separately. The two buildings used, respectively, for secular and religious education are eligible as educational facilities. As educational facilities, they are considered to provide critical services and therefore Community Church does not need to apply to SBA to receive funding for permanent work on those buildings. The chapel is eligible as a house of worship. Houses of worship provide noncritical services, so Community Church is required to apply for an SBA loan for the chapel. The restricted admissions process does not affect eligibility. Pursuant to the Stafford Act, no PNP facility is excluded from eligibility because leadership or membership in the organization is limited to people that share a religious faith or practice.

## APPENDIX C: WELDED STEEL MOMENT FRAME

FEMA has specific eligibility criteria for inspecting, evaluating, and repairing earthquake damage to buildings constructed with welded steel moment framing connections subject to brittle fracture, such as those constructed prior to 1995 using the prescribed detail of the 1991 Uniform Building Code (Section 2710(g)(B) or its equivalent). FEMA bases the eligibility criteria on *Recommended Post Earthquake Evaluation and Repair Criteria for Welded Steel Moment Frame Buildings* (FEMA 352).<sup>401</sup>

### *Reimbursement for Preliminary Post-earthquake Assessment*

The process of preliminary screening, which helps to rapidly identify buildings that are likely to have sustained significant damage to welded steel moment frame connections, is ineligible for Public Assistance (PA) funding. Preliminary screening is typically performed by building department officials immediately following an earthquake to determine if a building needs further evaluation.

Following the preliminary screening, the Applicant may use the preliminary evaluation method described in FEMA 352 to determine, on a preliminary basis, whether a building has sustained either structural or nonstructural damage that results in a hazardous condition. Preliminary evaluations include:

- A general review of the building's construction characteristics to determine its structural system and vulnerable features;
- A visit to the building site to observe its overall condition and note obvious signs of damage; and
- A determination of an appropriate posting category for the building, on the basis of the preceding results and engineering judgment. Posting categories are described by the following designations:
  - Green – Little or no damage. Poses no immediate threat.
  - Yellow – Structural or nonstructural damage. Limited or localized safety hazard.
  - Red – Significant damage to structural elements. Significant safety hazard.

Preliminary evaluation is eligible only when conditions result in a yellow or red designation.

### *Reimbursement for Detailed Post-earthquake Evaluations*

As recommended in FEMA 352, the Applicant should conduct a detailed evaluation on all buildings determined to have potential welded steel moment frame fractures, as identified in the preliminary assessment, and designated with a yellow or red posting. Eligible work includes the reasonable evaluation of the effects of the identified, significant connection damage to the future performance of the building structure. To be eligible, this evaluation should be limited to the recommendations in FEMA 352, Chapter 4, as follows:

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<sup>401</sup> [www.fema.gov/media-library/assets/documents/747](http://www.fema.gov/media-library/assets/documents/747).

- Visual bottom flange connection inspections performed at locations selected in accordance with FEMA 352, Chapter 4, Method 2 (Inspection of a Sample of Connections) are eligible.
- The inspection of a sample of the total welded steel moment frame connections in the building, in accordance with guidance provided in FEMA 352, Chapter 4, Method 2 is eligible.
- If an Applicant discovers certain types of damage, additional visual inspection of bottom or top flange connections at locations recommended in FEMA 352, Chapter 4, are also eligible but only after the Applicant informs FEMA of the frame damage already discovered and FEMA approves the follow-on inspection.

The eligible work associated with connection inspection includes:

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

In circumstances where a building is assigned a green posting, visual inspections are only eligible for those connections where the Applicant has found significant damage (as defined in FEMA 352, Chapter 4) associated with the declared earthquake disaster.

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

Except as detailed above, any inspections that do not yield discovery of significant connection damage attributable to the earthquake are ineligible.

Generally, detailed analytical or experimental studies or Level 2 evaluations as described in FEMA 352, Chapter 5, are ineligible unless FEMA provides approval before the Applicant initiates the work.

# APPENDIX D: FREQUENT COMPLIANCE ISSUES WITH COOPERATIVE PURCHASING PROGRAMS

The following is a list of frequent compliance issues with Federal procurement requirements when Tribal or local government or private nonprofit (PNP) Applicants use cooperative purchasing programs for procurements above the simplified acquisition threshold:

## **Full and Open Competition**

The Applicant must ensure that solicitations used by cooperative purchasing programs include a clear and accurate description of the scope of work or goods actually required. Additionally, cooperative purchasing programs that place overly restrictive requirements on solicitations risk noncompliance with the full and open competition requirements in 2 C.F.R. § 200.319.

## **Procurement Method**

Cooperative purchasing programs must comply with allowable procurement methods in 2 C.F.R. § 200.320. Some of these methods require that Applicants publicly advertise or publicize the solicitations, solicit bids from an adequate number of known suppliers, and award contracts to the responsible, responsive firm with the lowest price or to the responsive firm whose proposal is most advantageous to the program with price and other factors considered.

## **Socio-economic Contracting**

The Applicant must ensure cooperative purchasing programs take the applicable affirmative steps to encourage participation of small businesses, minority businesses, and women owned enterprises. Failure to take any of the affirmative steps violates 2 C.F.R. § 200.321.

## **Geographic Preferences**

Any geographic preferences that a cooperative purchasing program uses in evaluating bids or proposals and any additional terms and conditions in a cooperative purchasing program's pre-negotiated agreements that favor or give preference to local suppliers violates 2 C.F.R. § 200.319(b) and be restrictive of competition.

## **Contract Provisions**

Cooperative purchase programs at times do not include the federally required contract provisions in the agreements with vendors. In accordance with 2 C.F.R. § 200.326, all contracts must contain the applicable contract clauses described in Appendix II to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards).

## **Cost or Price Analysis**

The Applicant must conduct an independent cost or price analysis when using cooperative purchasing agreements in accordance with 2 C.F.R. § 200.323.



# APPENDIX E: STUMP CONVERSION TABLE

## Diameter to Volume Capacity

FEMA quantifies the number of cubic yards of debris for each size of stump based on the following formula:

$$\frac{[(\text{Stump Diameter}^2 \times 0.7854) \times \text{Stump Length}] + [(\text{Root-Ball Diameter}^2 \times 0.7854) \times \text{Root-Ball Height}]}{46,656}$$

0.7854 is one-fourth Pi and is a constant.

46,656 is used to convert cubic inches to cubic yards and is a constant.

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

- Stump diameter measured 2 feet up from the ground
- Stump diameter to root-ball diameter ratio of 1:3.6
- Root-ball height of 31 inches

| Stump Diameter<br>(Inches) | Debris Volume<br>(Cubic Yards) | Stump Diameter<br>(Inches) | Debris Volume<br>(Cubic Yards) |
|----------------------------|--------------------------------|----------------------------|--------------------------------|
| 6                          | 0.3                            | 46                         | 15.2                           |
| 7                          | 0.4                            | 47                         | 15.8                           |
| 8                          | 0.5                            | 48                         | 16.5                           |
| 9                          | 0.6                            | 49                         | 17.2                           |
| 10                         | 0.7                            | 50                         | 17.9                           |
| 11                         | 0.9                            | 51                         | 18.6                           |
| 12                         | 1                              | 52                         | 19.4                           |
| 13                         | 1.2                            | 53                         | 20.1                           |
| 14                         | 1.4                            | 54                         | 20.9                           |
| 15                         | 1.6                            | 55                         | 21.7                           |
| 16                         | 1.8                            | 56                         | 22.5                           |
| 17                         | 2.1                            | 57                         | 23.3                           |
| 18                         | 2.3                            | 58                         | 24.1                           |
| 19                         | 2.6                            | 59                         | 24.9                           |
| 20                         | 2.9                            | 60                         | 25.8                           |
| 21                         | 3.2                            | 61                         | 26.7                           |
| 22                         | 3.5                            | 62                         | 27.6                           |
| 23                         | 3.8                            | 63                         | 28.4                           |
| 24                         | 4.1                            | 64                         | 29.4                           |
| 25                         | 4.5                            | 65                         | 30.3                           |
| 26                         | 4.8                            | 66                         | 31.2                           |

| <b>Stump Diameter<br/>(Inches)</b> | <b>Debris Volume<br/>(Cubic Yards)</b> | <b>Stump Diameter<br/>(Inches)</b> | <b>Debris Volume<br/>(Cubic Yards)</b> |
|------------------------------------|--|------------------------------------|--|
| 27                                 | 5.2                                    | 67                                 | 32.2                                   |
| 28                                 | 5.6                                    | 68                                 | 33.1                                   |
| 29                                 | 6                                      | 69                                 | 34.1                                   |
| 30                                 | 6.5                                    | 70                                 | 35.1                                   |
| 31                                 | 6.9                                    | 71                                 | 36.1                                   |
| 32                                 | 7.3                                    | 72                                 | 37.2                                   |
| 33                                 | 7.8                                    | 73                                 | 38.2                                   |
| 34                                 | 8.3                                    | 74                                 | 39.2                                   |
| 35                                 | 8.8                                    | 75                                 | 40.3                                   |
| 36                                 | 9.3                                    | 76                                 | 41.4                                   |
| 37                                 | 9.8                                    | 77                                 | 42.5                                   |
| 38                                 | 10.3                                   | 78                                 | 43.6                                   |
| 39                                 | 10.9                                   | 79                                 | 44.7                                   |
| 40                                 | 11.5                                   | 80                                 | 45.9                                   |
| 41                                 | 12                                     | 81                                 | 47                                     |
| 42                                 | 12.6                                   | 82                                 | 48.2                                   |
| 43                                 | 13.3                                   | 83                                 | 49.4                                   |
| 44                                 | 13.9                                   | 84                                 | 50.6                                   |
| 45                                 | 14.5                                   |                                    |  |

# APPENDIX F: HAZARDOUS STUMP WORKSHEET

Applicant: \_\_\_\_\_

Date: \_\_\_\_\_

Applicant Representative: \_\_\_\_\_

Signature: \_\_\_\_\_

FEMA Representative (if available) \_\_\_\_\_

Signature: \_\_\_\_\_

|    | Physical Location<br>(i.e., Street address, road,<br>cross streets, etc.) | Description of<br>Facility (ROW,<br>Park, City<br>Hall, etc.) | Hazard<br>Yes/No | Global<br>Positioning<br>System (GPS)<br>Location | Tree Size<br>(Diameter) | Eligible<br>Yes/No | Fill for<br>Debris<br>Stumps<br>In CY | Comments<br>(See attached<br>sketch, photo,<br>etc.) |
|----|---|---|------------------|---|-------------------------|--------------------|---------------------------------------|--|
| 1  |   |   |                  |   |                         |                    |                                       |  |
| 2  |   |   |                  |   |                         |                    |                                       |  |
| 3  |   |   |                  |   |                         |                    |                                       |  |
| 4  |   |   |                  |   |                         |                    |                                       |  |
| 5  |   |   |                  |   |                         |                    |                                       |  |
| 6  |   |   |                  |   |                         |                    |                                       |  |
| 7  |   |   |                  |   |                         |                    |                                       |  |
| 8  |   |   |                  |   |                         |                    |                                       |  |
| 9  |   |   |                  |   |                         |                    |                                       |  |
| 10 |   |   |                  |   |                         |                    |                                       |  |

## APPENDIX G: MOSQUITO ABATEMENT

FEMA may provide reimbursement for mosquito abatement measures at the written request of the SLTT public health officials after FEMA consults with the Centers for Disease Control and Prevention (CDC), based on any of the following:

- Evidence of:
  - Higher levels of disease transmitting mosquitoes in the impacted area following the incident;
  - A significant number of disease-carrying mosquitoes in the area due to the increase in incident-related standing water; or
  - The potential for disease transmission and human exposure to disease carrying mosquitoes based on the detection of arboviral diseases in sentinel organisms (poultry, wild birds, mosquito pools) in the impacted area prior to the incident, discovered during surveillance as part of mosquito abatement activities, or reported human cases in which transmission occurred prior to the incident.
- A determination that a significant increase in the mosquito population and/or the change of biting mosquito species poses a threat to emergency workers who are required to work out-of-doors, thereby significantly hampering response and recovery efforts.

Such evidence may include an abnormal rise in landing rates or trap counts, significant changes in species composition or estimate of infection rates, when compared to pre-incident surveillance results.

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

Where possible, a determination of the need for vector control measures should be based on surveillance data provided by local agencies, or on surveillance conducted as a component of the emergency response. Similarly, termination of control efforts should be based on mosquito



### Terminology

An **arbovirus** is a virus utilizing arthropods as vectors and is transmitted via their feeding to a definitive host.

The **landing rate**, expressed as number of mosquitoes landing per minute, is used as an adult mosquito surveillance measure utilizing human volunteers as bait.

**Methoprene Briquettes** are formulated with methoprene (compound that mimics the action of an insect growth-regulating hormone and prevents the normal maturation of insect larvae) growth inhibitor and a timed-release carrier that resembles a charcoal briquette.

A **sentinel organism** is an organism, usually fowl, purposely exposed to mosquito bites outdoors to monitor pathogen transmission by mosquitoes.

**Seroconversion** is the development of detectable antibodies in the blood of a sentinel organism directed against an infectious agent.

**Trap count** is the number of female mosquitoes captured in a trap receptacle each night the traps are set.

density and disease transmission monitoring, and on the degree of exposure to mosquitoes of residents and responders. Information useful in determining the need for emergency mosquito control measures includes:

- The local jurisdiction's mosquito population density estimates pre- and post-disaster, including information about species composition;
- Arbovirus transmission activity indices, including information about the location of surveillance activities; indices may consist of:
  - Infection rates in mosquitoes;
  - Seroconversion in sentinel chickens;
  - Equine case;
  - Human cases;
- The amount and type of flooding (e.g., saltwater/freshwater, coastal/inland);
- The extent and location of damage to housing;
- The extent, location, and anticipated duration of power interruption;
- The anticipated extent and duration of cleanup and recovery operations; and
- A description of the type of mosquito management required (e.g., aerial or ground- based adulticide applications, larvicide applications), and duration of application to reduce the threat and the areas where the interventions are needed.

To be eligible for Public Assistance funding, insecticide formulations must be among those approved and registered by the U.S. Environmental Protection Agency for use in urban areas for mosquito control and must be applied according to label directions and precautions by appropriately trained and certified applicators. Furthermore, mosquito abatement measures must comply with all Federal and SLTT laws, ordinances, and regulations concerning vector control. Mosquito abatement measures include, but are not limited to the following:

- Adulticiding – The ground or aerial spraying of insecticides to kill adult mosquitoes
- Larviciding – The application of chemicals, including methoprene briquettes, by ground or air to kill mosquito larvae or pupae
- Breeding habitat removal or alteration – The modification of potential breeding habitat to make it unsuitable for mosquito breeding or to facilitate larval control, including:
  - Draining or removing standing water in close proximity to homes, schools, sheltering facilities, and businesses;
  - Increased dewatering through the pumping of existing drainage systems; and
  - Dissemination of information (e.g., inserting flyers with resident's water bills, public service announcements, newspaper campaigns) to direct residents to remove the mosquito breeding habitat.

## APPENDIX H: SNOW ASSISTANCE

Snow-related activities, including snow removal, de-icing, salting, snow dumps, and sanding of roads and other eligible facilities, is only an eligible emergency protective measure when a winter storm results in record or near-record<sup>402</sup> snowfall.<sup>403</sup> FEMA authorizes snow assistance by county based on a finding that the county received record or near-record snowfall or meets the contiguous county criteria as described below. FEMA evaluates Tribal lands either as part of a requested county or separately.

### **Record or Near-Record Snowfall**

FEMA utilizes data collected by the National Oceanic and Atmospheric Administration's National Centers for Environmental Information (NCEI) to identify the historical 1-, 2-, and 3-day snowfall records for each county. For current event snowfall, FEMA relies primarily on snowfall measurements taken at National Weather Service (NWS) Cooperative Network Stations but accepts measurements from other sources if those measurements are verified as reasonable and accurate by the NWS. Historical 1-, 2-, and 3-day snowfall records by county are available on the NCEI Snow Climatology Database (SCDB) at the following website: [www.ncdc.noaa.gov/snow-and-ice/snowfall-extremes](http://www.ncdc.noaa.gov/snow-and-ice/snowfall-extremes). Daily snowfall reports by county are available at: [www.ncdc.noaa.gov/snow-and-ice/daily-snow](http://www.ncdc.noaa.gov/snow-and-ice/daily-snow).

FEMA follows the following process to determine record or near-record snowfalls:

- Compare current snowfall amounts with the historical record snowfall amounts for a like number of days without regard for the month in which the record snowfall or current event occurred.
- For multiple-day snowstorms, counties or Tribal lands that meet the 1-day record or near-record requirement on any 1 day, or the 2-day record or near record over 2 consecutive days, or the 3-day record or near record over 3 consecutive days, etc., meets the record or near-record criteria for that county or Tribal lands.
- FEMA relies on the NWS to determine the duration of the snowstorm.
- When data from multiple NWS-verified sources exist within a county or Tribal lands, FEMA compares the highest current event snowfall reported by the NWS within that county or Tribal land with the highest historical record snowfall for that county or Tribal land.
- For counties or Tribal lands that do not have NCEI or NWS historical record snowfall data, use the historical record from the nearest NWS Cooperative Network Station in an adjacent county or Tribal land, even if located in an adjacent State, for determining historical snowfall records.
- If current event snowfall data are not available from the NWS for a county or Tribal land, use the nearest NWS Cooperative Network Station data from an adjacent county, even if located in an adjacent State.
- FEMA may designate a county or Tribal land that does not receive a record or near-record snowfall, but is contiguous to a county (generally referred to as a “core county”) that does receive a record or near-record snowfall, for snow assistance if the county or

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<sup>402</sup> FEMA generally considers near record as being within 10 percent of the record snowfall.

<sup>403</sup> 44 C.F.R. § 206.227.

Tribal land has current event snowfall that meets or exceeds the current event snowfall of the core county, to which it is contiguous. Base this comparison on the highest current event snowfall received by each county as reported by the NWS.

- Consider counties or Tribal areas that experience snowfalls occurring over a period exceeding 3 consecutive days that do not reach record or near-record snowfalls during a 3-day period, and for which there are no historical snowfall records for a period exceeding 3 days with NCEI or NWS, on a case-by-case basis.

### **Winter Storm or Snowstorm Declaration Requests**

The request for a Major Disaster Declaration must include a request for snow assistance as part of that declaration. All such requests are subject to the requirements and processes established in the Stafford Act and FEMA regulations.<sup>404</sup> In addition to the information required in every declaration request, requests for snow assistance must include the following information:

- Identification of core and contiguous counties for which a snowstorm declaration is requested;
- Duration of snowfall, as identified or confirmed by the NWS; and
- For each requested county or Tribal land, daily snowfall totals from NWS stations or NWS-verified sources and historical record snowfall data from the NCEI.

Generally, the current event weather and snowfall information is included in a statement or report from the NWS describing the event.

FEMA only includes costs related to snow activities as part of the preliminary damage assessment data for counties or Tribal lands that meet the record or near-record criteria or qualify as contiguous counties.

Other categories of work, including Permanent Work, may be authorized for snowstorm or winter storm declarations as appropriate.



#### **Terminology**

A **Core County** is a county that has a record or near record snowfall with PA costs that exceed the annually established countywide per capita impact indicator and is designated for snow assistance under a major disaster declaration.

A **Contiguous County** is a county in the same State that shares a common border with a core county without geographic separation other than by a minor body of water, typically not exceeding one mile between the land areas of such counties.

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<sup>404</sup> 44 C.F.R. § 206 Subpart B (206.31–48).

# APPENDIX I: MOLD REMEDIATION

## Mold Remediation Methods

The following list describes common mold remediation methods.

| Method                                    | Application  |
|---|--|
| Wet Vacuum                                | <ul style="list-style-type: none"> <li>• Use when materials are wet</li> <li>• Use where water has accumulated, such as on floors, carpets and hard surfaces</li> <li>• Do not use when sufficient liquid is not present</li> </ul>  |
| Damp Wipe                                 | <ul style="list-style-type: none"> <li>• Wipe or scrub non-porous (hard) surfaces with water and detergent</li> <li>• Follow instructions listed on the product label</li> </ul>   |
| High Efficiency Particulate (HEPA) Vacuum | <ul style="list-style-type: none"> <li>• Final clean-up after thoroughly dry and contaminated materials are removed</li> <li>• Recommended for cleanup of dust outside of the remediation area</li> <li>• Properly seal HEPA filter</li> <li>• Personal protection equipment is highly recommended; filter and contents must be disposed of in well-sealed bags</li> </ul> |
| Discard                                   | <ul style="list-style-type: none"> <li>• Use for building materials and furnishings that cannot be remediated</li> <li>• Seal contents in two bags using 6-mil polyethylene sheeting</li> <li>• Cover large items in polyethylene sheeting and seal with duct tape</li> <li>• Sealing materials must be within containment area to limit further contamination</li> </ul>  |

Summarized from Indoor Environments Division of the U.S. Environmental Protection Agency, "Mold Remediation in Schools and Commercial Buildings": [www.epa.gov/mold/mold\\_remediation.html](http://www.epa.gov/mold/mold_remediation.html).

## Application of Remediation Methods

The following list outlines typical mold remediation actions.

| Water Damaged Material            | Action  |
|-----------------------------------|---|
| Books and paper                   | <ul style="list-style-type: none"> <li>• Non-valuable items – discard</li> <li>• Valuable/important – photocopy and discard originals</li> <li>• Invaluable items – freeze in frost-free freezer or meat locker, or freeze dry</li> </ul> |
| Carpet and backing                | <ul style="list-style-type: none"> <li>• Wet vacuum</li> <li>• Reduce ambient humidity levels with dehumidifier</li> <li>• Accelerate drying process with fans</li> </ul>   |
| Ceiling tiles                     | <ul style="list-style-type: none"> <li>• Discard and replace (replacement only eligible as Permanent Work)</li> </ul>   |
| Cellulose insulation              | <ul style="list-style-type: none"> <li>• Discard and replace (replacement only eligible as Permanent Work)</li> </ul>   |
| Concrete or cinder block surfaces | <ul style="list-style-type: none"> <li>• Wet vacuum</li> <li>• Accelerate drying process with dehumidifiers, fans, and/or heaters</li> </ul>  |



| Water Damaged Material  | Action   |
|---|--|
| Fiberglass Insulation   | <ul style="list-style-type: none"> <li>• Discard and replace (replacement only eligible as Permanent Work)</li> </ul>  |
| Hard surfaces, porous floorings (linoleum, ceramic tile, vinyl) | <ul style="list-style-type: none"> <li>• Vacuum or damp wipe with water and mild detergent</li> <li>• Scrubbing may be necessary</li> <li>• Allow to dry</li> </ul>  |
| Upholstered furniture   | <ul style="list-style-type: none"> <li>• Wet vacuum</li> <li>• Accelerate drying process with dehumidifiers, fans, and/or heaters</li> </ul>   |
| Wallboard (drywall and gypsum board)                            | <ul style="list-style-type: none"> <li>• If obvious swelling and seams are not intact – discard</li> <li>• If no obvious swelling and seams are intact – may be dried in place</li> <li>• Ventilate wall cavity</li> </ul> |
| Window drapes   | <ul style="list-style-type: none"> <li>• Launder or clean according to manufacturer’s instructions</li> </ul>  |
| Wood surfaces   | <ul style="list-style-type: none"> <li>• Remove water with wet vacuum</li> <li>• Accelerate drying process with dehumidifiers, fans, and/or heaters</li> <li>• Wet paneling – discard and ventilate wall cavity</li> </ul> |

Summarized from Indoor Environments Division of the U.S. Environmental Protection Agency, "Mold Remediation in Schools and Commercial Buildings": [www.epa.gov/mold/table1.html](http://www.epa.gov/mold/table1.html).

# APPENDIX J: COST-EFFECTIVE PUBLIC ASSISTANCE HAZARD MITIGATION MEASURES

FEMA considers the following mitigation measures to be cost-effective Public Assistance (PA) mitigation if the measures do not exceed 100 percent of the eligible repair cost (prior to any insurance reductions). The mitigation measures must meet all eligibility requirements described in [Chapter 8:IV. Hazard Mitigation](#). There may be instances where these measures are required by codes or standards. In such cases FEMA first evaluates whether the work is eligible as a code or standard (See [Chapter 8:II. Codes and Standards](#)).

## I. Drainage Structures:

For Sections I.A. and I.C. (below), PA and environmental and historic preservation (EHP) staff coordinate to determine whether a hydrologic and hydraulic (H&H) study is needed. The Applicant must submit an H&H study to determine the appropriate culvert size with no adverse up or downstream impacts and National Flood Insurance Program regulations when:

- The facility is in a special flood hazard area;
- There is a potential adverse impact to the floodplain;<sup>405</sup>
- There is a potential adverse impact to a federally listed threatened or endangered species, critical habitat, or essential fish habitat;<sup>406</sup> or
- It is required to demonstrate compliance with the Clean Water Act.

A. Replace the structure with multiple structures or a larger structure. The Applicant may use existing SLTT drainage criteria for sizing replacement culverts. The Applicant must consider replacement structures with regard to the total drainage system.

B. For the purpose of erosion control, add properly designed entrance and exit structures, such as a headwall, wingwalls, flared aprons, or energy dissipation measures to increase efficiency and help to minimize scour and erosion. Depending on the severity of erosion, solutions for bank protection may include gabion baskets, rip rap,



### Example

Adding a relief culvert located at the same crossing site as a damaged culvert and in the embankment above the flow line of the primary culvert or located upstream of the main culvert. A relief culvert provides an alternate route for the flow if the main culvert is over capacity or gets plugged and prevents sedimentation through the high-flow scouring action.

<sup>405</sup> 44 C.F.R. §§ 9.11(d)(4) and 60.3(b)(7), (c)(10), and (d)(3).

<sup>406</sup> Endangered Species Act 16 U.S.C. §§ 1531-1544 and Magnuson-Stevens Fishery Conservation and Management Act.

cast-in-place concrete, crushed stone or rock, grouted rip rap<sup>407</sup>, sheet-piling, geotextile fabric, or similar measures to control erosion. Alternatively, the use of vegetation or a combination of vegetation and construction materials such as live fascines, vegetated geogrids, live crib walls, brush mattresses, root wads, or similar measures are eligible. The Applicant should consider using green infrastructure techniques such as bioswales, bioretention, rain gardens and similar techniques that may be used in public drainage systems.

C. Culverts:

1. Where the alignment of a culvert is inconsistent with existing water flow, realign the culvert vertically or horizontally or relocate the culvert to improve hydraulics and minimize erosion and scour. The Applicant must consider realignment of structures with regard to the total drainage system.
2. Extend the culvert discharge to mitigate erosion and scour by extending the discharge end beyond the toe of the embankment.
3. Install a debris barrier to prevent debris blockage or fins designed to orient floating debris for passage through the culvert.
4. Install a debris barrier riser to allow debris to float up with the rising floodwaters without blocking flow into the culvert.

II. Transportation Facilities:

A. Bridges:

1. Where traffic counts are low, replace with low-water crossings.
2. Install cables to restrain a bridge from being knocked off piers or abutments during floods or earthquakes.
3. Install girder and deck uplift tie-downs to prevent their displacement from the substructure.
4. Install Longitudinal Peaked Stone Toe Protection with nature planting, upstream of a failed abutment, to provide a stable floodplain bench for the protection of the abutment and the adjoining bridge approach. Consider other relevant Bio-engineering applications such as engineered logjams, log vanes or log bendway weir.

B. Marine Pier Ramps: If attached to decking, install open decking or floating decking with uplift-resistant tie-downs and fasteners.

C. Roadways and Railways: Where shoulders are susceptible to overflow from adjacent water courses, stabilize shoulders and embankments with geotextile fabric and revetments.

D. Roadways: Use geotextile drainage blankets between the pavement section and subbase to strengthen subgrade.

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<sup>407</sup> Projects involving grouted rip rap may be subject to an environmental assessment and may not be allowable in all instances.

### III. Mechanical, Electrical, Plumbing (MEP) Components:

- A. Provide seismic bracing for electrical lines, conduit, piping, duct-work, water heaters, and other MEP equipment. Components can be wall mounted, floor mounted, or suspended.
- B. Roof-Mounted Equipment: Secure to roof top via a continuous load path, using tie-downs, straps, or other anchoring systems that will resist expected wind forces.
- C. Elevate or dry floodproof components or systems vulnerable to flood damage, including equipment controls, electrical panels; heating, ventilation, and air conditioning/machinery rooms; emergency generators; and fuel tanks. When wiring cannot be elevated, replace with equipment suitable for submerged applications.
- D. Install switches, circuit isolation and/or quick connect capability to facilitate rapid connection of backup power for any damaged or susceptible mechanical and electrical components.
- E. Install camlocks, transfer switches, and electrical panels to facilitate the connection of portable emergency generators.

### IV. Pipes:

- A. Install pipe joint restraints, flexible piping at pipe/conduit connections, or replace pipes with more ductile material.
- B. Install continuous lining or encasement to prevent infiltration or structural collapse.
- C. Underground Pipes: Install shut-off valves so that damaged sections of pipe can be isolated.

### V. Water/Wastewater:

- A. Pumps: If pumps and their attached motors are damaged by stormwater inundation, replace them with submersible or inline pumps as appropriate.
- B. Sewer Access Covers: Elevate to the hydraulic grade line. When elevation is not feasible or practicable, install devices to prevent infiltration into access holes such as cast-iron watertight frames and covers.
- C. Well Systems: Seal exposed portions of well casing or raise the elevation of the well head to prevent infiltration of flood waters.
- D. Raw water intakes: Install buttressing to prevent damage from erosion, scour, and flood debris.

### VI. Electric Power Systems:

- A. Provide looped distribution service or other redundancies in the electrical service to critical facilities, such as hospitals and fire stations.
- B. Install surge suppressors and lightning arrestors.
- C. Transformers:
  - 1. Elevate pad transformers above the Base Flood Elevation.

2. Support pole-mounted transformers with multiple poles.

D. Power Poles:

1. Replace damaged poles with higher-rated poles (preferably two classes stronger) of the same or different material. When replacing poles with higher-rated poles, install guys and anchors to provide lateral support for poles supporting pole-mounted transformers, regulators, capacitor banks, reclosers, air-break switches, or other electrical distribution equipment.
2. Remove large diameter lines.
3. Add cross-bracing to H-frame poles to provide additional strength.
4. Power Lines: Add guy-wires or additional support.

VII. Storage Tanks:

- A. Anchor or otherwise protect from movement by strengthening or stiffening base connections.
- B. Install self-initiating disconnects and shut-off valves between tanks and distribution lines to minimize damage and leaks.

VIII. Buildings and Structures:

- A. For small support buildings subject to uplift or rollover from high winds, securely anchor the buildings to foundations to prevent toppling or becoming missile hazards.
- B. Elevate or dry or wet floodproof buildings.
- C. Footings: Where spread footings have been undercut by scour, underpin footings.
- D. Siding: Replace with a stronger siding with stronger attachments to the wall sheathing and structure.
- E. Vents: Replace with water-resistant vents.
- F. Non-structural Building Components: Brace interior walls, partitions, parapets, anchor veneer or cladding, suspended light features, drop ceilings, soffits, and other non-structural elements that could collapse and cause injury or block safe exit of a building during an earthquake or high-wind event.
- G. Furnishings: Provide seismic ties, straps, or clips to secure replaced furniture, cabinets, computers, bookcases, and other furnishings.
- H. Roofs
  1. Install hurricane clips, fasteners, anchors, straps, and connectors that are compatible with the roof system and corrosion-resistant in coastal areas.
  2. Strengthen the high-wind pressure areas (e.g., corner zones, roof soffits, overhangs).
  3. Strengthen roof openings, such as hatches and skylights.
  4. Low Slope Roofs: Replace entire roof covering with a fully adhered roof covering, such as a modified bitumen membrane roof. FEMA does not provide PA mitigation

funding for loose laid insulation or membranes as punctures can cause large amounts of water intrusion. Additionally, FEMA does not provide PA mitigation funding for loose laid roof membranes with loose ballast stones as the stones can become projectiles in high winds and cause damage.

5. Gable Roofs: Replace the gable-end framing with hipped roof framing to reduce wind forces (lower edge pressure; reduced projected wind area) and strengthen the roof framing.
6. Gutters and Downspouts: Upgrade to direct water away from the structure to prevent interior or basement water damage.

I. Doors and Windows:

1. Upgrade the weather stripping to prevent water infiltration.
2. Replace doors, door frames, hinges, and hardware with wind-resistant units.
3. Strengthen windows.
4. Replace glass with impact-resistant material.
5. Install shutters on windows:
  - a. Of critical facilities, such as hospitals.
  - b. On the lower floors of noncritical facilities most likely to be struck by debris.
  - c. Of buildings with very high-value contents that can be damaged by water (such as libraries and document centers).
  - d. Of buildings when failure of roofing materials or other portions of nearby structures could create impact hazards.

IX. Signage: Replace sign panels and their supports with a stronger type of system of supports and panels. Consider using multiple support posts and stronger panels and fasteners.

## APPENDIX K: CONTRACT PROVISIONS

The following is a list of frequent compliance issues with Federal procurement requirements when Tribal or local government or private nonprofit (PNP) Applicants use cooperative purchasing programs for procurements.

If an Applicant plans to use Federal funds to pay or reimburse equipment expenses or services under a contract, that contract must contain the applicable clauses described in [Appendix II to the Uniform Rules](#) (Contract Provisions for Non-Federal Entity Contracts Under Federal Awards) under 2 C.F.R. § 200.326. Additionally, FEMA recommends certain contract clauses recommended by FEMA.

This appendix outlines the federally required contract provisions in addition to FEMA-recommended provisions applicable to PA applicant contracts. For some of the required clauses, sample language or references to find sample language are listed below. Sample language for certain required clauses (remedies, termination for cause and convenience, changes) is not listed since these must be drafted in accordance with the non-Federal entity's applicable local laws and procedures. For the clauses which require that exact language be included, the required language is specifically identified below.

The non-Federal entity alone is responsible for ensuring that all language included in their contracts meets the requirements of 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II.

**REMEDIES:** Applies to all FEMA grant and cooperative agreement programs.

Contracts for more than the simplified acquisition threshold, currently set at \$250,000, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, A.

**TERMINATION FOR CAUSE AND CONVENIENCE:** Applies to all FEMA grant and cooperative agreement programs.

All contracts exceeding \$10,000 must address termination for cause and for convenience by the non-Federal entity, including how it will be affected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, B.

**EQUAL EMPLOYMENT OPPORTUNITY:** This requirement applies to all FEMA grant and cooperative agreement programs and exact language below is required.

**Standard:** Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, C.

## Key Definitions.

Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

Required Language: 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause.

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the



compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

*Provided*, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State, Territorial, or local government,

the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

**CONTRACT WORK HOURS AND SAFETY STANDARDS ACT:** This requirement applies to all FEMA contracts awarded by the non-federal entity exceeding \$100,000 under grant and cooperative agreement programs that involve the employment of mechanics or laborers. It is applicable to construction work. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Standard: Where applicable (see 40 U.S.C. §§ 3701-3708), all contracts awarded by the non-Federal entity exceeding \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, E. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work exceeding the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked beyond 40 hours in the work week. Further, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous.

Suggested Language: 29 C.F.R. § 5.5(b) provides contract clause language concerning compliance with the Contract Work Hours and Safety Standards Act. FEMA suggests including

the following contract clause:

Compliance with the Contract Work Hours and Safety Standards Act.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The **(write in the name of the Federal agency or the loan or grant recipient)** shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

**CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT:** This requirement applies to contracts awarded by a non-Federal entity of amounts exceeding \$150,000 under a federal grant.

**Standard:** If applicable, contracts must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act

(42 U.S.C. §§ 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, G.

Suggested Language: The following provides a sample contract clause.

#### Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the **(name of applicant entering into the contract)** and understands and agrees that the **(name of the applicant entering into the contract)** will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

#### Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the **(name of the applicant entering into the contract)** and understands and agrees that the **(name of the applicant entering into the contract)** will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**DEBARMENT AND SUSPENSION:** This requirement applies to all FEMA grant and cooperative agreement programs.

Standard: Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Non-procurement Debarment and Suspension).

## Requirements:

1. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, ¶ H; and 2 C.F.R. § 200.213. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at [www.sam.gov](http://www.sam.gov). See 2 C.F.R. § 180.530.
2. In general, an “excluded” party cannot receive a Federal grant award or a contract within the meaning of a “covered transaction,” to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a “covered transaction,” which is any non-procurement transaction (unless excepted) at either a “primary” or “secondary” tier. Although “covered transactions” do not include contracts awarded by the Federal Government for purposes of the non-procurement common rule and DHS’s implementing regulations, it does include some contracts awarded by recipients and subrecipients.
3. Specifically, a covered transaction includes the following contracts for goods or services:
  - a. The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.
  - b. The contract requires the approval of FEMA, regardless of amount.
  - c. The contract is for federally required audit services.
  - d. A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.

Suggested Language: The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified.

## Suspension and Debarment

1. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

2. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by **(insert name of recipient/subrecipient/applicant)**. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to **(insert name of recipient/subrecipient/applicant)**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**BYRD ANTI-LOBBYING AMENDMENT:** This requirement applies to all FEMA grant and cooperative agreement programs. Contractors that apply or bid for a contract of \$100,000 or more under a federal grant must file the required certification. See 2 C.F.R. Part 200, Appendix II, I; 31 U.S.C. § 1352; and 44 C.F.R. Part 18.

Standard: Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. FEMA's regulation at 44 C.F.R. Part 18 implements the requirements of 31 U.S.C. § 1352 and provides, in Appendix A to Part 18, a copy of the certification that is required to be completed by each entity as described in 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the Federal awarding agency.

Suggested Language:

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying

with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Required Certification: If applicable, contractors must sign and submit to the non-Federal entity the following certification.

#### APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

##### Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date

**PROCUREMENT OF RECOVERED MATERIALS:** This requirement applies to all contracts awarded by a non-federal entity under FEMA grant and cooperative agreement programs.

**Standard:** A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. See 2 C.F.R. Part 200, Appendix II, J; and 2 C.F.R. § 200.322.

**Requirements:** The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**Suggested Language:**

1. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
  - a. Competitively within a timeframe providing for compliance with the contract performance schedule;
  - b. Meeting contract performance requirements; or
  - c. At a reasonable price.
2. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
3. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”



## RECOMMENDED CONTRACT PROVISIONS

The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts. Although FEMA does not currently require additional provisions, FEMA recommends the following for PA applicant contracts:

### ACCESS TO RECORDS.

Standard: All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff. Recipients must give DHS and FEMA access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations *and* other applicable laws or program guidance. See DHS Standard Terms and Conditions: Version 8.1 (2018). Additionally, FEMA is prohibited from providing reimbursement to any SLTT government, or PNP organization for activities made pursuant to a contract that purports to prohibit audits or internal reviews by the FEMA administrator or Comptroller General.

### Suggested Language:

Access to Records. The following access to records requirements apply to this contract:

1. The Contractor agrees to provide (**insert name of state agency or local or Indian tribal government**), (**insert name of recipient**), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
4. In compliance with the Disaster Recovery Act of 2018, the (**write in name of the non-federal entity**) and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

**CHANGES:** FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the

method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

**Standard:** To be eligible for FEMA assistance under the non-Federal entity’s FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope.

**DHS SEAL, LOGO, AND FLAGS:** FEMA recommends that Applicants include a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

**Standard:** Recipients must obtain permission prior to using the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials. See DHS Standard Terms and Conditions: Version 8.1 (2018).

**Suggested Language:** “The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.”

**COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS:** FEMA recommends that Applicants include an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable Federal law, regulations, executive orders, and FEMA policies, procedures, and directives.

**Standard:** The recipient and its contractors are required to comply with all Federal laws, regulations, and executive orders.

**Suggested Language:** “This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.”

**NO OBLIGATION BY FEDERAL GOVERNMENT:** FEMA recommends that the non-Federal entity include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

**Standard:** FEMA is not a party to any transaction between the recipient and its contractor. FEMA is not subject to any obligations or liable to any party for any matter relating to the contract.

**Suggested Language:** “The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

**PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED**

**ACTS:** FEMA recommends that the non-Federal entity include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

Standard. Recipients must comply with the requirements of The False Claims Act (31 U.S.C. §§ 3729-3733) which prohibits the submission of false or fraudulent claims for payment to the federal government. See DHS Standard Terms and Conditions: Version 8.1 (2018); and 31 U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

Suggested Language. “The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this contract.”

## APPENDIX L: VALIDATION OF APPLICANT-PROVIDED COST ESTIMATES

This Appendix provides a checklist that FEMA Public Assistance (PA) staff must use to review and validate cost estimates submitted to FEMA for Permanent Work. FEMA staff may also use relevant portions of this checklist for Emergency Work. FEMA includes this checklist in the associated subaward file in PA Grants Manager.

The steps for validating Applicant-provided cost estimates are as follows:

### 1. **Verify that the estimate:**

- Is prepared by a licensed Professional Engineer or other estimating professional, such as a licensed architect or certified professional cost estimator<sup>408</sup> who certifies that the estimate was prepared in accordance with industry standards;
- Includes certification that the estimated cost directly corresponds to the repair of the agreed upon damage;
- Is based on unit costs for each component of the scope of work (SOW) and not a lump sum amount; and
- Contains a level of detail sufficient for FEMA to validate that all components correspond with the agreed-upon SOW.

### 2. **Review the scope of work and cost estimate to verify only eligible items are included:**

- The scope of work items in the cost estimate are required based on the agreed-upon damage description and dimensions.
- The scope of work included ineligible items, and FEMA has removed the ineligible components from the estimate (documentation detailing the components removed and reason for removal is attached).
- The scope of work included ineligible items, and FEMA is returning the estimate to the Applicant to revise.

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<sup>408</sup> In lieu of a license or certification, an individual with professional experience and proficiency in the field of cost estimating may prepare and sign the cost estimate.

**3. Determine whether unit costs are from an approved source of industry standard information and whether current cost data publications were used:**

There are numerous sources that may be used in the preparation of cost estimates.

- The Applicant used the following appropriate cost estimating resource(s):
  - Industry standard construction cost estimating resource
    - RSMeans
    - XActimate
    - BNi Costbooks
    - Marshall & Swift
    - Sweet's Unit Cost Guide
    - Other \_\_\_\_\_
  - Local cost data from \_\_\_\_\_
  - Contract unit costs from recently completed projects
  - Other: \_\_\_\_\_
- FEMA returned the estimate to the Applicant to revise as the Applicant did not use an appropriate cost estimate resource.

**4. Determine the components of unit costs:**

Ensure that the components that make up the unit costs are fully understood. The purpose of this review is to ensure that components of the unit costs are not duplicated elsewhere in the cost estimate.

- The estimate contained sufficient information related to the components of the unit costs:
  - Each unit cost represented a complete and in-place cost that included all labor, equipment, materials, small tools, incidentals, and hauling costs necessary to complete that element of work.
  - Unit costs were analyzed to determine if general contractor overhead and profit were included in the unit costs:
    - Both general contractor and subcontractor overhead and profit are included in the unit costs and these costs are not duplicated elsewhere in the estimate or in the Cost Estimating Format (CEF).
    - Overhead and profit are not included in the unit costs.
    - Overhead and profit are duplicated in the estimate.
    - Costs for surveying, construction inspection, and permit compliance fees are not duplicated (i.e., not included within a unit cost and separately in the estimate).
- The estimate did not contain sufficient information related to the components of the unit costs. FEMA requested additional information from the Applicant.

**5. Validate the cost estimate for completeness and reasonableness.**

- The costs of work items are reasonable based on a representative sample.
- FEMA has determined costs for items of work in the estimate to be unreasonable (see attached). Therefore, the estimate was returned to Applicant to revise.
- All items of work included in the cost estimate are eligible.
- FEMA has removed ineligible items of work from the cost estimate (see attached).
- All work activities required to complete the work are quantified with unit costs.
- The cost estimate included lump sum amounts for work activities that need to be adjusted to unit prices. FEMA has returned the estimate to the Applicant for revision.
- The appropriate locality adjustment factor from the cost estimating publication is used for each line item, as applicable. Where historical costs were used, a locality adjustment was not applied, but cost escalation factors were added.
- The appropriate locality adjustment factor from the cost estimating publication was not used (see attached) or, as historical costs were used, a locality adjustment was inappropriately applied.
- Cost items checked are within 10 percent of the local average weighted unit prices or industry standard construction cost data (based on a review of at least six of the ten largest cost items against local average weighted unit prices or industry standard construction cost data (or there were less than ten cost items and all were reviewed) and based on reviewing at least 25 percent of the remaining cost items against local average weighted unit prices or industry standard construction cost data.
- Cost items checked are not within 10 percent of the local average weighted unit prices or industry standard construction cost data; therefore, the estimate was returned to Applicant to revise.

Date Review Completed \_\_\_\_\_

Date of Information Requests to Applicant \_\_\_\_\_

Name of Reviewer \_\_\_\_\_

Reviewer Signature \_\_\_\_\_

# APPENDIX M: ALTERNATIVE PROCEDURES FOR PERMANENT WORK

Alternative Procedures for Permanent Work under Section 428 of the Stafford Act is designed to achieve better recovery outcomes and simplify the delivery of assistance.

## Objectives

- Focus on outcome-based recovery;
- Enable applicants to use funds in a manner that best meets their specific needs for recovery;
- Promote long-term resiliency;
- Improve future preparedness; and
- Simplify the delivery of assistance.

## Benefits of using the Pilot

- No requirement to rebuild communities back to what existed prior to the disaster.
- Applicants can share funds across all Permanent Work Pilot Projects.
- Excess funds may be used to reduce risk and improve future disaster operations.
- Hazard mitigation funding may be added to Replacement Projects.

## Project Requirements

- In order to receive the benefits:
  - ✓ The project must be a Large Project.
  - ✓ Applicants must accept a fixed cost offer.
- The fixed cost is based on the estimated amount to rebuild to pre-disaster design and function.
- FEMA processes any project that does not have a fixed cost accepted within 18 months of the declaration date using standard PA policies.
- FEMA will consider time extensions on a case by case basis.

The attached table summarizes the differences between the Alternative Procedures and standard PA procedures:

| <i>Alternative Procedures</i>   | <i>Standard Procedures</i>   |
|---|--|
| Fixed-cost project with use of excess funds.  | Actual cost project. No retention of excess funds associated with the approved estimate. |
| May use funds across all Alternative Procedures Projects.   | Can only use funds toward the specific work identified in each specific Project.         |
| After FEMA approves a SOW, FEMA only requires approval for changes that involve buildings or structures aged 45 years or older, ground disturbing activities, or work in or near water. | After FEMA approves a SOW, FEMA requires approval for any change to the SOW.             |

|  |   |
|--|---|
| Do not need to track costs associated with changes to the SOW.   | Must track costs associated with all changes to the SOW.                    |
| Do not need to track costs to specific work items. Only need to track the total costs associated with the Alternative Procedures Projects.                             | Must track costs specific to each work item within each individual project. |
| Do not need to track work to specific projects. Only need to substantiate that the work is related to the approved SOW covered in the Alternative Procedures Projects. | Must track all work to each individual project.                             |



# APPENDIX N: WORK ELIGIBILITY CONSIDERATIONS BY TYPE OF FACILITY

| Work Eligibility Considerations: All Facilities  |   |   |
|--|---|---|
| PAPPG Reference  | Topic   | Applicability   |
| Chapter 4:II, <i>Facility Eligibility</i>  | <b>Facility Eligibility</b>   | All Permanent Work.   |
| Chapter 4:I, <i>General Work Eligibility</i>   | <b>General Work Eligibility</b> <ul style="list-style-type: none"> <li>○ Result of Declared Incident</li> <li>○ Within Designated Area</li> <li>○ Applicant's Legal Responsibility</li> </ul> | All work.   |
| Chapter 6, <i>Cost Eligibility</i>   | <b>Cost Eligibility</b>   | All eligible work.  |
| Chapter 7, <i>Emergency Work Eligibility</i>   | <b>Emergency Work Eligibility</b>   | All Emergency Work.   |
| Chapter 7:I, <i>Debris Removal (Category A)</i>  | <b>Debris Removal Eligibility</b>   | All Debris Removal Work.  |
| Chapter 4:I.C; Chapter 7 and ; Appendix A  | <b>Environmental and Historic Preservation (EHP) Compliance</b>   | All work (including ground disturbance for any staging areas, access roads, parking, landscaping, grading, or utilities).   |
| Chapter 8:III, Codes and Standards   | <b>Codes and Standards</b>  | Upgrades to pre-disaster design required by codes or standards.   |
| Chapter 8:IV, <i>Hazard Mitigation</i> ; and Appendix J  | <b>Hazard Mitigation</b>  | Hazard mitigation is any sustained action (work) taken to reduce or eliminate long-term risk to people and property from natural hazards and their effects  |
| Chapter 8:V, <i>Repair vs. Replacement</i>   | <b>Replacement</b>  | The purpose of the 50% Rule is to make an early determination on whether it is more prudent to repair or replace a facility. It is not intended to be a full calculation of all eligible project costs. |
| Chapter 8:VI, <i>Relocation</i>  | <b>Permanent Relocation</b>   | FEMA may approve funding for and require restoration of an Applicant's destroyed (i.e., eligible for replacement) facility at a new location.   |
| Chapter 8:III.E, <i>Floodplain Management and Wetland Protection</i> and VII, <i>Facility Located in or Impacting a Floodplain</i> | <b>Floodplain Considerations</b>  | All Permanent Work in or impacting the floodplain   |

### Work Eligibility Considerations: All Facilities

|   |   |   |
|---|---|---|
| Chapter 8:IX.F, <i>Landslides and Slope Stabilization</i>         | <b>Landslides and Slope Stabilization</b> | Facilities damaged due to a landslide or slope instability triggered by the incident. |
| Chapter 7:II.V, <i>Temporary Relocation of Essential Services</i> | <b>Temporary Relocation</b>               | Certain essential community service facilities.                                       |

### Work Eligibility Considerations: Roads and Bridges

| Road (including surface, base, shoulders, roadside ditches, guardrails, lighting, signage, sidewalks, etc.), drainage structure (culvert, low-water crossing), bridge (including, but not limited to, decking, pavement, piers, girders, abutments, slope protection, approaches, guardrails, lighting, signage, sidewalks) |          |   |   |  |
|---|----------|---|---|--|
| EHP laws, regulations, and executive orders (EOs) that frequently apply: NEPA; NHPA, ESA, CWA, CAA, EOs 11988 and 11990; projects involving work in waterways usually require Section 404 permits – permits issued by the USACE as required by the CWA.   |          |   |   |  |
| PAPPG Reference   | Category | Eligible Work (including, but not limited to):  | Ineligible Work and Costs   | Other Considerations   |
| Chapter 7:I   | <b>A</b> | <b>Debris removal and disposal to eliminate an immediate threat</b>   | <ul style="list-style-type: none"> <li>○ Removal of debris placed on public ROWs from commercial properties unless pre-approved by FEMA</li> <li>○ Removal of materials related to the construction, repair, or renovation of either residential or commercial structures</li> </ul>  | Must distinguish between incident-related debris versus debris generated by other recent events.   |
| Chapter 7:II.J  | <b>B</b> | <b>Emergency access</b><br><b>If the extent of damage or blockage makes these areas inaccessible, work related to providing access is eligible.</b> <ul style="list-style-type: none"> <li>○ This includes clearing debris from or conducting emergency repairs to an access facility, such as a road or bridge.</li> <li>○ Eligible work is limited to that necessary for the access to remain passable</li> </ul> | <ul style="list-style-type: none"> <li>○ Removal of debris from a privately-owned access facility UNLESS no other access point exists, and damage or debris impedes emergency access.</li> <li>○ Emergency repairs to privately-owned roads UNLESS no other access point exists, damage impedes emergency access, and repair eliminates temporary housing needs.</li> </ul> | The Applicant must complete all necessary legal processes or obtains rights-of-entry and agreements to indemnify and hold harmless the Federal Government. |

### Work Eligibility Considerations: Roads and Bridges

Road (including surface, base, shoulders, roadside ditches, guardrails, lighting, signage, sidewalks, etc.), drainage structure (culvert, low-water crossing), bridge (including, but not limited to, decking, pavement, piers, girders, abutments, slope protection, approaches, guardrails, lighting, signage, sidewalks)

EHP laws, regulations, and executive orders (EOs) that frequently apply: NEPA; NHPA, ESA, CWA, CAA, EOs 11988 and 11990; projects involving work in waterways usually require Section 404 permits – permits issued by the USACE as required by the CWA.

|                                       |          |   |  |   |
|---------------------------------------|----------|---|--|---|
| Chapter 7:II.X                        | <b>B</b> | <b>Emergency repairs to address an immediate threat</b> | <ul style="list-style-type: none"> <li>○ Emergency repair of Federal-Aid highways (under FHWA authority).</li> </ul>   |   |
| Chapter 6:XXI.A and B; Chapter 8:IX.A | <b>C</b> | <b>Restoration: Permanent repair or replacement</b>     | <ul style="list-style-type: none"> <li>○ Loss of useful service life.</li> <li>○ Loss of toll revenue.</li> <li>○ Construction of additional lanes even if required by a code or standard, except when code requires changing a one lane bridge to two lanes.</li> <li>○ Costs related to maintenance of roads are ineligible.</li> <li>○ Federal-aid routes are ineligible for Permanent Work.</li> </ul> | <ul style="list-style-type: none"> <li>○ Must distinguish between minor incident-related damage and damage related to age of the road, traffic flow, and frequent rain events.</li> <li>○ Need date of construction for culvert and any nearby structures that may be altered or affected by the project.</li> <li>○ Hydrology and hydraulic study to evaluate upstream and downstream impacts are necessary if replacing culvert with larger culvert.</li> </ul> |

### Work Eligibility Considerations: Water Control Facilities

Dam or reservoir, irrigation and water conveyance (canal, pipeline, lateral, pump station, siphon), aqueducts, drainage channels, sediment and debris basins, stormwater retention and detention basins, coastal shoreline protection facilities (seawall, revetment), flood control work (levee, floodwall, flood control channel, dam, or basin, and other structure primarily used for flood control), navigational waterways, and shipping channels

EHP laws, regulations, and EOs that frequently apply: NEPA; NHPA, ESA, CWA, EOs 11988 and 11990; projects involving work in waterways usually require Section 404 permits – permits issued by the USACE as required by the CWA.

| PAPPG Reference | Category | Eligible Work (including, but not limited to):  | Ineligible Work and Costs  | Other Considerations   |
|-----------------|----------|---|--|--|
| Chapter 7:I.C   | <b>A</b> | <p><b>Debris removal and disposal (from natural feature or engineered facility) to eliminate an immediate threat</b></p> <ul style="list-style-type: none"> <li>○ For navigable waterways, debris removal eligibility is limited to a max depth of 2 feet below the low tide draft of the largest vessel that utilized the waterway prior to the incident.</li> <li>○ For non-navigable waterways, debris removal is only eligible to the extent that it is necessary to eliminate an immediate threat if the debris:                             <ul style="list-style-type: none"> <li>- Obstructs, or could obstruct, intake structures;</li> <li>- Could cause damage to structures; or</li> <li>- Is causing, or could cause, flooding to property during the occurrence of a 5-year flood.</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>○ Removal of debris to eliminate a threat of flooding to agricultural land.</li> <li>○ Random surveys to look for debris.</li> <li>○ Debris removal from flood control works that are under the specific authority of NRCS and/or USACE.</li> </ul> | <ul style="list-style-type: none"> <li>○ Must distinguish between incident-related debris versus pre-existing debris and debris generated by other incidents.</li> <li>○ Cannot duplicate funding provided by another Federal agency (e.g., USACE or NRCS).</li> </ul> |

### Work Eligibility Considerations: Water Control Facilities

Dam or reservoir, irrigation and water conveyance (canal, pipeline, lateral, pump station, siphon), aqueducts, drainage channels, sediment and debris basins, stormwater retention and detention basins, coastal shoreline protection facilities (seawall, revetment), flood control work (levee, floodwall, flood control channel, dam, or basin, and other structure primarily used for flood control), navigational waterways, and shipping channels

EHP laws, regulations, and EOs that frequently apply: NEPA; NHPA, ESA, CWA, EOs 11988 and 11990; projects involving work in waterways usually require Section 404 permits – permits issued by the USACE as required by the CWA.

|                                   |          |  |  |  |
|-----------------------------------|----------|--|--|--|
| Chapter 7:II.H;<br>Chapter 8:IX.2 | <b>B</b> | <p><b>Flood-fighting (on natural feature or engineered facility) or emergency repairs (engineered and maintained facility only) to address an immediate threat</b></p> <ul style="list-style-type: none"> <li>○ The repair of deliberate breaches or removal of flood-fighting measures is eligible as part of the Category B emergency protective measure project.</li> </ul> | <ul style="list-style-type: none"> <li>○ Emergency protective measures to reduce the threat of flooding to agricultural land.</li> <li>○ Emergency repair of flood control works that are under the authority of USACE or NRCS.</li> <li>○ Flood-fighting measures on a flood control work that is under the authority of the NRCS.</li> <li>○ Permanently increasing height or capacity of a flood control work.</li> <li>○ De-watering of flooded areas primarily for the purpose of drying land.</li> <li>○ Emergency repair of a secondary levee riverward of a primary levee.</li> <li>○ Emergency repairs of flood control works under the authority of NRCS and USACE and of federally constructed coastal shoreline protective features under the authority of USACE.</li> </ul> | <ul style="list-style-type: none"> <li>○ USACE can conduct flood fighting activities. USACE cannot reimburse Applicants for flood fighting efforts.</li> </ul> |
| Chapter 8:IX.B.1 and 2            | <b>D</b> | <p><b>Debris and silt removal required to restore capacity (engineered and maintained facilities only)</b></p> <ul style="list-style-type: none"> <li>○ Eligible, but only if the Applicant provides documentation to establish the pre-disaster capacity of the facility AND that the facility was actively used and maintained with a regular clearance schedule.</li> </ul> | <ul style="list-style-type: none"> <li>○ Restoration of flood control works under the authority of USACE or NRCS.</li> </ul>   |  |

### Work Eligibility Considerations: Water Control Facilities

**Dam or reservoir, irrigation and water conveyance (canal, pipeline, lateral, pump station, siphon), aqueducts, drainage channels, sediment and debris basins, stormwater retention and detention basins, coastal shoreline protection facilities (seawall, revetment), flood control work (levee, floodwall, flood control channel, dam, or basin, and other structure primarily used for flood control), navigational waterways, and shipping channels**

**EHP laws, regulations, and EOs that frequently apply: NEPA; NHPA, ESA, CWA, EOs 11988 and 11990; projects involving work in waterways usually require Section 404 permits – permits issued by the USACE as required by the CWA.**

|                  |          |  |   |  |
|------------------|----------|--|---|--|
| Chapter 8:IX.B.2 | <b>D</b> | <p><b>Restoration: Permanent Repair or Replacement</b></p> <ul style="list-style-type: none"> <li>○ PNP irrigation facilities are only eligible if they provide water for essential services of a governmental nature to the general public for water for drinking water supply, fire suppression, or electricity generation.</li> </ul> | <ul style="list-style-type: none"> <li>○ Restoration of natural channels, lakes, and shorelines—that is, any feature that is not improved and maintained.</li> <li>○ Restoration of PNP irrigation systems that provide water solely for agricultural purposes.</li> <li>○ Restoration of federally constructed coastal shoreline protective features.</li> <li>○ Restoration of flood control works under the authority of USACE or NRCS.</li> </ul> |  |
|------------------|----------|--|---|--|

## Work Eligibility Considerations: Buildings, Vehicles, and Equipment

EHP laws, regulations, and EOs that frequently apply: NEPA, NHPA, CAA, ESA and EOs 11988 and 11990

| PAPPG Reference  | Category | Eligible Work (including, but not limited to):  | Ineligible Work and Costs  | Other Considerations   |
|------------------|----------|---|--|--|
| Chapter 7:II.B   | <b>B</b> | <b>Extracting water and clearing mud, silt, or other accumulated debris from eligible facilities if the work is conducted expeditiously for the purpose of addressing an immediate threat (if the work is only necessary to restore the facility, it is Permanent Work, not Emergency Work)</b> | <ul style="list-style-type: none"> <li>○ Conducted on private property UNLESS FEMA approves the work because:                             <ul style="list-style-type: none"> <li>- The immediate threat is widespread, affecting numerous homes and businesses such that it is a threat to the health and safety of the general public;</li> <li>- The Applicant has legal authority to perform the work; and</li> <li>- The Applicant obtained rights-of-entry and agreements to indemnify and hold harmless the Federal Government.</li> </ul> </li> </ul> |  |
| Chapter 8:IX.C.1 | <b>E</b> | <b>Removal of mud, silt, or other accumulated debris is eligible as Permanent Work when conducted in conjunction with restoration of the facility.</b>  |  |  |
| Chapter 7:II.B   | <b>B</b> | <b>Mold remediation to address immediate threat of additional damage</b> <ul style="list-style-type: none"> <li>○ Includes post-remediation sampling to confirm remediation is complete.</li> </ul>   | <ul style="list-style-type: none"> <li>○ Mold remediation required as a result of poor facility maintenance or failure to take protective measures in a reasonable amount of time following the incident.</li> </ul>   | <ul style="list-style-type: none"> <li>○ Pre-remediation mold sampling is only eligible when sampling reveals presence of mold.</li> </ul> |
| Chapter 8:IX.C.1 | <b>E</b> | <b>Mold remediation when conducted in conjunction with restoring the facility</b> <ul style="list-style-type: none"> <li>○ Post-remediation sampling to confirm remediation is complete.</li> </ul>   | <ul style="list-style-type: none"> <li>○ Mold remediation required as a result of poor facility maintenance or failure to take protective measures in a reasonable amount of time following the incident.</li> </ul>   | <ul style="list-style-type: none"> <li>○ Pre-remediation mold sampling is only eligible when sampling reveals presence of mold.</li> </ul> |

## Work Eligibility Considerations: Buildings, Vehicles, and Equipment

EHP laws, regulations, and EOs that frequently apply: NEPA, NHPA, CAA, ESA and EOs 11988 and 11990

| PAPPG Reference | Category | Eligible Work (including, but not limited to):  | Ineligible Work and Costs   | Other Considerations  |
|-----------------|----------|---|---|---|
| Chapter 7:II.   | <b>B</b> | <b>Emergency protective measures to address an immediate threat</b> <ul style="list-style-type: none"> <li>○ Buttrressing, bracing, or shoring.</li> <li>○ Barricading and safety fencing.</li> <li>○ Flood protection, such as sandbagging.</li> <li>○ Emergency repairs to prevent further damage.</li> </ul> |   |   |
| Chapter 7:II.U  | <b>B</b> | <b>Demolition to address an immediate threat</b> <ul style="list-style-type: none"> <li>○ Demolition of private structures may be eligible when collapse is imminent, and an immediate threat exists to the general public subject to additional requirements.</li> </ul>                                       | <ul style="list-style-type: none"> <li>○ Removal of slabs or foundations that do not present a health or safety hazard.</li> <li>○ Removal or covering concrete pads and driveways.</li> <li>○ Exception to both – Structures in a buyout program funded by FEMA through the HMGP.</li> </ul>   | <ul style="list-style-type: none"> <li>○ If securing an unsafe structure and the surrounding area to prevent access is sufficient to alleviate the threat to public safety, demolition may not be necessary or eligible.</li> </ul> |
| Chapter 7: II.S | <b>B</b> | <b>Safety inspections</b> <ul style="list-style-type: none"> <li>○ To establish whether a building is safe for entry, occupancy, and lawful use, as well as posting appropriate placards.</li> <li>○ Eligible for both public and private buildings.</li> </ul>   | <ul style="list-style-type: none"> <li>○ Inspections associated with:                             <ul style="list-style-type: none"> <li>▪ A determination of Substantial Damage under the community’s floodplain management ordinance.</li> <li>▪ A determination of whether the building needs to be elevated or relocated.</li> <li>▪ Ensuring repairs are completed in accordance with building codes and standards.</li> </ul> </li> </ul> |   |



## Work Eligibility Considerations: Buildings, Vehicles, and Equipment

EHP laws, regulations, and EOs that frequently apply: NEPA, NHPA, CAA, ESA and EOs 11988 and 11990

| PAPPG Reference                                      | Category | Eligible Work (including, but not limited to):  | Ineligible Work and Costs  | Other Considerations   |
|--|----------|---|--|--|
| Chapter 6:XVII, 8:IX.C.1 and Appendix C              | <b>E</b> | <p><b>Post-earthquake inspection and evaluation of welded steel moment frames in buildings</b></p> <ul style="list-style-type: none"> <li>○ To determine the level of disaster-related damage requiring repair.</li> </ul>  | <ul style="list-style-type: none"> <li>○ Preliminary assessment to determine which buildings are likely to have sustained damage to welded steel moment frame connections.</li> <li>○ Detailed analytical or experimental studies.</li> <li>○ Inspections that do not yield discovery of significant connection damage attributable to the earthquake.</li> </ul>  | <ul style="list-style-type: none"> <li>○ The repair of the damaged frame connections to pre-earthquake design in accordance with FEMA 352, Chapter 6, is eligible, but only if FEMA approves a specific SOW for the repairs prior to the Applicant performing the work.</li> <li>○ Repair of the architectural finishes and fire retardants removed in the area of the damage are also eligible.</li> </ul>  |
| Chapter 6:XXI.C.; 8:I.; III.; VII, IX.C, C.1 and C.2 | <b>E</b> | <p><b>Restoration – Permanent repair or replacement</b></p> <ul style="list-style-type: none"> <li>○ Repair or replacement of buildings (to achieve pre-disaster design, capacity, and / or function)</li> <li>○ Repair or replacement of building components, vehicles or equipment with items similar in age, condition, and capacity.</li> </ul> | <ul style="list-style-type: none"> <li>○ Tax assessments.</li> <li>○ Additional capacity necessary due to increased population or use, even if required by code.</li> <li>○ Americans Disabilities Act (ADA), if the Applicant was notified of being in violation of a requirement prior to the incident and did not bring the facility into compliance, then accessibility requirements related to the violation are ineligible.</li> </ul> | <ul style="list-style-type: none"> <li>○ Need date(s) of construction of all facilities in the project area.</li> <li>○ Check National Register of Historic Places or a State historic register.</li> <li>○ Identify whether the building is located in the 100-year floodplain (500-year for critical actions).</li> <li>○ Public Housing Authority facility(s) is only eligible for Permanent Work if Congress does not appropriate funds to HUD for emergency capital needs for the facility.</li> <li>○ Must consider the age of the building, roof, and building systems; evidence of regular maintenance; severity and impacts of incident when distinguishing between incident-related damage and pre-existing damage.</li> <li>○ Comply with federally required codes and standards when repairing or replacing building.</li> </ul> |

## Work Eligibility Considerations: Contents

**Furnishings, equipment, consumable supplies, files, records, research-related contents, animals, irreplaceable collections and individual objects, library books, and publications.**

| PAPPG Reference | Category | Eligible Work (including, but not limited to):   | Ineligible Work and Costs  | Other Considerations  |
|-----------------|----------|--|--|---|
| Chapter 7.II.B  | <b>B</b> | <p><b>Address an immediate threat</b></p> <ul style="list-style-type: none"> <li>○ Removal and storage of contents to minimize additional damage</li> </ul>  |  |   |
| Chapter 8.IX.C  | <b>E</b> | <p><b>Restoration – Permanent repair or replacement</b></p> <ul style="list-style-type: none"> <li>○ Replacement of destroyed contents with items similar in age, condition, and capacity.</li> <li>○ Recovering and stabilizing records.</li> <li>○ Stabilization of irreplaceable collections and individual objects is eligible.</li> <li>○ Re-shelving, cataloging, and other work incidental to the replacement of library books and publications.</li> </ul> | <ul style="list-style-type: none"> <li>○ Replacing used items with new items, unless a used replacement item is not reasonably available.</li> <li>○ Establishing new information databases.</li> <li>○ Manually re-entering data into new computers</li> <li>○ Scanning re-established hardcopy files into computers to create digital files.</li> <li>○ Deciphering photocopies of damaged hard copies.</li> <li>○ Research-related contents and animal replacement, if a comparable item/animal is not available for purchase at a reasonable cost.</li> <li>○ Replacement of rare books, collections, or objects.</li> </ul> | <ul style="list-style-type: none"> <li>○ Applicants may replace contents with different items used for the same general purpose.</li> <li>○ Eligible funding is capped at the estimated cost for equivalent items.</li> </ul> |

## Work Eligibility Considerations: Utilities

**Water storage, treatment plants, and delivery systems; power generation, transmission, and distribution facilities, including, but not limited to, natural gas systems, wind turbines, generators, substations, and power lines; sewage collection systems and treatment plants; communication systems**

**EHP laws, regulations, and EOs that frequently apply: NEPA, NHPA, ESA, CAA, CWA, and EOs 11988 and 11990**

| PAPPG Reference                | Category | Eligible Work (including, but not limited to):  | Ineligible Work and Costs  | Other Considerations   |
|--------------------------------|----------|---|--|--|
| Chapter 6:XXI. A and D; 7:II.X | <b>B</b> | <b>Emergency protective measures to address an immediate threat</b> <ul style="list-style-type: none"> <li>○ Buttreassing, bracing, or shoring.</li> <li>○ Barricading and safety fencing.</li> <li>○ Flood protection, such as sandbagging.</li> <li>○ Emergency repairs to prevent further damage.</li> <li>○ Residential electrical meter repair</li> </ul>  | <ul style="list-style-type: none"> <li>○ Revenue lost due to shutdown of a utility.</li> <li>○ Increased operating costs, such as increased costs for obtaining an alternative source of power because of the shutdown of a power generation plant.</li> </ul> | <ul style="list-style-type: none"> <li>○ Work performed under an exigent circumstance that restores the pre-disaster design and function of the facility in accordance with codes and standards is Permanent Work (Category F), not Emergency Work (Category B).</li> </ul>  |
| Chapter 6:XVII and 8:IX.D      | <b>F</b> | <b>Restoration</b> <ul style="list-style-type: none"> <li>○ Permanent repair or replacement of any component of system, including buildings, structures, or systems, even if not contiguous.</li> <li>○ Electrical conductor replacement subject to specific criteria.</li> <li>○ Inspection or assessment of damaged components of a system.</li> <li>○ Inspection or assessment of an inaccessible structure or component of a system may be eligible, but only when there is evidence of damage, such as when sunken ground appears above a water pipeline.</li> </ul> | <ul style="list-style-type: none"> <li>○ General post-disaster surveys, inspections, and assessments, such as video inspection of sewer lines.</li> </ul>  | <ul style="list-style-type: none"> <li>○ Rural electric cooperatives, municipal utilities, and public power districts frequently use time and equipment contracts for power distribution system repairs. Costs under these contracts are subject to certain criteria.</li> <li>○ Limited ROW clearance required to access a damaged facility may be eligible.</li> </ul> |

## Work Eligibility Considerations: Parks, Recreation, and Other

EHP laws, regulations, and EOs that frequently apply: NEPA, NHPA, CZMA, CBRA, ESA, CWA, and EOs 11988 and 11990

| PAPPG Reference | Category | Eligible Work (including, but not limited to):   | Ineligible Work and Costs  | Other Considerations |
|-----------------|----------|--|--|----------------------|
| Chapter 7:II.   | <b>B</b> | <b>Emergency protective measures to address an immediate threat</b> <ul style="list-style-type: none"> <li>○ Buttressing, bracing, or shoring.</li> <li>○ Barricading and safety fencing.</li> <li>○ Flood protection, such as sandbagging.</li> <li>○ Emergency repairs or stabilization to eliminate or lessen an immediate threat.</li> </ul> | <ul style="list-style-type: none"> <li>○ Work performed under an exigent circumstance that restores the pre-disaster design and function of the facility in accordance with codes and standards is Permanent Work, not Emergency Work</li> </ul>   |                      |
| Chapter 8:IX.E  | <b>G</b> | <b>Restoration – Permanent repair or replacement</b> <ul style="list-style-type: none"> <li>○ Restoration of engineered beaches is subject to specific eligibility criteria.</li> </ul>  | <ul style="list-style-type: none"> <li>○ Restoration of federally constructed beaches or shoreline protection facilities.</li> <li>○ Restoration of PNP parks and recreational facilities, including supporting facilities such as roads, buildings, and utilities.</li> <li>○ Restoration of natural, unimproved features.</li> <li>○ Replacement of dead trees, shrubs, and other vegetation (unless necessary for slope stabilization, erosion control, minimizing sediment runoff, or restoring the function of the facility).</li> <li>○ Replacement of destroyed crops; cosmetic or aesthetic vegetation.</li> </ul> |                      |

**Federal Requirements (when applicable)**

**A. 2 CFR. Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.**

The Contractor shall comply with the Federal requirements per 2 Code of Federal Regulations (CFR) Part 200 Super Circular, titled "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", effective July 01, 2023, and any subsequent revisions and updates to 2 CFR. Part 200 "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards". 2 CFR Part 200 - Procurement Standards, as of July 01, 2023, attached below.

**B. Federal Equal Opportunity Employer Requirement.**

1. The Contractor is an Equal Opportunity Employer and will comply with all equal opportunity employment laws. The Contractor will further ensure that all subcontractors it utilizes in providing the services required hereunder will comply with all equal opportunity employment laws.
2. During the performance of this contract, the Contractor agrees as follows:
  - a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
  - b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
  - c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  - d) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375, and of the rules, regulations, and relevant orders of the Secretary of Labor.
  - e) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
  - f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375, and by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
  - g) The Contractor will include the portion of the sentence immediately preceding paragraph 1 and the provisions of paragraphs a) through f) in every subcontract or Purchase Order (PO) unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, as amended

by Executive Order 11375, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or PO as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**C. Compliance of Reporting Requirements.**

The Contractor hereby acknowledges that the County has the responsibility for providing required reporting, including financial information, program progress, and real property status, in accordance with 2 CFR. § 200.327, 2 CFR. § 200.328, and 2 CFR. § 200.329 on frequencies established by the Federal awarding agency.

**D. Access to Records.**

The following access to records requirements apply to this contract in respect to federal financial assistance awards:

- (a) The CONTRACTOR agrees to provide the County, the State of Florida, the Federal grantor agency, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (b) The CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (c) The CONTRACTOR agrees to provide the Federal grantor agency administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

**E. Retention of Records.**

1. The County shall retain all records related to this project for five (5) years from the date of final expenditure report for projects funded by grant programs.
2. The Contractor shall retain all records related to this Agreement for five (5) years after termination of this contract.

**F. Compliance with the Contract Work Hours and Safety Standards Act.**

1. Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph A of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each Day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.
3. Withholding for unpaid wages and liquidated damages. The County shall upon its own action or

upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph B of this section.

4. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 3 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 3 of this section.

**G. Clean Air Act and The Federal Water Pollution Control Act.**

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).
2. The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the County, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

**H. Suspension and Debarment.**

1. This contract is a covered transaction for purposes of 2 CFR. Part 180 and 2 CFR. Part 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 CFR. § 180.995), or its affiliates (defined at 2 CFR. § 180.905) are excluded (defined at 2 CFR. § 180.940) or disqualified (defined at 2 CFR. § 180.935).
2. The Contractor must comply with 2 CFR. Part 180, subpart C and 2 CFR. Part 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by the County. If it is later determined that the Contractor did not comply with 2 CFR. Part 180, subpart C and 2 CFR. Part 3000, subpart C, in addition to remedies available to the Florida Department of Emergency Management (recipient) and Franklin County (sub-recipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The Proposer agrees to comply with the requirements of 2 CFR. Part 180, subpart C and 2 CFR. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**I. Byrd Anti-Lobbying Amendment, 31 U.S. C. § 1352 (As Amended).**

1. Contractors who apply or propose for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.
2. Federal Form 'C.1' titled "44 CFR. Part 18 – Certification Regarding Lobbying" is hereby attached and made a binding part hereof.

**J. Procurement of Recovered Materials.**

1. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired:
  - a) Competitively within a timeframe providing for compliance with the contract performance schedule;
  - b) Meeting contract performance requirements; or
  - c) At a reasonable price.
2. Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <http://www.epa.gov/cpg/products.htm>.

**K. Department of Homeland Security (DHS) Seal, Logo and Flags.**

The Contractor shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific pre-approval from the appropriate Federal agency.

**L. Compliance with Federal Law, Regulations and Executive Orders.**

This is an acknowledgement that Federal and state financial assistance may be used to fund payment for services provided under this contract. The Contractor will comply will all applicable federal law, regulations, executive orders, as well as policies, procedures and directives of the respective funding Federal grantor agency.

**M. No Obligation by the Federal Government.**

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the County, Contractor, or any other party pertaining to any matter resulting from the contract.

**N. Fraud and False or Fraudulent or Related Acts.**

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

**O. Compliance with the "Davis-Bacon Act":**

- (a) In accordance with the requirements of the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction) as amended), all prime construction contracts in excess of \$2,000 must comply with the Davis-Bacon Act. CONTRACTORS are required to pay wages to laborers and mechanics at a rate not less that the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, CONTRACTORS must pay wages not less than once a week.
- (b) The COUNTY shall report all suspected or reported violations to the appropriate Federal agency in accordance with 2 C.F.R. Part 200, Appendix II, ¶ D

**P. Compliance with the Copeland "Anti-Kickback Act":**

- (a) The CONTRACTOR hereby agrees to comply with the Copeland "Anti-Kickback" Act (40 U.S. C. 3145), as supplemented by the Department of Labor regulations (29 C.F.R. Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States".
- (b) Each CONTRACTOR or SUBCONTRACTOR are hereby prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.
- (c) The CONTRACTOR or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The



- prime CONTRACTOR shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (d) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a CONTRACTOR and subcontractor as provided in 29 C.F.R. § 5.12.
  - (e) The COUNTY shall report all suspected or reported violations to the appropriate Federal agency in accordance with 2 C.F.R. Part 200, Appendix II, ¶ D

**Q.**

**Hatch Act**

The CONTRACTOR shall comply with the Hatch Act, 5 USC 1501 – 1508, and shall ensure that no funds provided, nor personnel employed under this agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

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This content is from the eCFR and is authoritative but unofficial.

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## **Title 2 – Grants and Agreements**

### **Subtitle A – Office of Management and Budget Guidance for Grants and Agreements**

#### **Chapter II – Office of Management and Budget Guidance**

#### **Part 200** Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

##### **Subpart A** Acronyms and Definitions

###### Acronyms

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**§ 200.1** Definitions.

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## **PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS**

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### **Subpart A—Acronyms and Definitions**

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#### ACRONYMS



## § 200.0 Acronyms.

### Acronym Term

CAS Cost Accounting Standards

CFR Code of Federal Regulations

CMIA Cash Management Improvement Act

COG Councils Of Governments

COSO Committee of Sponsoring Organizations of the Treadway Commission

EPA Environmental Protection Agency

ERISA Employee Retirement Income Security Act of 1974 ([29 U.S.C. 1301-1461](#))

EUI Energy Usage Index

F&A Facilities and Administration

FAC Federal Audit Clearinghouse

FAIN Federal Award Identification Number

FAPIIS Federal Awardee Performance and Integrity Information System

FAR Federal Acquisition Regulation

FFATA Federal Funding Accountability and Transparency Act of 2006 or Transparency Act—[Public Law 109-282](#), as amended by section 6202(a) of [Public Law 110-252](#) (31 U.S.C. 6101)

FICA Federal Insurance Contributions Act

FOIA Freedom of Information Act

FR Federal Register

FTE Full-time equivalent

GAAP Generally Accepted Accounting Principles

GAGAS Generally Accepted Government Auditing Standards

GAO Government Accountability Office

GOCO Government owned, contractor operated

GSA General Services Administration

IBS Institutional Base Salary

IHE Institutions of Higher Education

IRC Internal Revenue Code

ISDEAA Indian Self-Determination and Education and Assistance Act

MTC Modified Total Cost

MTDC Modified Total Direct Cost

NFE Non-Federal Entity

OMB Office of Management and Budget

PII Personally Identifiable Information

PMS Payment Management System

PRHP Post-retirement Health Plans

PTE Pass-through Entity

REUI Relative Energy Usage Index

SAM System for Award Management

SFA Student Financial Aid

SNAP Supplemental Nutrition Assistance Program

SPOC Single Point of Contact

TANF Temporary Assistance for Needy Families

TFM Treasury Financial Manual

U.S.C. United States Code

VAT Value Added Tax

*[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75880, Dec. 19, 2014; 80 FR 43308, July 22, 2015; 85 FR 49529, Aug. 13, 2020]*

## § 200.1 Definitions.

These are the definitions for terms used in this part. Different definitions may be found in Federal statutes or regulations that apply more specifically to particular programs or activities. These definitions could be supplemented by additional instructional information provided in governmentwide standard information collections. For purposes of this part, the following definitions apply:

**Acquisition cost** means the cost of the asset including the cost to ready the asset for its intended use.

Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Acquisition costs for software includes those development costs capitalized in accordance with generally accepted accounting principles (GAAP). Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in or excluded from the acquisition cost in accordance with the non-Federal entity's regular accounting practices.

**Advance payment** means a payment that a Federal awarding agency or pass-through entity makes by any appropriate payment mechanism, including a predetermined payment schedule, before the non-Federal entity disburses the funds for program purposes.

**Allocation** means the process of assigning a cost, or a group of costs, to one or more cost objective(s), in reasonable proportion to the benefit provided or other equitable relationship. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate cost objectives.

**Assistance listings** refers to the publicly available listing of Federal assistance programs managed and administered by the General Services Administration, formerly known as the Catalog of Federal Domestic Assistance (CFDA).

**Assistance listing number** means a unique number assigned to identify a Federal Assistance Listings, formerly known as the CFDA Number.

**Assistance listing program title** means the title that corresponds to the Federal Assistance Listings Number, formerly known as the CFDA program title.

**Audit finding** means deficiencies which the auditor is required by § 200.516(a) to report in the schedule of findings and questioned costs.

**Auditee** means any non-Federal entity that expends Federal awards which must be audited under subpart F of this part.

**Auditor** means an auditor who is a public accountant or a Federal, State, local government, or Indian tribe audit organization, which meets the general standards specified for external auditors in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of nonprofit organizations.

**Budget** means the financial plan for the Federal award that the Federal awarding agency or pass-through entity approves during the Federal award process or in subsequent amendments to the Federal award. It may include the Federal and non-Federal share or only the Federal share, as determined by the Federal awarding agency or pass-through entity.

**Budget period** means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which recipients are authorized to expend the funds awarded, including any funds carried forward or other revisions pursuant to § 200.308.

**Capital assets** means:

- (1) Tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include:
  - (i) Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, exchange, or through a lease accounted for as financed purchase under Government Accounting Standards Board (GASB) standards or a finance lease under Financial Accounting Standards Board (FASB) standards; and
  - (ii) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).
- (2) For purpose of this part, capital assets do not include intangible right-to-use assets (per GASB) and right-to-use operating lease assets (per FASB). For example, assets capitalized that recognize a lessee's right to control the use of property and/or equipment for a period of time under a lease contract. See also § 200.465.

**Capital expenditures** means expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.

**Central service cost allocation plan** means the documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a State or local government or Indian tribe on a centralized basis to its departments and agencies. The costs of these services may be allocated or billed to users.

**Claim** means, depending on the context, either:

- (1) A written demand or written assertion by one of the parties to a Federal award seeking as a matter of right:
  - (i) The payment of money in a sum certain;
  - (ii) The adjustment or interpretation of the terms and conditions of the Federal award; or
  - (iii) Other relief arising under or relating to a Federal award.
- (2) A request for payment that is not in dispute when submitted.

**Class of Federal awards** means a group of Federal awards either awarded under a specific program or group of programs or to a specific type of non-Federal entity or group of non-Federal entities to which specific provisions or exceptions may apply.

**Closeout** means the process by which the Federal awarding agency or pass-through entity determines that all applicable administrative actions and all required work of the Federal award have been completed and takes actions as described in § 200.344.

**Cluster of programs** means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. "Other clusters" are as defined by OMB in the compliance supplement or as designated by a State for Federal awards the State provides to its subrecipients that meet the definition of a cluster of programs. When designating an "other cluster," a State must identify the Federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster,

consistent with § 200.332(a). A cluster of programs must be considered as one program for determining major programs, as described in § 200.518, and, with the exception of R&D as described in § 200.501(c), whether a program-specific audit may be elected.

**Cognizant agency for audit** means the Federal agency designated to carry out the responsibilities described in § 200.513(a). The cognizant agency for audit is not necessarily the same as the cognizant agency for indirect costs. A list of cognizant agencies for audit can be found on the Federal Audit Clearinghouse (FAC) website.

**Cognizant agency for indirect costs** means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under this part on behalf of all Federal agencies. The cognizant agency for indirect cost is not necessarily the same as the cognizant agency for audit. For assignments of cognizant agencies see the following:

- (1) For Institutions of Higher Education (IHEs): Appendix III to this part, paragraph C.11.
- (2) For nonprofit organizations: Appendix IV to this part, paragraph C.2.a.
- (3) For State and local governments: Appendix V to this part, paragraph F.1.
- (4) For Indian tribes: Appendix VII to this part, paragraph D.1.

**Compliance supplement** means an annually updated authoritative source for auditors that serves to identify existing important compliance requirements that the Federal Government expects to be considered as part of an audit. Auditors use it to understand the Federal program's objectives, procedures, and compliance requirements, as well as audit objectives and suggested audit procedures for determining compliance with the relevant Federal program.

**Computing devices** means machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or "peripherals") for printing, transmitting and receiving, or storing electronic information. See also the definitions of *supplies* and *information technology systems* in this section.

**Contract** means, for the purpose of Federal financial assistance, a legal instrument by which a recipient or subrecipient purchases property or services needed to carry out the project or program under a Federal award. For additional information on subrecipient and contractor determinations, see § 200.331. See also the definition of *subaward* in this section.

**Contractor** means an entity that receives a contract as defined in this section.

**Cooperative agreement** means a legal instrument of financial assistance between a Federal awarding agency and a recipient or a pass-through entity and a subrecipient that, consistent with 31 U.S.C. 6302-6305:

- (1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal Government or pass-through entity's direct benefit or use;
- (2) Is distinguished from a grant in that it provides for substantial involvement of the Federal awarding agency in carrying out the activity contemplated by the Federal award.
- (3) The term does not include:
  - (i) A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or

- (ii) An agreement that provides only:
  - (A) Direct United States Government cash assistance to an individual;
  - (B) A subsidy;
  - (C) A loan;
  - (D) A loan guarantee; or
  - (E) Insurance.

**Cooperative audit resolution** means the use of audit follow-up techniques which promote prompt corrective action by improving communication, fostering collaboration, promoting trust, and developing an understanding between the Federal agency and the non-Federal entity. This approach is based upon:

- (1) A strong commitment by Federal agency and non-Federal entity leadership to program integrity;
- (2) Federal agencies strengthening partnerships and working cooperatively with non-Federal entities and their auditors; and non-Federal entities and their auditors working cooperatively with Federal agencies;
- (3) A focus on current conditions and corrective action going forward;
- (4) Federal agencies offering appropriate relief for past noncompliance when audits show prompt corrective action has occurred; and
- (5) Federal agency leadership sending a clear message that continued failure to correct conditions identified by audits which are likely to cause improper payments, fraud, waste, or abuse is unacceptable and will result in sanctions.

**Corrective action** means action taken by the auditee that:

- (1) Corrects identified deficiencies;
- (2) Produces recommended improvements; or
- (3) Demonstrates that audit findings are either invalid or do not warrant auditee action.

**Cost allocation plan** means central service cost allocation plan or public assistance cost allocation plan.

**Cost objective** means a program, function, activity, award, organizational subdivision, contract, or work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capital projects, etc. A cost objective may be a major function of the non-Federal entity, a particular service or project, a Federal award, or an indirect (Facilities & Administrative (F&A)) cost activity, as described in subpart E of this part. See also the definitions of *final cost objective* and *intermediate cost objective* in this section.

**Cost sharing or matching** means the portion of project costs not paid by Federal funds or contributions (unless otherwise authorized by Federal statute). See also § 200.306.

**Cross-cutting audit finding** means an audit finding where the same underlying condition or issue affects all Federal awards (including Federal awards of more than one Federal awarding agency or pass-through entity).

**Disallowed costs** means those charges to a Federal award that the Federal awarding agency or pass-through entity determines to be unallowable, in accordance with the applicable Federal statutes, regulations, or the terms and conditions of the Federal award.

**Discretionary award** means an award in which the Federal awarding agency, in keeping with specific statutory authority that enables the agency to exercise judgment ("discretion"), selects the recipient and/or the amount of Federal funding awarded through a competitive process or based on merit of proposals. A discretionary award may be selected on a non-competitive basis, as appropriate.

**Equipment** means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000. See also the definitions of *capital assets*, *computing devices*, *general purpose equipment*, *information technology systems*, *special purpose equipment*, and *supplies* in this section.

**Expenditures** means charges made by a non-Federal entity to a project or program for which a Federal award was received.

- (1) The charges may be reported on a cash or accrual basis, as long as the methodology is disclosed and is consistently applied.
- (2) For reports prepared on a cash basis, expenditures are the sum of:
  - (i) Cash disbursements for direct charges for property and services;
  - (ii) The amount of indirect expense charged;
  - (iii) The value of third-party in-kind contributions applied; and
  - (iv) The amount of cash advance payments and payments made to subrecipients.
- (3) For reports prepared on an accrual basis, expenditures are the sum of:
  - (i) Cash disbursements for direct charges for property and services;
  - (ii) The amount of indirect expense incurred;
  - (iii) The value of third-party in-kind contributions applied; and
  - (iv) The net increase or decrease in the amounts owed by the non-Federal entity for:
    - (A) Goods and other property received;
    - (B) Services performed by employees, contractors, subrecipients, and other payees; and
    - (C) Programs for which no current services or performance are required such as annuities, insurance claims, or other benefit payments.

**Federal agency** means an "agency" as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).

**Federal Audit Clearinghouse (FAC)** means the clearinghouse designated by OMB as the repository of record where non-Federal entities are required to transmit the information required by subpart F of this part.

**Federal award** has the meaning, depending on the context, in either paragraph (1) or (2) of this definition:

- (1)

- (i) The Federal financial assistance that a recipient receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101; or
  - (ii) The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101.
- (2) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (2) of the definition of *Federal financial assistance* in this section, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.
  - (3) Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal Government owned, contractor operated facilities (GOCOs).
  - (4) See also definitions of Federal financial assistance, grant agreement, and cooperative agreement.

**Federal award date** means the date when the Federal award is signed by the authorized official of the Federal awarding agency.

**Federal awarding agency** means the Federal agency that provides a Federal award directly to a non-Federal entity.

**Federal financial assistance** means

- (1) Assistance that non-Federal entities receive or administer in the form of:
  - (i) Grants;
  - (ii) Cooperative agreements;
  - (iii) Non-cash contributions or donations of property (including donated surplus property);
  - (iv) Direct appropriations;
  - (v) Food commodities; and
  - (vi) Other financial assistance (except assistance listed in paragraph (2) of this definition).
- (2) For § 200.203 and subpart F of this part, *Federal financial assistance* also includes assistance that non-Federal entities receive or administer in the form of:
  - (i) Loans;
  - (ii) Loan Guarantees;
  - (iii) Interest subsidies; and
  - (iv) Insurance.
- (3) For § 200.216, Federal financial assistance includes assistance that non-Federal entities receive or administer in the form of:
  - (i) Grants;
  - (ii) Cooperative agreements;
  - (iii) Loans; and



(iv) Loan Guarantees.

- (4) Federal financial assistance does not include amounts received as reimbursement for services rendered to individuals as described in § 200.502(h) and (i).

**Federal interest** means, for purposes of § 200.330 or when used in connection with the acquisition or improvement of real property, equipment, or supplies under a Federal award, the dollar amount that is the product of the:

- (1) The percentage of Federal participation in the total cost of the real property, equipment, or supplies; and
- (2) Current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs.

**Federal program** means:

- (1) All Federal awards which are assigned a single Assistance Listings Number.
- (2) When no Assistance Listings Number is assigned, all Federal awards from the same agency made for the same purpose must be combined and considered one program.
- (3) Notwithstanding paragraphs (1) and (2) of this definition, a cluster of programs. The types of clusters of programs are:
- (i) Research and development (R&D);
  - (ii) Student financial aid (SFA); and
  - (iii) "Other clusters," as described in the definition of *cluster of programs* in this section.

**Federal share** means the portion of the Federal award costs that are paid using Federal funds.

**Final cost objective** means a cost objective which has allocated to it both direct and indirect costs and, in the non-Federal entity's accumulation system, is one of the final accumulation points, such as a particular award, internal project, or other direct activity of a non-Federal entity. See also the definitions of *cost objective* and *intermediate cost objective* in this section.

**Financial obligations**, when referencing a recipient's or subrecipient's use of funds under a Federal award, means orders placed for property and services, contracts and subawards made, and similar transactions that require payment.

**Fixed amount awards** means a type of grant or cooperative agreement under which the Federal awarding agency or pass-through entity provides a specific level of support without regard to actual costs incurred under the Federal award. This type of Federal award reduces some of the administrative burden and record-keeping requirements for both the non-Federal entity and Federal awarding agency or pass-through entity. Accountability is based primarily on performance and results. See §§ 200.102(c), 200.201(b), and 200.333.

**Foreign organization** means an entity that is:

- (1) A public or private organization located in a country other than the United States and its territories that is subject to the laws of the country in which it is located, irrespective of the citizenship of project staff or place of performance;

- (2) A private nongovernmental organization located in a country other than the United States that solicits and receives cash contributions from the general public;
- (3) A charitable organization located in a country other than the United States that is nonprofit and tax exempt under the laws of its country of domicile and operation, and is not a university, college, accredited degree-granting institution of education, private foundation, hospital, organization engaged exclusively in research or scientific activities, church, synagogue, mosque or other similar entities organized primarily for religious purposes; or
- (4) An organization located in a country other than the United States not recognized as a foreign public entity.

**Foreign public entity** means:

- (1) A foreign government or foreign governmental entity;
- (2) A public international organization, which is an organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288-288f);
- (3) An entity owned (in whole or in part) or controlled by a foreign government; or
- (4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

**General purpose equipment** means equipment which is not limited to research, medical, scientific or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles. See also the definitions of *equipment* and *special purpose equipment* in this section.

**Generally accepted accounting principles (GAAP)** has the meaning specified in accounting standards issued by the GASB and the FASB.

**Generally accepted government auditing standards (GAGAS)**, also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.

**Grant agreement** means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302, 6304:

- (1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal awarding agency or pass-through entity's direct benefit or use;
- (2) Is distinguished from a cooperative agreement in that it does not provide for substantial involvement of the Federal awarding agency in carrying out the activity contemplated by the Federal award.
- (3) Does not include an agreement that provides only:
  - (i) Direct United States Government cash assistance to an individual;
  - (ii) A subsidy;
  - (iii) A loan;

- (vi) A loan guarantee; or
- (v) Insurance.

**Highest level owner** means the entity that owns or controls an immediate owner of the offeror, or that owns or controls one or more entities that control an immediate owner of the offeror. No entity owns or exercises control of the highest-level owner as defined in the Federal Acquisition Regulations (FAR) (48 CFR 52.204-17).

**Hospital** means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

**Improper payment** means:

- (1) Any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other *legally applicable* requirements.
  - (i) Incorrect amounts are overpayments or underpayments that are made to eligible recipients (including inappropriate denials of payment or service, any payment that does not account for credit for applicable discounts, payments that are for an incorrect amount, and duplicate payments). An improper payment also includes any payment that was made to an ineligible recipient or for an ineligible good or service, or payments for goods or services not received (except for such payments authorized by law).

**Note 1 to paragraph (1)(i) of this definition.** Applicable discounts are only those discounts where it is both advantageous and within the agency's control to claim them.

- (ii) When an agency's review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation, this payment should also be considered an improper payment. When establishing documentation requirements for payments, agencies should ensure that all documentation requirements are necessary and should refrain from imposing additional burdensome documentation requirements.
  - (iii) Interest or other fees that may result from an underpayment by an agency are not considered an improper payment if the interest was paid correctly. These payments are generally separate transactions and may be necessary under certain statutory, contractual, administrative, or other legally applicable requirements.
  - (iv) A "questioned cost" (as defined in this section) should not be considered an improper payment until the transaction has been completely reviewed and is confirmed to be improper.
  - (v) The term "payment" in this definition means any disbursement or transfer of Federal funds (including a commitment for future payment, such as cash, securities, loans, loan guarantees, and insurance subsidies) to any non-Federal person, non-Federal entity, or Federal employee, that is made by a Federal agency, a Federal contractor, a Federal grantee, or a governmental or other organization administering a Federal program or activity.
  - (vi) The term "payment" includes disbursements made pursuant to prime contracts awarded under the Federal Acquisition Regulation and Federal awards subject to this part that are expended by recipients.
- (2) See definition of improper payment in OMB Circular A-123 appendix C, part I A (1) "What is an improper payment?" Questioned costs, including those identified in audits, are not an improper payment until reviewed and confirmed to be improper as defined in OMB Circular A-123 appendix C.

**Indian tribe** means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b(e)). See annually published Bureau of Indian Affairs list of Indian Entities Recognized and Eligible to Receive Services.

**Institutions of Higher Education (IHEs)** is defined at 20 U.S.C. 1001.

**Indirect (facilities & administrative (F&A)) costs** means those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect (F&A) costs. Indirect (F&A) cost pools must be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

**Indirect cost rate proposal** means the documentation prepared by a non-Federal entity to substantiate its request for the establishment of an indirect cost rate as described in appendices III through VII and appendix IX to this part.

**Information technology systems** means computing devices, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources. See also the definitions of *computing devices* and *equipment* in this section.

**Intangible property** means property having no physical existence, such as trademarks, copyrights, patents and patent applications and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible).

**Intermediate cost objective** means a cost objective that is used to accumulate indirect costs or service center costs that are subsequently allocated to one or more indirect cost pools or final cost objectives. See also the definitions of *cost objective* and *final cost objective* in this section.

**Internal controls** for non-Federal entities means:

- (1) Processes designed and implemented by non-Federal entities to provide reasonable assurance regarding the achievement of objectives in the following categories:
  - (i) Effectiveness and efficiency of operations;
  - (ii) Reliability of reporting for internal and external use; and
  - (iii) Compliance with applicable laws and regulations.
- (2) Federal awarding agencies are required to follow internal control compliance requirements in OMB Circular No. A-123, Management's Responsibility for Enterprise Risk Management and Internal Control.

**Loan** means a Federal loan or loan guarantee received or administered by a non-Federal entity, except as used in the definition of *program income* in this section.

- (1) The term "direct loan" means a disbursement of funds by the Federal Government to a non-Federal borrower under a contract that requires the repayment of such funds with or without interest. The term includes the purchase of, or participation in, a loan made by another lender and financing

arrangements that defer payment for more than 90 days, including the sale of a Federal Government asset on credit terms. The term does not include the acquisition of a federally guaranteed loan in satisfaction of default claims or the price support loans of the Commodity Credit Corporation.

- (2) The term "direct loan obligation" means a binding agreement by a Federal awarding agency to make a direct loan when specified conditions are fulfilled by the borrower.
- (3) The term "loan guarantee" means any Federal Government guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.
- (4) The term "loan guarantee commitment" means a binding agreement by a Federal awarding agency to make a loan guarantee when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.

**Local government** means any unit of government within a state, including a:

- (1) County;
- (2) Borough;
- (3) Municipality;
- (4) City;
- (5) Town;
- (6) Township;
- (7) Parish;
- (8) Local public authority, including any public housing agency under the United States Housing Act of 1937;
- (9) Special district;
- (10) School district;
- (11) Intrastate district;
- (12) Council of governments, whether or not incorporated as a nonprofit corporation under State law; and
- (13) Any other agency or instrumentality of a multi-, regional, or intra-State or local government.

**Major program** means a Federal program determined by the auditor to be a major program in accordance with § 200.518 or a program identified as a major program by a Federal awarding agency or pass-through entity in accordance with § 200.503(e).

**Management decision** means the Federal awarding agency's or pass-through entity's written determination, provided to the auditee, of the adequacy of the auditee's proposed corrective actions to address the findings, based on its evaluation of the audit findings and proposed corrective actions.

**Micro-purchase** means a purchase of supplies or services, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchases comprise a subset of a non-Federal entity's small purchases as defined in § 200.320.

**Micro-purchase threshold** means the dollar amount at or below which a non-Federal entity may purchase property or services using micro-purchase procedures (see § 200.320). Generally, the micro-purchase threshold for procurement activities administered under Federal awards is not to exceed the amount set by the FAR at 48 CFR part 2, subpart 2.1, unless a higher threshold is requested by the non-Federal entity and approved by the cognizant agency for indirect costs.

**Modified Total Direct Cost (MTDC)** means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.

**Non-discretionary award** means an award made by the Federal awarding agency to specific recipients in accordance with statutory, eligibility and compliance requirements, such that in keeping with specific statutory authority the agency has no ability to exercise judgement (“discretion”). A non-discretionary award amount could be determined specifically or by formula.

**Non-Federal entity (NFE)** means a State, local government, Indian tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

**Nonprofit organization** means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:

- (1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
- (2) Is not organized primarily for profit; and
- (3) Uses net proceeds to maintain, improve, or expand the operations of the organization.

**Notice of funding opportunity** means a formal announcement of the availability of Federal funding through a financial assistance program from a Federal awarding agency. The notice of funding opportunity provides information on the award, who is eligible to apply, the evaluation criteria for selection of an awardee, required components of an application, and how to submit the application. The notice of funding opportunity is any paper or electronic issuance that an agency uses to announce a funding opportunity, whether it is called a “program announcement,” “notice of funding availability,” “broad agency announcement,” “research announcement,” “solicitation,” or some other term.

**Office of Management and Budget (OMB)** means the Executive Office of the President, Office of Management and Budget.

**Oversight agency for audit** means the Federal awarding agency that provides the predominant amount of funding directly (direct funding) (as listed on the schedule of expenditures of Federal awards, see § 200.510(b)) to a non-Federal entity unless OMB designates a specific cognizant agency for audit. When the direct funding represents less than 25 percent of the total Federal expenditures (as direct and sub-awards) by the non-Federal entity, then the Federal agency with the predominant amount of total funding is the designated oversight agency for audit. When there is no direct funding, the Federal awarding agency which is the predominant source of pass-through funding must assume the oversight responsibilities. The duties of the oversight agency for audit and the process for any reassignments are described in § 200.513(b).

**Participant support costs** means direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences, or training projects.

**Pass-through entity (PTE)** means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

**Performance goal** means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate. In some instances (e.g., discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with agency policy).

**Period of performance** means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions, or budget periods. Identification of the period of performance in the Federal award per § 200.211(b)(5) does not commit the awarding agency to fund the award beyond the currently approved budget period.

**Personal property** means property other than real property. It may be tangible, having physical existence, or intangible.

**Personally Identifiable Information (PII)** means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Some information that is considered to be PII is available in public sources such as telephone books, public websites, and university listings. This type of information is considered to be Public PII and includes, for example, first and last name, address, work telephone number, email address, home telephone number, and general educational credentials. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Non-PII can become PII whenever additional information is made publicly available, in any medium and from any source, that, when combined with other available information, could be used to identify an individual.

**Program income** means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in § 200.307(f). (See the definition of *period of performance* in this section.) Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them. See also § 200.407. See also 35 U.S.C. 200-212 "Disposition of Rights in Educational Awards" applies to inventions made under Federal awards.

**Project cost** means total allowable costs incurred under a Federal award and all required cost sharing and voluntary committed cost sharing, including third-party contributions.

**Property** means real property or personal property. See also the definitions of *real property* and *personal property* in this section.

**Protected Personally Identifiable Information (Protected PII)** means an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and

place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts. This does not include PII that is required by law to be disclosed. See also the definition of *Personally Identifiable Information (PII)* in this section.

**Questioned cost** means a cost that is questioned by the auditor because of an audit finding:

- (1) Which resulted from a violation or possible violation of a statute, regulation, or the terms and conditions of a Federal award, including for funds used to match Federal funds;
- (2) Where the costs, at the time of the audit, are not supported by adequate documentation; or
- (3) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.
- (4) Questioned costs are not an improper payment until reviewed and confirmed to be improper as defined in OMB Circular A-123 appendix C. (See also the definition of *Improper payment* in this section).

**Real property** means land, including land improvements, structures and appurtenances thereto, but excludes moveable machinery and equipment.

**Recipient** means an entity, usually but not limited to non-Federal entities that receives a Federal award directly from a Federal awarding agency. The term recipient does not include subrecipients or individuals that are beneficiaries of the award.

**Renewal award** means an award made subsequent to an expiring Federal award for which the start date is contiguous with, or closely follows, the end of the expiring Federal award. A renewal award's start date will begin a distinct period of performance.

**Research and Development (R&D)** means all research activities, both basic and applied, and all development activities that are performed by non-Federal entities. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

**Simplified acquisition threshold** means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods (see § 200.320). Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items at or below the simplified acquisition threshold. The simplified acquisition threshold for procurement activities administered under Federal awards is set by the FAR at 48 CFR part 2, subpart 2.1. The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. However, in no circumstances can this threshold exceed the dollar value established in the FAR (48 CFR part 2, subpart 2.1) for the simplified acquisition threshold. Recipients should determine if local government laws on purchasing apply.

**Special purpose equipment** means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers. See also the definitions of *equipment* and *general purpose equipment* in this section.



**State** means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

**Student Financial Aid (SFA)** means Federal awards under those programs of general student assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended, (20 U.S.C. 1070-1099d), which are administered by the U.S. Department of Education, and similar programs provided by other Federal agencies. It does not include Federal awards under programs that provide fellowships or similar Federal awards to students on a competitive basis, or for specified studies or research.

**Subaward** means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

**Subrecipient** means an entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

**Subsidiary** means an entity in which more than 50 percent of the entity is owned or controlled directly by a parent corporation or through another subsidiary of a parent corporation.

**Supplies** means all tangible personal property other than those described in the definition of *equipment* in this section. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or \$5,000, regardless of the length of its useful life. See also the definitions of *computing devices* and *equipment* in this section.

**Telecommunications cost** means the cost of using communication and telephony technologies such as mobile phones, land lines, and internet.

**Termination** means the ending of a Federal award, in whole or in part at any time prior to the planned end of period of performance. A lack of available funds is not a termination.

**Third-party in-kind contributions** means the value of non-cash contributions (*i.e.*, property or services) that—

- (1) Benefit a federally-assisted project or program; and
- (2) Are contributed by non-Federal third parties, without charge, to a non-Federal entity under a Federal award.

**Unliquidated financial obligations** means, for financial reports prepared on a cash basis, financial obligations incurred by the non-Federal entity that have not been paid (liquidated). For reports prepared on an accrual expenditure basis, these are financial obligations incurred by the non-Federal entity for which an expenditure has not been recorded.

**Unobligated balance** means the amount of funds under a Federal award that the non-Federal entity has not obligated. The amount is computed by subtracting the cumulative amount of the non-Federal entity's unliquidated financial obligations and expenditures of funds under the Federal award from the cumulative amount of the funds that the Federal awarding agency or pass-through entity authorized the non-Federal entity to obligate.

*Voluntary committed cost sharing* means cost sharing specifically pledged on a voluntary basis in the proposal's budget on the part of the non-Federal entity and that becomes a binding requirement of Federal award. See also § 200.306.

[85 FR 49529, Aug. 13, 2020, as amended at 86 FR 10439, Feb. 22, 2021]

## Subpart B—General Provisions

Link to an amendment published at 89 FR 30136, Apr. 22, 2024.

### § 200.100 Purpose.

(a) *Purpose.*

(1) This part establishes uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities, as described in § 200.101. Federal awarding agencies must not impose additional or inconsistent requirements, except as provided in §§ 200.102 and 200.211, or unless specifically required by Federal statute, regulation, or Executive order.

(2) This part provides the basis for a systematic and periodic collection and uniform submission by Federal agencies of information on all Federal financial assistance programs to the Office of Management and Budget (OMB). It also establishes Federal policies related to the delivery of this information to the public, including through the use of electronic media. It prescribes the manner in which General Services Administration (GSA), OMB, and Federal agencies that administer Federal financial assistance programs are to carry out their statutory responsibilities under the Federal Program Information Act (31 U.S.C. 6101-6106).

(b) *Administrative requirements.* Subparts B through D of this part set forth the uniform administrative requirements for grant and cooperative agreements, including the requirements for Federal awarding agency management of Federal grant programs before the Federal award has been made, and the requirements Federal awarding agencies may impose on non-Federal entities in the Federal award.

(c) *Cost principles.* Subpart E of this part establishes principles for determining the allowable costs incurred by non-Federal entities under Federal awards. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal Government participation in the financing of a particular program or project. The principles are designed to provide that Federal awards bear their fair share of cost recognized under these principles except where restricted or prohibited by statute.

(d) *Single Audit Requirements and Audit Follow-up.* Subpart F of this part is issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). It sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards. These provisions also provide the policies and procedures for Federal awarding agencies and pass-through entities when using the results of these audits.

(e) *Guidance on challenges and prizes.* For OMB guidance to Federal awarding agencies on challenges and prizes, please see memo M-10-11 Guidance on the Use of Challenges and Prizes to Promote Open Government, issued March 8, 2010, or its successor.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49536, Aug. 13, 2020]

**§ 200.101 Applicability.**

**(a) General applicability to Federal agencies.**

- (1) The requirements established in this part apply to Federal agencies that make Federal awards to non-Federal entities. These requirements are applicable to all costs related to Federal awards.
- (2) Federal awarding agencies may apply subparts A through E of this part to Federal agencies, for-profit entities, foreign public entities, or foreign organizations, except where the Federal awarding agency determines that the application of these subparts would be inconsistent with the international responsibilities of the United States or the statutes or regulations of a foreign government.

**(b) Applicability to different types of Federal awards.**

- (1) Throughout this part when the word “must” is used it indicates a requirement. Whereas, use of the word “should” or “may” indicates a best practice or recommended approach rather than a requirement and permits discretion.
- (2) The following table describes what portions of this part apply to which types of Federal awards. The terms and conditions of Federal awards (including this part) flow down to subawards to subrecipients unless a particular section of this part or the terms and conditions of the Federal award specifically indicate otherwise. This means that non-Federal entities must comply with requirements in this part regardless of whether the non-Federal entity is a recipient or subrecipient of a Federal award. Pass-through entities must comply with the requirements described in subpart D of this part, §§ 200.331 through 200.333, but not any requirements in this part directed towards Federal awarding agencies unless the requirements of this part or the terms and conditions of the Federal award indicate otherwise.

Table 1 to Paragraph (b)

| The following portions of this Part   | Are applicable to the following types of Federal Awards and Fixed-Price Contracts and Subcontracts (except as noted in paragraphs (d) and (e) of this section): | Are NOT applicable to the following types of Federal Awards and Fixed-Price Contracts and Subcontracts:  |
|---|---|--|
| Subpart A—Acronyms and Definitions  | —All  |  |
| Subpart B—General Provisions, except for §§ 200.111 English Language, 200.112 Conflict of Interest, 200.113 Mandatory Disclosures | —All  |  |
| §§ 200.111 English Language, 200.112 Conflict of Interest, 200.113 Mandatory Disclosures  | —Grant Agreements and cooperative agreements  | —Agreements for loans, loan guarantees, interest subsidies and insurance.<br>—Procurement contracts awarded by Federal Agencies under the Federal Acquisition Regulation and subcontracts under those contracts. |

| The following portions of this Part  | Are applicable to the following types of Federal Awards and Fixed-Price Contracts and Subcontracts (except as noted in paragraphs (d) and (e) of this section):  | Are NOT applicable to the following types of Federal Awards and Fixed-Price Contracts and Subcontracts:  |
|--|--|--|
| Subparts C-D, except for §§ 200.203 Requirement to provide public notice of Federal financial assistance programs, 200.303 Internal controls, 200.331-333 Subrecipient Monitoring and Management | –Grant Agreements and cooperative agreements   | –Agreements for loans, loan guarantees, interest subsidies and insurance.<br>–Procurement contracts awarded by Federal Agencies under the Federal Acquisition Regulation and subcontracts under those contracts.   |
| § 200.203 Requirement to provide public notice of Federal financial assistance programs  | –Grant Agreements and cooperative agreements<br>–Agreements for loans, loan guarantees, interest subsidies and insurance   | –Procurement contracts awarded by Federal Agencies under the Federal Acquisition Regulation and subcontracts under those contracts.  |
| §§ 200.303 Internal controls, 200.331-333 Subrecipient Monitoring and Management   | –All   |  |
| Subpart E–Cost Principles  | –Grant Agreements and cooperative agreements, except those providing food commodities<br>–All procurement contracts under the Federal Acquisition Regulations except those that are not negotiated   | –Grant agreements and cooperative agreements providing foods commodities.<br>–Fixed amount awards.<br>–Agreements for loans, loans guarantees, interest subsidies and insurance.<br>–Federal awards to hospitals (see Appendix IX Hospital Cost Principles). |
| Subpart F–Audit Requirements   | –Grant Agreements and cooperative agreements<br>–Contracts and subcontracts, except for fixed price contracts and subcontracts, awarded under the Federal Acquisition Regulation<br>–Agreements for loans, loans guarantees, interest subsidies and insurance and other forms of Federal Financial Assistance as defined by the Single Audit Act Amendment of 1996 | –Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation.  |

- (c) **Federal award of cost-reimbursement contract under the FAR to a non-Federal entity.** When a non-Federal entity is awarded a cost-reimbursement contract, only subpart D, §§ 200.331 through 200.333, and subparts E and F of this part are incorporated by reference into the contract, but the requirements of subparts D, E, and F are supplementary to the FAR and the contract. When the Cost Accounting Standards (CAS) are applicable to the contract, they take precedence over the requirements of this part, including subpart F of this part, which are supplementary to the CAS requirements. In addition, costs that are made unallowable under 10 U.S.C. 2324(e) and 41 U.S.C. 4304(a) as described in the FAR 48 CFR part 31, subpart 31.2, and 48 CFR 31.603 are always unallowable. For requirements other than those covered in subpart D, §§ 200.331 through 200.333, and subparts E and F of this part, the terms of the contract and the FAR apply. Note that when a non-Federal entity is awarded a FAR contract, the FAR applies, and the terms and conditions of the contract shall prevail over the requirements of this part.
- (d) **Governing provisions.** With the exception of subpart F of this part, which is required by the Single Audit Act, in any circumstances where the provisions of Federal statutes or regulations differ from the provisions of this part, the provision of the Federal statutes or regulations govern. This includes, for agreements with Indian tribes, the provisions of the Indian Self-Determination and Education and Assistance Act (ISDEAA), as amended, 25 U.S.C 450-458ddd-2.
- (e) **Program applicability.** Except for §§ 200.203, 200.216, and 200.331 through 200.333, the requirements in subparts C, D, and E of this part do not apply to the following programs:
- (1) The block grant awards authorized by the Omnibus Budget Reconciliation Act of 1981 (including Community Services), except to the extent that subpart E of this part apply to subrecipients of Community Services Block Grant funds pursuant to 42 U.S.C. 9916(a)(1)(B);
  - (2) Federal awards to local education agencies under 20 U.S.C. 7702-7703b, (portions of the Impact Aid program);
  - (3) Payments under the Department of Veterans Affairs' State Home Per Diem Program (38 U.S.C. 1741); and
  - (4) Federal awards authorized under the Child Care and Development Block Grant Act of 1990, as amended:
    - (i) Child Care and Development Block Grant (42 U.S.C. 9858).
    - (ii) Child Care Mandatory and Matching Funds of the Child Care and Development Fund (42 U.S.C. 9858).
- (f) **Additional program applicability.** Except for §§ 200.203 and 200.216, the guidance in subpart C of this part does not apply to the following programs:
- (1) Entitlement Federal awards to carry out the following programs of the Social Security Act:
    - (i) Temporary Assistance for Needy Families (title IV-A of the Social Security Act, 42 U.S.C. 601-619);
    - (ii) Child Support Enforcement and Establishment of Paternity (title IV-D of the Social Security Act, 42 U.S.C. 651-669b);
    - (iii) Foster Care and Adoption Assistance (title IV-E of the Act, 42 U.S.C. 670-679c);
    - (iv) Aid to the Aged, Blind, and Disabled (titles I, X, XIV, and XVI-AABD of the Act, as amended);

- (v) Medical Assistance (Medicaid) (title XIX of the Act, 42 U.S.C. 1396-1396w-5) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B) of the Social Security Act (42 U.S.C. 1396b(a)(6)(B)); and
  - (vi) Children's Health Insurance Program (title XXI of the Act, 42 U.S.C. 1397aa-1397mm).
- (2) A Federal award for an experimental, pilot, or demonstration project that is also supported by a Federal award listed in paragraph (f)(1) of this section.
  - (3) Federal awards under subsection 412(e) of the Immigration and Nationality Act and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits (8 U.S.C. 1522(e)).
  - (4) Entitlement awards under the following programs of The National School Lunch Act:
    - (i) National School Lunch Program (section 4 of the Act, 42 U.S.C. 1753);
    - (ii) Commodity Assistance (section 6 of the Act, 42 U.S.C. 1755);
    - (iii) Special Meal Assistance (section 11 of the Act, 42 U.S.C. 1759a);
    - (iv) Summer Food Service Program for Children (section 13 of the Act, 42 U.S.C. 1761); and
    - (v) Child and Adult Care Food Program (section 17 of the Act, 42 U.S.C. 1766).
  - (5) Entitlement awards under the following programs of The Child Nutrition Act of 1966:
    - (i) Special Milk Program (section 3 of the Act, 42 U.S.C. 1772);
    - (ii) School Breakfast Program (section 4 of the Act, 42 U.S.C. 1773); and
    - (iii) State Administrative Expenses (section 7 of the Act, 42 U.S.C. 1776).
  - (6) Entitlement awards for State Administrative Expenses under The Food and Nutrition Act of 2008 (section 16 of the Act, 7 U.S.C. 2025).
  - (7) Non-discretionary Federal awards under the following non-entitlement programs:
    - (i) Special Supplemental Nutrition Program for Women, Infants and Children (section 17 of the Child Nutrition Act of 1966) 42 U.S.C. 1786;
    - (ii) The Emergency Food Assistance Programs (Emergency Food Assistance Act of 1983) 7 U.S.C. 7501 note; and
    - (iii) Commodity Supplemental Food Program (section 5 of the Agriculture and Consumer Protection Act of 1973) 7 U.S.C. 612c note.

[85 FR 49536, Aug. 13, 2020, as amended at 86 FR 10439, Feb. 22, 2021]

## § 200.102 Exceptions.

- (a) With the exception of subpart F of this part, OMB may allow exceptions for classes of Federal awards or non-Federal entities subject to the requirements of this part when exceptions are not prohibited by statute. In the interest of maximum uniformity, exceptions from the requirements of this part will be permitted as described in this section.

- (b) Exceptions on a case-by-case basis for individual non-Federal entities may be authorized by the Federal awarding agency or cognizant agency for indirect costs, except where otherwise required by law or where OMB or other approval is expressly required by this part.
- (c) The Federal awarding agency may adjust requirements to a class of Federal awards or non-Federal entities when approved by OMB, or when required by Federal statutes or regulations, except for the requirements in subpart F of this part. A Federal awarding agency may apply less restrictive requirements when making fixed amount awards as defined in subpart A of this part, except for those requirements imposed by statute or in subpart F of this part.
- (d) Federal awarding agencies may request exceptions in support of innovative program designs that apply a risk-based, data-driven framework to alleviate select compliance requirements and hold recipients accountable for good performance. See also § 200.206.

[85 FR 49538, Aug. 13, 2020, as amended at 86 FR 10439, Feb. 22, 2021]

### § 200.103 Authorities.

This part is issued under the following authorities.

- (a) Subparts B through D of this part are authorized under 31 U.S.C. 503 (the Chief Financial Officers Act, Functions of the Deputy Director for Management), 41 U.S.C. 1101-1131 (the Office of Federal Procurement Policy Act), Reorganization Plan No. 2 of 1970, and Executive Order 11541 (“Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President”), the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507), as well as The Federal Program Information Act (Pub. L. 95-220 and Pub. L. 98-169, as amended, codified at 31 U.S.C. 6101-6106).
- (b) Subpart E of this part is authorized under the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended (31 U.S.C. 1101-1125); the Chief Financial Officers Act of 1990 (31 U.S.C. 503-504); Reorganization Plan No. 2 of 1970; and Executive Order 11541, “Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President.”
- (c) Subpart F of this part is authorized under the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507).

[85 FR 49538, Aug. 13, 2020]

### § 200.104 Supersession.

As described in § 200.110, this part supersedes the following OMB guidance documents and regulations under title 2 of the Code of Federal Regulations:

- (a) A-21, “Cost Principles for Educational Institutions” (2 CFR part 220);
- (b) A-87, “Cost Principles for State, Local and Indian Tribal Governments” (2 CFR part 225) and also FEDERAL REGISTER notice 51 FR 552 (January 6, 1986);
- (c) A-89, “Federal Domestic Assistance Program Information”;
- (d) A-102, “Grant Awards and Cooperative Agreements with State and Local Governments”;

- (e) A-110, "Uniform Administrative Requirements for Awards and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations" (codified at 2 CFR 215);
- (f) A-122, "Cost Principles for Non-Profit Organizations" (2 CFR part 230);
- (g) A-133, "Audits of States, Local Governments and Non-Profit Organizations"; and
- (h) Those sections of A-50 related to audits performed under subpart F of this part.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75882, Dec. 19, 2014; 85 FR 49538, Aug. 13, 2020]

### § 200.105 Effect on other issuances.

- (a) **Superseding inconsistent requirements.** For Federal awards subject to this part, all administrative requirements, program manuals, handbooks and other non-regulatory materials that are inconsistent with the requirements of this part must be superseded upon implementation of this part by the Federal agency, except to the extent they are required by statute or authorized in accordance with the provisions in § 200.102.
- (b) **Imposition of requirements on recipients.** Agencies may impose legally binding requirements on recipients only through the notice and public comment process through an approved agency process, including as authorized by this part, other statutes or regulations, or as incorporated into the terms of a Federal award.

[85 FR 49538, Aug. 13, 2020]

### § 200.106 Agency implementation.

The specific requirements and responsibilities of Federal agencies and non-Federal entities are set forth in this part. Federal agencies making Federal awards to non-Federal entities must implement the language in subparts C through F of this part in codified regulations unless different provisions are required by Federal statute or are approved by OMB.

[85 FR 49538, Aug. 13, 2020]

### § 200.107 OMB responsibilities.

OMB will review Federal agency regulations and implementation of this part, and will provide interpretations of policy requirements and assistance to ensure effective and efficient implementation. Any exceptions will be subject to approval by OMB. Exceptions will only be made in particular cases where adequate justification is presented.

### § 200.108 Inquiries.

Inquiries concerning this part may be directed to the Office of Federal Financial Management Office of Management and Budget, in Washington, DC. Non-Federal entities' inquiries should be addressed to the Federal awarding agency, cognizant agency for indirect costs, cognizant or oversight agency for audit, or pass-through entity as appropriate.

### § 200.109 Review date.

OMB will review this part at least every five years after December 26, 2013.



### § 200.110 Effective/applicability date.

- (a) The standards set forth in this part that affect the administration of Federal awards issued by Federal awarding agencies become effective once implemented by Federal awarding agencies or when any future amendment to this part becomes final.
- (b) Existing negotiated indirect cost rates (as of the publication date of the revisions to the guidance) will remain in place until they expire. The effective date of changes to indirect cost rates must be based upon the date that a newly re-negotiated rate goes into effect for a specific non-Federal entity's fiscal year. Therefore, for indirect cost rates and cost allocation plans, the revised Uniform Guidance (as of the publication date for revisions to the guidance) become effective in generating proposals and negotiating a new rate (when the rate is re-negotiated).

[85 FR 49538, Aug. 13, 2020]

### § 200.111 English language.

- (a) All Federal financial assistance announcements and Federal award information must be in the English language. Applications must be submitted in the English language and must be in the terms of U.S. dollars. If the Federal awarding agency receives applications in another currency, the Federal awarding agency will evaluate the application by converting the foreign currency to United States currency using the date specified for receipt of the application.
- (b) Non-Federal entities may translate the Federal award and other documents into another language. In the event of inconsistency between any terms and conditions of the Federal award and any translation into another language, the English language meaning will control. Where a significant portion of the non-Federal entity's employees who are working on the Federal award are not fluent in English, the non-Federal entity must provide the Federal award in English and the language(s) with which employees are more familiar.

### § 200.112 Conflict of interest.

The Federal awarding agency must establish conflict of interest policies for Federal awards. The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.

### § 200.113 Mandatory disclosures.

The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award including the term and condition outlined in appendix XII to this part are required to report certain civil, criminal, or administrative proceedings to SAM (currently FAPIIS). Failure to make required disclosures can result in any of the remedies described in § 200.339. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

[85 FR 49539, Aug. 13, 2020]

## Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

Link to an amendment published at [89 FR 30136](#), Apr. 22, 2024.

**Source:** 85 FR 49539, Aug. 13, 2020, unless otherwise noted.

## § 200.200 Purpose.

Sections 200.201 through 200.216 prescribe instructions and other pre-award matters to be used by Federal awarding agencies in the program planning, announcement, application and award processes.

## § 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

- (a) **Federal award instrument.** The Federal awarding agency or pass-through entity must decide on the appropriate instrument for the Federal award (*i.e.*, grant agreement, cooperative agreement, or contract) in accordance with the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-08).
- (b) **Fixed amount awards.** In addition to the options described in paragraph (a) of this section, Federal awarding agencies, or pass-through entities as permitted in § 200.333, may use fixed amount awards (see *Fixed amount awards* in § 200.1) to which the following conditions apply:
  - (1) The Federal award amount is negotiated using the cost principles (or other pricing information) as a guide. The Federal awarding agency or pass-through entity may use fixed amount awards if the project scope has measurable goals and objectives and if adequate cost, historical, or unit pricing data is available to establish a fixed amount award based on a reasonable estimate of actual cost. Payments are based on meeting specific requirements of the Federal award. Accountability is based on performance and results. Except in the case of termination before completion of the Federal award, there is no governmental review of the actual costs incurred by the non-Federal entity in performance of the award. Some of the ways in which the Federal award may be paid include, but are not limited to:
    - (i) In several partial payments, the amount of each agreed upon in advance, and the “milestone” or event triggering the payment also agreed upon in advance, and set forth in the Federal award;
    - (ii) On a unit price basis, for a defined unit or units, at a defined price or prices, agreed to in advance of performance of the Federal award and set forth in the Federal award; or,
    - (iii) In one payment at Federal award completion.
  - (2) A fixed amount award cannot be used in programs which require mandatory cost sharing or match.
  - (3) The non-Federal entity must certify in writing to the Federal awarding agency or pass-through entity at the end of the Federal award that the project or activity was completed or the level of effort was expended. If the required level of activity or effort was not carried out, the amount of the Federal award must be adjusted.
  - (4) Periodic reports may be established for each Federal award.
  - (5) Changes in principal investigator, project leader, project partner, or scope of effort must receive the prior written approval of the Federal awarding agency or pass-through entity.

## § 200.202 Program planning and design.

The Federal awarding agency must design a program and create an Assistance Listing before announcing the Notice of Funding Opportunity. The program must be designed with clear goals and objectives that facilitate the delivery of meaningful results consistent with the Federal authorizing legislation of the program. Program performance shall be measured based on the goals and objectives developed during program planning and design. See § 200.301 for more information on performance measurement. Performance measures may differ depending on the type of program. The program must align with the strategic goals and objectives within the Federal awarding agency's performance plan and should support the Federal awarding agency's performance measurement, management, and reporting as required by Part 6 of OMB Circular A-11 (Preparation, Submission, and Execution of the Budget). The program must also be designed to align with the Program Management Improvement Accountability Act (Pub. L. 114-264).

## § 200.203 Requirement to provide public notice of Federal financial assistance programs.

- (a) The Federal awarding agency must notify the public of Federal programs in the Federal Assistance Listings maintained by the General Services Administration (GSA).
  - (1) The Federal Assistance Listings is the single, authoritative, governmentwide comprehensive source of Federal financial assistance program information produced by the executive branch of the Federal Government.
  - (2) The information that the Federal awarding agency must submit to GSA for approval by OMB is listed in paragraph (b) of this section. GSA must prescribe the format for the submission in coordination with OMB.
  - (3) The Federal awarding agency may not award Federal financial assistance without assigning it to a program that has been included in the Federal Assistance Listings as required in this section unless there are exigent circumstances requiring otherwise, such as timing requirements imposed by statute.
- (b) For each program that awards discretionary Federal awards, non-discretionary Federal awards, loans, insurance, or any other type of Federal financial assistance, the Federal awarding agency must, to the extent practicable, create, update, and manage Assistance Listings entries based on the authorizing statute for the program and comply with additional guidance provided by GSA in consultation with OMB to ensure consistent, accurate information is available to prospective applicants. Accordingly, Federal awarding agencies must submit the following information to GSA:
  - (1) **Program Description, Purpose, Goals, and Measurement.** A brief summary of the statutory or regulatory requirements of the program and its intended outcome. Where appropriate, the Program Description, Purpose, Goals, and Measurement should align with the strategic goals and objectives within the Federal awarding agency's performance plan and should support the Federal awarding agency's performance measurement, management, and reporting as required by Part 6 of OMB Circular A-11;
  - (2) **Identification.** Identification of whether the program makes Federal awards on a discretionary basis or the Federal awards are prescribed by Federal statute, such as in the case of formula grants.
  - (3) **Projected total amount of funds available for the program.** Estimates based on previous year funding are acceptable if current appropriations are not available at the time of the submission;

- (4) **Anticipated source of available funds.** The statutory authority for funding the program and, to the extent possible, agency, sub-agency, or, if known, the specific program unit that will issue the Federal awards, and associated funding identifier (e.g., Treasury Account Symbol(s));
- (5) **General eligibility requirements.** The statutory, regulatory or other eligibility factors or considerations that determine the applicant's qualification for Federal awards under the program (e.g., type of non-Federal entity); and
- (6) **Applicability of Single Audit Requirements.** Applicability of Single Audit Requirements as required by subpart F of this part.

## § 200.204 Notices of funding opportunities.

For discretionary grants and cooperative agreements that are competed, the Federal awarding agency must announce specific funding opportunities by providing the following information in a public notice:

- (a) **Summary information in notices of funding opportunities.** The Federal awarding agency must display the following information posted on the OMB-designated governmentwide website for funding and applying for Federal financial assistance, in a location preceding the full text of the announcement:
  - (1) Federal Awarding Agency Name;
  - (2) Funding Opportunity Title;
  - (3) Announcement Type (whether the funding opportunity is the initial announcement of this funding opportunity or a modification of a previously announced opportunity);
  - (4) Funding Opportunity Number (required, if applicable). If the Federal awarding agency has assigned or will assign a number to the funding opportunity announcement, this number must be provided;
  - (5) Assistance Listings Number(s);
  - (6) Key Dates. Key dates include due dates for applications or Executive Order 12372 submissions, as well as for any letters of intent or pre-applications. For any announcement issued before a program's application materials are available, key dates also include the date on which those materials will be released; and any other additional information, as deemed applicable by the relevant Federal awarding agency.
- (b) **Availability period.** The Federal awarding agency must generally make all funding opportunities available for application for at least 60 calendar days. The Federal awarding agency may make a determination to have a less than 60 calendar day availability period but no funding opportunity should be available for less than 30 calendar days unless exigent circumstances require as determined by the Federal awarding agency head or delegate.
- (c) **Full text of funding opportunities.** The Federal awarding agency must include the following information in the full text of each funding opportunity. For specific instructions on the content required in this section, refer to appendix I to this part.
  - (1) Full programmatic description of the funding opportunity.
  - (2) Federal award information, including sufficient information to help an applicant make an informed decision about whether to submit an application. (See also § 200.414(c)(4)).
  - (3) Specific eligibility information, including any factors or priorities that affect an applicant's or its application's eligibility for selection.

- (4) Application Preparation and Submission Information, including the applicable submission dates and time.
- (5) Application Review Information including the criteria and process to be used to evaluate applications. See also §§ 200.205 and 200.206.
- (6) Federal Award Administration Information. See also § 200.211.
- (7) Applicable terms and conditions for resulting awards, including any exceptions from these standard terms.

### **§ 200.205 Federal awarding agency review of merit of proposals.**

For discretionary Federal awards, unless prohibited by Federal statute, the Federal awarding agency must design and execute a merit review process for applications, with the objective of selecting recipients most likely to be successful in delivering results based on the program objectives outlined in section § 200.202. A merit review is an objective process of evaluating Federal award applications in accordance with written standards set forth by the Federal awarding agency. This process must be described or incorporated by reference in the applicable funding opportunity (see appendix I to this part.). See also § 200.204. The Federal awarding agency must also periodically review its merit review process.

### **§ 200.206 Federal awarding agency review of risk posed by applicants.**

#### **(a) *Review of OMB-designated repositories of governmentwide data.***

- (1) Prior to making a Federal award, the Federal awarding agency is required by the Payment Integrity Information Act of 2019, 31 U.S.C. 3301 note, and 41 U.S.C. 2313 to review information available through any OMB-designated repositories of governmentwide eligibility qualification or financial integrity information as appropriate. See also suspension and debarment requirements at 2 CFR part 180 as well as individual Federal agency suspension and debarment regulations in title 2 of the Code of Federal Regulations.
- (2) In accordance 41 U.S.C. 2313, the Federal awarding agency is required to review the non-public segment of the OMB-designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) prior to making a Federal award where the Federal share is expected to exceed the simplified acquisition threshold, defined in 41 U.S.C. 134, over the period of performance. As required by Public Law 112-239, National Defense Authorization Act for Fiscal Year 2013, prior to making a Federal award, the Federal awarding agency must consider all of the information available through FAPIIS with regard to the applicant and any immediate highest level owner, predecessor (*i.e.*; a non-Federal entity that is replaced by a successor), or subsidiary, identified for that applicant in FAPIIS, if applicable. At a minimum, the information in the system for a prior Federal award recipient must demonstrate a satisfactory record of executing programs or activities under Federal grants, cooperative agreements, or procurement awards; and integrity and business ethics. The Federal awarding agency may make a Federal award to a recipient who does not fully meet these standards, if it is determined that the information is not relevant to the current Federal award under consideration or there are specific conditions that can appropriately mitigate the effects of the non-Federal entity's risk in accordance with § 200.208.

#### **(b) *Risk evaluation.***

- (1) The Federal awarding agency must have in place a framework for evaluating the risks posed by applicants before they receive Federal awards. This evaluation may incorporate results of the evaluation of the applicant's eligibility or the quality of its application. If the Federal awarding agency determines that a Federal award will be made, special conditions that correspond to the degree of risk assessed may be applied to the Federal award. Criteria to be evaluated must be described in the announcement of funding opportunity described in § 200.204.
- (2) In evaluating risks posed by applicants, the Federal awarding agency may use a risk-based approach and may consider any items such as the following:
  - (i) **Financial stability.** Financial stability;
  - (ii) **Management systems and standards.** Quality of management systems and ability to meet the management standards prescribed in this part;
  - (iii) **History of performance.** The applicant's record in managing Federal awards, if it is a prior recipient of Federal awards, including timeliness of compliance with applicable reporting requirements, conformance to the terms and conditions of previous Federal awards, and if applicable, the extent to which any previously awarded amounts will be expended prior to future awards;
  - (iv) **Audit reports and findings.** Reports and findings from audits performed under subpart F of this part or the reports and findings of any other available audits; and
  - (v) **Ability to effectively implement requirements.** The applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on non-Federal entities.
- (c) **Risk-based requirements adjustment.** The Federal awarding agency may adjust requirements when a risk-evaluation indicates that it may be merited either pre-award or post-award.
- (d) **Suspension and debarment compliance.**
  - (1) The Federal awarding agency must comply with the guidelines on governmentwide suspension and debarment in 2 CFR part 180, and must require non-Federal entities to comply with these provisions. These provisions restrict Federal awards, subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal programs or activities.

[85 FR 49539, Aug. 13, 2020, as amended at 86 FR 10439, Feb. 22, 2021]

## § 200.207 Standard application requirements.

- (a) **Paperwork clearances.** The Federal awarding agency may only use application information collections approved by OMB under the Paperwork Reduction Act of 1995 and OMB's implementing regulations in 5 CFR part 1320 and in alignment with OMB-approved, governmentwide data elements available from the OMB-designated standards lead. Consistent with these requirements, OMB will authorize additional information collections only on a limited basis.
- (b) **Information collection.** If applicable, the Federal awarding agency may inform applicants and recipients that they do not need to provide certain information otherwise required by the relevant information collection.

### § 200.208 Specific conditions.

- (a) Federal awarding agencies are responsible for ensuring that specific Federal award conditions are consistent with the program design reflected in § 200.202 and include clear performance expectations of recipients as required in § 200.301.
- (b) The Federal awarding agency or pass-through entity may adjust specific Federal award conditions as needed, in accordance with this section, based on an analysis of the following factors:
  - (1) Based on the criteria set forth in § 200.206;
  - (2) The applicant or recipient's history of compliance with the general or specific terms and conditions of a Federal award;
  - (3) The applicant or recipient's ability to meet expected performance goals as described in § 200.211; or
  - (4) A responsibility determination of an applicant or recipient.
- (c) Additional Federal award conditions may include items such as the following:
  - (1) Requiring payments as reimbursements rather than advance payments;
  - (2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given performance period;
  - (3) Requiring additional, more detailed financial reports;
  - (4) Requiring additional project monitoring;
  - (5) Requiring the non-Federal entity to obtain technical or management assistance; or
  - (6) Establishing additional prior approvals.
- (d) If the Federal awarding agency or pass-through entity is imposing additional requirements, they must notify the applicant or non-Federal entity as to:
  - (1) The nature of the additional requirements;
  - (2) The reason why the additional requirements are being imposed;
  - (3) The nature of the action needed to remove the additional requirement, if applicable;
  - (4) The time allowed for completing the actions if applicable; and
  - (5) The method for requesting reconsideration of the additional requirements imposed.
- (e) Any additional requirements must be promptly removed once the conditions that prompted them have been satisfied.

### § 200.209 Certifications and representations.

Unless prohibited by the U.S. Constitution, Federal statutes or regulations, each Federal awarding agency or pass-through entity is authorized to require the non-Federal entity to submit certifications and representations required by Federal statutes, or regulations on an annual basis. Submission may be required more frequently if the non-Federal entity fails to meet a requirement of a Federal award.

## § 200.210 Pre-award costs.

For requirements on costs incurred by the applicant prior to the start date of the period of performance of the Federal award, see § 200.458.

## § 200.211 Information contained in a Federal award.

A Federal award must include the following information:

- (a) **Federal award performance goals.** Performance goals, indicators, targets, and baseline data must be included in the Federal award, where applicable. The Federal awarding agency must also specify how performance will be assessed in the terms and conditions of the Federal award, including the timing and scope of expected performance. See §§ 200.202 and 200.301 for more information on Federal award performance goals.
- (b) **General Federal award information.** The Federal awarding agency must include the following general Federal award information in each Federal award:
  - (1) Recipient name (which must match the name associated with its unique entity identifier as defined at 2 CFR 25.315);
  - (2) Recipient's unique entity identifier;
  - (3) Unique Federal Award Identification Number (FAIN);
  - (4) Federal Award Date (see Federal award date in § 200.201);
  - (5) Period of Performance Start and End Date;
  - (6) Budget Period Start and End Date;
  - (7) Amount of Federal Funds Obligated by this action;
  - (8) Total Amount of Federal Funds Obligated;
  - (9) Total Approved Cost Sharing or Matching, where applicable;
  - (10) Total Amount of the Federal Award including approved Cost Sharing or Matching;
  - (11) Budget Approved by the Federal Awarding Agency;
  - (11) Federal award description, (to comply with statutory requirements (e.g., FFATA));
  - (12) Name of Federal awarding agency and contact information for awarding official,
  - (13) Assistance Listings Number and Title;
  - (14) Identification of whether the award is R&D; and
  - (15) Indirect cost rate for the Federal award (including if the de minimis rate is charged per § 200.414).
- (c) **General terms and conditions.**
  - (1) Federal awarding agencies must incorporate the following general terms and conditions either in the Federal award or by reference, as applicable:
    - (i) **Administrative requirements.** Administrative requirements implemented by the Federal awarding agency as specified in this part.



- (ii) **National policy requirements.** These include statutory, executive order, other Presidential directive, or regulatory requirements that apply by specific reference and are not program-specific. See § 200.300 Statutory and national policy requirements.
- (iii) **Recipient integrity and performance matters.** If the total Federal share of the Federal award may include more than \$500,000 over the period of performance, the Federal awarding agency must include the term and condition available in appendix XII of this part. See also § 200.113.
- (iv) **Future budget periods.** If it is anticipated that the period of performance will include multiple budget periods, the Federal awarding agency must indicate that subsequent budget periods are subject to the availability of funds, program authority, satisfactory performance, and compliance with the terms and conditions of the Federal award.
- (v) **Termination provisions.** Federal awarding agencies must make recipients aware, in a clear and unambiguous manner, of the termination provisions in § 200.340, including the applicable termination provisions in the Federal awarding agency's regulations or in each Federal award.

- (2) The Federal award must incorporate, by reference, all general terms and conditions of the award, which must be maintained on the agency's website.
- (3) If a non-Federal entity requests a copy of the full text of the general terms and conditions, the Federal awarding agency must provide it.
- (4) Wherever the general terms and conditions are publicly available, the Federal awarding agency must maintain an archive of previous versions of the general terms and conditions, with effective dates, for use by the non-Federal entity, auditors, or others.

(d) **Federal awarding agency, program, or Federal award specific terms and conditions.** The Federal awarding agency must include with each Federal award any terms and conditions necessary to communicate requirements that are in addition to the requirements outlined in the Federal awarding agency's general terms and conditions. See also § 200.208. Whenever practicable, these specific terms and conditions also should be shared on the agency's website and in notices of funding opportunities (as outlined in § 200.204) in addition to being included in a Federal award. See also § 200.207.

(e) **Federal awarding agency requirements.** Any other information required by the Federal awarding agency.

## § 200.212 Public access to Federal award information.

- (a) In accordance with statutory requirements for Federal spending transparency (e.g., FFATA), except as noted in this section, for applicable Federal awards the Federal awarding agency must announce all Federal awards publicly and publish the required information on a publicly available OMB-designated governmentwide website.
- (b) All information posted in the designated integrity and performance system accessible through SAM (currently FAPIIS) on or after April 15, 2011 will be publicly available after a waiting period of 14 calendar days, except for:
  - (1) Past performance reviews required by Federal Government contractors in accordance with the Federal Acquisition Regulation (FAR) 48 CFR part 42, subpart 42.15;
  - (2) Information that was entered prior to April 15, 2011; or
  - (3) Information that is withdrawn during the 14-calendar day waiting period by the Federal Government official.

- (c) Nothing in this section may be construed as requiring the publication of information otherwise exempt under the Freedom of Information Act (5 U.S.C 552), or controlled unclassified information pursuant to Executive Order 13556.

### **§ 200.213 Reporting a determination that a non-Federal entity is not qualified for a Federal award.**

- (a) If a Federal awarding agency does not make a Federal award to a non-Federal entity because the official determines that the non-Federal entity does not meet either or both of the minimum qualification standards as described in § 200.206(a)(2), the Federal awarding agency must report that determination to the designated integrity and performance system accessible through SAM (currently FAPIIS), only if all of the following apply:
  - (1) The only basis for the determination described in this paragraph (a) is the non-Federal entity's prior record of executing programs or activities under Federal awards or its record of integrity and business ethics, as described in § 200.206(a)(2) (i.e., the entity was determined to be qualified based on all factors other than those two standards); and
  - (2) The total Federal share of the Federal award that otherwise would be made to the non-Federal entity is expected to exceed the simplified acquisition threshold over the period of performance.
- (b) The Federal awarding agency is not required to report a determination that a non-Federal entity is not qualified for a Federal award if they make the Federal award to the non-Federal entity and include specific award terms and conditions, as described in § 200.208.
- (c) If a Federal awarding agency reports a determination that a non-Federal entity is not qualified for a Federal award, as described in paragraph (a) of this section, the Federal awarding agency also must notify the non-Federal entity that—
  - (1) The determination was made and reported to the designated integrity and performance system accessible through SAM, and include with the notification an explanation of the basis for the determination;
  - (2) The information will be kept in the system for a period of five years from the date of the determination, as required by section 872 of Public Law 110-417, as amended (41 U.S.C. 2313), then archived;
  - (3) Each Federal awarding agency that considers making a Federal award to the non-Federal entity during that five year period must consider that information in judging whether the non-Federal entity is qualified to receive the Federal award when the total Federal share of the Federal award is expected to include an amount of Federal funding in excess of the simplified acquisition threshold over the period of performance;
  - (4) The non-Federal entity may go to the awardee integrity and performance portal accessible through SAM (currently the Contractor Performance Assessment Reporting System (CPARS)) and comment on any information the system contains about the non-Federal entity itself; and
  - (5) Federal awarding agencies will consider that non-Federal entity's comments in determining whether the non-Federal entity is qualified for a future Federal award.
- (d) If a Federal awarding agency enters information into the designated integrity and performance system accessible through SAM about a determination that a non-Federal entity is not qualified for a Federal award and subsequently:

- (1) Learns that any of that information is erroneous, the Federal awarding agency must correct the information in the system within three business days; and
  - (2) Obtains an update to that information that could be helpful to other Federal awarding agencies, the Federal awarding agency is strongly encouraged to amend the information in the system to incorporate the update in a timely way.
- (e) Federal awarding agencies must not post any information that will be made publicly available in the non-public segment of designated integrity and performance system that is covered by a disclosure exemption under the Freedom of Information Act. If the recipient asserts within seven calendar days to the Federal awarding agency that posted the information that some or all of the information made publicly available is covered by a disclosure exemption under the Freedom of Information Act, the Federal awarding agency that posted the information must remove the posting within seven calendar days of receiving the assertion. Prior to reposting the releasable information, the Federal awarding agency must resolve the issue in accordance with the agency's Freedom of Information Act procedures.

### **§ 200.214 Suspension and debarment.**

Non-Federal entities are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. The regulations in 2 CFR part 180 restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

### **§ 200.215 Never contract with the enemy.**

Federal awarding agencies and recipients are subject to the regulations implementing Never Contract with the Enemy in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered contracts, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

### **§ 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.**

- (a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
- (1) Procure or obtain;
  - (2) Extend or renew a contract to procure or obtain; or
  - (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
    - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

- (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
- (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- (b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- (c) See Public Law 115-232, section 889 for additional information.
- (d) See also § 200.471.

## Subpart D—Post Federal Award Requirements

Link to an amendment published at 89 FR 30136, Apr. 22, 2024.

**Source:** 85 FR 49543, Aug. 13, 2020, unless otherwise noted.

### § 200.300 Statutory and national policy requirements.

- (a) The Federal awarding agency must manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution, Federal Law, and public policy requirements: Including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination. The Federal awarding agency must communicate to the non-Federal entity all relevant public policy requirements, including those in general appropriations provisions, and incorporate them either directly or by reference in the terms and conditions of the Federal award.
- (b) The non-Federal entity is responsible for complying with all requirements of the Federal award. For all Federal awards, this includes the provisions of FFATA, which includes requirements on executive compensation, and also requirements implementing the Act for the non-Federal entity at 2 CFR parts 25 and 170. See also statutory requirements for whistleblower protections at 10 U.S.C. 2409, 41 U.S.C. 4712, and 10 U.S.C. 2324, 41 U.S.C. 4304 and 4310.

### § 200.301 Performance measurement.

- (a) The Federal awarding agency must measure the recipient's performance to show achievement of program goals and objectives, share lessons learned, improve program outcomes, and foster adoption of promising practices. Program goals and objectives should be derived from program planning and design. See § 200.202 for more information. Where appropriate, the Federal award may include specific program goals, indicators, targets, baseline data, data collection, or expected outcomes (such as outputs, or

services performance or public impacts of any of these) with an expected timeline for accomplishment. Where applicable, this should also include any performance measures or independent sources of data that may be used to measure progress. The Federal awarding agency will determine how performance progress is measured, which may differ by program. Performance measurement progress must be both measured and reported. See § 200.329 for more information on monitoring program performance. The Federal awarding agency may include program-specific requirements, as applicable. These requirements must be aligned, to the extent permitted by law, with the Federal awarding agency strategic goals, strategic objectives or performance goals that are relevant to the program. See also OMB Circular A-11, Preparation, Submission, and Execution of the Budget Part 6.

- (b) The Federal awarding agency should provide recipients with clear performance goals, indicators, targets, and baseline data as described in § 200.211. Performance reporting frequency and content should be established to not only allow the Federal awarding agency to understand the recipient progress but also to facilitate identification of promising practices among recipients and build the evidence upon which the Federal awarding agency's program and performance decisions are made. See § 200.328 for more information on reporting program performance.
- (c) This provision is designed to operate in tandem with evidence-related statutes (e.g.; The Foundations for Evidence-Based Policymaking Act of 2018, which emphasizes collaboration and coordination to advance data and evidence-building functions in the Federal government). The Federal awarding agency should also specify any requirements of award recipients' participation in a federally funded evaluation, and any evaluation activities required to be conducted by the Federal award.

## § 200.302 Financial management.

- (a) Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds. In addition, the state's and the other non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award. See also § 200.450.
- (b) The financial management system of each non-Federal entity must provide for the following (see also §§ 200.334, 200.335, 200.336, and 200.337):
  - (1) Identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the Assistance Listings title and number, Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, if any.
  - (2) Accurate, current, and complete disclosure of the financial results of each Federal award or program in accordance with the reporting requirements set forth in §§ 200.328 and 200.329. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient must not be required to establish an accrual accounting system. This recipient may develop accrual data for its reports on the basis of an analysis of the documentation on hand. Similarly, a pass-through entity must not require a subrecipient to establish an accrual accounting system and must allow the subrecipient to develop accrual data for its reports on the basis of an analysis of the documentation on hand.

- (3) Records that identify adequately the source and application of funds for federally-funded activities. These records must contain information pertaining to Federal awards, authorizations, financial obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.
- (4) Effective control over, and accountability for, all funds, property, and other assets. The non-Federal entity must adequately safeguard all assets and assure that they are used solely for authorized purposes. See § 200.303.
- (5) Comparison of expenditures with budget amounts for each Federal award.
- (6) Written procedures to implement the requirements of § 200.305.
- (7) Written procedures for determining the allowability of costs in accordance with subpart E of this part and the terms and conditions of the Federal award.

### § 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with the U.S. Constitution, Federal statutes, regulations, and the terms and conditions of the Federal awards.
- (c) Evaluate and monitor the non-Federal entity's compliance with statutes, regulations and the terms and conditions of Federal awards.
- (d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.
- (e) Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, State, local, and tribal laws regarding privacy and responsibility over confidentiality.

### § 200.304 Bonds.

The Federal awarding agency may include a provision on bonding, insurance, or both in the following circumstances:

- (a) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Federal awarding agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the non-Federal entity are not deemed adequate to protect the interest of the Federal Government.
- (b) The Federal awarding agency may require adequate fidelity bond coverage where the non-Federal entity lacks sufficient coverage to protect the Federal Government's interest.

- (c) Where bonds are required in the situations described above, the bonds must be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223.

### § 200.305 Federal payment.

- (a) For states, payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 CFR part 205 and Treasury Financial Manual (TFM) 4A-2000, "Overall Disbursing Rules for All Federal Agencies".
- (b) For non-Federal entities other than states, payments methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. See also § 200.302(b)(6). Except as noted elsewhere in this part, Federal agencies must require recipients to use only OMB-approved, governmentwide information collection requests to request payment.
  - (1) The non-Federal entity must be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the non-Federal entity for direct program or project costs and the proportionate share of any allowable indirect costs. The non-Federal entity must make timely payment to contractors in accordance with the contract provisions.
  - (2) Whenever possible, advance payments must be consolidated to cover anticipated cash needs for all Federal awards made by the Federal awarding agency to the recipient.
    - (i) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer and must comply with applicable guidance in 31 CFR part 208.
    - (ii) Non-Federal entities must be authorized to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used, and as often as they like when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693-1693r).
  - (3) Reimbursement is the preferred method when the requirements in this paragraph (b) cannot be met, when the Federal awarding agency sets a specific condition per § 200.208, or when the non-Federal entity requests payment by reimbursement. This method may be used on any Federal award for construction, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal award constitutes a minor portion of the project. When the reimbursement method is used, the Federal awarding agency or pass-through entity must make payment within 30 calendar days after receipt of the billing, unless the Federal awarding agency or pass-through entity reasonably believes the request to be improper.
  - (4) If the non-Federal entity cannot meet the criteria for advance payments and the Federal awarding agency or pass-through entity has determined that reimbursement is not feasible because the non-Federal entity lacks sufficient working capital, the Federal awarding agency or pass-through entity may provide cash on a working capital advance basis. Under this procedure, the Federal awarding

agency or pass-through entity must advance cash payments to the non-Federal entity to cover its estimated disbursement needs for an initial period generally geared to the non-Federal entity's disbursing cycle. Thereafter, the Federal awarding agency or pass-through entity must reimburse the non-Federal entity for its actual cash disbursements. Use of the working capital advance method of payment requires that the pass-through entity provide timely advance payments to any subrecipients in order to meet the subrecipient's actual cash disbursements. The working capital advance method of payment must not be used by the pass-through entity if the reason for using this method is the unwillingness or inability of the pass-through entity to provide timely advance payments to the subrecipient to meet the subrecipient's actual cash disbursements.

- (5) To the extent available, the non-Federal entity must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.
- (6) Unless otherwise required by Federal statutes, payments for allowable costs by non-Federal entities must not be withheld at any time during the period of performance unless the conditions of § 200.208, subpart D of this part, including § 200.339, or one or more of the following applies:
  - (i) The non-Federal entity has failed to comply with the project objectives, Federal statutes, regulations, or the terms and conditions of the Federal award.
  - (ii) The non-Federal entity is delinquent in a debt to the United States as defined in OMB Circular A-129, "Policies for Federal Credit Programs and Non-Tax Receivables." Under such conditions, the Federal awarding agency or pass-through entity may, upon reasonable notice, inform the non-Federal entity that payments must not be made for financial obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.
  - (iii) A payment withheld for failure to comply with Federal award conditions, but without suspension of the Federal award, must be released to the non-Federal entity upon subsequent compliance. When a Federal award is suspended, payment adjustments will be made in accordance with § 200.343.
  - (iv) A payment must not be made to a non-Federal entity for amounts that are withheld by the non-Federal entity from payment to contractors to assure satisfactory completion of work. A payment must be made when the non-Federal entity actually disburses the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.
- (7) Standards governing the use of banks and other institutions as depositories of advance payments under Federal awards are as follows.
  - (i) The Federal awarding agency and pass-through entity must not require separate depository accounts for funds provided to a non-Federal entity or establish any eligibility requirements for depositories for funds provided to the non-Federal entity. However, the non-Federal entity must be able to account for funds received, obligated, and expended.
  - (ii) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.
- (8) The non-Federal entity must maintain advance payments of Federal awards in interest-bearing accounts, unless the following apply:
  - (i) The non-Federal entity receives less than \$250,000 in Federal awards per year.



- (ii) The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances.
  - (iii) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.
  - (iv) A foreign government or banking system prohibits or precludes interest-bearing accounts.
- (9) Interest earned amounts up to \$500 per year may be retained by the non-Federal entity for administrative expense. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services Payment Management System (PMS) through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment.
- (i) For returning interest on Federal awards paid through PMS, the refund should:
    - (A) Provide an explanation stating that the refund is for interest;
    - (B) List the PMS Payee Account Number(s) (PANs);
    - (C) List the Federal award number(s) for which the interest was earned; and
    - (D) Make returns payable to: Department of Health and Human Services.
  - (ii) For returning interest on Federal awards not paid through PMS, the refund should:
    - (A) Provide an explanation stating that the refund is for interest;
    - (B) Include the name of the awarding agency;
    - (C) List the Federal award number(s) for which the interest was earned; and
    - (D) Make returns payable to: Department of Health and Human Services.
- (10) Funds, principal, and excess cash returns must be directed to the original Federal agency payment system. The non-Federal entity should review instructions from the original Federal agency payment system. Returns should include the following information:
- (i) Payee Account Number (PAN), if the payment originated from PMS, or Agency information to indicate whom to credit the funding if the payment originated from ASAP, NSF, or another Federal agency payment system.
  - (ii) PMS document number and subaccount(s), if the payment originated from PMS, or relevant account numbers if the payment originated from another Federal agency payment system.
  - (iii) The reason for the return (e.g., excess cash, funds not spent, interest, part interest part other, etc.)
- (11) When returning funds or interest to PMS you must include the following as applicable:
- (i) For ACH Returns:

Routing Number: 051036706

Account number: 303000

Bank Name and Location: Credit Gateway—ACH Receiver St. Paul, MN

(ii) For Fedwire Returns<sup>1</sup>:

Routing Number: 021030004

Account number: 75010501

Bank Name and Location: Federal Reserve Bank Treas NYC/Funds Transfer Division New York, NY

<sup>1</sup> Please note that the organization initiating payment is likely to incur a charge from their Financial Institution for this type of payment.

(iii) For International ACH Returns:

Beneficiary Account: Federal Reserve Bank of New York/ITS (FRBNY/ITS)

Bank: Citibank N.A. (New York)

Swift Code: CITIUS33

Account Number: 36838868

Bank Address: 388 Greenwich Street, New York, NY 10013 USA

Payment Details (Line 70): Agency Locator Code (ALC): 75010501

Name (abbreviated when possible) and ALC Agency POC

(iv) For recipients that do not have electronic remittance capability, please make check<sup>2</sup> payable to: "The Department of Health and Human Services."

Mail Check to Treasury approved lockbox:

HHS Program Support Center, P.O. Box 530231, Atlanta, GA 30353-0231

<sup>2</sup> Please allow 4-6 weeks for processing of a payment by check to be applied to the appropriate PMS account.

(v) Questions can be directed to PMS at 877-614-5533 or [PMSSupport@psc.hhs.gov](mailto:PMSSupport@psc.hhs.gov).

## § 200.306 Cost sharing or matching.

- (a) Under Federal research proposals, voluntary committed cost sharing is not expected. It cannot be used as a factor during the merit review of applications or proposals, but may be considered if it is both in accordance with Federal awarding agency regulations and specified in a notice of funding opportunity. Criteria for considering voluntary committed cost sharing and any other program policy factors that may be used to determine who may receive a Federal award must be explicitly described in the notice of funding opportunity. See also §§ 200.414 and 200.204 and appendix I to this part.

- (b) For all Federal awards, any shared costs or matching funds and all contributions, including cash and third-party in-kind contributions, must be accepted as part of the non-Federal entity's cost sharing or matching when such contributions meet all of the following criteria:
  - (1) Are verifiable from the non-Federal entity's records;
  - (2) Are not included as contributions for any other Federal award;
  - (3) Are necessary and reasonable for accomplishment of project or program objectives;
  - (4) Are allowable under subpart E of this part;
  - (5) Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;
  - (6) Are provided for in the approved budget when required by the Federal awarding agency; and
  - (7) Conform to other provisions of this part, as applicable.
- (c) Unrecovered indirect costs, including indirect costs on cost sharing or matching may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency. Unrecovered indirect cost means the difference between the amount charged to the Federal award and the amount which could have been charged to the Federal award under the non-Federal entity's approved negotiated indirect cost rate.
- (d) Values for non-Federal entity contributions of services and property must be established in accordance with the cost principles in subpart E of this part. If a Federal awarding agency authorizes the non-Federal entity to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching must be the lesser of paragraph (d)(1) or (2) of this section.
  - (1) The value of the remaining life of the property recorded in the non-Federal entity's accounting records at the time of donation.
  - (2) The current fair market value. However, when there is sufficient justification, the Federal awarding agency may approve the use of the current fair market value of the donated property, even if it exceeds the value described in paragraph (d)(1) of this section at the time of donation.
- (e) Volunteer services furnished by third-party professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for third-party volunteer services must be consistent with those paid for similar work by the non-Federal entity. In those instances in which the required skills are not found in the non-Federal entity, rates must be consistent with those paid for similar work in the labor market in which the non-Federal entity competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, necessary, allocable, and otherwise allowable may be included in the valuation.
- (f) When a third-party organization furnishes the services of an employee, these services must be valued at the employee's regular rate of pay plus an amount of fringe benefits that is reasonable, necessary, allocable, and otherwise allowable, and indirect costs at either the third-party organization's approved federally-negotiated indirect cost rate or, a rate in accordance with § 200.414(d) provided these services

employ the same skill(s) for which the employee is normally paid. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donated services so that reimbursement for the donated services will not be made.

- (g) Donated property from third parties may include such items as equipment, office supplies, laboratory supplies, or workshop and classroom supplies. Value assessed to donated property included in the cost sharing or matching share must not exceed the fair market value of the property at the time of the donation.
- (h) The method used for determining cost sharing or matching for third-party-donated equipment, buildings and land for which title passes to the non-Federal entity may differ according to the purpose of the Federal award, if paragraph (h)(1) or (2) of this section applies.
  - (1) If the purpose of the Federal award is to assist the non-Federal entity in the acquisition of equipment, buildings or land, the aggregate value of the donated property may be claimed as cost sharing or matching.
  - (2) If the purpose of the Federal award is to support activities that require the use of equipment, buildings or land, normally only depreciation charges for equipment and buildings may be made. However, the fair market value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Federal awarding agency has approved the charges. See also § 200.420.
- (i) The value of donated property must be determined in accordance with the usual accounting policies of the non-Federal entity, with the following qualifications:
  - (1) The value of donated land and buildings must not exceed its fair market value at the time of donation to the non-Federal entity as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the non-Federal entity as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601-4655) (Uniform Act) except as provided in the implementing regulations at 49 CFR part 24, "Uniform Relocation Assistance And Real Property Acquisition For Federal And Federally-Assisted Programs".
  - (2) The value of donated equipment must not exceed the fair market value of equipment of the same age and condition at the time of donation.
  - (3) The value of donated space must not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.
  - (4) The value of loaned equipment must not exceed its fair rental value.
- (j) For third-party in-kind contributions, the fair market value of goods and services must be documented and to the extent feasible supported by the same methods used internally by the non-Federal entity.
- (k) For IHEs, see also OMB memorandum M-01-06, dated January 5, 2001, Clarification of OMB A-21 Treatment of Voluntary Uncommitted Cost Sharing and Tuition Remission Costs.

### § 200.307 Program income.

- (a) **General.** Non-Federal entities are encouraged to earn income to defray program costs where appropriate.

- (b) **Cost of generating program income.** If authorized by Federal regulations or the Federal award, costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the Federal award.
- (c) **Governmental revenues.** Taxes, special assessments, levies, fines, and other such revenues raised by a non-Federal entity are not program income unless the revenues are specifically identified in the Federal award or Federal awarding agency regulations as program income.
- (d) **Property.** Proceeds from the sale of real property, equipment, or supplies are not program income; such proceeds will be handled in accordance with the requirements of the Property Standards §§ 200.311, 200.313, and 200.314, or as specifically identified in Federal statutes, regulations, or the terms and conditions of the Federal award.
- (e) **Use of program income.** If the Federal awarding agency does not specify in its regulations or the terms and conditions of the Federal award, or give prior approval for how program income is to be used, paragraph (e)(1) of this section must apply. For Federal awards made to IHEs and nonprofit research institutions, if the Federal awarding agency does not specify in its regulations or the terms and conditions of the Federal award how program income is to be used, paragraph (e)(2) of this section must apply. In specifying alternatives to paragraphs (e)(1) and (2) of this section, the Federal awarding agency may distinguish between income earned by the recipient and income earned by subrecipients and between the sources, kinds, or amounts of income. When the Federal awarding agency authorizes the approaches in paragraphs (e)(2) and (3) of this section, program income in excess of any amounts specified must also be deducted from expenditures.
  - (1) **Deduction.** Ordinarily program income must be deducted from total allowable costs to determine the net allowable costs. Program income must be used for current costs unless the Federal awarding agency authorizes otherwise. Program income that the non-Federal entity did not anticipate at the time of the Federal award must be used to reduce the Federal award and non-Federal entity contributions rather than to increase the funds committed to the project.
  - (2) **Addition.** With prior approval of the Federal awarding agency (except for IHEs and nonprofit research institutions, as described in this paragraph (e)) program income may be added to the Federal award by the Federal agency and the non-Federal entity. The program income must be used for the purposes and under the conditions of the Federal award.
  - (3) **Cost sharing or matching.** With prior approval of the Federal awarding agency, program income may be used to meet the cost sharing or matching requirement of the Federal award. The amount of the Federal award remains the same.
- (f) **Income after the period of performance.** There are no Federal requirements governing the disposition of income earned after the end of the period of performance for the Federal award, unless the Federal awarding agency regulations or the terms and conditions of the Federal award provide otherwise. The Federal awarding agency may negotiate agreements with recipients regarding appropriate uses of income earned after the period of performance as part of the grant closeout process. See also § 200.344.
- (g) **License fees and royalties.** Unless the Federal statute, regulations, or terms and conditions for the Federal award provide otherwise, the non-Federal entity is not accountable to the Federal awarding agency with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions made under a Federal award to which 37 CFR part 401 is applicable.

## § 200.308 Revision of budget and program plans.

- (a) The approved budget for the Federal award summarizes the financial aspects of the project or program as approved during the Federal award process. It may include either the Federal and non-Federal share (see definition for *Federal share* in § 200.1) or only the Federal share, depending upon Federal awarding agency requirements. The budget and program plans include considerations for performance and program evaluation purposes whenever required in accordance with the terms and conditions of the award.
- (b) Recipients are required to report deviations from budget or project scope or objective, and request prior approvals from Federal awarding agencies for budget and program plan revisions, in accordance with this section.
- (c) For non-construction Federal awards, recipients must request prior approvals from Federal awarding agencies for the following program or budget-related reasons:
  - (1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).
  - (2) Change in a key person specified in the application or the Federal award.
  - (3) The disengagement from the project for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.
  - (4) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with subpart E of this part as applicable.
  - (5) The transfer of funds budgeted for participant support costs to other categories of expense.
  - (6) Unless described in the application and funded in the approved Federal awards, the subawarding, transferring or contracting out of any work under a Federal award, including fixed amount subawards as described in § 200.333. This provision does not apply to the acquisition of supplies, material, equipment or general support services.
  - (7) Changes in the approved cost-sharing or matching provided by the non-Federal entity.
  - (8) The need arises for additional Federal funds to complete the project.
- (d) No other prior approval requirements for specific items may be imposed unless an exception has been approved by OMB. See also §§ 200.102 and 200.407.
- (e) Except for requirements listed in paragraphs (c)(1) through (8) of this section, the Federal awarding agency is authorized, at its option, to waive other cost-related and administrative prior written approvals contained in subparts D and E of this part. Such waivers may include authorizing recipients to do any one or more of the following:
  - (1) Incur project costs 90 calendar days before the Federal awarding agency makes the Federal award. Expenses more than 90 calendar days pre-award require prior approval of the Federal awarding agency. All costs incurred before the Federal awarding agency makes the Federal award are at the recipient's risk (*i.e.*, the Federal awarding agency is not required to reimburse such costs if for any reason the recipient does not receive a Federal award or if the Federal award is less than anticipated and inadequate to cover such costs). See also § 200.458.
  - (2) Initiate a one-time extension of the period of performance by up to 12 months unless one or more of the conditions outlined in paragraphs (e)(2)(i) through (iii) of this section apply. For one-time extensions, the recipient must notify the Federal awarding agency in writing with the supporting

reasons and revised period of performance at least 10 calendar days before the end of the period of performance specified in the Federal award. This one-time extension must not be exercised merely for the purpose of using unobligated balances. Extensions require explicit prior Federal awarding agency approval when:

- (i) The terms and conditions of the Federal award prohibit the extension.
  - (ii) The extension requires additional Federal funds.
  - (iii) The extension involves any change in the approved objectives or scope of the project.
- (3) Carry forward unobligated balances to subsequent budget periods.
  - (4) For Federal awards that support research, unless the Federal awarding agency provides otherwise in the Federal award or in the Federal awarding agency's regulations, the prior approval requirements described in this paragraph (e) are automatically waived (*i.e.*, recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) of this section applies.
- (f) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for Federal awards in which the Federal share of the project exceeds the simplified acquisition threshold and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency. The Federal awarding agency cannot permit a transfer that would cause any Federal appropriation to be used for purposes other than those consistent with the appropriation.
  - (g) All other changes to non-construction budgets, except for the changes described in paragraph (c) of this section, do not require prior approval (see also § 200.407).
  - (h) For construction Federal awards, the recipient must request prior written approval promptly from the Federal awarding agency for budget revisions whenever paragraph (h)(1), (2), or (3) of this section applies:
    - (1) The revision results from changes in the scope or the objective of the project or program.
    - (2) The need arises for additional Federal funds to complete the project.
    - (3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in subpart E.
    - (4) No other prior approval requirements for budget revisions may be imposed unless an exception has been approved by OMB.
    - (5) When a Federal awarding agency makes a Federal award that provides support for construction and non-construction work, the Federal awarding agency may require the recipient to obtain prior approval from the Federal awarding agency before making any fund or budget transfers between the two types of work supported.
  - (i) When requesting approval for budget revisions, the recipient must use the same format for budget information that was used in the application, unless the Federal awarding agency indicates a letter of request suffices.
  - (j) Within 30 calendar days from the date of receipt of the request for budget revisions, the Federal awarding agency must review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal awarding agency must inform the recipient in writing of the date when the recipient may expect the decision.

## § 200.309 Modifications to Period of Performance.

If a Federal awarding agency or pass-through entity approves an extension, or if a recipient extends under § 200.308(e)(2), the Period of Performance will be amended to end at the completion of the extension. If a termination occurs, the Period of Performance will be amended to end upon the effective date of termination. If a renewal award is issued, a distinct Period of Performance will begin.

### PROPERTY STANDARDS

## § 200.310 Insurance coverage.

The non-Federal entity must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by the non-Federal entity. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award.

## § 200.311 Real property.

- (a) **Title.** Subject to the requirements and conditions set forth in this section, title to real property acquired or improved under a Federal award will vest upon acquisition in the non-Federal entity.
- (b) **Use.** Except as otherwise provided by Federal statutes or by the Federal awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose, during which time the non-Federal entity must not dispose of or encumber its title or other interests.
- (c) **Disposition.** When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from the Federal awarding agency or pass-through entity. The instructions must provide for one of the following alternatives:
  - (1) Retain title after compensating the Federal awarding agency. The amount paid to the Federal awarding agency will be computed by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and costs of any improvements) to the fair market value of the property. However, in those situations where the non-Federal entity is disposing of real property acquired or improved with a Federal award and acquiring replacement real property under the same Federal award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.
  - (2) Sell the property and compensate the Federal awarding agency. The amount due to the Federal awarding agency will be calculated by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and cost of any improvements) to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the Federal award has not been closed out, the net proceeds from sale may be offset against the original cost of the property. When the non-Federal entity is directed to sell property, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.
  - (3) Transfer title to the Federal awarding agency or to a third party designated/approved by the Federal awarding agency. The non-Federal entity is entitled to be paid an amount calculated by applying the non-Federal entity's percentage of participation in the purchase of the real property (and cost of any improvements) to the current fair market value of the property.



## § 200.312 Federally-owned and exempt property.

- (a) Title to federally-owned property remains vested in the Federal Government. The non-Federal entity must submit annually an inventory listing of federally-owned property in its custody to the Federal awarding agency. Upon completion of the Federal award or when the property is no longer needed, the non-Federal entity must report the property to the Federal awarding agency for further Federal agency utilization.
- (b) If the Federal awarding agency has no further need for the property, it must declare the property excess and report it for disposal to the appropriate Federal disposal authority, unless the Federal awarding agency has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (i)) to donate research equipment to educational and nonprofit organizations in accordance with Executive Order 12999, "Educational Technology: Ensuring Opportunity for All Children in the Next Century."). The Federal awarding agency must issue appropriate instructions to the non-Federal entity.
- (c) Exempt property means property acquired under a Federal award where the Federal awarding agency has chosen to vest title to the property to the non-Federal entity without further responsibility to the Federal Government, based upon the explicit terms and conditions of the Federal award. The Federal awarding agency may exercise this option when statutory authority exists. Absent statutory authority and specific terms and conditions of the Federal award, title to exempt property acquired under the Federal award remains with the Federal Government.

## § 200.313 Equipment.

See also § 200.439.

- (a) **Title.** Subject to the requirements and conditions set forth in this section, title to equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity. Unless a statute specifically authorizes the Federal agency to vest title in the non-Federal entity without further responsibility to the Federal Government, and the Federal agency elects to do so, the title must be a conditional title. Title must vest in the non-Federal entity subject to the following conditions:
  - (1) Use the equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project.
  - (2) Not encumber the property without approval of the Federal awarding agency or pass-through entity.
  - (3) Use and dispose of the property in accordance with paragraphs (b), (c), and (e) of this section.
- (b) **General.** A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section.
- (c) **Use.**
  - (1) Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award, and the non-Federal entity must not encumber the property without prior approval of the Federal awarding agency. The Federal awarding agency may require the submission of the applicable common form for equipment. When no longer needed for the original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:

- (i) Activities under a Federal award from the Federal awarding agency which funded the original program or project, then
  - (ii) Activities under Federal awards from other Federal awarding agencies. This includes consolidated equipment for information technology systems.
- (2) During the time that equipment is used on the project or program for which it was acquired, the non-Federal entity must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use must be given to other programs or projects supported by Federal awarding agency that financed the equipment and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate.
- (3) Notwithstanding the encouragement in § 200.307 to earn program income, the non-Federal entity must not use equipment acquired with the Federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal Government retains an interest in the equipment.
- (4) When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.
- (d) **Management requirements.** Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:
  - (1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
  - (2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
  - (3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.
  - (4) Adequate maintenance procedures must be developed to keep the property in good condition.
  - (5) If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.
- (e) **Disposition.** When original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the non-Federal entity must request disposition instructions from the Federal awarding agency if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal awarding agency disposition instructions:

- (1) Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further responsibility to the Federal awarding agency.
- (2) Except as provided in § 200.312(b), or if the Federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair market value in excess of \$5,000 may be retained by the non-Federal entity or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the Federal awarding agency may permit the non-Federal entity to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.
- (3) The non-Federal entity may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the non-Federal entity must be entitled to compensation for its attributable percentage of the current fair market value of the property.
- (4) In cases where a non-Federal entity fails to take appropriate disposition actions, the Federal awarding agency may direct the non-Federal entity to take disposition actions.

### § 200.314 Supplies.

See also § 200.453.

- (a) Title to supplies will vest in the non-Federal entity upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other Federal award, the non-Federal entity must retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal Government for its share. The amount of compensation must be computed in the same manner as for equipment. See § 200.313 (e)(2) for the calculation methodology.
- (b) As long as the Federal Government retains an interest in the supplies, the non-Federal entity must not use supplies acquired under a Federal award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute.

### § 200.315 Intangible property.

- (a) Title to intangible property (see definition for *Intangible property* in § 200.1) acquired under a Federal award vests upon acquisition in the non-Federal entity. The non-Federal entity must use that property for the originally-authorized purpose, and must not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in § 200.313(e).
- (b) The non-Federal entity may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. The Federal awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.
- (c) The non-Federal entity is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements."
- (d) The Federal Government has the right to:

- (1) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and
- (2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(e)

- (1) In response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under a Federal award that were used by the Federal Government in developing an agency action that has the force and effect of law, the Federal awarding agency must request, and the non-Federal entity must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the research data solely in response to a FOIA request, the Federal awarding agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the Federal agency and the non-Federal entity. This fee is in addition to any fees the Federal awarding agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).
- (2) Published research findings means when:
  - (i) Research findings are published in a peer-reviewed scientific or technical journal; or
  - (ii) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law. "Used by the Federal Government in developing an agency action that has the force and effect of law" is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.
- (3) Research data means the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: Preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (e.g., laboratory samples). Research data also do not include:
  - (i) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and
  - (ii) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

### **§ 200.316 Property trust relationship.**

Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The Federal awarding agency may require the non-Federal entity to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property.

## PROCUREMENT STANDARDS

## § 200.317 Procurements by states.

When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§ 200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by § 200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§ 200.318 through 200.327.

## § 200.318 General procurement standards.

- (a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§ 200.317 through 200.327.
- (b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- (c)
  - (1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.
  - (2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
- (d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- (e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or

use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

- (f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- (g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
- (h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also § 200.214.
- (i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- (j)
  - (1) The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:
    - (i) The actual cost of materials; and
    - (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
  - (2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
- (k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

[85 FR 49543, Aug. 13, 2020, as amended at 86 FR 10440, Feb. 22, 2021]

## § 200.319 Competition.

- (a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and § 200.320.
- (b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:
  - (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
  - (2) Requiring unnecessary experience and excessive bonding;
  - (3) Noncompetitive pricing practices between firms or between affiliated companies;
  - (4) Noncompetitive contracts to consultants that are on retainer contracts;
  - (5) Organizational conflicts of interest;
  - (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
  - (7) Any arbitrary action in the procurement process.
- (c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- (d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:
  - (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
  - (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

- (e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.
- (f) Noncompetitive procurements can only be awarded in accordance with § 200.320(c).

### § 200.320 Methods of procurement to be followed.

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

- (a) **Informal procurement methods.** When the value of the procurement for property or services under a Federal award does not exceed the *simplified acquisition threshold (SAT)*, as defined in § 200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

- (1) **Micro-purchases** –

- (i) **Distribution.** The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of *micro-purchase* in § 200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.
- (ii) **Micro-purchase awards.** Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.
- (iii) **Micro-purchase thresholds.** The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.
- (iv) **Non-Federal entity increase to the micro-purchase threshold up to \$50,000.** Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with § 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:
  - (A) A qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;



- (B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,
- (C) For public institutions, a higher threshold consistent with State law.
- (v) **Non-Federal entity increase to the micro-purchase threshold over \$50,000.** Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

(2) **Small purchases –**

- (i) **Small purchase procedures.** The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.
  - (ii) **Simplified acquisition thresholds.** The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.
- (b) **Formal procurement methods.** When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with § 200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:
- (1) **Sealed bids.** A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.
    - (i) In order for sealed bidding to be feasible, the following conditions should be present:
      - (A) A complete, adequate, and realistic specification or purchase description is available;
      - (B) Two or more responsible bidders are willing and able to compete effectively for the business; and
      - (C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
    - (ii) If sealed bids are used, the following requirements apply:
      - (A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

- (B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
  - (C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
  - (D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
  - (E) Any or all bids may be rejected if there is a sound documented reason.
- (2) **Proposals.** A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:
- (i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;
  - (ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;
  - (iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and
  - (iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort.
- (c) **Noncompetitive procurement.** There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:
- (1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);
  - (2) The item is available only from a single source;
  - (3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
  - (4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or
  - (5) After solicitation of a number of sources, competition is determined inadequate.

## § 200.321 Contracting with small and minority businesses, women's business enterprises, and

### **labor surplus area firms.**

- (a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (b) Affirmative steps must include:
  - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
  - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
  - (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
  - (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

### **§ 200.322 Domestic preferences for procurements.**

- (a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- (b) For purposes of this section:
  - (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
  - (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- (c) Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.

[85 FR 49543, Aug. 13, 2020, as amended at 88 FR 57790, Aug. 23, 2023]

### **§ 200.323 Procurement of recovered materials.**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable,

consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

### § 200.324 Contract cost and price.

- (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.
- (b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.
- (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

### § 200.325 Federal awarding agency or pass-through entity review.

- (a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
- (b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:
  - (1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
  - (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
  - (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;

- (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
  - (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
- (c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.
- (1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;
  - (2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

### **§ 200.326 Bonding requirements.**

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

### **§ 200.327 Contract provisions.**

The non-Federal entity's contracts must contain the applicable provisions described in appendix II to this part.

#### PERFORMANCE AND FINANCIAL MONITORING AND REPORTING

## § 200.328 Financial reporting.

Unless otherwise approved by OMB, the Federal awarding agency must solicit only the OMB-approved governmentwide data elements for collection of financial information (at time of publication the Federal Financial Report or such future, OMB-approved, governmentwide data elements available from the OMB-designated standards lead. This information must be collected with the frequency required by the terms and conditions of the Federal award, but no less frequently than annually nor more frequently than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes, and preferably in coordination with performance reporting. The Federal awarding agency must use OMB-approved common information collections, as applicable, when providing financial and performance reporting information.

## § 200.329 Monitoring and reporting program performance.

- (a) **Monitoring by the non-Federal entity.** The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also § 200.332.
- (b) **Reporting program performance.** The Federal awarding agency must use OMB-approved common information collections, as applicable, when providing financial and performance reporting information. As appropriate and in accordance with above mentioned information collections, the Federal awarding agency must require the recipient to relate financial data and accomplishments to performance goals and objectives of the Federal award. Also, in accordance with above mentioned common information collections, and when required by the terms and conditions of the Federal award, recipients must provide cost information to demonstrate cost effective practices (e.g., through unit cost data). In some instances (e.g., discretionary research awards), this will be limited to the requirement to submit technical performance reports (to be evaluated in accordance with Federal awarding agency policy). Reporting requirements must be clearly articulated such that, where appropriate, performance during the execution of the Federal award has a standard against which non-Federal entity performance can be measured.
- (c) **Non-construction performance reports.** The Federal awarding agency must use standard, governmentwide OMB-approved data elements for collection of performance information including performance progress reports, Research Performance Progress Reports.
  - (1) The non-Federal entity must submit performance reports at the interval required by the Federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Reports submitted annually by the non-Federal entity and/or pass-through entity must be due no later than 90 calendar days after the reporting period. Reports submitted quarterly or semiannually must be due no later than 30 calendar days after the reporting period. Alternatively, the Federal awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report submitted by the non-Federal entity and/or pass-through entity must be due no later than 120 calendar days after the period of performance end date. A subrecipient must submit to the pass-through entity, no later than 90 calendar days after the

period of performance end date, all final performance reports as required by the terms and conditions of the Federal award. See also § 200.344. If a justified request is submitted by a non-Federal entity, the Federal agency may extend the due date for any performance report.

- (2) As appropriate in accordance with above mentioned performance reporting, these reports will contain, for each Federal award, brief information on the following unless other data elements are approved by OMB in the agency information collection request:
  - (i) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.
  - (ii) The reasons why established goals were not met, if appropriate.
  - (iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.
- (d) **Construction performance reports.** For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by Federal awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The Federal awarding agency may require additional performance reports only when considered necessary.
- (e) **Significant developments.** Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the Federal awarding agency or pass-through entity as soon as the following types of conditions become known:
  - (1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
  - (2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.
- (f) **Site visits.** The Federal awarding agency may make site visits as warranted by program needs.
- (g) **Performance report requirement waiver.** The Federal awarding agency may waive any performance report required by this part if not needed.

### § 200.330 Reporting on real property.

The Federal awarding agency or pass-through entity must require a non-Federal entity to submit reports at least annually on the status of real property in which the Federal Government retains an interest, unless the Federal interest in the real property extends 15 years or longer. In those instances where the Federal interest attached is for a period of 15 years or more, the Federal awarding agency or pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or a Federal awarding agency or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years).

#### SUBRECIPIENT MONITORING AND MANAGEMENT

## § 200.331 Subrecipient and contractor determinations.

The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

- (a) **Subrecipients.** A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See definition for *Subaward* in § 200.1 of this part. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:
  - (1) Determines who is eligible to receive what Federal assistance;
  - (2) Has its performance measured in relation to whether objectives of a Federal program were met;
  - (3) Has responsibility for programmatic decision-making;
  - (4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
  - (5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.
- (b) **Contractors.** A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. See the definition of *contract* in § 200.1 of this part. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the contractor:
  - (1) Provides the goods and services within normal business operations;
  - (2) Provides similar goods or services to many different purchasers;
  - (3) Normally operates in a competitive environment;
  - (4) Provides goods or services that are ancillary to the operation of the Federal program; and
  - (5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.
- (c) **Use of judgment in making determination.** In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

## § 200.332 Requirements for pass-through entities.

All pass-through entities must:



- (a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:
- (1) Federal award identification.
    - (i) Subrecipient name (which must match the name associated with its unique entity identifier);
    - (ii) Subrecipient's unique entity identifier;
    - (iii) Federal Award Identification Number (FAIN);
    - (iv) Federal Award Date (see the definition of *Federal award date* in § 200.1 of this part) of award to the recipient by the Federal agency;
    - (v) Subaward Period of Performance Start and End Date;
    - (vi) Subaward Budget Period Start and End Date;
    - (vii) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;
    - (viii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current financial obligation;
    - (ix) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;
    - (x) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);
    - (xi) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity;
    - (xii) Assistance Listings number and Title; the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listings Number at time of disbursement;
    - (xiii) Identification of whether the award is R&D; and
    - (xiv) Indirect cost rate for the Federal award (including if the de minimis rate is charged) per § 200.414.
  - (2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award;
  - (3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;
  - (4)
    - (i) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government. If no approved rate exists, the pass-through entity must determine the appropriate rate in collaboration with the subrecipient, which is either:

- (A) The negotiated indirect cost rate between the pass-through entity and the subrecipient; which can be based on a prior negotiated rate between a different PTE and the same subrecipient. If basing the rate on a previously negotiated rate, the pass-through entity is not required to collect information justifying this rate, but may elect to do so;
  - (B) The de minimis indirect cost rate.
- (ii) The pass-through entity must not require use of a de minimis indirect cost rate if the subrecipient has a Federally approved rate. Subrecipients can elect to use the cost allocation method to account for indirect costs in accordance with § 200.405(d).
- (5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part; and
  - (6) Appropriate terms and conditions concerning closeout of the subaward.
- (b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraphs (d) and (e) of this section, which may include consideration of such factors as:
    - (1) The subrecipient's prior experience with the same or similar subawards;
    - (2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F of this part, and the extent to which the same or similar subaward has been audited as a major program;
    - (3) Whether the subrecipient has new personnel or new or substantially changed systems; and
    - (4) The extent and results of Federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).
- (c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in § 200.208.
  - (d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:
    - (1) Reviewing financial and performance reports required by the pass-through entity.
    - (2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and written confirmation from the subrecipient, highlighting the status of actions planned or taken to address Single Audit findings related to the particular subaward.
    - (3) Issuing a management decision for applicable audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by § 200.521.
    - (4) The pass-through entity is responsible for resolving audit findings specifically related to the subaward and not responsible for resolving crosscutting findings. If a subrecipient has a current Single Audit report posted in the Federal Audit Clearinghouse and has not otherwise been excluded from receipt of Federal funding (e.g., has been debarred or suspended), the pass-through entity may

rely on the subrecipient's cognizant audit agency or cognizant oversight agency to perform audit follow-up and make management decisions related to cross-cutting findings in accordance with section § 200.513(a)(3)(vii). Such reliance does not eliminate the responsibility of the pass-through entity to issue subawards that conform to agency and award-specific requirements, to manage risk through ongoing subaward monitoring, and to monitor the status of the findings that are specifically related to the subaward.

- (e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:
  - (1) Providing subrecipients with training and technical assistance on program-related matters; and
  - (2) Performing on-site reviews of the subrecipient's program operations;
  - (3) Arranging for agreed-upon-procedures engagements as described in § 200.425.
- (f) Verify that every subrecipient is audited as required by Subpart F of this part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in § 200.501.
- (g) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.
- (h) Consider taking enforcement action against noncompliant subrecipients as described in § 200.339 of this part and in program regulations.

[85 FR 49543, Aug. 13, 2020, as amended at 86 FR 10440, Feb. 22, 2021]

### **§ 200.333 Fixed amount subawards.**

With prior written approval from the Federal awarding agency, a pass-through entity may provide subawards based on fixed amounts up to the Simplified Acquisition Threshold, provided that the subawards meet the requirements for fixed amount awards in § 200.201.

#### RECORD RETENTION AND ACCESS

### **§ 200.334 Retention requirements for records.**

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:

- (a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

- (b) When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.
- (c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.
- (d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.
- (e) Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.
- (f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
  - (1) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.
  - (2) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

### **§ 200.335 Requests for transfer of records.**

The Federal awarding agency must request transfer of certain records to its custody from the non-Federal entity when it determines that the records possess long-term retention value. However, in order to avoid duplicate recordkeeping, the Federal awarding agency may make arrangements for the non-Federal entity to retain any records that are continuously needed for joint use.

### **§ 200.336 Methods for collection, transmission, and storage of information.**

The Federal awarding agency and the non-Federal entity should, whenever practicable, collect, transmit, and store Federal award-related information in open and machine-readable formats rather than in closed formats or on paper in accordance with applicable legislative requirements. A machine-readable format is a format in a standard computer language (not English text) that can be read automatically by a web browser or computer system. The Federal awarding agency or pass-through entity must always provide or accept paper versions of Federal award-related information to and from the non-Federal entity upon request. If paper copies are submitted, the Federal awarding agency or pass-through entity must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.

### § 200.337 Access to records.

- (a) **Records of non-Federal entities.** The Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents.
- (b) **Extraordinary and rare circumstances.** Only under extraordinary and rare circumstances would such access include review of the true name of victims of a crime. Routine monitoring cannot be considered extraordinary and rare circumstances that would necessitate access to this information. When access to the true name of victims of a crime is necessary, appropriate steps to protect this sensitive information must be taken by both the non-Federal entity and the Federal awarding agency. Any such access, other than under a court order or subpoena pursuant to a bona fide confidential investigation, must be approved by the head of the Federal awarding agency or delegate.
- (c) **Expiration of right of access.** The rights of access in this section are not limited to the required retention period but last as long as the records are retained. Federal awarding agencies and pass-through entities must not impose any other access requirements upon non-Federal entities.

### § 200.338 Restrictions on public access to records.

No Federal awarding agency may place restrictions on the non-Federal entity that limit public access to the records of the non-Federal entity pertinent to a Federal award, except for protected personally identifiable information (PII) or when the Federal awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the Federal awarding agency. The Freedom of Information Act (5 U.S.C. 552) (FOIA) does not apply to those records that remain under a non-Federal entity's control except as required under § 200.315. Unless required by Federal, state, local, and tribal statute, non-Federal entities are not required to permit public access to their records. The non-Federal entity's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions.

## REMEDIES FOR NONCOMPLIANCE

### § 200.339 Remedies for noncompliance.

If a non-Federal entity fails to comply with the U.S. Constitution, Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency or pass-through entity may impose additional conditions, as described in § 200.208. If the Federal awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

- (a) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity.
- (b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- (c) Wholly or partly suspend or terminate the Federal award.

- (d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).
- (e) Withhold further Federal awards for the project or program.
- (f) Take other remedies that may be legally available.

## § 200.340 Termination.

- (a) The Federal award may be terminated in whole or in part as follows:
  - (1) By the Federal awarding agency or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;
  - (2) By the Federal awarding agency or pass-through entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;
  - (3) By the Federal awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
  - (4) By the non-Federal entity upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety; or
  - (5) By the Federal awarding agency or pass-through entity pursuant to termination provisions included in the Federal award.
- (b) A Federal awarding agency should clearly and unambiguously specify termination provisions applicable to each Federal award, in applicable regulations or in the award, consistent with this section.
- (c) When a Federal awarding agency terminates a Federal award prior to the end of the period of performance due to the non-Federal entity's material failure to comply with the Federal award terms and conditions, the Federal awarding agency must report the termination to the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS).
  - (1) The information required under paragraph (c) of this section is not to be reported to designated integrity and performance system until the non-Federal entity either—
    - (i) Has exhausted its opportunities to object or challenge the decision, see § 200.342; or
    - (ii) Has not, within 30 calendar days after being notified of the termination, informed the Federal awarding agency that it intends to appeal the Federal awarding agency's decision to terminate.
  - (2) If a Federal awarding agency, after entering information into the designated integrity and performance system about a termination, subsequently:
    - (i) Learns that any of that information is erroneous, the Federal awarding agency must correct the information in the system within three business days;

- (ii) Obtains an update to that information that could be helpful to other Federal awarding agencies, the Federal awarding agency is strongly encouraged to amend the information in the system to incorporate the update in a timely way.
- (3) Federal awarding agencies, must not post any information that will be made publicly available in the non-public segment of designated integrity and performance system that is covered by a disclosure exemption under the Freedom of Information Act. If the non-Federal entity asserts within seven calendar days to the Federal awarding agency who posted the information, that some of the information made publicly available is covered by a disclosure exemption under the Freedom of Information Act, the Federal awarding agency who posted the information must remove the posting within seven calendar days of receiving the assertion. Prior to reposting the releasable information, the Federal agency must resolve the issue in accordance with the agency's Freedom of Information Act procedures.
- (d) When a Federal award is terminated or partially terminated, both the Federal awarding agency or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in §§ 200.344 and 200.345.

### § 200.341 Notification of termination requirement.

- (a) The Federal agency or pass-through entity must provide to the non-Federal entity a notice of termination.
- (b) If the Federal award is terminated for the non-Federal entity's material failure to comply with the U.S. Constitution, Federal statutes, regulations, or terms and conditions of the Federal award, the notification must state that—
  - (1) The termination decision will be reported to the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS);
  - (2) The information will be available in the OMB-designated integrity and performance system for a period of five years from the date of the termination, then archived;
  - (3) Federal awarding agencies that consider making a Federal award to the non-Federal entity during that five year period must consider that information in judging whether the non-Federal entity is qualified to receive the Federal award, when the Federal share of the Federal award is expected to exceed the simplified acquisition threshold over the period of performance;
  - (4) The non-Federal entity may comment on any information the OMB-designated integrity and performance system contains about the non-Federal entity for future consideration by Federal awarding agencies. The non-Federal entity may submit comments to the awardee integrity and performance portal accessible through SAM (currently CPARS).
  - (5) Federal awarding agencies will consider non-Federal entity comments when determining whether the non-Federal entity is qualified for a future Federal award.
- (c) Upon termination of a Federal award, the Federal awarding agency must provide the information required under FFATA to the Federal website established to fulfill the requirements of FFATA, and update or notify any other relevant governmentwide systems or entities of any indications of poor performance as required by 41 U.S.C. 417b and 31 U.S.C. 3321 and implementing guidance at 2 CFR part 77 (forthcoming at time of publication). See also the requirements for Suspension and Debarment at 2 CFR part 180.

### § 200.342 Opportunities to object, hearings, and appeals.

Upon taking any remedy for non-compliance, the Federal awarding agency must provide the non-Federal entity an opportunity to object and provide information and documentation challenging the suspension or termination action, in accordance with written processes and procedures published by the Federal awarding agency. The Federal awarding agency or pass-through entity must comply with any requirements for hearings, appeals or other administrative proceedings to which the non-Federal entity is entitled under any statute or regulation applicable to the action involved.

### § 200.343 Effects of suspension and termination.

Costs to the non-Federal entity resulting from financial obligations incurred by the non-Federal entity during a suspension or after termination of a Federal award or subaward are not allowable unless the Federal awarding agency or pass-through entity expressly authorizes them in the notice of suspension or termination or subsequently. However, costs during suspension or after termination are allowable if:

- (a) The costs result from financial obligations which were properly incurred by the non-Federal entity before the effective date of suspension or termination, are not in anticipation of it; and
- (b) The costs would be allowable if the Federal award was not suspended or expired normally at the end of the period of performance in which the termination takes effect.

#### CLOSEOUT

### § 200.344 Closeout.

The Federal awarding agency or pass-through entity will close out the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed by the non-Federal entity. If the non-Federal entity fails to complete the requirements, the Federal awarding agency or pass-through entity will proceed to close out the Federal award with the information available. This section specifies the actions the non-Federal entity and Federal awarding agency or pass-through entity must take to complete this process at the end of the period of performance.

- (a) The recipient must submit, no later than 120 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. A subrecipient must submit to the pass-through entity, no later than 90 calendar days (or an earlier date as agreed upon by the pass-through entity and subrecipient) after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity may approve extensions when requested and justified by the non-Federal entity, as applicable.
- (b) Unless the Federal awarding agency or pass-through entity authorizes an extension, a non-Federal entity must liquidate all financial obligations incurred under the Federal award no later than 120 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.
- (c) The Federal awarding agency or pass-through entity must make prompt payments to the non-Federal entity for costs meeting the requirements in Subpart E of this part under the Federal award being closed out.



- (d) The non-Federal entity must promptly refund any balances of unobligated cash that the Federal awarding agency or pass-through entity paid in advance or paid and that are not authorized to be retained by the non-Federal entity for use in other projects. See OMB Circular A-129 and see § 200.346, for requirements regarding unreturned amounts that become delinquent debts.
- (e) Consistent with the terms and conditions of the Federal award, the Federal awarding agency or pass-through entity must make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.
- (f) The non-Federal entity must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 200.310 through 200.316 and 200.330.
- (g) When a recipient or subrecipient completes all closeout requirements, the Federal awarding agency or pass-through entity must promptly complete all closeout actions for Federal awards. The Federal awarding agency must make every effort to complete closeout actions no later than one year after the end of the period of performance unless otherwise directed by authorizing statutes. Closeout actions include Federal awarding agency actions in the grants management and payment systems.
- (h) If the non-Federal entity does not submit all reports in accordance with this section and the terms and conditions of the Federal Award, the Federal awarding agency must proceed to close out with the information available within one year of the period of performance end date.
- (i) If the non-Federal entity does not submit all reports in accordance with this section within one year of the period of performance end date, the Federal awarding agency must report the non-Federal entity's material failure to comply with the terms and conditions of the award with the OMB-designated integrity and performance system (currently FAPIIS). Federal awarding agencies may also pursue other enforcement actions per § 200.339.

#### POST-CLOSEOUT ADJUSTMENTS AND CONTINUING RESPONSIBILITIES

### § 200.345 Post-closeout adjustments and continuing responsibilities.

- (a) The closeout of a Federal award does not affect any of the following:
  - (1) The right of the Federal awarding agency or pass-through entity to disallow costs and recover funds on the basis of a later audit or other review. The Federal awarding agency or pass-through entity must make any cost disallowance determination and notify the non-Federal entity within the record retention period.
  - (2) The requirement for the non-Federal entity to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments.
  - (3) The ability of the Federal awarding agency to make financial adjustments to a previously closed award such as resolving indirect cost payments and making final payments.
  - (4) Audit requirements in subpart F of this part.
  - (5) Property management and disposition requirements in §§ 200.310 through 200.316 of this subpart.
  - (6) Records retention as required in §§ 200.334 through 200.337 of this subpart.

- (b) After closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part with the consent of the Federal awarding agency or pass-through entity and the non-Federal entity, provided the responsibilities of the non-Federal entity referred to in paragraph (a) of this section, including those for property management as applicable, are considered and provisions made for continuing responsibilities of the non-Federal entity, as appropriate.

#### COLLECTION OF AMOUNTS DUE

### § 200.346 Collection of amounts due.

- (a) Any funds paid to the non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the terms of the Federal award constitute a debt to the Federal Government. If not paid within 90 calendar days after demand, the Federal awarding agency may reduce the debt by:
  - (1) Making an administrative offset against other requests for reimbursements;
  - (2) Withholding advance payments otherwise due to the non-Federal entity; or
  - (3) Other action permitted by Federal statute.
- (b) Except where otherwise provided by statutes or regulations, the Federal awarding agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (31 CFR parts 900 through 999). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

### Subpart E—Cost Principles

Link to an amendment published at [89 FR 30136](#), Apr. 22, 2024.

#### GENERAL PROVISIONS

### § 200.400 Policy guide.

The application of these cost principles is based on the fundamental premises that:

- (a) The non-Federal entity is responsible for the efficient and effective administration of the Federal award through the application of sound management practices.
- (b) The non-Federal entity assumes responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award.
- (c) The non-Federal entity, in recognition of its own unique combination of staff, facilities, and experience, has the primary responsibility for employing whatever form of sound organization and management techniques may be necessary in order to assure proper and efficient administration of the Federal award.
- (d) The application of these cost principles should require no significant changes in the internal accounting policies and practices of the non-Federal entity. However, the accounting practices of the non-Federal entity must be consistent with these cost principles and support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to the Federal award.

- (e) In reviewing, negotiating and approving cost allocation plans or indirect cost proposals, the cognizant agency for indirect costs should generally assure that the non-Federal entity is applying these cost accounting principles on a consistent basis during their review and negotiation of indirect cost proposals. Where wide variations exist in the treatment of a given cost item by the non-Federal entity, the reasonableness and equity of such treatments should be fully considered. See the definition of *indirect (facilities & administrative (F&A)) costs* in § 200.1 of this part.
- (f) For non-Federal entities that educate and engage students in research, the dual role of students as both trainees and employees (including pre- and post-doctoral staff) contributing to the completion of Federal awards for research must be recognized in the application of these principles.
- (g) The non-Federal entity may not earn or keep any profit resulting from Federal financial assistance, unless explicitly authorized by the terms and conditions of the Federal award. See also § 200.307.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 85 FR 49561, Aug. 13, 2020]

### § 200.401 Application.

- (a) **General.** These principles must be used in determining the allowable costs of work performed by the non-Federal entity under Federal awards. These principles also must be used by the non-Federal entity as a guide in the pricing of fixed-price contracts and subcontracts where costs are used in determining the appropriate price. The principles do not apply to:
  - (1) Arrangements under which Federal financing is in the form of loans, scholarships, fellowships, traineeships, or other fixed amounts based on such items as education allowance or published tuition rates and fees.
  - (2) For IHEs, capitation awards, which are awards based on case counts or number of beneficiaries according to the terms and conditions of the Federal award.
  - (3) Fixed amount awards. See also § 200.1 Definitions and 200.201.
  - (4) Federal awards to hospitals (see appendix IX to this part).
  - (5) Other awards under which the non-Federal entity is not required to account to the Federal Government for actual costs incurred.
- (b) **Federal contract.** Where a Federal contract awarded to a non-Federal entity is subject to the Cost Accounting Standards (CAS), it incorporates the applicable CAS clauses, Standards, and CAS administration requirements per the 48 CFR Chapter 99 and 48 CFR part 30 (FAR Part 30). CAS applies directly to the CAS-covered contract and the Cost Accounting Standards at 48 CFR parts 9904 or 9905 takes precedence over the cost principles in this subpart E with respect to the allocation of costs. When a contract with a non-Federal entity is subject to full CAS coverage, the allowability of certain costs under the cost principles will be affected by the allocation provisions of the Cost Accounting Standards (e.g., CAS 414—48 CFR 9904.414, Cost of Money as an Element of the Cost of Facilities Capital, and CAS 417—48 CFR 9904.417, Cost of Money as an Element of the Cost of Capital Assets Under Construction), apply rather the allowability provisions of § 200.449. In complying with those requirements, the non-Federal entity's application of cost accounting practices for estimating, accumulating, and reporting costs for other Federal awards and other cost objectives under the CAS-covered contract still must be consistent with its cost accounting practices for the CAS-covered contracts. In all cases, only one set of accounting records needs to be maintained for the allocation of costs by the non-Federal entity.

- (c) **Exemptions.** Some nonprofit organizations, because of their size and nature of operations, can be considered to be similar to for-profit entities for purpose of applicability of cost principles. Such nonprofit organizations must operate under Federal cost principles applicable to for-profit entities located at 48 CFR 31.2. A listing of these organizations is contained in appendix VIII to this part. Other organizations, as approved by the cognizant agency for indirect costs, may be added from time to time.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49562, Aug. 13, 2020]

## BASIC CONSIDERATIONS

### § 200.402 Composition of costs.

**Total cost.** The total cost of a Federal award is the sum of the allowable direct and allocable indirect costs less any applicable credits.

### § 200.403 Factors affecting allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards:

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also § 200.306(b).
- (g) Be adequately documented. See also §§ 200.300 through 200.309 of this part.
- (h) Cost must be incurred during the approved budget period. The Federal awarding agency is authorized, at its discretion, to waive prior written approvals to carry forward unobligated balances to subsequent budget periods pursuant to § 200.308(e)(3).

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49562, Aug. 13, 2020]

### § 200.404 Reasonable costs.

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when the non-Federal entity is predominantly federally-funded. In determining reasonableness of a given cost, consideration must be given to:

- (a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award.
- (b) The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, state, local, tribal, and other laws and regulations; and terms and conditions of the Federal award.
- (c) Market prices for comparable goods or services for the geographic area.
- (d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal Government.
- (e) Whether the non-Federal entity significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

### § 200.405 Allocable costs.

- (a) A cost is allocable to a particular Federal award or other cost objective if the goods or services involved are chargeable or assignable to that Federal award or cost objective in accordance with relative benefits received. This standard is met if the cost:
  - (1) Is incurred specifically for the Federal award;
  - (2) Benefits both the Federal award and other work of the non-Federal entity and can be distributed in proportions that may be approximated using reasonable methods; and
  - (3) Is necessary to the overall operation of the non-Federal entity and is assignable in part to the Federal award in accordance with the principles in this subpart.
- (b) All activities which benefit from the non-Federal entity's indirect (F&A) cost, including unallowable activities and donated services by the non-Federal entity or third parties, will receive an appropriate allocation of indirect costs.
- (c) Any cost allocable to a particular Federal award under the principles provided for in this part may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude the non-Federal entity from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.
- (d) Direct cost allocation principles: If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be

determined because of the interrelationship of the work involved, then, notwithstanding paragraph (c) of this section, the costs may be allocated or transferred to benefitted projects on any reasonable documented basis. Where the purchase of equipment or other capital asset is specifically authorized under a Federal award, the costs are assignable to the Federal award regardless of the use that may be made of the equipment or other capital asset involved when no longer needed for the purpose for which it was originally required. See also §§ 200.310 through 200.316 and 200.439.

- (e) If the contract is subject to CAS, costs must be allocated to the contract pursuant to the Cost Accounting Standards. To the extent that CAS is applicable, the allocation of costs in accordance with CAS takes precedence over the allocation provisions in this part.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 85 FR 49562, Aug. 13, 2020]

### § 200.406 Applicable credits.

- (a) Applicable credits refer to those receipts or reduction-of-expenditure-type transactions that offset or reduce expense items allocable to the Federal award as direct or indirect (F&A) costs. Examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the non-Federal entity relate to allowable costs, they must be credited to the Federal award either as a cost reduction or cash refund, as appropriate.
- (b) In some instances, the amounts received from the Federal Government to finance activities or service operations of the non-Federal entity should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) must be recognized in determining the rates or amounts to be charged to the Federal award. (See §§ 200.436 and 200.468, for areas of potential application in the matter of Federal financing of activities.)

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 85 FR 49562, Aug. 13, 2020]

### § 200.407 Prior written approval (prior approval).

Under any given Federal award, the reasonableness and allocability of certain items of costs may be difficult to determine. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, the non-Federal entity may seek the prior written approval of the cognizant agency for indirect costs or the Federal awarding agency in advance of the incurrence of special or unusual costs. Prior written approval should include the timeframe or scope of the agreement. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that element, unless prior approval is specifically required for allowability as described under certain circumstances in the following sections of this part:

- (a) § 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts, paragraph (b)(5);
- (b) § 200.306 Cost sharing or matching;
- (c) § 200.307 Program income;
- (d) § 200.308 Revision of budget and program plans;
- (e) § 200.311 Real property;
- (f) § 200.313 Equipment;

- (g) § 200.333 Fixed amount subawards;
- (h) § 200.413 Direct costs, paragraph (c);
- (i) § 200.430 Compensation—personal services, paragraph (h);
- (j) § 200.431 Compensation—fringe benefits;
- (k) § 200.438 Entertainment costs;
- (l) § 200.439 Equipment and other capital expenditures;
- (m) § 200.440 Exchange rates;
- (n) § 200.441 Fines, penalties, damages and other settlements;
- (o) § 200.442 Fund raising and investment management costs;
- (p) § 200.445 Goods or services for personal use;
- (q) § 200.447 Insurance and indemnification;
- (r) § 200.454 Memberships, subscriptions, and professional activity costs, paragraph (c);
- (s) § 200.455 Organization costs;
- (t) § 200.456 Participant support costs;
- (u) § 200.458 Pre-award costs;
- (v) § 200.462 Rearrangement and reconversion costs;
- (w) § 200.467 Selling and marketing costs;
- (x) § 200.470 Taxes (including Value Added Tax); and
- (y) § 200.475 Travel costs.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 85 FR 49562, Aug. 13, 2020]

### **§ 200.408 Limitation on allowance of costs.**

The Federal award may be subject to statutory requirements that limit the allowability of costs. When the maximum amount allowable under a limitation is less than the total amount determined in accordance with the principles in this part, the amount not recoverable under the Federal award may not be charged to the Federal award.

### **§ 200.409 Special considerations.**

In addition to the basic considerations regarding the allowability of costs highlighted in this subtitle, other subtitles in this part describe special considerations and requirements applicable to states, local governments, Indian tribes, and IHEs. In addition, certain provisions among the items of cost in this subpart are only applicable to certain types of non-Federal entities, as specified in the following sections:

- (a) Direct and Indirect (F&A) Costs (§§ 200.412-200.415) of this subpart;
- (b) Special Considerations for States, Local Governments and Indian Tribes (§§ 200.416 and 200.417) of this subpart; and

- (c) Special Considerations for Institutions of Higher Education (§§ 200.418 and 200.419) of this subpart.

[85 FR 49562, Aug. 13, 2020]

### § 200.410 Collection of unallowable costs.

Payments made for costs determined to be unallowable by either the Federal awarding agency, cognizant agency for indirect costs, or pass-through entity, either as direct or indirect costs, must be refunded (including interest) to the Federal Government in accordance with instructions from the Federal agency that determined the costs are unallowable unless Federal statute or regulation directs otherwise. See also §§ 200.300 through 200.309 in subpart D of this part.

[85 FR 49562, Aug. 13, 2020]

### § 200.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs.

- (a) Negotiated indirect (F&A) cost rates based on a proposal later found to have included costs that:
- (1) Are unallowable as specified by Federal statutes, regulations or the terms and conditions of a Federal award; or
  - (2) Are unallowable because they are not allocable to the Federal award(s), must be adjusted, or a refund must be made, in accordance with the requirements of this section. These adjustments or refunds are designed to correct the proposals used to establish the rates and do not constitute a reopening of the rate negotiation. The adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).
- (b) For rates covering a future fiscal year of the non-Federal entity, the unallowable costs will be removed from the indirect (F&A) cost pools and the rates appropriately adjusted.
- (c) For rates covering a past period, the Federal share of the unallowable costs will be computed for each year involved and a cash refund (including interest chargeable in accordance with applicable regulations) will be made to the Federal Government. If cash refunds are made for past periods covered by provisional or fixed rates, appropriate adjustments will be made when the rates are finalized to avoid duplicate recovery of the unallowable costs by the Federal Government.
- (d) For rates covering the current period, either a rate adjustment or a refund, as described in paragraphs (b) and (c) of this section, must be required by the cognizant agency for indirect costs. The choice of method must be at the discretion of the cognizant agency for indirect costs, based on its judgment as to which method would be most practical.
- (e) The amount or proportion of unallowable costs included in each year's rate will be assumed to be the same as the amount or proportion of unallowable costs included in the base year proposal used to establish the rate.

#### DIRECT AND INDIRECT (F&A) COSTS



## § 200.412 Classification of costs.

There is no universal rule for classifying certain costs as either direct or indirect (F&A) under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost incurred for the same purpose be treated consistently in like circumstances either as a direct or an indirect (F&A) cost in order to avoid possible double-charging of Federal awards. Guidelines for determining direct and indirect (F&A) costs charged to Federal awards are provided in this subpart.

## § 200.413 Direct costs.

- (a) **General.** Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect (F&A) costs. See also § 200.405.
- (b) **Application to Federal awards.** Identification with the Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. Typical costs charged directly to a Federal award are the compensation of employees who work on that award, their related fringe benefit costs, the costs of materials and other items of expense incurred for the Federal award. If directly related to a specific award, certain costs that otherwise would be treated as indirect costs may also be considered direct costs. Examples include extraordinary utility consumption, the cost of materials supplied from stock or services rendered by specialized facilities, program evaluation costs, or other institutional service operations.
- (c) The salaries of administrative and clerical staff should normally be treated as indirect (F&A) costs. Direct charging of these costs may be appropriate only if all of the following conditions are met:
  - (1) Administrative or clerical services are integral to a project or activity;
  - (2) Individuals involved can be specifically identified with the project or activity;
  - (3) Such costs are explicitly included in the budget or have the prior written approval of the Federal awarding agency; and
  - (4) The costs are not also recovered as indirect costs.
- (d) **Minor items.** Any direct cost of minor amount may be treated as an indirect (F&A) cost for reasons of practicality where such accounting treatment for that item of cost is consistently applied to all Federal and non-Federal cost objectives.
- (e) The costs of certain activities are not allowable as charges to Federal awards. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they nonetheless must be treated as direct costs for purposes of determining indirect (F&A) cost rates and be allocated their equitable share of the non-Federal entity's indirect costs if they represent activities which:
  - (1) Include the salaries of personnel,
  - (2) Occupy space, and
  - (3) Benefit from the non-Federal entity's indirect (F&A) costs.

- (f) For nonprofit organizations, the costs of activities performed by the non-Federal entity primarily as a service to members, clients, or the general public when significant and necessary to the non-Federal entity's mission must be treated as direct costs whether or not allowable, and be allocated an equitable share of indirect (F&A) costs. Some examples of these types of activities include:
- (1) Maintenance of membership rolls, subscriptions, publications, and related functions. See also § 200.454.
  - (2) Providing services and information to members, legislative or administrative bodies, or the public. See also §§ 200.454 and 200.450.
  - (3) Promotion, lobbying, and other forms of public relations. See also §§ 200.421 and 200.450.
  - (4) Conferences except those held to conduct the general administration of the non-Federal entity. See also § 200.432.
  - (5) Maintenance, protection, and investment of special funds not used in operation of the non-Federal entity. See also § 200.442.
  - (6) Administration of group benefits on behalf of members or clients, including life and hospital insurance, annuity or retirement plans, and financial aid. See also § 200.431.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 85 FR 49562, Aug. 13, 2020]

### § 200.414 Indirect (F&A) costs.

- (a) **Facilities and administration classification.** For major Institutions of Higher Education (IHE) and major nonprofit organizations, indirect (F&A) costs must be classified within two broad categories: "Facilities" and "Administration." "Facilities" is defined as depreciation on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. "Administration" is defined as general administration and general expenses such as the director's office, accounting, personnel and all other types of expenditures not listed specifically under one of the subcategories of "Facilities" (including cross allocations from other pools, where applicable). For nonprofit organizations, library expenses are included in the "Administration" category; for IHEs, they are included in the "Facilities" category. Major IHEs are defined as those required to use the Standard Format for Submission as noted in appendix III to this part, and Rate Determination for Institutions of Higher Education paragraph C. 11. Major nonprofit organizations are those which receive more than \$10 million dollars in direct Federal funding.
- (b) **Diversity of nonprofit organizations.** Because of the diverse characteristics and accounting practices of nonprofit organizations, it is not possible to specify the types of cost which may be classified as indirect (F&A) cost in all situations. Identification with a Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. However, typical examples of indirect (F&A) cost for many nonprofit organizations may include depreciation on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.
- (c) **Federal Agency Acceptance of Negotiated Indirect Cost Rates.** (See also § 200.306.)

- (1) The negotiated rates must be accepted by all Federal awarding agencies. A Federal awarding agency may use a rate different from the negotiated rate for a class of Federal awards or a single Federal award only when required by Federal statute or regulation, or when approved by a Federal awarding agency head or delegate based on documented justification as described in paragraph (c)(3) of this section.
  - (2) The Federal awarding agency head or delegate must notify OMB of any approved deviations.
  - (3) The Federal awarding agency must implement, and make publicly available, the policies, procedures and general decision-making criteria that their programs will follow to seek and justify deviations from negotiated rates.
  - (4) As required under § 200.204, the Federal awarding agency must include in the notice of funding opportunity the policies relating to indirect cost rate reimbursement, matching, or cost share as approved under paragraph (e)(1) of this section. As appropriate, the Federal agency should incorporate discussion of these policies into Federal awarding agency outreach activities with non-Federal entities prior to the posting of a notice of funding opportunity.
- (d) Pass-through entities are subject to the requirements in § 200.332(a)(4).
- (e) Requirements for development and submission of indirect (F&A) cost rate proposals and cost allocation plans are contained in Appendices III-VII and Appendix IX as follows:
- (1) Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);
  - (2) Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations;
  - (3) Appendix V to Part 200—State/Local Governmentwide Central Service Cost Allocation Plans;
  - (4) Appendix VI to Part 200—Public Assistance Cost Allocation Plans;
  - (5) Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals; and
  - (6) Appendix IX to Part 200—Hospital Cost Principles.
- (f) In addition to the procedures outlined in the appendices in paragraph (e) of this section, any non-Federal entity that does not have a current negotiated (including provisional) rate, except for those non-Federal entities described in appendix VII to this part, paragraph D.1.b, may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely. No documentation is required to justify the 10% de minimis indirect cost rate. As described in § 200.403, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.
- (g) Any non-Federal entity that has a current federally-negotiated indirect cost rate may apply for a one-time extension of the rates in that agreement for a period of up to four years. This extension will be subject to the review and approval of the cognizant agency for indirect costs. If an extension is granted the non-Federal entity may not request a rate review until the extension period ends. At the end of the 4-year extension, the non-Federal entity must re-apply to negotiate a rate. Subsequent one-time extensions (up to four years) are permitted if a renegotiation is completed between each extension request.

- (h) The federally negotiated indirect rate, distribution base, and rate type for a non-Federal entity (except for the Indian tribes or tribal organizations, as defined in the Indian Self Determination, Education and Assistance Act, 25 U.S.C. 450b(1)) must be available publicly on an OMB-designated Federal website.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49563, Aug. 13, 2020]

## § 200.415 Required certifications.

Required certifications include:

- (a) To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the non-Federal entity, which reads as follows: "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."
- (b) Certification of cost allocation plan or indirect (F&A) cost rate proposal. Each cost allocation plan or indirect (F&A) cost rate proposal must comply with the following:
  - (1) A proposal to establish a cost allocation plan or an indirect (F&A) cost rate, whether submitted to a Federal cognizant agency for indirect costs or maintained on file by the non-Federal entity, must be certified by the non-Federal entity using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in appendices III through VII, and IX of this part. The certificate must be signed on behalf of the non-Federal entity by an individual at a level no lower than vice president or chief financial officer of the non-Federal entity that submits the proposal.
  - (2) Unless the non-Federal entity has elected the option under § 200.414(f), the Federal Government may either disallow all indirect (F&A) costs or unilaterally establish such a plan or rate when the non-Federal entity fails to submit a certified proposal for establishing such a plan or rate in accordance with the requirements. Such a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government because the non-Federal entity failed to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.
- (c) Certifications by nonprofit organizations as appropriate that they did not meet the definition of a major nonprofit organization as defined in § 200.414(a).
- (d) See also § 200.450 for another required certification.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49563, Aug. 13, 2020]

SPECIAL CONSIDERATIONS FOR STATES, LOCAL GOVERNMENTS AND INDIAN TRIBES

## § 200.416 Cost allocation plans and indirect cost proposals.

- (a) For states, local governments and Indian tribes, certain services, such as motor pools, computer centers, purchasing, accounting, etc., are provided to operating agencies on a centralized basis. Since Federal awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process.
- (b) Individual operating agencies (governmental department or agency), normally charge Federal awards for indirect costs through an indirect cost rate. A separate indirect cost rate(s) proposal for each operating agency is usually necessary to claim indirect costs under Federal awards. Indirect costs include:
  - (1) The indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and
  - (2) The costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.
- (c) The requirements for development and submission of cost allocation plans (for central service costs and public assistance programs) and indirect cost rate proposals are contained in appendices V, VI and VII to this part.

[78 FR 78608, Dec. 26, 2013, as amended at 86 FR 10440, Feb. 22, 2021]

## § 200.417 Interagency service.

The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro-rated share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in Appendix V to Part 200.

[85 FR 49564, Aug. 13, 2020]

### SPECIAL CONSIDERATIONS FOR INSTITUTIONS OF HIGHER EDUCATION

## § 200.418 Costs incurred by states and local governments.

Costs incurred or paid by a state or local government on behalf of its IHEs for fringe benefit programs, such as pension costs and FICA and any other costs specifically incurred on behalf of, and in direct benefit to, the IHEs, are allowable costs of such IHEs whether or not these costs are recorded in the accounting records of the institutions, subject to the following:

- (a) The costs meet the requirements of § 200.402-411 of this subpart;
- (b) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles in this part; and
- (c) The costs are not otherwise borne directly or indirectly by the Federal Government.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49564, Aug. 13, 2020]

## § 200.419 Cost accounting standards and disclosure statement.

- (a) An IHE that receive an aggregate total \$50 million or more in Federal awards and instruments subject to this subpart (as specified in § 200.101) in its most recently completed fiscal year must comply with the Cost Accounting Standards Board's cost accounting standards located at 48 CFR 9905.501, 9905.502, 9905.505, and 9905.506. CAS-covered contracts and subcontracts awarded to the IHEs are subject to the broader range of CAS requirements at 48 CFR 9900 through 9999 and 48 CFR part 30 (FAR Part 30).
- (b) **Disclosure statement.** An IHE that receives an aggregate total \$50 million or more in Federal awards and instruments subject to this subpart (as specified in § 200.101) during its most recently completed fiscal year must disclose their cost accounting practices by filing a Disclosure Statement (DS-2), which is reproduced in Appendix III to Part 200. With the approval of the cognizant agency for indirect costs, an IHE may meet the DS-2 submission by submitting the DS-2 for each business unit that received \$50 million or more in Federal awards and instruments.
- (1) The DS-2 must be submitted to the cognizant agency for indirect costs with a copy to the IHE's cognizant agency for audit. The initial DS-2 and revisions to the DS-2 must be submitted in coordination with the IHE's indirect (F&A) rate proposal, unless an earlier submission is requested by the cognizant agency for indirect costs. IHEs with CAS-covered contracts or subcontracts meeting the dollar threshold in 48 CFR 9903.202-1(f) must submit their initial DS-2 or revisions no later than prior to the award of a CAS-covered contract or subcontract.
  - (2) An IHE must maintain an accurate DS-2 and comply with disclosed cost accounting practices. An IHE must file amendments to the DS-2 to the cognizant agency for indirect costs in advance of a disclosed practice being changed to comply with a new or modified standard, or when a practice is changed for other reasons. An IHE may proceed with implementing the change after it has notified the Federal cognizant agency for indirect costs. If the change represents a variation from 2 CFR part 200, the change may require approval by the Federal cognizant agency for indirect costs, in accordance with § 200.102(b). Amendments of a DS-2 may be submitted at any time. Resubmission of a complete, updated DS-2 is discouraged except when there are extensive changes to disclosed practices.
  - (3) **Cost and funding adjustments.** Cost adjustments must be made by the cognizant agency for indirect costs if an IHE fails to comply with the cost policies in this part or fails to consistently follow its established or disclosed cost accounting practices when estimating, accumulating or reporting the costs of Federal awards, and the aggregate cost impact on Federal awards is material. The cost adjustment must normally be made on an aggregate basis for all affected Federal awards through an adjustment of the IHE's future F&A costs rates or other means considered appropriate by the cognizant agency for indirect costs. Under the terms of CAS covered contracts, adjustments in the amount of funding provided may also be required when the estimated proposal costs were not determined in accordance with established cost accounting practices.
  - (4) **Overpayments.** Excess amounts paid in the aggregate by the Federal Government under Federal awards due to a noncompliant cost accounting practice used to estimate, accumulate, or report costs must be credited or refunded, as deemed appropriate by the cognizant agency for indirect costs. Interest applicable to the excess amounts paid in the aggregate during the period of noncompliance must also be determined and collected in accordance with applicable Federal agency regulations.

- (5) **Compliant cost accounting practice changes.** Changes from one compliant cost accounting practice to another compliant practice that are approved by the cognizant agency for indirect costs may require cost adjustments if the change has a material effect on Federal awards and the changes are deemed appropriate by the cognizant agency for indirect costs.
- (6) **Responsibilities.** The cognizant agency for indirect cost must:
  - (i) Determine cost adjustments for all Federal awards in the aggregate on behalf of the Federal Government. Actions of the cognizant agency for indirect cost in making cost adjustment determinations must be coordinated with all affected Federal awarding agencies to the extent necessary.
  - (ii) Prescribe guidelines and establish internal procedures to promptly determine on behalf of the Federal Government that a DS-2 adequately discloses the IHE's cost accounting practices and that the disclosed practices are compliant with applicable CAS and the requirements of this part.
  - (iii) Distribute to all affected Federal awarding agencies any DS-2 determination of adequacy or noncompliance.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49564, Aug. 13, 2020]

#### GENERAL PROVISIONS FOR SELECTED ITEMS OF COST

### § 200.420 Considerations for selected items of cost.

This section provides principles to be applied in establishing the allowability of certain items involved in determining cost, in addition to the requirements of Subtitle II of this subpart. These principles apply whether or not a particular item of cost is properly treated as direct cost or indirect (F&A) cost. Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment provided for similar or related items of cost, and based on the principles described in §§ 200.402 through 200.411. In case of a discrepancy between the provisions of a specific Federal award and the provisions below, the Federal award governs. Criteria outlined in § 200.403 must be applied in determining allowability. See also § 200.102.

[85 FR 49564, Aug. 13, 2020]

### § 200.421 Advertising and public relations.

- (a) The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.
- (b) The only allowable advertising costs are those which are solely for:
  - (1) The recruitment of personnel required by the non-Federal entity for performance of a Federal award (See also § 200.463);
  - (2) The procurement of goods and services for the performance of a Federal award;
  - (3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when non-Federal entities are reimbursed for disposal costs at a predetermined amount; or

- (4) Program outreach and other specific purposes necessary to meet the requirements of the Federal award.
- (c) The term “public relations” includes community relations and means those activities dedicated to maintaining the image of the non-Federal entity or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.
- (d) The only allowable public relations costs are:
  - (1) Costs specifically required by the Federal award;
  - (2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of the Federal award (these costs are considered necessary as part of the outreach effort for the Federal award); or
  - (3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of funding opportunities, financial matters, etc.
- (e) Unallowable advertising and public relations costs include the following:
  - (1) All advertising and public relations costs other than as specified in paragraphs (b) and (d) of this section;
  - (2) Costs of meetings, conventions, convocations, or other events related to other activities of the entity (see also § 200.432), including:
    - (i) Costs of displays, demonstrations, and exhibits;
    - (ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and
    - (iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;
  - (3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;
  - (4) Costs of advertising and public relations designed solely to promote the non-Federal entity.

*[78 FR 76808, Dec. 26, 2013, as amended at 85 FR 49564, Aug. 13, 2020]*

### **§ 200.422 Advisory councils.**

Costs incurred by advisory councils or committees are unallowable unless authorized by statute, the Federal awarding agency or as an indirect cost where allocable to Federal awards. See § 200.444, applicable to States, local governments, and Indian tribes.

*[85 FR 49564, Aug. 13, 2020]*

### **§ 200.423 Alcoholic beverages.**

Costs of alcoholic beverages are unallowable.



### § 200.424 Alumni/ae activities.

Costs incurred by IHEs for, or in support of, alumni/ae activities are unallowable.

### § 200.425 Audit services.

- (a) A reasonably proportionate share of the costs of audits required by, and performed in accordance with, the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by requirements of this part, are allowable. However, the following audit costs are unallowable:
  - (1) Any costs when audits required by the Single Audit Act and subpart F of this part have not been conducted or have been conducted but not in accordance therewith; and
  - (2) Any costs of auditing a non-Federal entity that is exempted from having an audit conducted under the Single Audit Act and subpart F of this part because its expenditures under Federal awards are less than \$750,000 during the non-Federal entity's fiscal year.
- (b) The costs of a financial statement audit of a non-Federal entity that does not currently have a Federal award may be included in the indirect cost pool for a cost allocation plan or indirect cost proposal.
- (c) Pass-through entities may charge Federal awards for the cost of agreed-upon-procedures engagements to monitor subrecipients (in accordance with subpart D, §§ 200.331-333) who are exempted from the requirements of the Single Audit Act and subpart F of this part. This cost is allowable only if the agreed-upon-procedures engagements are:
  - (1) Conducted in accordance with GAGAS attestation standards;
  - (2) Paid for and arranged by the pass-through entity; and
  - (3) Limited in scope to one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; and reporting.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49564, Aug. 13, 2020]

### § 200.426 Bad debts.

Bad debts (debts which have been determined to be uncollectable), including losses (whether actual or estimated) arising from uncollectable accounts and other claims, are unallowable. Related collection costs, and related legal costs, arising from such debts after they have been determined to be uncollectable are also unallowable. See also § 200.428.

[85 FR 49565, Aug. 13, 2020]

### § 200.427 Bonding costs.

- (a) Bonding costs arise when the Federal awarding agency requires assurance against financial loss to itself or others by reason of the act or default of the non-Federal entity. They arise also in instances where the non-Federal entity requires similar assurance, including: bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds for employees and officials.
- (b) Costs of bonding required pursuant to the terms and conditions of the Federal award are allowable.

- (c) Costs of bonding required by the non-Federal entity in the general conduct of its operations are allowable as an indirect cost to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

### § 200.428 Collections of improper payments.

The costs incurred by a non-Federal entity to recover improper payments are allowable as either direct or indirect costs, as appropriate. Amounts collected may be used by the non-Federal entity in accordance with cash management standards set forth in § 200.305.

[85 FR 49565, Aug. 13, 2020]

### § 200.429 Commencement and convocation costs.

For IHEs, costs incurred for commencements and convocations are unallowable, except as provided for in (B)(9) Student Administration and Services, in appendix III to this part, as activity costs.

[85 FR 49565, Aug. 13, 2020]

### § 200.430 Compensation—personal services.

- (a) **General.** Compensation for personal services includes all remuneration, paid currently or accrued, for services of employees rendered during the period of performance under the Federal award, including but not necessarily limited to wages and salaries. Compensation for personal services may also include fringe benefits which are addressed in § 200.431. Costs of compensation are allowable to the extent that they satisfy the specific requirements of this part, and that the total compensation for individual employees:
  - (1) Is reasonable for the services rendered and conforms to the established written policy of the non-Federal entity consistently applied to both Federal and non-Federal activities;
  - (2) Follows an appointment made in accordance with a non-Federal entity's laws and/or rules or written policies and meets the requirements of Federal statute, where applicable; and
  - (3) Is determined and supported as provided in paragraph (i) of this section, when applicable.
- (b) **Reasonableness.** Compensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the non-Federal entity. In cases where the kinds of employees required for Federal awards are not found in the other activities of the non-Federal entity, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the non-Federal entity competes for the kind of employees involved.
- (c) **Professional activities outside the non-Federal entity.** Unless an arrangement is specifically authorized by a Federal awarding agency, a non-Federal entity must follow its written non-Federal entity-wide policies and practices concerning the permissible extent of professional services that can be provided outside the non-Federal entity for non-organizational compensation. Where such non-Federal entity-wide written policies do not exist or do not adequately define the permissible extent of consulting or other non-organizational activities undertaken for extra outside pay, the Federal Government may require that the effort of professional staff working on Federal awards be allocated between:
  - (1) Non-Federal entity activities, and

- (2) Non-organizational professional activities. If the Federal awarding agency considers the extent of non-organizational professional effort excessive or inconsistent with the conflicts-of-interest terms and conditions of the Federal award, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

(d) **Unallowable costs.**

- (1) Costs which are unallowable under other sections of these principles must not be allowable under this section solely on the basis that they constitute personnel compensation.
- (2) The allowable compensation for certain employees is subject to a ceiling in accordance with statute. For the amount of the ceiling for cost-reimbursement contracts, the covered compensation subject to the ceiling, the covered employees, and other relevant provisions, see 10 U.S.C. 2324(e)(1)(P), and 41 U.S.C. 1127 and 4304(a)(16). For other types of Federal awards, other statutory ceilings may apply.

- (e) **Special considerations.** Special considerations in determining allowability of compensation will be given to any change in a non-Federal entity's compensation policy resulting in a substantial increase in its employees' level of compensation (particularly when the change was concurrent with an increase in the ratio of Federal awards to other activities) or any change in the treatment of allowability of specific types of compensation due to changes in Federal policy.

- (f) **Incentive compensation.** Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., is allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the non-Federal entity and the employees before the services were rendered, or pursuant to an established plan followed by the non-Federal entity so consistently as to imply, in effect, an agreement to make such payment.

- (g) **Nonprofit organizations.** For compensation to members of nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof, determination must be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs. This may include director's and executive committee member's fees, incentive awards, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost-of-living differentials.

(h) **Institutions of Higher Education (IHEs).**

- (1) Certain conditions require special consideration and possible limitations in determining allowable personnel compensation costs under Federal awards. Among such conditions are the following:
  - (i) Allowable activities. Charges to Federal awards may include reasonable amounts for activities contributing and directly related to work under an agreement, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, developing and maintaining protocols (human, animals, etc.), managing substances/chemicals, managing and securing project-specific data, coordinating research subjects, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences.

- (ii) Incidental activities. Incidental activities for which supplemental compensation is allowable under written institutional policy (at a rate not to exceed institutional base salary) need not be included in the records described in paragraph (i) of this section to directly charge payments of incidental activities, such activities must either be specifically provided for in the Federal award budget or receive prior written approval by the Federal awarding agency.
- (2) **Salary basis.** Charges for work performed on Federal awards by faculty members during the academic year are allowable at the IBS rate. Except as noted in paragraph (h)(1)(ii) of this section, in no event will charges to Federal awards, irrespective of the basis of computation, exceed the proportionate share of the IBS for that period. This principle applies to all members of faculty at an institution. IBS is defined as the annual compensation paid by an IHE for an individual's appointment, whether that individual's time is spent on research, instruction, administration, or other activities. IBS excludes any income that an individual earns outside of duties performed for the IHE. Unless there is prior approval by the Federal awarding agency, charges of a faculty member's salary to a Federal award must not exceed the proportionate share of the IBS for the period during which the faculty member worked on the award.
- (3) **Intra-Institution of Higher Education (IHE) consulting.** Intra-IHE consulting by faculty should be undertaken as an IHE responsibility requiring no compensation in addition to IBS. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the faculty member is in addition to his or her regular responsibilities, any charges for such work representing additional compensation above IBS are allowable provided that such consulting arrangements are specifically provided for in the Federal award or approved in writing by the Federal awarding agency.
- (4) Extra Service Pay normally represents overload compensation, subject to institutional compensation policies for services above and beyond IBS. Where extra service pay is a result of Intra-IHE consulting, it is subject to the same requirements of paragraph (b) above. It is allowable if all of the following conditions are met:
  - (i) The non-Federal entity establishes consistent written policies which apply uniformly to all faculty members, not just those working on Federal awards.
  - (ii) The non-Federal entity establishes a consistent written definition of work covered by IBS which is specific enough to determine conclusively when work beyond that level has occurred. This may be described in appointment letters or other documentations.
  - (iii) The supplementation amount paid is commensurate with the IBS rate of pay and the amount of additional work performed. See paragraph (h)(2) of this section.
  - (iv) The salaries, as supplemented, fall within the salary structure and pay ranges established by and documented in writing or otherwise applicable to the non-Federal entity.
  - (v) The total salaries charged to Federal awards including extra service pay are subject to the Standards of Documentation as described in paragraph (i) of this section.
- (5) **Periods outside the academic year.**
  - (i) Except as specified for teaching activity in paragraph (h)(5)(ii) of this section, charges for work performed by faculty members on Federal awards during periods not included in the base salary period will be at a rate not in excess of the IBS.

(ii) Charges for teaching activities performed by faculty members on Federal awards during periods not included in IBS period will be based on the normal written policy of the IHE governing compensation to faculty members for teaching assignments during such periods.

(6) **Part-time faculty.** Charges for work performed on Federal awards by faculty members having only part-time appointments will be determined at a rate not in excess of that regularly paid for part-time assignments.

(7) **Sabbatical leave costs.** Rules for sabbatical leave are as follow:

(i) Costs of leaves of absence by employees for performance of graduate work or sabbatical study, travel, or research are allowable provided the IHE has a uniform written policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Such costs will be allocated on an equitable basis among all related activities of the IHE.

(ii) Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the IHE's actual experience under its sabbatical leave policy.

(8) **Salary rates for non-faculty members.** Non-faculty full-time professional personnel may also earn "extra service pay" in accordance with the non-Federal entity's written policy and consistent with paragraph (h)(1)(i) of this section.

(i) **Standards for Documentation of Personnel Expenses**

(1) Charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:

(i) Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;

(ii) Be incorporated into the official records of the non-Federal entity;

(iii) Reasonably reflect the total activity for which the employee is compensated by the non-Federal entity, not exceeding 100% of compensated activities (for IHE, this per the IHE's definition of IBS);

(iv) Encompass federally-assisted and all other activities compensated by the non-Federal entity on an integrated basis, but may include the use of subsidiary records as defined in the non-Federal entity's written policy;

(v) Comply with the established accounting policies and practices of the non-Federal entity (See paragraph (h)(1)(ii) above for treatment of incidental work for IHEs.); and

(vi) [Reserved]

(vii) Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one Federal award; a Federal award and non-Federal award; an indirect cost activity and a direct cost activity; two or more indirect activities which are allocated using different allocation bases; or an unallowable activity and a direct or indirect cost activity.

- (viii) Budget estimates (i.e., estimates determined before the services are performed) alone do not qualify as support for charges to Federal awards, but may be used for interim accounting purposes, provided that:
  - (A) The system for establishing the estimates produces reasonable approximations of the activity actually performed;
  - (B) Significant changes in the corresponding work activity (as defined by the non-Federal entity's written policies) are identified and entered into the records in a timely manner. Short term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term; and
  - (C) The non-Federal entity's system of internal controls includes processes to review after-the-fact interim charges made to a Federal award based on budget estimates. All necessary adjustment must be made such that the final amount charged to the Federal award is accurate, allowable, and properly allocated.
- (ix) Because practices vary as to the activity constituting a full workload (for IHEs, IBS), records may reflect categories of activities expressed as a percentage distribution of total activities.
- (x) It is recognized that teaching, research, service, and administration are often inextricably intermingled in an academic setting. When recording salaries and wages charged to Federal awards for IHEs, a precise assessment of factors that contribute to costs is therefore not always feasible, nor is it expected.
- (2) For records which meet the standards required in paragraph (i)(1) of this section, the non-Federal entity will not be required to provide additional support or documentation for the work performed, other than that referenced in paragraph (i)(3) of this section.
- (3) In accordance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR part 516), charges for the salaries and wages of nonexempt employees, in addition to the supporting documentation described in this section, must also be supported by records indicating the total number of hours worked each day.
- (4) Salaries and wages of employees used in meeting cost sharing or matching requirements on Federal awards must be supported in the same manner as salaries and wages claimed for reimbursement from Federal awards.
- (5) For states, local governments and Indian tribes, substitute processes or systems for allocating salaries and wages to Federal awards may be used in place of or in addition to the records described in paragraph (1) if approved by the cognizant agency for indirect cost. Such systems may include, but are not limited to, random moment sampling, "rolling" time studies, case counts, or other quantifiable measures of work performed.
  - (i) Substitute systems which use sampling methods (primarily for Temporary Assistance for Needy Families (TANF), the Supplemental Nutrition Assistance Program (SNAP), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:
    - (A) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in paragraph (i)(5)(iii) of this section;

- (B) The entire time period involved must be covered by the sample; and
  - (C) The results must be statistically valid and applied to the period being sampled.
- (ii) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.
  - (iii) Less than full compliance with the statistical sampling standards noted in subsection (5)(i) may be accepted by the cognizant agency for indirect costs if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the non-Federal entity will result in lower costs to Federal awards than a system which complies with the standards.
- (6) Cognizant agencies for indirect costs are encouraged to approve alternative proposals based on outcomes and milestones for program performance where these are clearly documented. Where approved by the Federal cognizant agency for indirect costs, these plans are acceptable as an alternative to the requirements of paragraph (i)(1) of this section.
  - (7) For Federal awards of similar purpose activity or instances of approved blended funding, a non-Federal entity may submit performance plans that incorporate funds from multiple Federal awards and account for their combined use based on performance-oriented metrics, provided that such plans are approved in advance by all involved Federal awarding agencies. In these instances, the non-Federal entity must submit a request for waiver of the requirements based on documentation that describes the method of charging costs, relates the charging of costs to the specific activity that is applicable to all fund sources, and is based on quantifiable measures of the activity in relation to time charged.
  - (8) For a non-Federal entity where the records do not meet the standards described in this section, the Federal Government may require personnel activity reports, including prescribed certifications, or equivalent documentation that support the records as required in this section.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49565, Aug. 13, 2020]

## § 200.431 Compensation—fringe benefits.

- (a) **General.** Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave (vacation, family-related, sick or military), employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable provided that the benefits are reasonable and are required by law, non-Federal entity-employee agreement, or an established policy of the non-Federal entity.
- (b) **Leave.** The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:
  - (1) They are provided under established written leave policies;
  - (2) The costs are equitably allocated to all related activities, including Federal awards; and
  - (3) The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the non-Federal entity or specified grouping of employees.

- (i) When a non-Federal entity uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment.
  - (ii) The accrual basis may be only used for those types of leave for which a liability as defined by GAAP exists when the leave is earned. When a non-Federal entity uses the accrual basis of accounting, allowable leave costs are the lesser of the amount accrued or funded.
- (c) **Fringe benefits.** The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in § 200.447); pension plan costs (see paragraph (i) of this section); and other similar benefits are allowable, provided such benefits are granted under established written policies. Such benefits, must be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities, and charged as direct or indirect costs in accordance with the non-Federal entity's accounting practices.
- (d) **Cost objectives.** Fringe benefits may be assigned to cost objectives by identifying specific benefits to specific individual employees or by allocating on the basis of entity-wide salaries and wages of the employees receiving the benefits. When the allocation method is used, separate allocations must be made to selective groupings of employees, unless the non-Federal entity demonstrates that costs in relationship to salaries and wages do not differ significantly for different groups of employees.
- (e) **Insurance.** See also § 200.447(d)(1) and (2).
  - (1) Provisions for a reserve under a self-insurance program for unemployment compensation or workers' compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation, and the types of coverage, extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made must not exceed the present value of the liability.
  - (2) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The costs of such insurance when the non-Federal entity is named as beneficiary are unallowable.
  - (3) Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g., post-retirement health benefits), are allowable in the year of payment provided that the non-Federal entity follows a consistent costing policy.
- (f) **Automobiles.** That portion of automobile costs furnished by the non-Federal entity that relates to personal use by employees (including transportation to and from work) is unallowable as fringe benefit or indirect (F&A) costs regardless of whether the cost is reported as taxable income to the employees.
- (g) **Pension plan costs.** Pension plan costs which are incurred in accordance with the established policies of the non-Federal entity are allowable, provided that:
  - (1) Such policies meet the test of reasonableness.
  - (2) The methods of cost allocation are not discriminatory.



- (3) Except for State and Local Governments, the cost assigned to each fiscal year should be determined in accordance with GAAP.
- (4) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 calendar days after each quarter of the year to which such costs are assignable are unallowable. Non-Federal entity may elect to follow the "Cost Accounting Standard for Composition and Measurement of Pension Costs" (48 CFR 9904.412).
- (5) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. 1301-1461) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and other penalties imposed under ERISA are unallowable.
- (6) Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.
  - (i) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.
  - (ii) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six-month period (or a later period agreed to by the cognizant agency for indirect costs) are allowable in the year funded. The cognizant agency for indirect costs may agree to an extension of the six-month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the non-Federal entity's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.
  - (iii) Amounts funded by the non-Federal entity in excess of the actuarially determined amount for a fiscal year may be used as the non-Federal entity's contribution in future periods.
  - (iv) When a non-Federal entity converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion is allowable if amortized over a period of years in accordance with GAAP.
  - (v) The Federal Government must receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or other credit.
- (h) **Post-retirement health.** Post-retirement health plans (PRHP) refers to costs of health insurance or health services not included in a pension plan covered by paragraph (g) of this section for retirees and their spouses, dependents, and survivors. PRHP costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.
  - (1) For PRHP financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

- (2) PRHP costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six-month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The Federal cognizant agency for indirect costs may agree to an extension of the six-month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursements and the non-Federal entity's contributions to the PRHP fund. Adjustments may be made by cash refund, reduction in current year's PRHP costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHP fund.
- (3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the non-Federal entity contribution in a future period.
- (4) When a non-Federal entity converts to an acceptable actuarial cost method and funds PRHP costs in accordance with this method, the initial unfunded liability attributable to prior years is allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency for indirect costs.
- (5) To be allowable in the current year, the PRHP costs must be paid either to:
  - (i) An insurer or other benefit provider as current year costs or premiums, or
  - (ii) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.
- (6) The Federal Government must receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or other credit.

(i) **Severance pay.**

- (1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by non-Federal entities to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by
  - (i) Law;
  - (ii) Employer-employee agreement;
  - (iii) Established policy that constitutes, in effect, an implied agreement on the non-Federal entity's part; or
  - (iv) Circumstances of the particular employment.
- (2) Costs of severance payments are divided into two categories as follows:
  - (i) Actual normal turnover severance payments must be allocated to all activities; or, where the non-Federal entity provides for a reserve for normal severances, such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the non-Federal entity.

- (ii) Measurement of costs of abnormal or mass severance pay by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Federal Government recognizes its responsibility to participate, to the extent of its fair share, in any specific payment. Prior approval by the Federal awarding agency or cognizant agency for indirect cost, as appropriate, is required.
  - (3) Costs incurred in certain severance pay packages which are in an amount in excess of the normal severance pay paid by the non-Federal entity to an employee upon termination of employment and are paid to the employee contingent upon a change in management control over, or ownership of, the non-Federal entity's assets, are unallowable.
  - (4) Severance payments to foreign nationals employed by the non-Federal entity outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the non-Federal entity in the United States, are unallowable, unless they are necessary for the performance of Federal programs and approved by the Federal awarding agency.
  - (5) Severance payments to foreign nationals employed by the non-Federal entity outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the non-Federal entity in that country, are unallowable, unless they are necessary for the performance of Federal programs and approved by the Federal awarding agency.
- (j) **For IHEs only.**
- (1) Fringe benefits in the form of undergraduate and graduate tuition or remission of tuition for individual employees are allowable, provided such benefits are granted in accordance with established non-Federal entity policies, and are distributed to all non-Federal entity activities on an equitable basis. Tuition benefits for family members other than the employee are unallowable.
  - (2) Fringe benefits in the form of tuition or remission of tuition for individual employees not employed by IHEs are limited to the tax-free amount allowed per section 127 of the Internal Revenue Code as amended.
  - (3) IHEs may offer employees tuition waivers or tuition reductions, provided that the benefit does not discriminate in favor of highly compensated employees. Employees can exercise these benefits at other institutions according to institutional policy. See [§ 200.466](#), for treatment of tuition remission provided to students.
- (k) **Fringe benefit programs and other benefit costs.** For IHEs whose costs are paid by state or local governments, fringe benefit programs (such as pension costs and FICA) and any other benefits costs specifically incurred on behalf of, and in direct benefit to, the non-Federal entity, are allowable costs of such non-Federal entities whether or not these costs are recorded in the accounting records of the non-Federal entities, subject to the following:
- (1) The costs meet the requirements of Basic Considerations in [§§ 200.402 through 200.411](#);
  - (2) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles; and
  - (3) The costs are not otherwise borne directly or indirectly by the Federal Government.

[85 FR 49565, Aug. 13, 2020]

## § 200.432 Conferences.

A conference is defined as a meeting, retreat, seminar, symposium, workshop or event whose primary purpose is the dissemination of technical information beyond the non-Federal entity and is necessary and reasonable for successful performance under the Federal award. Allowable conference costs paid by the non-Federal entity as a sponsor or host of the conference may include rental of facilities, speakers' fees, costs of meals and refreshments, local transportation, and other items incidental to such conferences unless further restricted by the terms and conditions of the Federal award. As needed, the costs of identifying, but not providing, locally available dependent-care resources are allowable. Conference hosts/sponsors must exercise discretion and judgment in ensuring that conference costs are appropriate, necessary and managed in a manner that minimizes costs to the Federal award. The Federal awarding agency may authorize exceptions where appropriate for programs including Indian tribes, children, and the elderly. See also §§ 200.438, 200.456, and 200.475.

[85 FR 49567, Aug. 13, 2020]

## § 200.433 Contingency provisions.

- (a) Contingency is that part of a budget estimate of future costs (typically of large construction projects, IT systems, or other items as approved by the Federal awarding agency) which is associated with possible events or conditions arising from causes the precise outcome of which is indeterminable at the time of estimate, and that experience shows will likely result, in aggregate, in additional costs for the approved activity or project. Amounts for major project scope changes, unforeseen risks, or extraordinary events may not be included.
- (b) It is permissible for contingency amounts other than those excluded in paragraph (a) of this section to be explicitly included in budget estimates, to the extent they are necessary to improve the precision of those estimates. Amounts must be estimated using broadly-accepted cost estimating methodologies, specified in the budget documentation of the Federal award, and accepted by the Federal awarding agency. As such, contingency amounts are to be included in the Federal award. In order for actual costs incurred to be allowable, they must comply with the cost principles and other requirements in this part (see also §§ 200.300 and 200.403 of this part); be necessary and reasonable for proper and efficient accomplishment of project or program objectives, and be verifiable from the non-Federal entity's records.
- (c) Payments made by the Federal awarding agency to the non-Federal entity's "contingency reserve" or any similar payment made for events the occurrence of which cannot be foretold with certainty as to the time or intensity, or with an assurance of their happening, are unallowable, except as noted in §§ 200.431 and 200.447.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49567, Aug. 13, 2020]

## § 200.434 Contributions and donations.

- (a) Costs of contributions and donations, including cash, property, and services, from the non-Federal entity to other entities, are unallowable.
- (b) The value of services and property donated to the non-Federal entity may not be charged to the Federal award either as a direct or indirect (F&A) cost. The value of donated services and property may be used to meet cost sharing or matching requirements (see § 200.306). Depreciation on donated assets is permitted in accordance with § 200.436, as long as the donated property is not counted towards cost sharing or matching requirements.

- (c) Services donated or volunteered to the non-Federal entity may be furnished to a non-Federal entity by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services may not be charged to the Federal award either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of § 200.306.
- (d) To the extent feasible, services donated to the non-Federal entity will be supported by the same methods used to support the allocability of regular personnel services.
- (e) The following provisions apply to nonprofit organizations. The value of services donated to the nonprofit organization utilized in the performance of a direct cost activity must be considered in the determination of the non-Federal entity's indirect cost rate(s) and, accordingly, must be allocated a proportionate share of applicable indirect costs when the following circumstances exist:
  - (1) The aggregate value of the services is material;
  - (2) The services are supported by a significant amount of the indirect costs incurred by the non-Federal entity;
    - (i) In those instances where there is no basis for determining the fair market value of the services rendered, the non-Federal entity and the cognizant agency for indirect costs must negotiate an appropriate allocation of indirect cost to the services.
    - (ii) Where donated services directly benefit a project supported by the Federal award, the indirect costs allocated to the services will be considered as a part of the total costs of the project. Such indirect costs may be reimbursed under the Federal award or used to meet cost sharing or matching requirements.
- (f) Fair market value of donated services must be computed as described in § 200.306.
- (g) Personal Property and Use of Space.
  - (1) Donated personal property and use of space may be furnished to a non-Federal entity. The value of the personal property and space may not be charged to the Federal award either as a direct or indirect cost.
  - (2) The value of the donations may be used to meet cost sharing or matching share requirements under the conditions described in § 200.300 of this part. The value of the donations must be determined in accordance with § 200.300. Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49567, Aug. 13, 2020]

## § 200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.

### (a) *Definitions for the purposes of this section.*

- (1) **Conviction** means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon verdict or a plea, including a conviction due to a plea of nolo contendere.

(2) **Costs** include the services of in-house or private counsel, accountants, consultants, or others engaged to assist the non-Federal entity before, during, and after commencement of a judicial or administrative proceeding, that bear a direct relationship to the proceeding.

(3) **Fraud** means:

- (i) Acts of fraud or corruption or attempts to defraud the Federal Government or to corrupt its agents,
- (ii) Acts that constitute a cause for debarment or suspension (as specified in agency regulations), and
- (iii) Acts which violate the False Claims Act (31 U.S.C. 3729-3732) or the Anti-kickback Act (41 U.S.C. 1320a-7b(b)).

(4) **Penalty** does not include restitution, reimbursement, or compensatory damages.

(5) **Proceeding** includes an investigation.

(b) **Costs.**

(1) Except as otherwise described herein, costs incurred in connection with any criminal, civil or administrative proceeding (including filing of a false certification) commenced by the Federal Government, a state, local government, or foreign government, or joined by the Federal Government (including a proceeding under the False Claims Act), against the non-Federal entity, (or commenced by third parties or a current or former employee of the non-Federal entity who submits a whistleblower complaint of reprisal in accordance with 10 U.S.C. 2409 or 41 U.S.C. 4712), are not allowable if the proceeding:

- (i) Relates to a violation of, or failure to comply with, a Federal, state, local or foreign statute, regulation or the terms and conditions of the Federal award, by the non-Federal entity (including its agents and employees); and
- (ii) Results in any of the following dispositions:
  - (A) In a criminal proceeding, a conviction.
  - (B) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of non-Federal entity liability.
  - (C) In the case of any civil or administrative proceeding, the disallowance of costs or the imposition of a monetary penalty, or an order issued by the Federal awarding agency head or delegate to the non-Federal entity to take corrective action under 10 U.S.C. 2409 or 41 U.S.C. 4712.
  - (D) A final decision by an appropriate Federal official to debar or suspend the non-Federal entity, to rescind or void a Federal award, or to terminate a Federal award by reason of a violation or failure to comply with a statute, regulation, or the terms and conditions of the Federal award.
  - (E) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in paragraphs (b)(1)(ii)(A) through (D) of this section.

- (2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings are unallowable if any results in one of the dispositions shown in paragraph (b) of this section.
- (c) If a proceeding referred to in paragraph (b) of this section is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement by the non-Federal entity and the Federal Government, then the costs incurred may be allowed to the extent specifically provided in such agreement.
- (d) If a proceeding referred to in paragraph (b) of this section is commenced by a state, local or foreign government, the authorized Federal official may allow the costs incurred if such authorized official determines that the costs were incurred as a result of:
  - (1) A specific term or condition of the Federal award, or
  - (2) Specific written direction of an authorized official of the Federal awarding agency.
- (e) Costs incurred in connection with proceedings described in paragraph (b) of this section, which are not made unallowable by that subsection, may be allowed but only to the extent that:
  - (1) The costs are reasonable and necessary in relation to the administration of the Federal award and activities required to deal with the proceeding and the underlying cause of action;
  - (2) Payment of the reasonable, necessary, allocable and otherwise allowable costs incurred is not prohibited by any other provision(s) of the Federal award;
  - (3) The costs are not recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and,
  - (4) An authorized Federal official must determine the percentage of costs allowed considering the complexity of litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States, and such other factors as may be appropriate. Such percentage must not exceed 80 percent. However, if an agreement reached under paragraph (c) of this section has explicitly considered this 80 percent limitation and permitted a higher percentage, then the full amount of costs resulting from that agreement are allowable.
- (f) Costs incurred by the non-Federal entity in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (18 U.S.C. 1031), including the cost of all relief necessary to make such employee whole, where the non-Federal entity was found liable or settled, are unallowable.
- (g) Costs of prosecution of claims against the Federal Government, including appeals of final Federal agency decisions, are unallowable.
- (h) Costs of legal, accounting, and consultant services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the Federal award.
- (i) Costs which may be unallowable under this section, including directly associated costs, must be segregated and accounted for separately. During the pendency of any proceeding covered by paragraphs (b) and (f) of this section, the Federal Government must generally withhold payment of such costs. However, if in its best interests, the Federal Government may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

## § 200.436 Depreciation.

- (a) Depreciation is the method for allocating the cost of fixed assets to periods benefitting from asset use. The non-Federal entity may be compensated for the use of its buildings, capital improvements, equipment, and software projects capitalized in accordance with GAAP, provided that they are used, needed in the non-Federal entity's activities, and properly allocated to Federal awards. Such compensation must be made by computing depreciation.
- (b) The allocation for depreciation must be made in accordance with Appendices III through IX.
- (c) Depreciation is computed applying the following rules. The computation of depreciation must be based on the acquisition cost of the assets involved. For an asset donated to the non-Federal entity by a third party, its fair market value at the time of the donation must be considered as the acquisition cost. Such assets may be depreciated or claimed as matching but not both. For the computation of depreciation, the acquisition cost will exclude:
  - (1) The cost of land;
  - (2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it is presently located;
  - (3) Any portion of the cost of buildings and equipment contributed by or for the non-Federal entity that are already claimed as matching or where law or agreement prohibits recovery;
  - (4) Any asset acquired solely for the performance of a non-Federal award; and
- (d) When computing depreciation charges, the following must be observed:
  - (1) The period of useful service or useful life established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment, technological developments in the particular area, historical data, and the renewal and replacement policies followed for the individual items or classes of assets involved.
  - (2) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods must reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight-line method must be presumed to be the appropriate method. Depreciation methods once used may not be changed unless approved in advance by the cognizant agency. The depreciation methods used to calculate the depreciation amounts for indirect (F&A) rate purposes must be the same methods used by the non-Federal entity for its financial statements.
  - (3) The entire building, including the shell and all components, may be treated as a single asset and depreciated over a single useful life. A building may also be divided into multiple components. Each component item may then be depreciated over its estimated useful life. The building components must be grouped into three general components of a building: building shell (including construction and design costs), building services systems (e.g., elevators, HVAC, plumbing system and heating and air-conditioning system) and fixed equipment (e.g., sterilizers, casework, fume hoods, cold rooms and glassware/washers). In exceptional cases, a cognizant agency may authorize a non-Federal entity to use more than these three groupings. When a non-Federal entity elects to



depreciate its buildings by its components, the same depreciation methods must be used for indirect (F&A) purposes and financial statements purposes, as described in paragraphs (d)(1) and (2) of this section.

- (4) No depreciation may be allowed on any assets that have outlived their depreciable lives.
- (5) Where the depreciation method is introduced to replace the use allowance method, depreciation must be computed as if the asset had been depreciated over its entire life (i.e., from the date the asset was acquired and ready for use to the date of disposal or withdrawal from service). The total amount of use allowance and depreciation for an asset (including imputed depreciation applicable to periods prior to the conversion from the use allowance method as well as depreciation after the conversion) may not exceed the total acquisition cost of the asset.
- (e) Charges for depreciation must be supported by adequate property records, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. Statistical sampling techniques may be used in taking these inventories. In addition, adequate depreciation records showing the amount of depreciation must be maintained.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49568, Aug. 13, 2020]

### § 200.437 Employee health and welfare costs.

- (a) Costs incurred in accordance with the non-Federal entity's documented policies for the improvement of working conditions, employer-employee relations, employee health, and employee performance are allowable.
- (b) Such costs will be equitably apportioned to all activities of the non-Federal entity. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably sent to employee welfare organizations.
- (c) Losses resulting from operating food services are allowable only if the non-Federal entity's objective is to operate such services on a break-even basis. Losses sustained because of operating objectives other than the above are allowable only:
  - (1) Where the non-Federal entity can demonstrate unusual circumstances; and
  - (2) With the approval of the cognizant agency for indirect costs.

### § 200.438 Entertainment costs.

Costs of entertainment, including amusement, diversion, and social activities and any associated costs are unallowable, except where specific costs that might otherwise be considered entertainment have a programmatic purpose and are authorized either in the approved budget for the Federal award or with prior written approval of the Federal awarding agency.

### § 200.439 Equipment and other capital expenditures.

- (a) See § 200.1 for the definitions of *capital expenditures*, *equipment*, *special purpose equipment*, *general purpose equipment*, *acquisition cost*, and *capital assets*.
- (b) The following rules of allowability must apply to equipment and other capital expenditures:

- (1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except with the prior written approval of the Federal awarding agency or pass-through entity.
- (2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of \$5,000 or more have the prior written approval of the Federal awarding agency or pass-through entity.
- (3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior written approval of the Federal awarding agency, or pass-through entity. See § 200.436, for rules on the allowability of depreciation on buildings, capital improvements, and equipment. See also § 200.465.
- (4) When approved as a direct charge pursuant to paragraphs (b)(1) through (3) of this section, capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate and negotiated with the Federal awarding agency.
- (5) The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the Federal cognizant agency for indirect cost.
- (6) Cost of equipment disposal. If the non-Federal entity is instructed by the Federal awarding agency to otherwise dispose of or transfer the equipment the costs of such disposal or transfer are allowable.
- (7) Equipment and other capital expenditures are unallowable as indirect costs. See § 200.436.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49568, Aug. 13, 2020]

### § 200.440 Exchange rates.

- (a) Cost increases for fluctuations in exchange rates are allowable costs subject to the availability of funding. Prior approval of exchange rate fluctuations is required only when the change results in the need for additional Federal funding, or the increased costs result in the need to significantly reduce the scope of the project. The Federal awarding agency must however ensure that adequate funds are available to cover currency fluctuations in order to avoid a violation of the Anti-Deficiency Act.
- (b) The non-Federal entity is required to make reviews of local currency gains to determine the need for additional federal funding before the expiration date of the Federal award. Subsequent adjustments for currency increases may be allowable only when the non-Federal entity provides the Federal awarding agency with adequate source documentation from a commonly used source in effect at the time the expense was made, and to the extent that sufficient Federal funds are available.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

### § 200.441 Fines, penalties, damages and other settlements.

Costs resulting from non-Federal entity violations of, alleged violations of, or failure to comply with, Federal, state, tribal, local or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the Federal award, or with prior written approval of the Federal awarding agency. See also § 200.435.

[85 FR 49568, Aug. 13, 2020]

### § 200.442 Fund raising and investment management costs.

- (a) Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable. Fund raising costs for the purposes of meeting the Federal program objectives are allowable with prior written approval from the Federal awarding agency. Proposal costs are covered in § 200.460.
- (b) Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable except when associated with investments covering pension, self-insurance, or other funds which include Federal participation allowed by this part.
- (c) Costs related to the physical custody and control of monies and securities are allowable.
- (d) Both allowable and unallowable fund-raising and investment activities must be allocated as an appropriate share of indirect costs under the conditions described in § 200.413.

[85 FR 49568, Aug. 13, 2020]

### § 200.443 Gains and losses on disposition of depreciable assets.

- (a) Gains and losses on the sale, retirement, or other disposition of depreciable property must be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) is the difference between the amount realized on the property and the undepreciated basis of the property.
- (b) Gains and losses from the disposition of depreciable property must not be recognized as a separate credit or charge under the following conditions:
  - (1) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under §§ 200.436 and 200.439.
  - (2) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.
  - (3) A loss results from the failure to maintain permissible insurance, except as otherwise provided in § 200.447.
  - (4) Compensation for the use of the property was provided through use allowances in lieu of depreciation.
  - (5) Gains and losses arising from mass or extraordinary sales, retirements, or other dispositions must be considered on a case-by-case basis.
- (c) Gains or losses of any nature arising from the sale or exchange of property other than the property covered in paragraph (a) of this section, e.g., land, must be excluded in computing Federal award costs.
- (d) When assets acquired with Federal funds, in part or wholly, are disposed of, the distribution of the proceeds must be made in accordance with §§ 200.310 through 200.316 of this part.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49568, Aug. 13, 2020]

## § 200.444 General costs of government.

- (a) For states, local governments, and Indian Tribes, the general costs of government are unallowable (except as provided in § 200.475). Unallowable costs include:
  - (1) Salaries and expenses of the Office of the Governor of a state or the chief executive of a local government or the chief executive of an Indian tribe;
  - (2) Salaries and other expenses of a state legislature, tribal council, or similar local governmental body, such as a county supervisor, city council, school board, etc., whether incurred for purposes of legislation or executive direction;
  - (3) Costs of the judicial branch of a government;
  - (4) Costs of prosecutorial activities unless treated as a direct cost to a specific program if authorized by statute or regulation (however, this does not preclude the allowability of other legal activities of the Attorney General as described in § 200.435); and
  - (5) Costs of other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost under a program statute or regulation.
- (b) For Indian tribes and Councils of Governments (COGs) (see definition for *Local government* in § 200.1 of this part), up to 50% of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his or her staff can be included in the indirect cost calculation without documentation.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49568, Aug. 13, 2020]

## § 200.445 Goods or services for personal use.

- (a) Costs of goods or services for personal use of the non-Federal entity's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.
- (b) Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses are only allowable as direct costs regardless of whether reported as taxable income to the employees. In addition, to be allowable direct costs must be approved in advance by a Federal awarding agency.

## § 200.446 Idle facilities and idle capacity.

- (a) As used in this section the following terms have the meanings set forth in this section:
  - (1) Facilities means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the non-Federal entity.
  - (2) Idle facilities means completely unused facilities that are excess to the non-Federal entity's current needs.
  - (3) Idle capacity means the unused capacity of partially used facilities. It is the difference between:
    - (i) That which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and;

- (ii) The extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.
- (4) Cost of idle facilities or idle capacity means costs such as maintenance, repair, housing, rent, and other related costs, e.g., insurance, interest, and depreciation. These costs could include the costs of idle public safety emergency facilities, telecommunications, or information technology system capacity that is built to withstand major fluctuations in load, e.g., consolidated data centers.
- (b) The costs of idle facilities are unallowable except to the extent that:
  - (1) They are necessary to meet workload requirements which may fluctuate and are allocated appropriately to all benefiting programs; or
  - (2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.
- (c) The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary to carry out the purpose of the Federal award or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

### § 200.447 Insurance and indemnification.

- (a) Costs of insurance required or approved and maintained, pursuant to the Federal award, are allowable.
- (b) Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:
  - (1) Types and extent and cost of coverage are in accordance with the non-Federal entity's policy and sound business practice.
  - (2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the Federal awarding agency has specifically required or approved such costs.
  - (3) Costs allowed for business interruption or other similar insurance must exclude coverage of management fees.
  - (4) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation (see § 200.431). The cost of such insurance when the non-Federal entity is identified as the beneficiary is unallowable.
  - (5) Insurance against defects. Costs of insurance with respect to any costs incurred to correct defects in the non-Federal entity's materials or workmanship are unallowable.

- (6) Medical liability (malpractice) insurance. Medical liability insurance is an allowable cost of Federal research programs only to the extent that the Federal research programs involve human subjects or training of participants in research techniques. Medical liability insurance costs must be treated as a direct cost and must be assigned to individual projects based on the manner in which the insurer allocates the risk to the population covered by the insurance.
- (c) Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable, unless expressly provided for in the Federal award. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.
- (d) Contributions to a reserve for certain self-insurance programs including workers' compensation, unemployment compensation, and severance pay are allowable subject to the following provisions:
  - (1) The type of coverage and the extent of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, must not exceed the discounted present value of the liability. The rate used for discounting the liability must be determined by giving consideration to such factors as the non-Federal entity's settlement rate for those liabilities and its investment rate of return.
  - (2) Earnings or investment income on reserves must be credited to those reserves.
  - (3)
    - (i) Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, etc. Reserve levels related to employee-related coverages will normally be limited to the value of claims:
      - (A) Submitted and adjudicated but not paid;
      - (B) Submitted but not adjudicated; and
      - (C) Incurred but not submitted.
    - (ii) Reserve levels in excess of the amounts based on the above must be identified and justified in the cost allocation plan or indirect cost rate proposal.
  - (4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to types of insured risk and losses generated by the various insured activities or agencies of the non-Federal entity. If individual departments or agencies of the non-Federal entity experience significantly different levels of claims for a particular risk, those differences are to be recognized by the use of separate allocations or other techniques resulting in an equitable allocation.

- (5) Whenever funds are transferred from a self-insurance reserve to other accounts (e.g., general fund or unrestricted account), refunds must be made to the Federal Government for its share of funds transferred, including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect cost, claims collection regulations.
- (e) Insurance refunds must be credited against insurance costs in the year the refund is received.
- (f) Indemnification includes securing the non-Federal entity against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the non-Federal entity only to the extent expressly provided for in the Federal award, except as provided in paragraph (c) of this section.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49568, Aug. 13, 2020]

## § 200.448 Intellectual property.

### (a) *Patent costs.*

- (1) The following costs related to securing patents and copyrights are allowable:
  - (i) Costs of preparing disclosures, reports, and other documents required by the Federal award, and of searching the art to the extent necessary to make such disclosures;
  - (ii) Costs of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government; and
  - (iii) General counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee intellectual property agreements (See also § 200.459).
- (2) The following costs related to securing patents and copyrights are unallowable:
  - (i) Costs of preparing disclosures, reports, and other documents, and of searching the art to make disclosures not required by the Federal award;
  - (ii) Costs in connection with filing and prosecuting any foreign patent application, or any United States patent application, where the Federal award does not require conveying title or a royalty-free license to the Federal Government.

### (b) *Royalties and other costs for use of patents and copyrights.*

- (1) Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the Federal award are allowable unless:
  - (i) The Federal Government already has a license or the right to free use of the patent or copyright.
  - (ii) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.
  - (iii) The patent or copyright is considered to be unenforceable.
  - (iv) The patent or copyright is expired.

- (2) Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less-than-arm's-length bargaining, such as:
  - (i) Royalties paid to persons, including corporations, affiliated with the non-Federal entity.
  - (ii) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.
  - (iii) Royalties paid under an agreement entered into after a Federal award is made to a non-Federal entity.
- (3) In any case involving a patent or copyright formerly owned by the non-Federal entity, the amount of royalty allowed must not exceed the cost which would have been allowed had the non-Federal entity retained title thereto.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49569, Aug. 13, 2020]

### § 200.449 Interest.

- (a) **General.** Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the non-Federal entity's own funds, however represented, are unallowable. Financing costs (including interest) to acquire, construct, or replace capital assets are allowable, subject to the conditions in this section.
- (b) **Capital assets.**
  - (1) Capital assets is defined as noted in § 200.1 of this part. An asset cost includes (as applicable) acquisition costs, construction costs, and other costs capitalized in accordance with GAAP.
  - (2) For non-Federal entity fiscal years beginning on or after January 1, 2016, intangible assets include patents and computer software. For software development projects, only interest attributable to the portion of the project costs capitalized in accordance with GAAP is allowable.
- (c) **Conditions for all non-Federal entities.**
  - (1) The non-Federal entity uses the capital assets in support of Federal awards;
  - (2) The allowable asset costs to acquire facilities and equipment are limited to a fair market value available to the non-Federal entity from an unrelated (arm's length) third party.
  - (3) The non-Federal entity obtains the financing via an arm's-length transaction (that is, a transaction with an unrelated third party); or claims reimbursement of actual interest cost at a rate available via such a transaction.
  - (4) The non-Federal entity limits claims for Federal reimbursement of interest costs to the least expensive alternative. For example, a lease contract that transfers ownership by the end of the contract may be determined less costly than purchasing through other types of debt financing, in which case reimbursement must be limited to the amount of interest determined if leasing had been used.
  - (5) The non-Federal entity expenses or capitalizes allowable interest cost in accordance with GAAP.



- (6) Earnings generated by the investment of borrowed funds pending their disbursement for the asset costs are used to offset the current period's allowable interest cost, whether that cost is expensed or capitalized. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.
- (7) The following conditions must apply to debt arrangements over \$1 million to purchase or construct facilities, unless the non-Federal entity makes an initial equity contribution to the purchase of 25 percent or more. For this purpose, "initial equity contribution" means the amount or value of contributions made by the non-Federal entity for the acquisition of facilities prior to occupancy.
  - (i) The non-Federal entity must reduce claims for reimbursement of interest cost by an amount equal to imputed interest earnings on excess cash flow attributable to the portion of the facility used for Federal awards.
  - (ii) The non-Federal entity must impute interest on excess cash flow as follows:
    - (A) Annually, the non-Federal entity must prepare a cumulative (from the inception of the project) report of monthly cash inflows and outflows, regardless of the funding source. For this purpose, inflows consist of Federal reimbursement for depreciation, amortization of capitalized construction interest, and annual interest cost. Outflows consist of initial equity contributions, debt principal payments (less the pro-rata share attributable to the cost of land), and interest payments.
    - (B) To compute monthly cash inflows and outflows, the non-Federal entity must divide the annual amounts determined in step (i) by the number of months in the year (usually 12) that the building is in service.
    - (C) For any month in which cumulative cash inflows exceed cumulative outflows, interest must be calculated on the excess inflows for that month and be treated as a reduction to allowable interest cost. The rate of interest to be used must be the three-month Treasury bill closing rate as of the last business day of that month.
- (8) Interest attributable to a fully depreciated asset is unallowable.
- (d) Additional conditions for states, local governments and Indian tribes. For costs to be allowable, the non-Federal entity must have incurred the interest costs for buildings after October 1, 1980, or for land and equipment after September 1, 1995.
  - (1) The requirement to offset interest earned on borrowed funds against current allowable interest cost (paragraph (c)(5), above) also applies to earnings on debt service reserve funds.
  - (2) The non-Federal entity will negotiate the amount of allowable interest cost related to the acquisition of facilities with asset costs of \$1 million or more, as outlined in paragraph (c)(7) of this section. For this purpose, a non-Federal entity must consider only cash inflows and outflows attributable to that portion of the real property used for Federal awards.
- (e) Additional conditions for IHEs. For costs to be allowable, the IHE must have incurred the interest costs after July 1, 1982, in connection with acquisitions of capital assets that occurred after that date.
- (f) Additional condition for nonprofit organizations. For costs to be allowable, the nonprofit organization incurred the interest costs after September 29, 1995, in connection with acquisitions of capital assets that occurred after that date.

- (g) The interest allowability provisions of this section do not apply to a nonprofit organization subject to “full coverage” under the Cost Accounting Standards (CAS), as defined at 48 CFR 9903.201-2(a). The non-Federal entity's Federal awards are instead subject to CAS 414 (48 CFR 9904.414), “Cost of Money as an Element of the Cost of Facilities Capital”, and CAS 417 (48 CFR 9904.417), “Cost of Money as an Element of the Cost of Capital Assets Under Construction”.

[78 FR 78608, Dec. 26, 2013, as amended at 80 FR 54409, Sept. 10, 2015; 85 FR 49569, Aug. 13, 2020]

## § 200.450 Lobbying.

- (a) The cost of certain influencing activities associated with obtaining grants, contracts, or cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans is governed by relevant statutes, including among others, the provisions of 31 U.S.C. 1352, as well as the common rule, “New Restrictions on Lobbying” published on February 26, 1990, including definitions, and the Office of Management and Budget “Governmentwide Guidance for New Restrictions on Lobbying” and notices published on December 20, 1989, June 15, 1990, January 15, 1992, and January 19, 1996.
- (b) **Executive lobbying costs.** Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the executive branch of the Federal Government to give consideration or to act regarding a Federal award or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter.
- (c) In addition to the above, the following restrictions are applicable to nonprofit organizations and IHEs:
  - (1) Costs associated with the following activities are unallowable:
    - (i) Attempts to influence the outcomes of any Federal, state, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activity;
    - (ii) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections in the United States;
    - (iii) Any attempt to influence:
      - (A) The introduction of Federal or state legislation;
      - (B) The enactment or modification of any pending Federal or state legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence state or local officials to engage in similar lobbying activity);
      - (C) The enactment or modification of any pending Federal or state legislation by preparing, distributing, or using publicity or propaganda, or by urging members of the general public, or any segment thereof, to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or
      - (D) Any government official or employee in connection with a decision to sign or veto enrolled legislation;

- (iv) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.
- (2) The following activities are excepted from the coverage of paragraph (c)(1) of this section:
- (i) Technical and factual presentations on topics directly related to the performance of a grant, contract, or other agreement (through hearing testimony, statements, or letters to the Congress or a state legislature, or subdivision, member, or cognizant staff member thereof), in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the non-Federal entity's member of congress, legislative body or a subdivision, or a cognizant staff member thereof, provided such information is readily obtainable and can be readily put in deliverable form, and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearings;
  - (ii) Any lobbying made unallowable by paragraph (c)(1)(iii) of this section to influence state legislation in order to directly reduce the cost, or to avoid material impairment of the non-Federal entity's authority to perform the grant, contract, or other agreement; or
  - (iii) Any activity specifically authorized by statute to be undertaken with funds from the Federal award.
  - (iv) Any activity excepted from the definitions of "lobbying" or "influencing legislation" by the Internal Revenue Code provisions that require nonprofit organizations to limit their participation in direct and "grass roots" lobbying activities in order to retain their charitable deduction status and avoid punitive excise taxes, I.R.C. §§ 501(c)(3), 501(h), 4911(a), including:
    - (A) Nonpartisan analysis, study, or research reports;
    - (B) Examinations and discussions of broad social, economic, and similar problems; and
    - (C) Information provided upon request by a legislator for technical advice and assistance, as defined by I.R.C. § 4911(d)(2) and 26 CFR 56.4911-2(c)(1)-(c)(3).
  - (v) When a non-Federal entity seeks reimbursement for indirect (F&A) costs, total lobbying costs must be separately identified in the indirect (F&A) cost rate proposal, and thereafter treated as other unallowable activity costs in accordance with the procedures of § 200.413.
  - (vi) The non-Federal entity must submit as part of its annual indirect (F&A) cost rate proposal a certification that the requirements and standards of this section have been complied with. (See also § 200.415.)
  - (vii)
    - (A) Time logs, calendars, or similar records are not required to be created for purposes of complying with the record keeping requirements in § 200.302 with respect to lobbying costs during any particular calendar month when:

- (1) The employee engages in lobbying (as defined in paragraphs (c)(1) and (c)(2) of this section) 25 percent or less of the employee's compensated hours of employment during that calendar month; and
  - (2) Within the preceding five-year period, the non-Federal entity has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs.
- (B) When conditions in paragraph (c)(2)(vii)(A)(1) and (2) of this section are met, non-Federal entities are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions in paragraphs (c)(2)(vii)(A)(1) and (2) of this section are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.
- (viii) The Federal awarding agency must establish procedures for resolving in advance, in consultation with OMB, any significant questions or disagreements concerning the interpretation or application of this section. Any such advance resolutions must be binding in any subsequent settlements, audits, or investigations with respect to that grant or contract for purposes of interpretation of this part, provided, however, that this must not be construed to prevent a contractor or non-Federal entity from contesting the lawfulness of such a determination.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

### **§ 200.451 Losses on other awards or contracts.**

Any excess of costs over income under any other award or contract of any nature is unallowable. This includes, but is not limited to, the non-Federal entity's contributed portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for indirect (F&A) costs. Also, any excess of costs over authorized funding levels transferred from any award or contract to another award or contract is unallowable. All losses are not allowable indirect (F&A) costs and are required to be included in the appropriate indirect cost rate base for allocation of indirect costs.

### **§ 200.452 Maintenance and repair costs.**

Costs incurred for utilities, insurance, security, necessary maintenance, janitorial services, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life must be treated as capital expenditures (see § 200.439). These costs are only allowable to the extent not paid through rental or other agreements.

[85 FR 49569, Aug. 13, 2020]

### **§ 200.453 Materials and supplies costs, including costs of computing devices.**

- (a) Costs incurred for materials, supplies, and fabricated parts necessary to carry out a Federal award are allowable.

- (b) Purchased materials and supplies must be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms must be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are a proper part of materials and supplies costs.
- (c) Materials and supplies used for the performance of a Federal award may be charged as direct costs. In the specific case of computing devices, charging as direct costs is allowable for devices that are essential and allocable, but not solely dedicated, to the performance of a Federal award.
- (d) Where federally-donated or furnished materials are used in performing the Federal award, such materials will be used without charge.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

### § 200.454 Memberships, subscriptions, and professional activity costs.

- (a) Costs of the non-Federal entity's membership in business, technical, and professional organizations are allowable.
- (b) Costs of the non-Federal entity's subscriptions to business, professional, and technical periodicals are allowable.
- (c) Costs of membership in any civic or community organization are allowable with prior approval by the Federal awarding agency or pass-through entity.
- (d) Costs of membership in any country club or social or dining club or organization are unallowable.
- (e) Costs of membership in organizations whose primary purpose is lobbying are unallowable. See also § 200.450.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

### § 200.455 Organization costs.

Costs such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselor, whether or not employees of the non-Federal entity in connection with establishment or reorganization of an organization, are unallowable except with prior approval of the Federal awarding agency.

### § 200.456 Participant support costs.

Participant support costs as defined in § 200.1 are allowable with the prior approval of the Federal awarding agency.

[85 FR 49569, Aug. 13, 2020]

### § 200.457 Plant and security costs.

Necessary and reasonable expenses incurred for protection and security of facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; protective (non-military) gear, devices, and equipment; contractual security services; and consultants. Capital expenditures for plant security purposes are subject to § 200.439.

[85 FR 49569, Aug. 13, 2020]

### § 200.458 Pre-award costs.

Pre-award costs are those incurred prior to the effective date of the Federal award or subaward directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Federal awarding agency. If charged to the award, these costs must be charged to the initial budget period of the award, unless otherwise specified by the Federal awarding agency or pass-through entity.

[85 FR 49569, Aug. 13, 2020]

### § 200.459 Professional service costs.

- (a) Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the non-Federal entity, are allowable, subject to paragraphs (b) and (c) of this section when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. In addition, legal and related services are limited under § 200.435.
- (b) In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:
  - (1) The nature and scope of the service rendered in relation to the service required.
  - (2) The necessity of contracting for the service, considering the non-Federal entity's capability in the particular area.
  - (3) The past pattern of such costs, particularly in the years prior to Federal awards.
  - (4) The impact of Federal awards on the non-Federal entity's business (i.e., what new problems have arisen).
  - (5) Whether the proportion of Federal work to the non-Federal entity's total business is such as to influence the non-Federal entity in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal awards.
  - (6) Whether the service can be performed more economically by direct employment rather than contracting.
  - (7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-federally funded activities.
  - (8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).
- (c) In addition to the factors in paragraph (b) of this section, to be allowable, retainer fees must be supported by evidence of bona fide services available or rendered.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

### § 200.460 Proposal costs.

Proposal costs are the costs of preparing bids, proposals, or applications on potential Federal and non-Federal awards or projects, including the development of data necessary to support the non-Federal entity's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect (F&A) costs and allocated currently to all activities of the non-Federal entity. No proposal costs of past accounting periods will be allocable to the current period.

### § 200.461 Publication and printing costs.

- (a) Publication costs for electronic and print media, including distribution, promotion, and general handling are allowable. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the non-Federal entity.
- (b) Page charges for professional journal publications are allowable where:
  - (1) The publications report work supported by the Federal Government; and
  - (2) The charges are levied impartially on all items published by the journal, whether or not under a Federal award.
  - (3) The non-Federal entity may charge the Federal award during closeout for the costs of publication or sharing of research results if the costs are not incurred during the period of performance of the Federal award. If charged to the award, these costs must be charged to the final budget period of the award, unless otherwise specified by the Federal awarding agency.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

### § 200.462 Rearrangement and reconversion costs.

- (a) Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable as indirect costs. Special arrangements and alterations costs incurred specifically for a Federal award are allowable as a direct cost with the prior approval of the Federal awarding agency or pass-through entity.
- (b) Costs incurred in the restoration or rehabilitation of the non-Federal entity's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, less costs related to normal wear and tear, are allowable.

### § 200.463 Recruiting costs.

- (a) Subject to paragraphs (b) and (c) of this section, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to the non-Federal entity's standard recruitment program. Where the non-Federal entity uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

- (b) Special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel that do not meet the test of reasonableness or do not conform with the established practices of the non-Federal entity, are unallowable.
- (c) Where relocation costs incurred incident to recruitment of a new employee have been funded in whole or in part to a Federal award, and the newly hired employee resigns for reasons within the employee's control within 12 months after hire, the non-Federal entity will be required to refund or credit the Federal share of such relocation costs to the Federal Government. See also § 200.464.
- (d) Short-term, travel visa costs (as opposed to longer-term, immigration visas) are generally allowable expenses that may be proposed as a direct cost. Since short-term visas are issued for a specific period and purpose, they can be clearly identified as directly connected to work performed on a Federal award. For these costs to be directly charged to a Federal award, they must:
  - (1) Be critical and necessary for the conduct of the project;
  - (2) Be allowable under the applicable cost principles;
  - (3) Be consistent with the non-Federal entity's cost accounting practices and non-Federal entity policy; and
  - (4) Meet the definition of "direct cost" as described in the applicable cost principles.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49569, Aug. 13, 2020]

### § 200.464 Relocation costs of employees.

- (a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitations described in paragraphs (b), (c), and (d) of this section, provided that:
  - (1) The move is for the benefit of the employer.
  - (2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.
  - (3) The reimbursement does not exceed the employee's actual (or reasonably estimated) expenses.
- (b) Allowable relocation costs for current employees are limited to the following:
  - (1) The costs of transportation of the employee, members of his or her immediate family and his household, and personal effects to the new location.
  - (2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to maximum period of 30 calendar days.
  - (3) Closing costs, such as brokerage, legal, and appraisal fees, incident to the disposition of the employee's former home. These costs, together with those described in (4), are limited to 8 per cent of the sales price of the employee's former home.
  - (4) The continuing costs of ownership (for up to six months) of the vacant former home after the settlement or lease date of the employee's new permanent home, such as maintenance of buildings and grounds (exclusive of fixing-up expenses), utilities, taxes, and property insurance.



- (5) Other necessary and reasonable expenses normally incident to relocation, such as the costs of canceling an unexpired lease, transportation of personal property, and purchasing insurance against loss of or damages to personal property. The cost of canceling an unexpired lease is limited to three times the monthly rental.
- (c) Allowable relocation costs for new employees are limited to those described in paragraphs (b)(1) and (2) of this section. When relocation costs incurred incident to the recruitment of new employees have been charged to a Federal award and the employee resigns for reasons within the employee's control within 12 months after hire, the non-Federal entity must refund or credit the Federal Government for its share of the cost. If dependents are not permitted at the location for any reason and the costs do not include costs of transporting household goods, the costs of travel to an overseas location must be considered travel costs in accordance with § 200.474 Travel costs, and not this relocations costs of employees (See also § 200.464).
- (d) The following costs related to relocation are unallowable:
  - (1) Fees and other costs associated with acquiring a new home.
  - (2) A loss on the sale of a former home.
  - (3) Continuing mortgage principal and interest payments on a home being sold.
  - (4) Income taxes paid by an employee related to reimbursed relocation costs.

*[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49570, Aug. 13, 2020]*

## **§ 200.465 Rental costs of real property and equipment.**

- (a) Subject to the limitations described in paragraphs (b) through (d) of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.
- (b) Rental costs under “sale and lease back” arrangements are allowable only up to the amount that would be allowed had the non-Federal entity continued to own the property. This amount would include expenses such as depreciation, maintenance, taxes, and insurance.
- (c) Rental costs under “less-than-arm's-length” leases are allowable only up to the amount (as explained in paragraph (b) of this section). For this purpose, a less-than-arm's-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between:
  - (1) Divisions of the non-Federal entity;
  - (2) The non-Federal entity under common control through common officers, directors, or members; and
  - (3) The non-Federal entity and a director, trustee, officer, or key employee of the non-Federal entity or an immediate family member, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, the non-Federal entity may establish a separate corporation for the sole purpose of owning property and leasing it back to the non-Federal entity.
  - (4) Family members include one party with any of the following relationships to another party:

- (i) Spouse, and parents thereof;
- (ii) Children, and spouses thereof;
- (iii) Parents, and spouses thereof;
- (iv) Siblings, and spouses thereof;
- (v) Grandparents and grandchildren, and spouses thereof;
- (vi) Domestic partner and parents thereof, including domestic partners of any individual in 2 through 5 of this definition; and
- (vii) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

(5) Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount (as explained in paragraph (b) of this section) that would be allowed had the non-Federal entity purchased the property on the date the lease agreement was executed. The provisions of GAAP must be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in § 200.449 Interest. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the non-Federal entity purchased the property.

(6) The rental of any property owned by any individuals or entities affiliated with the non-Federal entity, to include commercial or residential real estate, for purposes such as the home office workspace is unallowable.

(d) Rental costs under leases which are required to be accounted for as a financed purchase under GASB standards or a finance lease under FASB standards under GAAP are allowable only up to the amount (as explained in paragraph (b) of this section) that would be allowed had the non-Federal entity purchased the property on the date the lease agreement was executed. Interest costs related to these leases are allowable to the extent they meet the criteria in § 200.449. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the non-Federal entity purchased the property.

(e) Rental or lease payments are allowable under lease contracts where the non-Federal entity is required to recognize an intangible right-to-use lease asset (per GASB) or right of use operating lease asset (per FASB) for purposes of financial reporting in accordance with GAAP.

(f) The rental of any property owned by any individuals or entities affiliated with the non-Federal entity, to include commercial or residential real estate, for purposes such as the home office workspace is unallowable.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

## § 200.466 Scholarships and student aid costs.

(a) Costs of scholarships, fellowships, and other programs of student aid at IHEs are allowable only when the purpose of the Federal award is to provide training to selected participants and the charge is approved by the Federal awarding agency. However, tuition remission and other forms of compensation paid as, or in lieu of, wages to students performing necessary work are allowable provided that:

- (1) The individual is conducting activities necessary to the Federal award;

- (2) Tuition remission and other support are provided in accordance with established policy of the IHE and consistently provided in a like manner to students in return for similar activities conducted under Federal awards as well as other activities; and
  - (3) During the academic period, the student is enrolled in an advanced degree program at a non-Federal entity or affiliated institution and the activities of the student in relation to the Federal award are related to the degree program;
  - (4) The tuition or other payments are reasonable compensation for the work performed and are conditioned explicitly upon the performance of necessary work; and
  - (5) It is the IHE's practice to similarly compensate students under Federal awards as well as other activities.
- (b) Charges for tuition remission and other forms of compensation paid to students as, or in lieu of, salaries and wages must be subject to the reporting requirements in § 200.430, and must be treated as direct or indirect cost in accordance with the actual work being performed. Tuition remission may be charged on an average rate basis. See also § 200.431.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

### § 200.467 Selling and marketing costs.

Costs of selling and marketing any products or services of the non-Federal entity (unless allowed under § 200.421) are unallowable, except as direct costs, with prior approval by the Federal awarding agency when necessary for the performance of the Federal award.

[85 FR 49570, Aug. 13, 2020]

### § 200.468 Specialized service facilities.

- (a) The costs of services provided by highly complex or specialized facilities operated by the non-Federal entity, such as computing facilities, wind tunnels, and reactors are allowable, provided the charges for the services meet the conditions of either paragraph (b) or (c) of this section, and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under § 200.406.
- (b) The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that:
  - (1) Does not discriminate between activities under Federal awards and other activities of the non-Federal entity, including usage by the non-Federal entity for internal purposes, and
  - (2) Is designed to recover only the aggregate costs of the services. The costs of each service must consist normally of both its direct costs and its allocable share of all indirect (F&A) costs. Rates must be adjusted at least biennially, and must take into consideration over/under-applied costs of the previous period(s).
- (c) Where the costs incurred for a service are not material, they may be allocated as indirect (F&A) costs.
- (d) Under some extraordinary circumstances, where it is in the best interest of the Federal Government and the non-Federal entity to establish alternative costing arrangements, such arrangements may be worked out with the Federal cognizant agency for indirect costs.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

## § 200.469 Student activity costs.

Costs incurred for intramural activities, student publications, student clubs, and other student activities, are unallowable, unless specifically provided for in the Federal award.

## § 200.470 Taxes (including Value Added Tax).

(a) For states, local governments and Indian tribes:

- (1) Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs.
- (2) Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees for benefits provided to the Federal Government are allowable.
- (3) This provision does not restrict the authority of the Federal awarding agency to identify taxes where Federal participation is inappropriate. Where the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency for indirect costs may accept a reasonable approximation thereof.

(b) For nonprofit organizations and IHEs:

- (1) In general, taxes which the non-Federal entity is required to pay and which are paid or accrued in accordance with GAAP, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for:
  - (i) Taxes from which exemptions are available to the non-Federal entity directly or which are available to the non-Federal entity based on an exemption afforded the Federal Government and, in the latter case, when the Federal awarding agency makes available the necessary exemption certificates,
  - (ii) Special assessments on land which represent capital improvements, and
  - (iii) Federal income taxes.
- (2) Any refund of taxes, and any payment to the non-Federal entity of interest thereon, which were allowed as Federal award costs, will be credited either as a cost reduction or cash refund, as appropriate, to the Federal Government. However, any interest actually paid or credited to a non-Federal entity incident to a refund of tax, interest, and penalty will be paid or credited to the Federal Government only to the extent that such interest accrued over the period during which the non-Federal entity has been reimbursed by the Federal Government for the taxes, interest, and penalties.

(c) Value Added Tax (VAT) Foreign taxes charged for the purchase of goods or services that a non-Federal entity is legally required to pay in country is an allowable expense under Federal awards. Foreign tax refunds or applicable credits under Federal awards refer to receipts, or reduction of expenditures, which operate to offset or reduce expense items that are allocable to Federal awards as direct or indirect costs. To the extent that such credits accrued or received by the non-Federal entity relate to allowable cost, these costs must be credited to the Federal awarding agency either as costs or cash refunds. If the costs are credited back to the Federal award, the non-Federal entity may reduce the Federal share of costs by

the amount of the foreign tax reimbursement, or where Federal award has not expired, use the foreign government tax refund for approved activities under the Federal award with prior approval of the Federal awarding agency.

### § 200.471 Telecommunication costs and video surveillance costs.

- (a) Costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, cloud servers are allowable except for the following circumstances:
- (b) Obligating or expending covered telecommunications and video surveillance services or equipment or services as described in § 200.216 to:
  - (1) Procure or obtain, extend or renew a contract to procure or obtain;
  - (2) Enter into a contract (or extend or renew a contract) to procure; or
  - (3) Obtain the equipment, services, or systems.

[85 FR 49570, Aug. 13, 2020]

### § 200.472 Termination costs.

Termination of a Federal award generally gives rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the Federal award not been terminated. Cost principles covering these items are set forth in this section. They are to be used in conjunction with the other provisions of this part in termination situations.

- (a) The cost of items reasonably usable on the non-Federal entity's other work must not be allowable unless the non-Federal entity submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the non-Federal entity, the Federal awarding agency should consider the non-Federal entity's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the non-Federal entity must be regarded as evidence that such items are reasonably usable on the non-Federal entity's other work. Any acceptance of common items as allocable to the terminated portion of the Federal award must be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.
- (b) If in a particular case, despite all reasonable efforts by the non-Federal entity, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this part, except that any such costs continuing after termination due to the negligent or willful failure of the non-Federal entity to discontinue such costs must be unallowable.
- (c) Loss of useful value of special tooling, machinery, and equipment is generally allowable if:
  - (1) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the non-Federal entity,
  - (2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the Federal awarding agency (see also § 200.313 (d)), and

- (3) The loss of useful value for any one terminated Federal award is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the Federal award bears to the entire terminated Federal award and other Federal awards for which the special tooling, machinery, or equipment was acquired.
- (d) Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated Federal award less the residual value of such leases, if:
  - (1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the Federal award and such further period as may be reasonable, and
  - (2) The non-Federal entity makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the Federal award, and of reasonable restoration required by the provisions of the lease.
- (e) Settlement expenses including the following are generally allowable:
  - (1) Accounting, legal, clerical, and similar costs reasonably necessary for:
    - (i) The preparation and presentation to the Federal awarding agency of settlement claims and supporting data with respect to the terminated portion of the Federal award, unless the termination is for cause (see subpart D, including §§ 200.339-200.343); and
    - (ii) The termination and settlement of subawards.
  - (2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the Federal award.
- (f) Claims under subawards, including the allocable portion of claims which are common to the Federal award and to other work of the non-Federal entity, are generally allowable. An appropriate share of the non-Federal entity's indirect costs may be allocated to the amount of settlements with contractors and/or subrecipients, provided that the amount allocated is otherwise consistent with the basic guidelines contained in § 200.414. The indirect costs so allocated must exclude the same and similar costs claimed directly or indirectly as settlement expenses.

[78 FR 78608, Dec. 26, 2013. Redesignated and amended at 85 FR 49570, Aug. 13, 2020]

### **§ 200.473 Training and education costs.**

The cost of training and education provided for employee development is allowable.

[78 FR 78608, Dec. 26, 2013. Redesignated at 85 FR 49570, Aug. 13, 2020]

### **§ 200.474 Transportation costs.**

Costs incurred for freight, express, cartage, postage, and other transportation services relating either to goods purchased, in process, or delivered, are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation cost may be charged to the appropriate indirect (F&A) cost accounts if the non-Federal entity follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms and conditions of the Federal award, should be treated as a direct cost.

[78 FR 78608, Dec. 26, 2013. Redesignated at 85 FR 49570, Aug. 13, 2020]

## § 200.475 Travel costs.

- (a) **General.** Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the non-Federal entity. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the non-Federal entity's non-federally-funded activities and in accordance with non-Federal entity's written travel reimbursement policies. Notwithstanding the provisions of § 200.444, travel costs of officials covered by that section are allowable with the prior written approval of the Federal awarding agency or pass-through entity when they are specifically related to the Federal award.
- (b) **Lodging and subsistence.** Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, must be considered reasonable and otherwise allowable only to the extent such costs do not exceed charges normally allowed by the non-Federal entity in its regular operations as the result of the non-Federal entity's written travel policy. In addition, if these costs are charged directly to the Federal award documentation must justify that:
  - (1) Participation of the individual is necessary to the Federal award; and
  - (2) The costs are reasonable and consistent with non-Federal entity's established travel policy.
- (c)
  - (1) Temporary dependent care costs (as dependent is defined in 26 U.S.C. 152) above and beyond regular dependent care that directly results from travel to conferences is allowable provided that:
    - (i) The costs are a direct result of the individual's travel for the Federal award;
    - (ii) The costs are consistent with the non-Federal entity's documented travel policy for all entity travel; and
    - (iii) Are only temporary during the travel period.
  - (2) Travel costs for dependents are unallowable, except for travel of duration of six months or more with prior approval of the Federal awarding agency. See also § 200.432.
- (d) In the absence of an acceptable, written non-Federal entity policy regarding travel costs, the rates and amounts established under 5 U.S.C. 5701-11, ("Travel and Subsistence Expenses; Mileage Allowances"), or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter must apply to travel under Federal awards (48 CFR 31.205-46(a)).
- (e) **Commercial air travel.**
  - (1) Airfare costs in excess of the basic least expensive unrestricted accommodations class offered by commercial airlines are unallowable except when such accommodations would:
    - (i) Require circuitous routing;
    - (ii) Require travel during unreasonable hours;
    - (iii) Excessively prolong travel;
    - (iv) Result in additional costs that would offset the transportation savings; or

- (v) Offer accommodations not reasonably adequate for the traveler's medical needs. The non-Federal entity must justify and document these conditions on a case-by-case basis in order for the use of first-class or business-class airfare to be allowable in such cases.
- (2) Unless a pattern of avoidance is detected, the Federal Government will generally not question a non-Federal entity's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the non-Federal entity can demonstrate that such airfare was not available in the specific case.
- (f) **Air travel by other than commercial carrier.** Costs of travel by non-Federal entity-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of airfare as provided for in paragraph (d) of this section, is unallowable.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014. Redesignated and amended at 85 FR 49570, Aug. 13, 2020]

### § 200.476 Trustees.

Travel and subsistence costs of trustees (or directors) at IHEs and nonprofit organizations are allowable. See also § 200.475.

[85 FR 49571, Aug. 13, 2020]

## Subpart F—Audit Requirements

Link to an amendment published at 89 FR 30136, Apr. 22, 2024.

### GENERAL

### § 200.500 Purpose.

This part sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.

### AUDITS

### § 200.501 Audit requirements.

- (a) **Audit required.** A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.
- (b) **Single audit.** A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with § 200.514 except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.
- (c) **Program-specific audit election.** When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a



program-specific audit conducted in accordance with § 200.507. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

- (d) **Exemption when Federal awards expended are less than \$750,000.** A non-Federal entity that expends less than \$750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in § 200.503, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).
- (e) **Federally Funded Research and Development Centers (FFRDC).** Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.
- (f) **Subrecipients and contractors.** An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient or a subrecipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not Federal awards. Section § 200.331 sets forth the considerations in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.
- (g) **Compliance responsibility for contractors.** In most cases, the auditee's compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of Federal awards. Federal award compliance requirements normally do not pass through to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.
- (h) **For-profit subrecipient.** Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The agreement with the for-profit subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also § 200.332.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49571, Aug. 13, 2020]

## § 200.502 Basis for determining Federal awards expended.

- (a) **Determining Federal awards expended.** The determination of when a Federal award is expended must be based on when the activity related to the Federal award occurs. Generally, the activity pertains to events that require the non-Federal entity to comply with Federal statutes, regulations, and the terms and conditions of Federal awards, such as: expenditure/expense transactions associated with awards including grants, cost-reimbursement contracts under the FAR, compacts with Indian Tribes, cooperative agreements, and direct appropriations; the disbursement of funds to subrecipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or use of food commodities; the disbursement of amounts entitling the non-Federal entity to an interest subsidy; and the period when insurance is in force.

- (b) **Loan and loan guarantees (loans).** Since the Federal Government is at risk for loans until the debt is repaid, the following guidelines must be used to calculate the value of Federal awards expended under loan programs, except as noted in paragraphs (c) and (d) of this section:
  - (1) Value of new loans made or received during the audit period; plus
  - (2) Beginning of the audit period balance of loans from previous years for which the Federal Government imposes continuing compliance requirements; plus
  - (3) Any interest subsidy, cash, or administrative cost allowance received.
- (c) **Loan and loan guarantees (loans) at IHEs.** When loans are made to students of an IHE but the IHE does not make the loans, then only the value of loans made during the audit period must be considered Federal awards expended in that audit period. The balance of loans for previous audit periods is not included as Federal awards expended because the lender accounts for the prior balances.
- (d) **Prior loan and loan guarantees (loans).** Loans, the proceeds of which were received and expended in prior years, are not considered Federal awards expended under this part when the Federal statutes, regulations, and the terms and conditions of Federal awards pertaining to such loans impose no continuing compliance requirements other than to repay the loans.
- (e) **Endowment funds.** The cumulative balance of Federal awards for endowment funds that are federally restricted are considered Federal awards expended in each audit period in which the funds are still restricted.
- (f) **Free rent.** Free rent received by itself is not considered a Federal award expended under this part. However, free rent received as part of a Federal award to carry out a Federal program must be included in determining Federal awards expended and subject to audit under this part.
- (g) **Valuing non-cash assistance.** Federal non-cash assistance, such as free rent, food commodities, donated property, or donated surplus property, must be valued at fair market value at the time of receipt or the assessed value provided by the Federal agency.
- (h) **Medicare.** Medicare payments to a non-Federal entity for providing patient care services to Medicare-eligible individuals are not considered Federal awards expended under this part.
- (i) **Medicaid.** Medicaid payments to a subrecipient for providing patient care services to Medicaid-eligible individuals are not considered Federal awards expended under this part unless a state requires the funds to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis.
- (j) **Certain loans provided by the National Credit Union Administration.** For purposes of this part, loans made from the National Credit Union Share Insurance Fund and the Central Liquidity Facility that are funded by contributions from insured non-Federal entities are not considered Federal awards expended.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

### § 200.503 Relation to other audit requirements.

- (a) An audit conducted in accordance with this part must be in lieu of any financial audit of Federal awards which a non-Federal entity is required to undergo under any other Federal statute or regulation. To the extent that such audit provides a Federal agency with the information it requires to carry out its responsibilities under Federal statute or regulation, a Federal agency must rely upon and use that information.

- (b) Notwithstanding subsection (a), a Federal agency, Inspector General, or GAO may conduct or arrange for additional audits which are necessary to carry out its responsibilities under Federal statute or regulation. The provisions of this part do not authorize any non-Federal entity to constrain, in any manner, such Federal agency from carrying out or arranging for such additional audits, except that the Federal agency must plan such audits to not be duplicative of other audits of Federal awards. Prior to commencing such an audit, the Federal agency or pass-through entity must review the FAC for recent audits submitted by the non-Federal entity, and to the extent such audits meet a Federal agency or pass-through entity's needs, the Federal agency or pass-through entity must rely upon and use such audits. Any additional audits must be planned and performed in such a way as to build upon work performed, including the audit documentation, sampling, and testing already performed, by other auditors.
- (c) The provisions of this part do not limit the authority of Federal agencies to conduct, or arrange for the conduct of, audits and evaluations of Federal awards, nor limit the authority of any Federal agency Inspector General or other Federal official. For example, requirements that may be applicable under the FAR or CAS and the terms and conditions of a cost-reimbursement contract may include additional applicable audits to be conducted or arranged for by Federal agencies.
- (d) **Federal agency to pay for additional audits.** A Federal agency that conducts or arranges for additional audits must, consistent with other applicable Federal statutes and regulations, arrange for funding the full cost of such additional audits.
- (e) **Request for a program to be audited as a major program.** A Federal awarding agency may request that an auditee have a particular Federal program audited as a major program in lieu of the Federal awarding agency conducting or arranging for the additional audits. To allow for planning, such requests should be made at least 180 calendar days prior to the end of the fiscal year to be audited. The auditee, after consultation with its auditor, should promptly respond to such a request by informing the Federal awarding agency whether the program would otherwise be audited as a major program using the risk-based audit approach described in § 200.518 and, if not, the estimated incremental cost. The Federal awarding agency must then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major program based upon this Federal awarding agency request, and the Federal awarding agency agrees to pay the full incremental costs, then the auditee must have the program audited as a major program. A pass-through entity may use the provisions of this paragraph for a subrecipient.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49570, Aug. 13, 2020]

## § 200.504 Frequency of audits.

Except for the provisions for biennial audits provided in paragraphs (a) and (b) of this section, audits required by this part must be performed annually. Any biennial audit must cover both years within the biennial period.

- (a) A state, local government, or Indian tribe that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits pursuant to this part biennially. This requirement must still be in effect for the biennial period.
- (b) Any nonprofit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits pursuant to this part biennially.

## § 200.505 Sanctions.

In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities must take appropriate action as provided in § 200.339.

[85 FR 49571, Aug. 13, 2020]

## § 200.506 Audit costs.

See § 200.425.

[85 FR 49571, Aug. 13, 2020]

## § 200.507 Program-specific audits.

- (a) **Program-specific audit guide available.** In some cases, a program-specific audit guide will be available to provide specific guidance to the auditor with respect to internal controls, compliance requirements, suggested audit procedures, and audit reporting requirements. A listing of current program-specific audit guides can be found in the compliance supplement, Part 8, Appendix VI, Program-Specific Audit Guides, which includes a website where a copy of the guide can be obtained. When a current program-specific audit guide is available, the auditor must follow GAGAS and the guide when performing a program-specific audit.
- (b) **Program-specific audit guide not available.**
  - (1) When a current program-specific audit guide is not available, the auditee and auditor must have basically the same responsibilities for the Federal program as they would have for an audit of a major program in a single audit.
  - (2) The auditee must prepare the financial statement(s) for the Federal program that includes, at a minimum, a schedule of expenditures of Federal awards for the program and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of § 200.511(b), and a corrective action plan consistent with the requirements of § 200.511(c).
  - (3) The auditor must:
    - (i) Perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS;
    - (ii) Obtain an understanding of internal controls and perform tests of internal controls over the Federal program consistent with the requirements of § 200.514(c) for a major program;
    - (iii) Perform procedures to determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that could have a direct and material effect on the Federal program consistent with the requirements of § 200.514(d) for a major program;

- (iv) Follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with the requirements of § 200.511, and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding; and
  - (v) Report any audit findings consistent with the requirements of § 200.516.
- (4) The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this part and include the following:
- (i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) of the Federal program is presented fairly in all material respects in accordance with the stated accounting policies;
  - (ii) A report on internal control related to the Federal program, which must describe the scope of testing of internal control and the results of the tests;
  - (iii) A report on compliance which includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the terms and conditions of Federal awards which could have a direct and material effect on the Federal program; and
  - (iv) A schedule of findings and questioned costs for the Federal program that includes a summary of the auditor's results relative to the Federal program in a format consistent with § 200.515(d)(1) and findings and questioned costs consistent with the requirements of § 200.515(d)(3).

(c) **Report submission for program-specific audits.**

- (1) The audit must be completed and the reporting required by paragraph (c)(2) or (c)(3) of this section submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide. Unless restricted by Federal law or regulation, the auditee must make report copies available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.
- (2) When a program-specific audit guide is available, the auditee must electronically submit to the FAC the data collection form prepared in accordance with § 200.512(b), as applicable to a program-specific audit, and the reporting required by the program-specific audit guide.
- (3) When a program-specific audit guide is not available, the reporting package for a program-specific audit must consist of the financial statement(s) of the Federal program, a summary schedule of prior audit findings, and a corrective action plan as described in paragraph (b)(2) of this section, and the auditor's report(s) described in paragraph (b)(4) of this section. The data collection form prepared in accordance with § 200.512(b), as applicable to a program-specific audit, and one copy of this reporting package must be electronically submitted to the FAC.

(d) **Other sections of this part may apply.** Program-specific audits are subject to:

- (1) 200.500 Purpose through 200.503 Relation to other audit requirements, paragraph (d);
- (2) 200.504 Frequency of audits through 200.506 Audit costs;

- (3) 200.508 Auditee responsibilities through 200.509 Auditor selection;
- (4) 200.511 Audit findings follow-up;
- (5) 200.512 Report submission, paragraphs (e) through (h);
- (6) 200.513 Responsibilities;
- (7) 200.516 Audit findings through 200.517 Audit documentation;
- (8) 200.521 Management decision; and
- (9) Other referenced provisions of this part unless contrary to the provisions of this section, a program-specific audit guide, or program statutes and regulations.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49571, Aug. 13, 2020]

## AUDITEES

### § 200.508 Auditee responsibilities.

The auditee must:

- (a) Procure or otherwise arrange for the audit required by this part in accordance with § 200.509, and ensure it is properly performed and submitted when due in accordance with § 200.512.
- (b) Prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with § 200.510.
- (c) Promptly follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with § 200.511(b) and (c), respectively.
- (d) Provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by this part.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49572, Aug. 13, 2020]

### § 200.509 Auditor selection.

- (a) **Auditor procurement.** In procuring audit services, the auditee must follow the procurement standards prescribed by the Procurement Standards in §§ 200.317 through 200.327 of subpart D of this part or the FAR (48 CFR part 42), as applicable. In requesting proposals for audit services, the objectives and scope of the audit must be made clear and the non-Federal entity must request a copy of the audit organization's peer review report which the auditor is required to provide under GAGAS. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of peer and external quality control reviews, and price. Whenever possible, the auditee must make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in § 200.321, or the FAR (48 CFR part 42), as applicable.

- (b) **Restriction on auditor preparing indirect cost proposals.** An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit required by this part when the indirect costs recovered by the auditee during the prior year exceeded \$1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs.
- (c) **Use of Federal auditors.** Federal auditors may perform all or part of the work required under this part if they comply fully with the requirements of this part.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49572, Aug. 13, 2020; 86 FR 10440, Feb. 22, 2021]

## § 200.510 Financial statements.

- (a) **Financial statements.** The auditee must prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements must be for the same organizational unit and fiscal year that is chosen to meet the requirements of this part. However, non-Federal entity-wide financial statements may also include departments, agencies, and other organizational units that have separate audits in accordance with § 200.514(a) and prepare separate financial statements.
- (b) **Schedule of expenditures of Federal awards.** The auditee must also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements which must include the total Federal awards expended as determined in accordance with § 200.502. While not required, the auditee may choose to provide information requested by Federal awarding agencies and pass-through entities to make the schedule easier to use. For example, when a Federal program has multiple Federal award years, the auditee may list the amount of Federal awards expended for each Federal award year separately. At a minimum, the schedule must:
  - (1) List individual Federal programs by Federal agency. For a cluster of programs, provide the cluster name, list individual Federal programs within the cluster of programs, and provide the applicable Federal agency name. For R&D, total Federal awards expended must be shown either by individual Federal award or by Federal agency and major subdivision within the Federal agency. For example, the National Institutes of Health is a major subdivision in the Department of Health and Human Services.
  - (2) For Federal awards received as a subrecipient, the name of the pass-through entity and identifying number assigned by the pass-through entity must be included.
  - (3) Provide total Federal awards expended for each individual Federal program and the Assistance Listings Number or other identifying number when the Assistance Listings information is not available. For a cluster of programs also provide the total for the cluster.
  - (4) Include the total amount provided to subrecipients from each Federal program.
  - (5) For loan or loan guarantee programs described in § 200.502(b), identify in the notes to the schedule the balances outstanding at the end of the audit period. This is in addition to including the total Federal awards expended for loan or loan guarantee programs in the schedule.
  - (6) Include notes that describe that significant accounting policies used in preparing the schedule, and note whether or not the auditee elected to use the 10% de minimis cost rate as covered in § 200.414.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49572, Aug. 13, 2020]

## § 200.511 Audit findings follow-up.

- (a) **General.** The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee must prepare a summary schedule of prior audit findings. The auditee must also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan must include the reference numbers the auditor assigns to audit findings under § 200.516(c). Since the summary schedule may include audit findings from multiple years, it must include the fiscal year in which the finding initially occurred. The corrective action plan and summary schedule of prior audit findings must include findings relating to the financial statements which are required to be reported in accordance with GAGAS.
- (b) **Summary schedule of prior audit findings.** The summary schedule of prior audit findings must report the status of all audit findings included in the prior audit's schedule of findings and questioned costs. The summary schedule must also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (b)(1) of this section, or no longer valid or not warranting further action in accordance with paragraph (b)(3) of this section.
- (1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.
- (2) When audit findings were not corrected or were only partially corrected, the summary schedule must describe the reasons for the finding's recurrence and planned corrective action, and any partial corrective action taken. When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the Federal agency's or pass-through entity's management decision, the summary schedule must provide an explanation.
- (3) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position must be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:
- (i) Two years have passed since the audit report in which the finding occurred was submitted to the FAC;
- (ii) The Federal agency or pass-through entity is not currently following up with the auditee on the audit finding; and
- (iii) A management decision was not issued.
- (c) **Corrective action plan.** At the completion of the audit, the auditee must prepare, in a document separate from the auditor's findings described in § 200.516, a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan must provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan must include an explanation and specific reasons.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49572, Aug. 13, 2020]



## § 200.512 Report submission.

(a) **General.**

- (1) The audit must be completed and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.
- (2) Unless restricted by Federal statutes or regulations, the auditee must make copies available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(b) **Data collection.** The FAC is the repository of record for subpart F of this part reporting packages and the data collection form. All Federal agencies, pass-through entities and others interested in a reporting package and data collection form must obtain it by accessing the FAC.

- (1) The auditee must submit required data elements described in Appendix X to Part 200, which state whether the audit was completed in accordance with this part and provides information about the auditee, its Federal programs, and the results of the audit. The data must include information available from the audit required by this part that is necessary for Federal agencies to use the audit to ensure integrity for Federal programs. The data elements and format must be approved by OMB, available from the FAC, and include collections of information from the reporting package described in paragraph (c) of this section. A senior level representative of the auditee (e.g., state controller, director of finance, chief executive officer, or chief financial officer) must sign a statement to be included as part of the data collection that says that the auditee complied with the requirements of this part, the data were prepared in accordance with this part (and the instructions accompanying the form), the reporting package does not include protected personally identifiable information, the information included in its entirety is accurate and complete, and that the FAC is authorized to make the reporting package and the form publicly available on a website.
- (2) **Exception for Indian Tribes and Tribal Organizations.** An auditee that is an Indian tribe or a tribal organization (as defined in the Indian Self-Determination, Education and Assistance Act (ISDEAA), 25 U.S.C. 450b(l)) may opt not to authorize the FAC to make the reporting package publicly available on a Web site, by excluding the authorization for the FAC publication in the statement described in paragraph (b)(1) of this section. If this option is exercised, the auditee becomes responsible for submitting the reporting package directly to any pass-through entities through which it has received a Federal award and to pass-through entities for which the summary schedule of prior audit findings reported the status of any findings related to Federal awards that the pass-through entity provided. Unless restricted by Federal statute or regulation, if the auditee opts not to authorize publication, it must make copies of the reporting package available for public inspection.
- (3) Using the information included in the reporting package described in paragraph (c) of this section, the auditor must complete the applicable data elements of the data collection form. The auditor must sign a statement to be included as part of the data collection form that indicates, at a minimum, the source of the information included in the form, the auditor's responsibility for the information, that the form is not a substitute for the reporting package described in paragraph (c) of this section, and that the content of the form is limited to the collection of information prescribed by OMB.

- (c) **Reporting package.** The reporting package must include the:
- (1) Financial statements and schedule of expenditures of Federal awards discussed in § 200.510(a) and (b), respectively;
  - (2) Summary schedule of prior audit findings discussed in § 200.511(b);
  - (3) Auditor's report(s) discussed in § 200.515; and
  - (4) Corrective action plan discussed in § 200.511(c).
- (d) **Submission to FAC.** The auditee must electronically submit to the FAC the data collection form described in paragraph (b) of this section and the reporting package described in paragraph (c) of this section.
- (e) **Requests for management letters issued by the auditor.** In response to requests by a Federal agency or pass-through entity, auditees must submit a copy of any management letters issued by the auditor.
- (f) **Report retention requirements.** Auditees must keep one copy of the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section on file for three years from the date of submission to the FAC.
- (g) **FAC responsibilities.** The FAC must make available the reporting packages received in accordance with paragraph (c) of this section and § 200.507(c) to the public, except for Indian tribes exercising the option in (b)(2) of this section, and maintain a data base of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees that have not submitted the required data collection forms and reporting packages.
- (h) **Electronic filing.** Nothing in this part must preclude electronic submissions to the FAC in such manner as may be approved by OMB.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49573, Aug. 13, 2020]

## FEDERAL AGENCIES

### § 200.513 Responsibilities.

- (a)
- (1) **Cognizant agency for audit responsibilities.** A non-Federal entity expending more than \$50 million a year in Federal awards must have a cognizant agency for audit. The designated cognizant agency for audit must be the Federal awarding agency that provides the predominant amount of funding directly (direct funding) (as listed on the Schedule of expenditures of Federal awards, see § 200.510(b)) to a non-Federal entity unless OMB designates a specific cognizant agency for audit. When the direct funding represents less than 25 percent of the total expenditures (as direct and subawards) by the non-Federal entity, then the Federal agency with the predominant amount of total funding is the designated cognizant agency for audit.
  - (2) To provide for continuity of cognizance, the determination of the predominant amount of direct funding must be based upon direct Federal awards expended in the non-Federal entity's fiscal years ending in 2019, and every fifth year thereafter.

- (3) Notwithstanding the manner in which audit cognizance is determined, a Federal awarding agency with cognizance for an auditee may reassign cognizance to another Federal awarding agency that provides substantial funding and agrees to be the cognizant agency for audit. Within 30 calendar days after any reassignment, both the old and the new cognizant agency for audit must provide notice of the change to the FAC, the auditee, and, if known, the auditor. The cognizant agency for audit must:
- (i) Provide technical audit advice and liaison assistance to auditees and auditors.
  - (ii) Obtain or conduct quality control reviews on selected audits made by non-Federal auditors, and provide the results to other interested organizations. Cooperate and provide support to the Federal agency designated by OMB to lead a governmentwide project to determine the quality of single audits by providing a reliable estimate of the extent that single audits conform to applicable requirements, standards, and procedures; and to make recommendations to address noted audit quality issues, including recommendations for any changes to applicable requirements, standards and procedures indicated by the results of the project. The governmentwide project can rely on the current and on-going quality control review work performed by the agencies, State auditors, and professional audit associations. This governmentwide audit quality project must be performed once every 6 years (or at such other interval as determined by OMB), and the results must be public.
  - (iii) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any direct reporting by the auditee or its auditor required by GAGAS or statutes and regulations.
  - (iv) Advise the community of independent auditors of any noteworthy or important factual trends related to the quality of audits stemming from quality control reviews. Significant problems or quality issues consistently identified through quality control reviews of audit reports must be referred to appropriate state licensing agencies and professional bodies.
  - (v) Advise the auditor, Federal awarding agencies, and, where appropriate, the auditee of any deficiencies found in the audits when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee must work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency for audit must notify the auditor, the auditee, and applicable Federal awarding agencies and pass-through entities of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors must be referred to appropriate state licensing agencies and professional bodies for disciplinary action.
  - (vi) Coordinate, to the extent practical, audits or reviews made by or for Federal agencies that are in addition to the audits made pursuant to this part, so that the additional audits or reviews build upon rather than duplicate audits performed in accordance with this part.
  - (vii) Coordinate a management decision for cross-cutting audit findings (see in § 200.1 of this part) that affect the Federal programs of more than one agency when requested by any Federal awarding agency whose awards are included in the audit finding of the auditee.
  - (viii) Coordinate the audit work and reporting responsibilities among auditors to achieve the most cost-effective audit.
  - (ix) Provide advice to auditees as to how to handle changes in fiscal years.

- (b) **Oversight agency for audit responsibilities.** An auditee who does not have a designated cognizant agency for audit will be under the general oversight of the Federal agency determined in accordance with § 200.1 *oversight agency for audit*. A Federal agency with oversight for an auditee may reassign oversight to another Federal agency that agrees to be the oversight agency for audit. Within 30 calendar days after any reassignment, both the old and the new oversight agency for audit must provide notice of the change to the FAC, the auditee, and, if known, the auditor. The oversight agency for audit:
- (1) Must provide technical advice to auditees and auditors as requested.
  - (2) May assume all or some of the responsibilities normally performed by a cognizant agency for audit.
- (c) **Federal awarding agency responsibilities.** The Federal awarding agency must perform the following for the Federal awards it makes (See also the requirements of § 200.211):
- (1) Ensure that audits are completed and reports are received in a timely manner and in accordance with the requirements of this part.
  - (2) Provide technical advice and counsel to auditees and auditors as requested.
  - (3) Follow-up on audit findings to ensure that the recipient takes appropriate and timely corrective action. As part of audit follow-up, the Federal awarding agency must:
    - (i) Issue a management decision as prescribed in § 200.521;
    - (ii) Monitor the recipient taking appropriate and timely corrective action;
    - (iii) Use cooperative audit resolution mechanisms (see the definition of *cooperative audit resolution* in § 200.1 of this part) to improve Federal program outcomes through better audit resolution, follow-up, and corrective action; and
    - (iv) Develop a baseline, metrics, and targets to track, over time, the effectiveness of the Federal agency's process to follow-up on audit findings and on the effectiveness of Single Audits in improving non-Federal entity accountability and their use by Federal awarding agencies in making award decisions.
  - (4) Provide OMB annual updates to the compliance supplement and work with OMB to ensure that the compliance supplement focuses the auditor to test the compliance requirements most likely to cause improper payments, fraud, waste, abuse or generate audit finding for which the Federal awarding agency will take sanctions.
  - (5) Provide OMB with the name of a single audit accountable official from among the senior policy officials of the Federal awarding agency who must be:
    - (i) Responsible for ensuring that the agency fulfills all the requirements of paragraph (c) of this section and effectively uses the single audit process to reduce improper payments and improve Federal program outcomes.
    - (ii) Held accountable to improve the effectiveness of the single audit process based upon metrics as described in paragraph (c)(3)(iv) of this section.
    - (iii) Responsible for designating the Federal agency's key management single audit liaison.
  - (6) Provide OMB with the name of a key management single audit liaison who must:
    - (i) Serve as the Federal awarding agency's management point of contact for the single audit process both within and outside the Federal Government.

- (ii) Promote interagency coordination, consistency, and sharing in areas such as coordinating audit follow-up; identifying higher-risk non-Federal entities; providing input on single audit and follow-up policy; enhancing the utility of the FAC; and studying ways to use single audit results to improve Federal award accountability and best practices.
- (iii) Oversee training for the Federal awarding agency's program management personnel related to the single audit process.
- (iv) Promote the Federal awarding agency's use of cooperative audit resolution mechanisms.
- (v) Coordinate the Federal awarding agency's activities to ensure appropriate and timely follow-up and corrective action on audit findings.
- (vi) Organize the Federal cognizant agency for audit's follow-up on cross-cutting audit findings that affect the Federal programs of more than one Federal awarding agency.
- (vii) Ensure the Federal awarding agency provides annual updates of the compliance supplement to OMB.
- (viii) Support the Federal awarding agency's single audit accountable official's mission.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49573, Aug. 13, 2020]

## AUDITORS

### § 200.514 Scope of audit.

- (a) **General.** The audit must be conducted in accordance with GAGAS. The audit must cover the entire operations of the auditee, or, at the option of the auditee, such audit must include a series of audits that cover departments, agencies, and other organizational units that expended or otherwise administered Federal awards during such audit period, provided that each such audit must encompass the financial statements and schedule of expenditures of Federal awards for each such department, agency, and other organizational unit, which must be considered to be a non-Federal entity. The financial statements and schedule of expenditures of Federal awards must be for the same audit period.
- (b) **Financial statements.** The auditor must determine whether the financial statements of the auditee are presented fairly in all material respects in accordance with generally accepted accounting principles. The auditor must also determine whether the schedule of expenditures of Federal awards is stated fairly in all material respects in relation to the auditee's financial statements as a whole.
- (c) **Internal control.**
  - (1) The compliance supplement provides guidance on internal controls over Federal programs based upon the guidance in Standards for Internal Control in the Federal Government issued by the Comptroller General of the United States and the Internal Control—Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
  - (2) In addition to the requirements of GAGAS, the auditor must perform procedures to obtain an understanding of internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk of noncompliance for major programs.
  - (3) Except as provided in paragraph (c)(4) of this section, the auditor must:

- (i) Plan the testing of internal control over compliance for major programs to support a low assessed level of control risk for the assertions relevant to the compliance requirements for each major program; and
  - (ii) Perform testing of internal control as planned in paragraph (c)(3)(i) of this section.
- (4) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(3) of this section are not required for those compliance requirements. However, the auditor must report a significant deficiency or material weakness in accordance with § 200.516, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.
- (d) **Compliance.**
- (1) In addition to the requirements of GAGAS, the auditor must determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that may have a direct and material effect on each of its major programs.
  - (2) The principal compliance requirements applicable to most Federal programs and the compliance requirements of the largest Federal programs are included in the compliance supplement.
  - (3) For the compliance requirements related to Federal programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this part. Where there have been changes to the compliance requirements and the changes are not reflected in the compliance supplement, the auditor must determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor must follow the compliance supplement's guidance for programs not included in the supplement.
  - (4) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(3) of this section are not required for those compliance requirements. However, the auditor must report a significant deficiency or material weakness in accordance with § 200.516, assess the related control risk at the
- (e) **Audit follow-up.** The auditor must follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with § 200.511(b), and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding. The auditor must perform audit follow-up procedures regardless of whether a prior audit finding relates to a major program in the current year.
- (f) **Data collection form.** As required in § 200.512(b)(3), the auditor must complete and sign specified sections of the data collection form.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49574, Aug. 13, 2020; 86 FR 10440, Feb. 22, 2021]

## § 200.515 Audit reporting.

The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this part and include the following:

- (a) **Financial statements.** The auditor must determine and provide an opinion (or disclaimer of opinion) whether the financial statements of the auditee are presented fairly in all material respects in accordance with generally accepted accounting principles (or a special purpose framework such as cash, modified cash, or regulatory as required by state law). The auditor must also decide whether the schedule of expenditures of Federal awards is stated fairly in all material respects in relation to the auditee's financial statements as a whole.
- (b) A report on internal control over financial reporting and compliance with provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements. This report must describe the scope of testing of internal control and compliance and the results of the tests, and, where applicable, it will refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.
- (c) A report on compliance for each major program and a report on internal control over compliance. This report must describe the scope of testing of internal control over compliance, include an opinion or disclaimer of opinion as to whether the auditee complied with Federal statutes, regulations, and the terms and conditions of Federal awards which could have a direct and material effect on each major program and refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.
- (d) A schedule of findings and questioned costs which must include the following three components:
  - (1) A summary of the auditor's results, which must include:
    - (i) The type of report the auditor issued on whether the financial statements audited were prepared in accordance with GAAP (i.e., unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);
    - (ii) Where applicable, a statement about whether significant deficiencies or material weaknesses in internal control were disclosed by the audit of the financial statements;
    - (iii) A statement as to whether the audit disclosed any noncompliance that is material to the financial statements of the auditee;
    - (iv) Where applicable, a statement about whether significant deficiencies or material weaknesses in internal control over major programs were disclosed by the audit;
    - (v) The type of report the auditor issued on compliance for major programs (i.e., unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);
    - (vi) A statement as to whether the audit disclosed any audit findings that the auditor is required to report under § 200.516(a);
    - (vii) An identification of major programs by listing each individual major program; however, in the case of a cluster of programs, only the cluster name as shown on the Schedule of Expenditures of Federal Awards is required;

- (viii) The dollar threshold used to distinguish between Type A and Type B programs, as described in § 200.518(b)(1) or (3) when a recalculation of the Type A threshold is required for large loan or loan guarantees; and
- (ix) A statement as to whether the auditee qualified as a low-risk auditee under § 200.520.
- (2) Findings relating to the financial statements which are required to be reported in accordance with GAGAS.
- (3) Findings and questioned costs for Federal awards which must include audit findings as defined in § 200.516(a).
  - (i) Audit findings (e.g., internal control findings, compliance findings, questioned costs, or fraud) that relate to the same issue must be presented as a single audit finding. Where practical, audit findings should be organized by Federal agency or pass-through entity.
  - (ii) Audit findings that relate to both the financial statements and Federal awards, as reported under paragraphs (d)(2) and (d)(3) of this section, respectively, must be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form with a reference to a detailed reporting in the other section of the schedule.
- (e) Nothing in this part precludes combining of the audit reporting required by this section with the reporting required by § 200.512(b) when allowed by GAGAS and appendix X to this part.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49574, Aug. 13, 2020]

## § 200.516 Audit findings.

- (a) **Audit findings reported.** The auditor must report the following as audit findings in a schedule of findings and questioned costs:
  - (1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or a material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.
  - (2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.
  - (3) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.



- (4) Known questioned costs that are greater than \$25,000 for a Federal program which is not audited as a major program. Except for audit follow-up, the auditor is not required under this part to perform audit procedures for such a Federal program; therefore, the auditor will normally not find questioned costs for a program that is not audited as a major program. However, if the auditor does become aware of questioned costs for a Federal program that is not audited as a major program (e.g., as part of audit follow-up or other audit procedures) and the known questioned costs are greater than \$25,000, then the auditor must report this as an audit finding.
  - (5) The circumstances concerning why the auditor's report on compliance for each major program is other than an unmodified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs for Federal awards.
  - (6) Known or likely fraud affecting a Federal award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for Federal awards. This paragraph does not require the auditor to report publicly information which could compromise investigative or legal proceedings or to make an additional reporting when the auditor confirms that the fraud was reported outside the auditor's reports under the direct reporting requirements of GAGAS.
  - (7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with § 200.511(b) materially misrepresents the status of any prior audit finding.
- (b) ***Audit finding detail and clarity.*** Audit findings must be presented in sufficient detail and clarity for the auditee to prepare a corrective action plan and take corrective action, and for Federal agencies and pass-through entities to arrive at a management decision. The following specific information must be included, as applicable, in audit findings:
- (1) Federal program and specific Federal award identification including the Assistance Listings title and number, Federal award identification number and year, name of Federal agency, and name of the applicable pass-through entity. When information, such as the Assistance Listings title and number or Federal award identification number, is not available, the auditor must provide the best information available to describe the Federal award.
  - (2) The criteria or specific requirement upon which the audit finding is based, including the Federal statutes, regulations, or the terms and conditions of the Federal awards. Criteria generally identify the required or desired state or expectation with respect to the program or operation. Criteria provide a context for evaluating evidence and understanding findings.
  - (3) The condition found, including facts that support the deficiency identified in the audit finding.
  - (4) A statement of cause that identifies the reason or explanation for the condition or the factors responsible for the difference between the situation that exists (condition) and the required or desired state (criteria), which may also serve as a basis for recommendations for corrective action.
  - (5) The possible asserted effect to provide sufficient information to the auditee and Federal agency, or pass-through entity in the case of a subrecipient, to permit them to determine the cause and effect to facilitate prompt and proper corrective action. A statement of the effect or potential effect should provide a clear, logical link to establish the impact or potential impact of the difference between the condition and the criteria.

- (6) Identification of questioned costs and how they were computed. Known questioned costs must be identified by applicable Assistance Listings number(s) and applicable Federal award identification number(s).
  - (7) Information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem. Where appropriate, instances identified must be related to the universe and the number of cases examined and be quantified in terms of dollar value. The auditor should report whether the sampling was a statistically valid sample.
  - (8) Identification of whether the audit finding was a repeat of a finding in the immediately prior audit and if so any applicable prior year audit finding numbers.
  - (9) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.
  - (10) Views of responsible officials of the auditee.
- (c) **Reference numbers.** Each audit finding in the schedule of findings and questioned costs must include a reference number in the format meeting the requirements of the data collection form submission required by § 200.512(b) to allow for easy referencing of the audit findings during follow-up.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49574, Aug. 13, 2020]

### § 200.517 Audit documentation.

- (a) **Retention of audit documentation.** The auditor must retain audit documentation and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee, unless the auditor is notified in writing by the cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period. When the auditor is aware that the Federal agency, pass-through entity, or auditee is contesting an audit finding, the auditor must contact the parties contesting the audit finding for guidance prior to destruction of the audit documentation and reports.
- (b) **Access to audit documentation.** Audit documentation must be made available upon request to the cognizant or oversight agency for audit or its designee, cognizant agency for indirect cost, a Federal agency, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this part. Access to audit documentation includes the right of Federal agencies to obtain copies of audit documentation, as is reasonable and necessary.

### § 200.518 Major program determination.

- (a) **General.** The auditor must use a risk-based approach to determine which Federal programs are major programs. This risk-based approach must include consideration of: current and prior audit experience, oversight by Federal agencies and pass-through entities, and the inherent risk of the Federal program. The process in paragraphs (b) through (h) of this section must be followed.
- (b) **Step one.**

- (1) The auditor must identify the larger Federal programs, which must be labeled Type A programs. Type A programs are defined as Federal programs with Federal awards expended during the audit period exceeding the levels outlined in the table in this paragraph (b)(1):

| Total Federal awards expended                                       | Type A/B threshold                         |
|---|--|
| Equal to or exceed \$750,000 but less than or equal to \$25 million | \$750,000.                                 |
| Exceed \$25 million but less than or equal to \$100 million         | Total Federal awards expended times .03.   |
| Exceed \$100 million but less than or equal to \$1 billion          | \$3 million.                               |
| Exceed \$1 billion but less than or equal to \$10 billion           | Total Federal awards expended times .003.  |
| Exceed \$10 billion but less than or equal to \$20 billion          | \$30 million.                              |
| Exceed \$20 billion   | Total Federal awards expended times .0015. |

- (2) Federal programs not labeled Type A under paragraph (b)(1) of this section must be labeled Type B programs.
- (3) The inclusion of large loan and loan guarantees (loans) must not result in the exclusion of other programs as Type A programs. When a Federal program providing loans exceeds four times the largest non-loan program it is considered a large loan program, and the auditor must consider this Federal program as a Type A program and exclude its values in determining other Type A programs. This recalculation of the Type A program is performed after removing the total of all large loan programs. For the purposes of this paragraph a program is only considered to be a Federal program providing loans if the value of Federal awards expended for loans within the program comprises fifty percent or more of the total Federal awards expended for the program. A cluster of programs is treated as one program and the value of Federal awards expended under a loan program is determined as described in § 200.502.
- (4) For biennial audits permitted under § 200.504, the determination of Type A and Type B programs must be based upon the Federal awards expended during the two-year period.

(c) **Step two.**

- (1) The auditor must identify Type A programs which are low-risk. In making this determination, the auditor must consider whether the requirements in § 200.519(c), the results of audit follow-up, or any changes in personnel or systems affecting the program indicate significantly increased risk and preclude the program from being low risk. For a Type A program to be considered low-risk, it must have been audited as a major program in at least one of the two most recent audit periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, the program must have not had:
- (i) Internal control deficiencies which were identified as material weaknesses in the auditor's report on internal control for major programs as required under § 200.515(c);
  - (ii) A modified opinion on the program in the auditor's report on major programs as required under § 200.515(c); or
  - (iii) Known or likely questioned costs that exceed five percent of the total Federal awards expended for the program.

(2) Notwithstanding paragraph (c)(1) of this section, OMB may approve a Federal awarding agency's request that a Type A program may not be considered low risk for a certain recipient. For example, it may be necessary for a large Type A program to be audited as a major program each year at a particular recipient to allow the Federal awarding agency to comply with 31 U.S.C. 3515. The Federal awarding agency must notify the recipient and, if known, the auditor of OMB's approval at least 180 calendar days prior to the end of the fiscal year to be audited.

(d) **Step three.**

(1) The auditor must identify Type B programs which are high-risk using professional judgment and the criteria in § 200.519. However, the auditor is not required to identify more high-risk Type B programs than at least one fourth the number of low-risk Type A programs identified as low-risk under Step 2 (paragraph (c) of this section). Except for known material weakness in internal control or compliance problems as discussed in § 200.519(b)(1) and (2) and (c)(1), a single criterion in risk would seldom cause a Type B program to be considered high-risk. When identifying which Type B programs to risk assess, the auditor is encouraged to use an approach which provides an opportunity for different high-risk Type B programs to be audited as major over a period of time.

(2) The auditor is not expected to perform risk assessments on relatively small Federal programs. Therefore, the auditor is only required to perform risk assessments on Type B programs that exceed twenty-five percent (0.25) of the Type A threshold determined in Step 1 (paragraph (b) of this section).

(e) **Step four.** At a minimum, the auditor must audit all of the following as major programs:

(1) All Type A programs not identified as low risk under step two (paragraph (c)(1) of this section).

(2) All Type B programs identified as high-risk under step three (paragraph (d) of this section).

(3) Such additional programs as may be necessary to comply with the percentage of coverage rule discussed in paragraph (f) of this section. This may require the auditor to audit more programs as major programs than the number of Type A programs.

(f) **Percentage of coverage rule.** If the auditee meets the criteria in § 200.520, the auditor need only audit the major programs identified in Step 4 (paragraphs (e)(1) and (2) of this section) and such additional Federal programs with Federal awards expended that, in aggregate, all major programs encompass at least 20 percent (0.20) of total Federal awards expended. Otherwise, the auditor must audit the major programs identified in Step 4 (paragraphs (e)(1) and (2) of this section) and such additional Federal programs with Federal awards expended that, in aggregate, all major programs encompass at least 40 percent (0.40) of total Federal awards expended.

(g) **Documentation of risk.** The auditor must include in the audit documentation the risk analysis process used in determining major programs.

(h) **Auditor's judgment.** When the major program determination was performed and documented in accordance with this Subpart, the auditor's judgment in applying the risk-based approach to determine major programs must be presumed correct. Challenges by Federal agencies and pass-through entities must only be for clearly improper use of the requirements in this part. However, Federal agencies and pass-through entities may provide auditors guidance about the risk of a particular Federal program and the auditor must consider this guidance in determining major programs in audits not yet completed.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49574, Aug. 13, 2020]

## § 200.519 Criteria for Federal program risk.

- (a) **General.** The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring that could be material to the Federal program. The auditor must consider criteria, such as described in paragraphs (b), (c), and (d) of this section, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency or pass-through entity.
- (b) **Current and prior audit experience.**
  - (1) Weaknesses in internal control over Federal programs would indicate higher risk. Consideration should be given to the control environment over Federal programs and such factors as the expectation of management's adherence to Federal statutes, regulations, and the terms and conditions of Federal awards and the competence and experience of personnel who administer the Federal programs.
    - (i) A Federal program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor must consider whether weaknesses are isolated in a single operating unit (e.g., one college campus) or pervasive throughout the entity.
    - (ii) When significant parts of a Federal program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.
  - (2) Prior audit findings would indicate higher risk, particularly when the situations identified in the audit findings could have a significant impact on a Federal program or have not been corrected.
  - (3) Federal programs not recently audited as major programs may be of higher risk than Federal programs recently audited as major programs without audit findings.
- (c) **Oversight exercised by Federal agencies and pass-through entities.**
  - (1) Oversight exercised by Federal agencies or pass-through entities could be used to assess risk. For example, recent monitoring or other reviews performed by an oversight entity that disclosed no significant problems would indicate lower risk, whereas monitoring that disclosed significant problems would indicate higher risk.
  - (2) Federal agencies, with the concurrence of OMB, may identify Federal programs that are higher risk. OMB will provide this identification in the compliance supplement.
- (d) **Inherent risk of the Federal program.**
  - (1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third-party contracts or have eligibility criteria may be of higher risk. Federal programs primarily involving staff payroll costs may have high risk for noncompliance with requirements of § 200.430, but otherwise be at low risk.
  - (2) The phase of a Federal program in its life cycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, statutes, regulations, or the terms and conditions of Federal awards may increase risk.

- (3) The phase of a Federal program in its life cycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to start-up or closeout of program activities and staff.
- (4) Type B programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49575, Aug. 13, 2020]

### § 200.520 Criteria for a low-risk auditee.

An auditee that meets all of the following conditions for each of the preceding two audit periods must qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with § 200.518.

- (a) Single audits were performed on an annual basis in accordance with the provisions of this Subpart, including submitting the data collection form and the reporting package to the FAC within the timeframe specified in § 200.512. A non-Federal entity that has biennial audits does not qualify as a low-risk auditee.
- (b) The auditor's opinion on whether the financial statements were prepared in accordance with GAAP, or a basis of accounting required by state law, and the auditor's in relation to opinion on the schedule of expenditures of Federal awards were unmodified.
- (c) There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS.
- (d) The auditor did not report a substantial doubt about the auditee's ability to continue as a going concern.
- (e) None of the Federal programs had audit findings from any of the following in either of the preceding two audit periods in which they were classified as Type A programs:
  - (1) Internal control deficiencies that were identified as material weaknesses in the auditor's report on internal control for major programs as required under § 200.515(c);
  - (2) A modified opinion on a major program in the auditor's report on major programs as required under § 200.515(c); or
  - (3) Known or likely questioned costs that exceeded five percent of the total Federal awards expended for a Type A program during the audit period.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49575, Aug. 13, 2020]

## MANAGEMENT DECISIONS

### § 200.521 Management decision.

- (a) **General.** The management decision must clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-through entity may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The

management decision should describe any appeal process available to the auditee. While not required, the Federal agency or pass-through entity may also issue a management decision on findings relating to the financial statements which are required to be reported in accordance with GAGAS.

- (b) **Federal agency.** As provided in § 200.513(a)(3)(vii), the cognizant agency for audit must be responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency. As provided in § 200.513(c)(3)(i), a Federal awarding agency is responsible for issuing a management decision for findings that relate to Federal awards it makes to non-Federal entities.
- (c) **Pass-through entity.** As provided in § 200.332(d), the pass-through entity must be responsible for issuing a management decision for audit findings that relate to Federal awards it makes to subrecipients.
- (d) **Time requirements.** The Federal awarding agency or pass-through entity responsible for issuing a management decision must do so within six months of acceptance of the audit report by the FAC. The auditee must initiate and proceed with corrective action as rapidly as possible and corrective action should begin no later than upon receipt of the audit report.
- (e) **Reference numbers.** Management decisions must include the reference numbers the auditor assigned to each audit finding in accordance with § 200.516(c).

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49575, Aug. 13, 2020]

## Appendix I to Part 200—Full Text of Notice of Funding Opportunity

Link to an amendment published at 89 FR 30204, Apr. 22, 2024.

The full text of the notice of funding opportunity is organized in sections. The required format outlined in this appendix indicates immediately following the title of each section whether that section is required in every announcement or is a Federal awarding agency option. The format is designed so that similar types of information will appear in the same sections in announcements of different Federal funding opportunities. Toward that end, there is text in each of the following sections to describe the types of information that a Federal awarding agency would include in that section of an actual announcement.

A Federal awarding agency that wishes to include information that the format does not specifically discuss may address that subject in whatever section(s) is most appropriate. For example, if a Federal awarding agency chooses to address performance goals in the announcement, it might do so in the funding opportunity description, the application content, or the reporting requirements.

Similarly, when this format calls for a type of information to be in a particular section, a Federal awarding agency wishing to address that subject in other sections may elect to repeat the information in those sections or use cross references between the sections (there should be hyperlinks for cross-references in any electronic versions of the announcement). For example, a Federal awarding agency may want to include Section A information about the types of non-Federal entities who are eligible to apply. The format specifies a standard location for that information in Section C.1 but does not preclude repeating the information in Section A or creating a cross reference between Section A and C.1, as long as a potential applicant can find the information quickly and easily from the standard location.

The sections of the full text of the announcement are described in the following paragraphs.

## A. Program Description—Required

This section contains the full program description of the funding opportunity. It may be as long as needed to adequately communicate to potential applicants the areas in which funding may be provided. It describes the Federal awarding agency's funding priorities or the technical or focus areas in which the Federal awarding agency intends to provide assistance. As appropriate, it may include any program history (e.g., whether this is a new program or a new or changed area of program emphasis). This section must include program goals and objectives, a reference to the relevant Assistance Listings, a description of how the award will contribute to the achievement of the program's goals and objectives, and the expected performance goals, indicators, targets, baseline data, data collection, and other outcomes such Federal awarding agency expects to achieve, and may include examples of successful projects that have been funded previously. This section also may include other information the Federal awarding agency deems necessary, and must at a minimum include citations for authorizing statutes and regulations for the funding opportunity.

## B. Federal Award Information—Required

This section provides sufficient information to help an applicant make an informed decision about whether to submit a proposal. Relevant information could include the total amount of funding that the Federal awarding agency expects to award through the announcement; the expected performance indicators, targets, baseline data, and data collection; the anticipated number of Federal awards; the expected amounts of individual Federal awards (which may be a range); the amount of funding per Federal award, on average, experienced in previous years; and the anticipated start dates and periods of performance for new Federal awards. This section also should address whether applications for renewal or supplementation of existing projects are eligible to compete with applications for new Federal awards.

This section also must indicate the type(s) of assistance instrument (e.g., grant, cooperative agreement) that may be awarded if applications are successful. If cooperative agreements may be awarded, this section either should describe the "substantial involvement" that the Federal awarding agency expects to have or should reference where the potential applicant can find that information (e.g., in the funding opportunity description in Section A. or Federal award administration information in Section D. If procurement contracts also may be awarded, this must be stated.

## C. Eligibility Information

This section addresses the considerations or factors that determine applicant or application eligibility. This includes the eligibility of particular types of applicant organizations, any factors affecting the eligibility of the principal investigator or project director, and any criteria that make particular projects ineligible. Federal agencies should make clear whether an applicant's failure to meet an eligibility criterion by the time of an application deadline will result in the Federal awarding agency returning the application without review or, even though an application may be reviewed, will preclude the Federal awarding agency from making a Federal award. Key elements to be addressed are:

1. **Eligible Applicants—Required.** Announcements must clearly identify the types of entities that are eligible to apply. If there are no restrictions on eligibility, this section may simply indicate that all potential applicants are eligible. If there are restrictions on eligibility, it is important to be clear about the specific types of entities that are eligible, not just the types that are ineligible. For example, if the program is limited to nonprofit organizations subject to 26 U.S.C. 501(c)(3) of the tax code (26 U.S.C.



501(c)(3)), the announcement should say so. Similarly, it is better to state explicitly that Native American tribal organizations are eligible than to assume that they can unambiguously infer that from a statement that nonprofit organizations may apply. Eligibility also can be expressed by exception, (e.g., open to all types of domestic applicants other than individuals). This section should refer to any portion of Section D specifying documentation that must be submitted to support an eligibility determination (e.g., proof of 501(c)(3) status as determined by the Internal Revenue Service or an authorizing tribal resolution). To the extent that any funding restriction in Section D.6 could affect the eligibility of an applicant or project, the announcement must either restate that restriction in this section or provide a cross-reference to its description in Section D.6.

2. **Cost Sharing or Matching—Required.** Announcements must state whether there is required cost sharing, matching, or cost participation without which an application would be ineligible (if cost sharing is not required, the announcement must explicitly say so). Required cost sharing may be a certain percentage or amount, or may be in the form of contributions of specified items or activities (e.g., provision of equipment). It is important that the announcement be clear about any restrictions on the types of cost (e.g., in-kind contributions) that are acceptable as cost sharing. Cost sharing as an eligibility criterion includes requirements based in statute or regulation, as described in § 200.306 of this Part. This section should refer to the appropriate portion(s) of section D. stating any pre-award requirements for submission of letters or other documentation to verify commitments to meet cost-sharing requirements if a Federal award is made.
3. **Other—Required, if applicable.** If there are other eligibility criteria (i.e., criteria that have the effect of making an application or project ineligible for Federal awards, whether referred to as “responsiveness” criteria, “go-no go” criteria, “threshold” criteria, or in other ways), must be clearly stated and must include a reference to the regulation of requirement that describes the restriction, as applicable. For example, if entities that have been found to be in violation of a particular Federal statute are ineligible, it is important to say so. This section must also state any limit on the number of applications an applicant may submit under the announcement and make clear whether the limitation is on the submitting organization, individual investigator/program director, or both. This section should also address any eligibility criteria for beneficiaries or for program participants other than Federal award recipients.

## D. Application and Submission Information

1. **Address to Request Application Package—Required.** Potential applicants must be told how to get application forms, kits, or other materials needed to apply (if this announcement contains everything needed, this section need only say so). An Internet address where the materials can be accessed is acceptable. However, since high-speed Internet access is not yet universally available for downloading documents, and applicants may have additional accessibility requirements, there also should be a way for potential applicants to request paper copies of materials, such as a U.S. Postal Service mailing address, telephone or FAX number, Telephone Device for the Deaf (TDD), Text Telephone (TTY) number, and/or Federal Information Relay Service (FIRS) number.
2. **Content and Form of Application Submission—Required.** This section must identify the required content of an application and the forms or formats that an applicant must use to submit it. If any requirements are stated elsewhere because they are general requirements that apply to multiple programs or funding opportunities, this section should refer to where those requirements may be found. This section also should include required forms or formats as part of the announcement or state where the applicant may obtain them.

This section should specifically address content and form or format requirements for:

- i. Pre-applications, letters of intent, or white papers required or encouraged (see Section D.4), including any limitations on the number of pages or other formatting requirements similar to those for full applications.
  - ii. The application as a whole. For all submissions, this would include any limitations on the number of pages, font size and typeface, margins, paper size, number of copies, and sequence or assembly requirements. If electronic submission is permitted or required, this could include special requirements for formatting or signatures.
  - iii. Component pieces of the application (e.g., if all copies of the application must bear original signatures on the face page or the program narrative may not exceed 10 pages). This includes any pieces that may be submitted separately by third parties (e.g., references or letters confirming commitments from third parties that will be contributing a portion of any required cost sharing).
  - iv. Information that successful applicants must submit after notification of intent to make a Federal award, but prior to a Federal award. This could include evidence of compliance with requirements relating to human subjects or information needed to comply with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4370h).
3. **Unique entity identifier and System for Award Management (SAM) – Required.** This paragraph must state clearly that each applicant (unless the applicant is an individual or Federal awarding agency that is excepted from those requirements under 2 CFR 25.110(b) or (c), or has an exception approved by the Federal awarding agency under 2 CFR 25.110(d)) is required to:
- (i) Be registered in SAM before submitting its application;
  - (ii) Provide a valid unique entity identifier in its application; and
  - (iii) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency. It also must state that the Federal awarding agency may not make a Federal award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.
4. **Submission Dates and Times—Required.** Announcements must identify due dates and times for all submissions. This includes not only the full applications but also any preliminary submissions (e.g., letters of intent, white papers, or pre-applications). It also includes any other submissions of information before Federal award that are separate from the full application. If the funding opportunity is a general announcement that is open for a period of time with no specific due dates for applications, this section should say so. Note that the information on dates that is included in this section also must appear with other overview information in a location preceding the full text of the announcement (see § 200.204 of this part).
5. **Intergovernmental Review—Required, if applicable.** If the funding opportunity is subject to Executive Order 12372, “Intergovernmental Review of Federal Programs,” the notice must say so and applicants must contact their state's Single Point of Contact (SPOC) to find out about and comply

with the state's process under Executive Order 12372, it may be useful to inform potential applicants that the names and addresses of the SPOCs are listed in the Office of Management and Budget's website.

6. **Funding Restrictions—Required.** Notices must include information on funding restrictions in order to allow an applicant to develop an application and budget consistent with program requirements. Examples are whether construction is an allowable activity, if there are any limitations on direct costs such as foreign travel or equipment purchases, and if there are any limits on indirect costs (or facilities and administrative costs). Applicants must be advised if Federal awards will not allow reimbursement of pre-Federal award costs.

7. **Other Submission Requirements— Required.** This section must address any other submission requirements not included in the other paragraphs of this section. This might include the format of submission, i.e., paper or electronic, for each type of required submission. Applicants should not be required to submit in more than one format and this section should indicate whether they may choose whether to submit applications in hard copy or electronically, may submit only in hard copy, or may submit only electronically.

This section also must indicate where applications (and any pre-applications) must be submitted if sent by postal mail, electronic means, or hand-delivery. For postal mail submission, this must include the name of an office, official, individual or function (e.g., application receipt center) and a complete mailing address. For electronic submission, this must include the URL or email address; whether a password(s) is required; whether particular software or other electronic capabilities are required; what to do in the event of system problems and a point of contact who will be available in the event the applicant experiences technical difficulties.<sup>[1]</sup>

## E. Application Review Information

1. **Criteria—Required.** This section must address the criteria that the Federal awarding agency will use to evaluate applications. This includes the merit and other review criteria that evaluators will use to judge applications, including any statutory, regulatory, or other preferences (e.g., minority status or Native American tribal preferences) that will be applied in the review process. These criteria are distinct from eligibility criteria that are addressed before an application is accepted for review and any program policy or other factors that are applied during the selection process, after the review process is completed. The intent is to make the application process transparent so applicants can make informed decisions when preparing their applications to maximize fairness of the process. The announcement should clearly describe all criteria, including any sub-criteria. If criteria vary in importance, the announcement should specify the relative percentages, weights, or other means used to distinguish among them. For statutory, regulatory, or other preferences, the announcement should provide a detailed explanation of those preferences with an explicit indication of their effect (e.g., whether they result in additional points being assigned).

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<sup>[1]</sup> With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each Federal awarding agency is responsible for compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

If an applicant's proposed cost sharing will be considered in the review process (as opposed to being an eligibility criterion described in Section C.2), the announcement must specifically address how it will be considered (e.g., to assign a certain number of additional points to applicants who offer cost sharing, or to break ties among applications with equivalent scores after evaluation against all other factors). If cost sharing will not be considered in the evaluation, the announcement should say so, so that there is no ambiguity for potential applicants. Vague statements that cost sharing is encouraged, without clarification as to what that means, are unhelpful to applicants. It also is important that the announcement be clear about any restrictions on the types of cost (e.g., in-kind contributions) that are acceptable as cost sharing.

2. **Review and Selection Process—Required.** This section may vary in the level of detail provided. The announcement must list any program policy or other factors or elements, other than merit criteria, that the selecting official may use in selecting applications for Federal award (e.g., geographical dispersion, program balance, or diversity). The Federal awarding agency may also include other appropriate details. For example, this section may indicate who is responsible for evaluation against the merit criteria (e.g., peers external to the Federal awarding agency or Federal awarding agency personnel) and/or who makes the final selections for Federal awards. If there is a multi-phase review process (e.g., an external panel advising internal Federal awarding agency personnel who make final recommendations to the deciding official), the announcement may describe the phases. It also may include: the number of people on an evaluation panel and how it operates, the way reviewers are selected, reviewer qualifications, and the way that conflicts of interest are avoided. With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each Federal awarding agency is responsible for compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

In addition, if the Federal awarding agency permits applicants to nominate suggested reviewers of their applications or suggest those they feel may be inappropriate due to a conflict of interest, that information should be included in this section.

3. For any Federal award under a notice of funding opportunity, if the Federal awarding agency anticipates that the total Federal share will be greater than the simplified acquisition threshold on any Federal award under a notice of funding opportunity may include, over the period of performance, this section must also inform applicants:
  - i. That the Federal awarding agency, prior to making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold, is required to review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently FAPIIS) (see 41 U.S.C. 2313);
  - ii. That an applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM;
  - iii. That the Federal awarding agency will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in § 200.206.

4. **Anticipated Announcement and Federal Award Dates—Optional.** This section is intended to provide applicants with information they can use for planning purposes. If there is a single application deadline followed by the simultaneous review of all applications, the Federal awarding agency can include in this section information about the anticipated dates for announcing or notifying successful and unsuccessful applicants and for having Federal awards in place. If applications are received and evaluated on a “rolling” basis at different times during an extended period, it may be appropriate to give applicants an estimate of the time needed to process an application and notify the applicant of the Federal awarding agency's decision.

## F. Federal Award Administration Information

1. **Federal Award Notices—Required.** This section must address what a successful applicant can expect to receive following selection. If the Federal awarding agency's practice is to provide a separate notice stating that an application has been selected before it actually makes the Federal award, this section would be the place to indicate that the letter is not an authorization to begin performance (to the extent that it allows charging to Federal awards of pre-award costs at the non-Federal entity's own risk). This section should indicate that the notice of Federal award signed by the grants officer (or equivalent) is the authorizing document, and whether it is provided through postal mail or by electronic means and to whom. It also may address the timing, form, and content of notifications to unsuccessful applicants. See also § 200.211.
2. **Administrative and National Policy Requirements—Required.** This section must identify the usual administrative and national policy requirements the Federal awarding agency's Federal awards may include. Providing this information lets a potential applicant identify any requirements with which it would have difficulty complying if its application is successful. In those cases, early notification about the requirements allows the potential applicant to decide not to apply or to take needed actions before receiving the Federal award. The announcement need not include all of the terms and conditions of the Federal award, but may refer to a document (with information about how to obtain it) or Internet site where applicants can see the terms and conditions. If this funding opportunity will lead to Federal awards with some special terms and conditions that differ from the Federal awarding agency's usual (sometimes called “general”) terms and conditions, this section should highlight those special terms and conditions. Doing so will alert applicants that have received Federal awards from the Federal awarding agency previously and might not otherwise expect different terms and conditions. For the same reason, the announcement should inform potential applicants about special requirements that could apply to particular Federal awards after the review of applications and other information, based on the particular circumstances of the effort to be supported (e.g., if human subjects were to be involved or if some situations may justify special terms on intellectual property, data sharing or security requirements).
3. **Reporting—Required.** This section must include general information about the type (e.g., financial or performance), frequency, and means of submission (paper or electronic) of post-Federal award reporting requirements. Highlight any special reporting requirements for Federal awards under this funding opportunity that differ (e.g., by report type, frequency, form/format, or circumstances for use) from what the Federal awarding agency's Federal awards usually require. Federal awarding agencies must also describe in this section all relevant requirements such as those at 2 CFR 180.335 and 180.350.

If the Federal share of any Federal award may include more than \$500,000 over the period of performance, this section must inform potential applicants about the post award reporting requirements reflected in appendix XII to this part.

## G. Federal Awarding Agency Contact(s)—Required

The announcement must give potential applicants a point(s) of contact for answering questions or helping with problems while the funding opportunity is open. The intent of this requirement is to be as helpful as possible to potential applicants, so the Federal awarding agency should consider approaches such as giving:

- i. Points of contact who may be reached in multiple ways (e.g., by telephone, FAX, and/or email, as well as regular mail).
- ii. A fax or email address that multiple people access, so that someone will respond even if others are unexpectedly absent during critical periods.
- iii. Different contacts for distinct kinds of help (e.g., one for questions of programmatic content and a second for administrative questions).

## H. Other Information—Optional

This section may include any additional information that will assist a potential applicant. For example, the section might:

- i. Indicate whether this is a new program or a one-time initiative.
- ii. Mention related programs or other upcoming or ongoing Federal awarding agency funding opportunities for similar activities.
- iii. Include current Internet addresses for Federal awarding agency Web sites that may be useful to an applicant in understanding the program.
- iv. Alert applicants to the need to identify proprietary information and inform them about the way the Federal awarding agency will handle it.
- v. Include certain routine notices to applicants (e.g., that the Federal Government is not obligated to make any Federal award as a result of the announcement or that only grants officers can bind the Federal Government to the expenditure of funds).

*[78 FR 78608, Dec. 26, 2013, as amended at 80 FR 43310, July 22, 2015; 85 FR 49575, Aug. 13, 2020]*

## Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

- (A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- (C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- (D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- (E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- (F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- (G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- (J) See § 200.323.
- (K) See § 200.216.
- (L) See § 200.322.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014; 85 FR 49577, Aug. 13, 2020]

## **Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs)**

Link to an amendment published at 89 FR 30206, Apr. 22, 2024.

### **A. General**



This appendix provides criteria for identifying and computing indirect (or indirect (F&A)) rates at IHEs (institutions). Indirect (F&A) costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. See subsection B.1 for a discussion of the components of indirect (F&A) costs.

## 1. Major Functions of an Institution

Refers to instruction, organized research, other sponsored activities and other institutional activities as defined in this section:

- a. **Instruction** means the teaching and training activities of an institution. Except for research training as provided in subsection b, this term includes all teaching and training activities, whether they are offered for credits toward a degree or certificate or on a non-credit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension division. Also considered part of this major function are departmental research, and, where agreed to, university research.
  - (1) **Sponsored instruction and training** means specific instructional or training activity established by grant, contract, or cooperative agreement. For purposes of the cost principles, this activity may be considered a major function even though an institution's accounting treatment may include it in the instruction function.
  - (2) **Departmental research** means research, development and scholarly activities that are not organized research and, consequently, are not separately budgeted and accounted for. Departmental research, for purposes of this document, is not considered as a major function, but as a part of the instruction function of the institution.
  - (3) Only mandatory cost sharing or cost sharing specifically committed in the project budget must be included in the organized research base for computing the indirect (F&A) cost rate or reflected in any allocation of indirect costs. Salary costs above statutory limits are not considered cost sharing.
- b. **Organized research** means all research and development activities of an institution that are separately budgeted and accounted for. It includes:
  - (1) **Sponsored research** means all research and development activities that are sponsored by Federal and non-Federal agencies and organizations. This term includes activities involving the training of individuals in research techniques (commonly called research training) where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.
  - (2) **University research** means all research and development activities that are separately budgeted and accounted for by the institution under an internal application of institutional funds. University research, for purposes of this document, must be combined with sponsored research under the function of organized research.

- c. **Other sponsored activities** means programs and projects financed by Federal and non-Federal agencies and organizations which involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects and community service programs. However, when any of these activities are undertaken by the institution without outside support, they may be classified as other institutional activities.
- d. **Other institutional activities** means all activities of an institution except for instruction, departmental research, organized research, and other sponsored activities, as defined in this section; indirect (F&A) cost activities identified in this Appendix paragraph B, Identification and assignment of indirect (F&A) costs; and specialized services facilities described in § 200.468 of this part.

## 2. Criteria for Distribution

- a. **Base period.** A base period for distribution of indirect (F&A) costs is the period during which the costs are incurred. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.
- b. **Need for cost groupings.** The overall objective of the indirect (F&A) cost allocation process is to distribute the indirect (F&A) costs described in Section B, Identification and assignment of indirect (F&A) costs, to the major functions of the institution in proportions reasonably consistent with the nature and extent of their use of the institution's resources. In order to achieve this objective, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the indirect (F&A) cost categories referred to in subsection B.1. In general, the cost groupings established within a category should constitute, in each case, a pool of those items of expense that are considered to be of like nature in terms of their relative contribution to (or degree of remoteness from) the particular cost objectives to which distribution is appropriate. Cost groupings should be established considering the general guides provided in subsection c of this section. Each such pool or cost grouping should then be distributed individually to the related cost objectives, using the distribution base or method most appropriate in light of the guidelines set forth in subsection d of this section.
- c. **General considerations on cost groupings.** The extent to which separate cost groupings and selective distribution would be appropriate at an institution is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groupings (based on account classification or analysis) within an indirect (F&A) cost category include but are not limited to the following:
  - (1) If certain items or categories of expense relate solely to one of the major functions of the institution or to less than all functions, such expenses should be set aside as a separate cost grouping for direct assignment or selective allocation in accordance with the guides provided in subsections b and d.
  - (2) If any types of expense ordinarily treated as general administration or departmental administration are charged to Federal awards as direct costs, expenses applicable to other activities of the institution when incurred for the same purposes in like

circumstances must, through separate cost groupings, be excluded from the indirect (F&A) costs allocable to those Federal awards and included in the direct cost of other activities for cost allocation purposes.

- (3) If it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research, instructional, and other activities at the institution or within the department.
- (4) If activities provide their own purchasing, personnel administration, building maintenance or similar service, the distribution of general administration and general expenses, or operation and maintenance expenses to such activities should be accomplished through cost groupings which include only that portion of central indirect (F&A) costs (such as for overall management) which are properly allocable to such activities.
- (5) If the institution elects to treat fringe benefits as indirect (F&A) charges, such costs should be set aside as a separate cost grouping for selective distribution to related cost objectives.
- (6) The number of separate cost groupings within a category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

d. Selection of distribution method.

- (1) Actual conditions must be taken into account in selecting the method or base to be used in distributing individual cost groupings. The essential consideration in selecting a base is that it be the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; with a traceable cause-and-effect relationship; or with logic and reason, where neither benefit nor a cause-and-effect relationship is determinable.
- (2) If a cost grouping can be identified directly with the cost objective benefitted, it should be assigned to that cost objective.
- (3) If the expenses in a cost grouping are more general in nature, the distribution may be based on a cost analysis study which results in an equitable distribution of the costs. Such cost analysis studies may take into consideration weighting factors, population, or space occupied if appropriate. Cost analysis studies, however, must
  - (a) be appropriately documented in sufficient detail for subsequent review by the cognizant agency for indirect costs,
  - (b) distribute the costs to the related cost objectives in accordance with the relative benefits derived,
  - (c) be statistically sound,
  - (d) be performed specifically at the institution at which the results are to be used, and

- (e) be reviewed periodically, but not less frequently than rate negotiations, updated if necessary, and used consistently. Any assumptions made in the study must be stated and explained. The use of cost analysis studies and periodic changes in the method of cost distribution must be fully justified.
  - (4) If a cost analysis study is not performed, or if the study does not result in an equitable distribution of the costs, the distribution must be made in accordance with the appropriate base cited in Section B, unless one of the following conditions is met:
    - (a) It can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to Federal awards, or
    - (b) The institution qualifies for, and elects to use, the simplified method for computing indirect (F&A) cost rates described in Section D.
  - (5) Notwithstanding subsection (3), effective July 1, 1998, a cost analysis or base other than that in Section B must not be used to distribute utility or student services costs. Instead, subsection B.4.c, may be used in the recovery of utility costs.
- e. Order of distribution.
- (1) Indirect (F&A) costs are the broad categories of costs discussed in Section B.1.
  - (2) Depreciation, interest expenses, operation and maintenance expenses, and general administrative and general expenses should be allocated in that order to the remaining indirect (F&A) cost categories as well as to the major functions and specialized service facilities of the institution. Other cost categories may be allocated in the order determined to be most appropriate by the institutions. When cross allocation of costs is made as provided in subsection (3), this order of allocation does not apply.
  - (3) Normally an indirect (F&A) cost category will be considered closed once it has been allocated to other cost objectives, and costs may not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect (F&A) cost categories may be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect (F&A) cost categories described in Section B is required.

## B. Identification and Assignment of Indirect (F&A) Costs

### 1. Definition of Facilities and Administration

See § 200.414 which provides the basis for these indirect cost requirements.

### 2. Depreciation

- a. The expenses under this heading are the portion of the costs of the institution's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with § 200.436.

- b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated in the following manner:
- (1) Depreciation on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, must be assigned to that function.
  - (2) Depreciation on buildings used for more than one function, and on capital improvements and equipment used in such buildings, must be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas such as hallways, stairwells, and rest rooms.
  - (3) Depreciation on buildings, capital improvements and equipment related to space (e.g., individual rooms, laboratories) used jointly by more than one function (as determined by the users of the space) must be treated as follows. The cost of each jointly used unit of space must be allocated to benefitting functions on the basis of:
    - (a) The employee full-time equivalents (FTEs) or salaries and wages of those individual functions benefitting from the use of that space; or
    - (b) Institution-wide employee FTEs or salaries and wages applicable to the benefitting major functions (see Section A.1) of the institution.
  - (4) Depreciation on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, must be allocated to user categories of students and employees on a full-time equivalent basis. The amount allocated to the student category must be assigned to the instruction function of the institution. The amount allocated to the employee category must be further allocated to the major functions of the institution in proportion to the salaries and wages of all employees applicable to those functions.

### 3. Interest

Interest on debt associated with certain buildings, equipment and capital improvements, as defined in § 200.449, must be classified as an expenditure under the category Facilities. These costs must be allocated in the same manner as the depreciation on the buildings, equipment and capital improvements to which the interest relates.

### 4. Operation and Maintenance Expenses

- a. The expenses under this heading are those that have been incurred for the administration, supervision, operation, maintenance, preservation, and protection of the institution's physical plant. They include expenses normally incurred for such items as janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and all other insurance relating to property; space and capital leasing; facility planning and management; and central receiving. The operation and maintenance expense category should also include its allocable share of fringe benefit costs, depreciation, and interest costs.
- b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated in the same manner as described in subsection 2.b for depreciation.

- c. A utility cost adjustment of up to 1.3 percentage points may be included in the negotiated indirect cost rate of the IHE for organized research, per the computation alternatives in paragraphs (c)(1) and (2) of this section:
  - (1) Where space is devoted to a single function and metering allows unambiguous measurement of usage related to that space, costs must be assigned to the function located in that space.
  - (2) Where space is allocated to different functions and metering does not allow unambiguous measurement of usage by function, costs must be allocated as follows:
    - (i) Utilities costs should be apportioned to functions in the same manner as depreciation, based on the calculated difference between the site or building actual square footage for monitored research laboratory space (site, building, floor, or room), and a separate calculation prepared by the IHE using the “effective square footage” described in subsection (c)(2)(ii) of this section.
    - (ii) “**Effective square footage**” allocated to research laboratory space must be calculated as the actual square footage times the relative energy utilization index (REUI) posted on the OMB Web site at the time of a rate determination.
      - A. This index is the ratio of a laboratory energy use index (lab EUI) to the corresponding index for overall average college or university space (college EUI).
      - B. In July 2012, values for these two indices (taken respectively from the Lawrence Berkeley Laboratory “Labs for the 21st Century” benchmarking tool and the US Department of Energy “Buildings Energy Databook” and were 310 kBtu/sq ft-yr. and 155 kBtu/sq ft-yr., so that the adjustment ratio is 2.0 by this methodology. To retain currency, OMB will adjust the EUI numbers from time to time (no more often than annually nor less often than every 5 years), using reliable and publicly disclosed data. Current values of both the EUIs and the REUI will be posted on the OMB website.

## 5. General Administration and General Expenses

- a. The expenses under this heading are those that have been incurred for the general executive and administrative offices of educational institutions and other expenses of a general character which do not relate solely to any major function of the institution; *i.e.*, solely to
  - (1) instruction,
  - (2) organized research,
  - (3) other sponsored activities, or
  - (4) other institutional activities. The general administration and general expense category should also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation, and interest costs. Examples of general administration and general expenses include: Those expenses incurred by administrative offices that serve the entire university system of which the institution is a part; central offices of the institution such as the President's or Chancellor's office, the offices for institution-wide financial management, business services, budget and planning, personnel management, and safety and risk management; the office of the General Counsel; and the operations of the central administrative management information

systems. General administration and general expenses must not include expenses incurred within non-university-wide deans' offices, academic departments, organized research units, or similar organizational units. (See subsection 6.)

- b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be grouped first according to common major functions of the institution to which they render services or provide benefits. The aggregate expenses of each group must then be allocated to serviced or benefitted functions on the modified total cost basis. Modified total costs consist of the same elements as those in Section C.2. When an activity included in this indirect (F&A) cost category provides a service or product to another institution or organization, an appropriate adjustment must be made to either the expenses or the basis of allocation or both, to assure a proper allocation of costs.

## 6. Departmental Administration Expenses

- a. The expenses under this heading are those that have been incurred for administrative and supporting services that benefit common or joint departmental activities or objectives in academic deans' offices, academic departments and divisions, and organized research units. Organized research units include such units as institutes, study centers, and research centers. Departmental administration expenses are subject to the following limitations.
  - (1) Academic deans' offices. Salaries and operating expenses are limited to those attributable to administrative functions.
  - (2) Academic departments:
    - (a) Salaries and fringe benefits attributable to the administrative work (including bid and proposal preparation) of faculty (including department heads) and other professional personnel conducting research and/or instruction, must be allowed at a rate of 3.6 percent of modified total direct costs. This category does not include professional business or professional administrative officers. This allowance must be added to the computation of the indirect (F&A) cost rate for major functions in Section C; the expenses covered by the allowance must be excluded from the departmental administration cost pool. No documentation is required to support this allowance.
    - (b) Other administrative and supporting expenses incurred within academic departments are allowable provided they are treated consistently in like circumstances. This would include expenses such as the salaries of secretarial and clerical staffs, the salaries of administrative officers and assistants, travel, office supplies, stockrooms, and the like.
  - (3) Other fringe benefit costs applicable to the salaries and wages included in subsections (1) and (2) are allowable, as well as an appropriate share of general administration and general expenses, operation and maintenance expenses, and depreciation.
  - (4) Federal agencies may authorize reimbursement of additional costs for department heads and faculty only in exceptional cases where an institution can demonstrate undue hardship or detriment to project performance.
- b. The following guidelines apply to the determination of departmental administrative costs as direct or indirect (F&A) costs.

- (1) In developing the departmental administration cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect (F&A) costs. For example, salaries of technical staff, laboratory supplies (e.g., chemicals), telephone toll charges, animals, animal care costs, computer costs, travel costs, and specialized shop costs must be treated as direct costs wherever identifiable to a particular cost objective. Direct charging of these costs may be accomplished through specific identification of individual costs to benefitting cost objectives, or through recharge centers or specialized service facilities, as appropriate under the circumstances. See §§ 200.413(c) and 200.468.
  - (2) Items such as office supplies, postage, local telephone costs, and memberships must normally be treated as indirect (F&A) costs.
- c. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated as follows:
- (1) The administrative expenses of the dean's office of each college and school must be allocated to the academic departments within that college or school on the modified total cost basis.
  - (2) The administrative expenses of each academic department, and the department's share of the expenses allocated in subsection (1) must be allocated to the appropriate functions of the department on the modified total cost basis.

## 7. Sponsored Projects Administration

- a. The expenses under this heading are limited to those incurred by a separate organization(s) established primarily to administer sponsored projects, including such functions as grant and contract administration (Federal and non-Federal), special security, purchasing, personnel, administration, and editing and publishing of research and other reports. They include the salaries and expenses of the head of such organization, assistants, and immediate staff, together with the salaries and expenses of personnel engaged in supporting activities maintained by the organization, such as stock rooms, print shops, and the like. This category also includes an allocable share of fringe benefit costs, general administration and general expenses, operation and maintenance expenses, and depreciation. Appropriate adjustments will be made for services provided to other functions or organizations.
- b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated to the major functions of the institution under which the sponsored projects are conducted on the basis of the modified total cost of sponsored projects.
- c. An appropriate adjustment must be made to eliminate any duplicate charges to Federal awards when this category includes similar or identical activities as those included in the general administration and general expense category or other indirect (F&A) cost items, such as accounting, procurement, or personnel administration.

## 8. Library Expenses

- a. The expenses under this heading are those that have been incurred for the operation of the library, including the cost of books and library materials purchased for the library, less any items of library income that qualify as applicable credits under § 200.406. The library expense category should also include the fringe benefits applicable to the salaries and wages included therein, an appropriate



share of general administration and general expense, operation and maintenance expense, and depreciation. Costs incurred in the purchases of rare books (museum-type books) with no value to Federal awards should not be allocated to them.

- b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated first on the basis of primary categories of users, including students, professional employees, and other users.
  - (1) The student category must consist of full-time equivalent students enrolled at the institution, regardless of whether they earn credits toward a degree or certificate.
  - (2) The professional employee category must consist of all faculty members and other professional employees of the institution, on a full-time equivalent basis. This category may also include post-doctorate fellows and graduate students.
  - (3) The other users category must consist of a reasonable factor as determined by institutional records to account for all other users of library facilities.
- c. Amount allocated in paragraph b of this section must be assigned further as follows:
  - (1) The amount in the student category must be assigned to the instruction function of the institution.
  - (2) The amount in the professional employee category must be assigned to the major functions of the institution in proportion to the salaries and wages of all faculty members and other professional employees applicable to those functions.
  - (3) The amount in the other users category must be assigned to the other institutional activities function of the institution.

## 9. Student Administration and Services

- a. The expenses under this heading are those that have been incurred for the administration of student affairs and for services to students, including expenses of such activities as deans of students, admissions, registrar, counseling and placement services, student advisers, student health and infirmary services, catalogs, and commencements and convocations. The salaries of members of the academic staff whose responsibilities to the institution require administrative work that benefits sponsored projects may also be included to the extent that the portion charged to student administration is determined in accordance with subpart E of this Part. This expense category also includes the fringe benefit costs applicable to the salaries and wages included therein, an appropriate share of general administration and general expenses, operation and maintenance, interest expense, and depreciation.
- b. In the absence of the alternatives provided for in Section A.2.d, the expenses in this category must be allocated to the instruction function, and subsequently to Federal awards in that function.

## 10. Offset for Indirect (F&A) Expenses Otherwise Provided for by the Federal Government

- a. The items to be accumulated under this heading are the reimbursements and other payments from the Federal Government which are made to the institution to support solely, specifically, and directly, in whole or in part, any of the administrative or service activities described in subsections 2 through 9.

- b. The items in this group must be treated as a credit to the affected individual indirect (F&A) cost category before that category is allocated to benefitting functions.

## C. Determination and Application of Indirect (F&A) Cost Rate or Rates

### 1. Indirect (F&A) Cost Pools

a.

- (1) Subject to subsection b, the separate categories of indirect (F&A) costs allocated to each major function of the institution as prescribed in Section B, must be aggregated and treated as a common pool for that function. The amount in each pool must be divided by the distribution base described in subsection 2 to arrive at a single indirect (F&A) cost rate for each function.
- (2) The rate for each function is used to distribute indirect (F&A) costs to individual Federal awards of that function. Since a common pool is established for each major function of the institution, a separate indirect (F&A) cost rate would be established for each of the major functions described in Section A.1 under which Federal awards are carried out.
- (3) Each institution's indirect (F&A) cost rate process must be appropriately designed to ensure that Federal sponsors do not in any way subsidize the indirect (F&A) costs of other sponsors, specifically activities sponsored by industry and foreign governments. Accordingly, each allocation method used to identify and allocate the indirect (F&A) cost pools, as described in Sections A.2 and B.2 through B.9, must contain the full amount of the institution's modified total costs or other appropriate units of measurement used to make the computations. In addition, the final rate distribution base (as defined in subsection 2) for each major function (organized research, instruction, etc., as described in Section A.1 functions of an institution) must contain all the programs or activities which utilize the indirect (F&A) costs allocated to that major function. At the time an indirect (F&A) cost proposal is submitted to a cognizant agency for indirect costs, each institution must describe the process it uses to ensure that Federal funds are not used to subsidize industry and foreign government funded programs.

### 2. The Distribution Basis

Indirect (F&A) costs must be distributed to applicable Federal awards and other benefitting activities within each major function (see section A.1) on the basis of modified total direct costs (MTDC), consisting of all salaries and wages, fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period covered by the subaward). MTDC is defined in § 200.1. For this purpose, an indirect (F&A) cost rate should be determined for each of the separate indirect (F&A) cost pools developed pursuant to subsection 1. The rate in each case should be stated as the percentage which the amount of the particular indirect (F&A) cost pool is of the modified total direct costs identified with such pool.

### 3. Negotiated Lump Sum for Indirect (F&A) Costs

A negotiated fixed amount in lieu of indirect (F&A) costs may be appropriate for self-contained, off-campus, or primarily subcontracted activities where the benefits derived from an institution's indirect (F&A) services cannot be readily determined. Such negotiated indirect (F&A) costs will be treated as an

offset before allocation to instruction, organized research, other sponsored activities, and other institutional activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

#### **4. Predetermined Rates for Indirect (F&A) Costs**

Public Law 87-638 (76 Stat. 437) as amended (41 U.S.C. 4708) authorizes the use of predetermined rates in determining the "indirect costs" (indirect (F&A) costs) applicable under research agreements with educational institutions. The stated objectives of the law are to simplify the administration of cost-type research and development contracts (including grants) with educational institutions, to facilitate the preparation of their budgets, and to permit more expeditious closeout of such contracts when the work is completed. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect (F&A) costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect (F&A) costs during the ensuing accounting periods.

#### **5. Negotiated Fixed Rates and Carry-Forward Provisions**

When a fixed rate is negotiated in advance for a fiscal year (or other time period), the over- or under-recovery for that year may be included as an adjustment to the indirect (F&A) cost for the next rate negotiation. When the rate is negotiated before the carry-forward adjustment is determined, the carry-forward amount may be applied to the next subsequent rate negotiation. When such adjustments are to be made, each fixed rate negotiated in advance for a given period will be computed by applying the expected indirect (F&A) costs allocable to Federal awards for the forecast period plus or minus the carry-forward adjustment (over- or under-recovery) from the prior period, to the forecast distribution base. Unrecovered amounts under lump-sum agreements or cost-sharing provisions of prior years must not be carried forward for consideration in the new rate negotiation. There must, however, be an advance understanding in each case between the institution and the cognizant agency for indirect costs as to whether these differences will be considered in the rate negotiation rather than making the determination after the differences are known. Further, institutions electing to use this carry-forward provision may not subsequently change without prior approval of the cognizant agency for indirect costs. In the event that an institution returns to a post-determined rate, any over- or under-recovery during the period in which negotiated fixed rates and carry-forward provisions were followed will be included in the subsequent post-determined rates. Where multiple rates are used, the same procedure will be applicable for determining each rate.

#### **6. Provisional and Final Rates for Indirect (F&A) Costs**

Where the cognizant agency for indirect costs determines that cost experience and other pertinent facts do not justify the use of predetermined rates, or a fixed rate with a carry-forward, or if the parties cannot agree on an equitable rate, a provisional rate must be established. To prevent substantial overpayment or underpayment, the provisional rate may be adjusted by the cognizant agency for indirect costs during the institution's fiscal year. Predetermined or fixed rates may replace provisional rates at any time prior to the

close of the institution's fiscal year. If a provisional rate is not replaced by a predetermined or fixed rate prior to the end of the institution's fiscal year, a final rate will be established and upward or downward adjustments will be made based on the actual allowable costs incurred for the period involved.

## 7. Fixed Rates for the Life of the Sponsored Agreement

- a. Except as provided in paragraph (c)(1) of § 200.414, Federal agencies must use the negotiated rates in effect at the time of the initial award throughout the life of the Federal award. Award levels for Federal awards may not be adjusted in future years as a result of changes in negotiated rates. "Negotiated rates" per the rate agreement include final, fixed, and predetermined rates and exclude provisional rates. "Life" for the purpose of this subsection means each competitive segment of a project. A competitive segment is a period of years approved by the Federal awarding agency at the time of the Federal award. If negotiated rate agreements do not extend through the life of the Federal award at the time of the initial award, then the negotiated rate for the last year of the Federal award must be extended through the end of the life of the Federal award.
- b. Except as provided in § 200.414, when an educational institution does not have a negotiated rate with the Federal Government at the time of an award (because the educational institution is a new recipient or the parties cannot reach agreement on a rate), the provisional rate used at the time of the award must be adjusted once a rate is negotiated and approved by the cognizant agency for indirect costs.

## 8. Limitation on Reimbursement of Administrative Costs

- a. Notwithstanding the provisions of subsection C.1.a, the administrative costs charged to Federal awards awarded or amended (including continuation and renewal awards) with effective dates beginning on or after the start of the institution's first fiscal year which begins on or after October 1, 1991, must be limited to 26% of modified total direct costs (as defined in subsection 2) for the total of General Administration and General Expenses, Departmental Administration, Sponsored Projects Administration, and Student Administration and Services (including their allocable share of depreciation, interest costs, operation and maintenance expenses, and fringe benefits costs, as provided by Section B, and all other types of expenditures not listed specifically under one of the subcategories of facilities in Section B.
- b. Institutions should not change their accounting or cost allocation methods if the effect is to change the charging of a particular type of cost from F&A to direct, or to reclassify costs, or increase allocations from the administrative pools identified in paragraph B.1 of this Appendix to the other F&A cost pools or fringe benefits. Cognizant agencies for indirect cost are authorized to allow changes where an institution's charging practices are at variance with acceptable practices followed by a substantial majority of other institutions.

## 9. Alternative Method for Administrative Costs

- a. Notwithstanding the provisions of subsection C.1.a, an institution may elect to claim a fixed allowance for the "Administration" portion of indirect (F&A) costs. The allowance could be either 24% of modified total direct costs or a percentage equal to 95% of the most recently negotiated fixed or predetermined rate for the cost pools included under "Administration" as defined in Section B.1, whichever is less. Under this alternative, no cost proposal need be prepared for the "Administration"

portion of the indirect (F&A) cost rate nor is further identification or documentation of these costs required (see subsection c). Where a negotiated indirect (F&A) cost agreement includes this alternative, an institution must make no further charges for the expenditure categories described in Section B.5, Section B.6, Section B.7, and Section B.9.

- b. In negotiations of rates for subsequent periods, an institution that has elected the option of subsection a may continue to exercise it at the same rate without further identification or documentation of costs.
- c. If an institution elects to accept a threshold rate as defined in subsection a of this section, it is not required to perform a detailed analysis of its administrative costs. However, in order to compute the facilities components of its indirect (F&A) cost rate, the institution must reconcile its indirect (F&A) cost proposal to its financial statements and make appropriate adjustments and reclassifications to identify the costs of each major function as defined in Section A.1, as well as to identify and allocate the facilities components. Administrative costs that are not identified as such by the institution's accounting system (such as those incurred in academic departments) will be classified as instructional costs for purposes of reconciling indirect (F&A) cost proposals to financial statements and allocating facilities costs.

## 10. Individual Rate Components

In order to provide mutually agreed-upon information for management purposes, each indirect (F&A) cost rate negotiation or determination must include development of a rate for each indirect (F&A) cost pool as well as the overall indirect (F&A) cost rate.

## 11. Negotiation and Approval of Indirect (F&A) Rate

- a. Cognizant agency for indirect costs is defined in Subpart A.
  - (1) Cost negotiation cognizance is assigned to the Department of Health and Human Services (HHS) or the Department of Defense's Office of Naval Research (DOD), normally depending on which of the two agencies (HHS or DOD) provides more funds directly to the educational institution for the most recent three years. Information on funding must be derived from relevant data gathered by the National Science Foundation. In cases where neither HHS nor DOD provides Federal funding directly to an educational institution, the cognizant agency for indirect costs assignment must default to HHS. Notwithstanding the method for cognizance determination described in this section, other arrangements for cognizance of a particular educational institution may also be based in part on the types of research performed at the educational institution and must be decided based on mutual agreement between HHS and DOD. Where a non-Federal entity only receives funds as a subrecipient, see § 200.332.
  - (2) After cognizance is established, it must continue for a five-year period.
- b. Acceptance of rates. See § 200.414.
- c. Correcting deficiencies. The cognizant agency for indirect costs must negotiate changes needed to correct systems deficiencies relating to accountability for Federal awards. Cognizant agencies for indirect costs must address the concerns of other affected agencies, as appropriate, and must negotiate special rates for Federal agencies that are required to limit recovery of indirect costs by statute.

- d. Resolving questioned costs. The cognizant agency for indirect costs must conduct any necessary negotiations with an educational institution regarding amounts questioned by audit that are due the Federal Government related to costs covered by a negotiated agreement.
- e. Reimbursement. Reimbursement to cognizant agencies for indirect costs for work performed under this Part may be made by reimbursement billing under the Economy Act, 31 U.S.C. 1535.
- f. Procedure for establishing facilities and administrative rates must be established by one of the following methods:
  - (1) Formal negotiation. The cognizant agency for indirect costs is responsible for negotiating and approving rates for an educational institution on behalf of all Federal agencies. Federal awarding agencies that do not have cognizance for indirect costs must notify the cognizant agency for indirect costs of specific concerns (i.e., a need to establish special cost rates) which could affect the negotiation process. The cognizant agency for indirect costs must address the concerns of all interested agencies, as appropriate. A pre-negotiation conference may be scheduled among all interested agencies, if necessary. The cognizant agency for indirect costs must then arrange a negotiation conference with the educational institution.
  - (2) Other than formal negotiation. The cognizant agency for indirect costs and educational institution may reach an agreement on rates without a formal negotiation conference; for example, through correspondence or use of the simplified method described in this section D of this Appendix.
- g. Formalizing determinations and agreements. The cognizant agency for indirect costs must formalize all determinations or agreements reached with an educational institution and provide copies to other agencies having an interest. Determinations should include a description of any adjustments, the actual amount, both dollar and percentage adjusted, and the reason for making adjustments.
- h. Disputes and disagreements. Where the cognizant agency for indirect costs is unable to reach agreement with an educational institution with regard to rates or audit resolution, the appeal system of the cognizant agency for indirect costs must be followed for resolution of the disagreement.

## 12. Standard Format for Submission

For facilities and administrative (indirect (F&A)) rate proposals, educational institutions must use the standard format, shown in section E of this appendix, to submit their indirect (F&A) rate proposal to the cognizant agency for indirect costs. The cognizant agency for indirect costs may, on an institution-by-institution basis, grant exceptions from all or portions of Part II of the standard format requirement. This requirement does not apply to educational institutions that use the simplified method for calculating indirect (F&A) rates, as described in Section D of this Appendix.

As provided in section C.10 of this appendix, each F&A cost rate negotiation or determination must include development of a rate for each F&A cost pool as well as the overall F&A rate.

## D. Simplified Method for Small Institutions

### 1. General

- a. Where the total direct cost of work covered by this Part at an institution does not exceed \$10 million in a fiscal year, the simplified procedure described in subsections 2 or 3 may be used in determining allowable indirect (F&A) costs. Under this simplified procedure, the institution's most recent annual financial report and immediately available supporting information must be utilized as a basis for determining the indirect (F&A) cost rate applicable to all Federal awards. The institution may use either the salaries and wages (see subsection 2) or modified total direct costs (see subsection 3) as the distribution basis.
- b. The simplified procedure should not be used where it produces results which appear inequitable to the Federal Government or the institution. In any such case, indirect (F&A) costs should be determined through use of the regular procedure.

## 2. Simplified Procedure—Salaries and Wages Base

- a. Establish the total amount of salaries and wages paid to all employees of the institution.
- b. Establish an indirect (F&A) cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:
  - (1) General administration and general expenses (exclusive of costs of student administration and services, student activities, student aid, and scholarships).
  - (2) Operation and maintenance of physical plant and depreciation (after appropriate adjustment for costs applicable to other institutional activities).
  - (3) Library.
  - (4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments.

In those cases where expenditures classified under subsection (1) have previously been allocated to other institutional activities, they may be included in the indirect (F&A) cost pool. The total amount of salaries and wages included in the indirect (F&A) cost pool must be separately identified.

- c. Establish a salary and wage distribution base, determined by deducting from the total of salaries and wages as established in subsection a from the amount of salaries and wages included under subsection b.
- d. Establish the indirect (F&A) cost rate, determined by dividing the amount in the indirect (F&A) cost pool, subsection b, by the amount of the distribution base, subsection c.
- e. Apply the indirect (F&A) cost rate to direct salaries and wages for individual agreements to determine the amount of indirect (F&A) costs allocable to such agreements.

## 3. Simplified Procedure—Modified Total Direct Cost Base

- a. Establish the total costs incurred by the institution for the base period.
- b. Establish an indirect (F&A) cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:

- (1) General administration and general expenses (exclusive of costs of student administration and services, student activities, student aid, and scholarships).
  - (2) Operation and maintenance of physical plant and depreciation (after appropriate adjustment for costs applicable to other institutional activities).
  - (3) Library.
  - (4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments. In those cases where expenditures classified under subsection (1) have previously been allocated to other institutional activities, they may be included in the indirect (F&A) cost pool. The modified total direct costs amount included in the indirect (F&A) cost pool must be separately identified.
- c. Establish a modified total direct cost distribution base, as defined in Section C.2, The distribution basis, that consists of all institution's direct functions.
  - d. Establish the indirect (F&A) cost rate, determined by dividing the amount in the indirect (F&A) cost pool, subsection b, by the amount of the distribution base, subsection c.
  - e. Apply the indirect (F&A) cost rate to the modified total direct costs for individual agreements to determine the amount of indirect (F&A) costs allocable to such agreements.

## E. Documentation Requirements

The standard format for documentation requirements for indirect (indirect (F&A)) rate proposals for claiming costs under the regular method is available on the OMB website.

## F. Certification

### 1. Certification of Charges

To assure that expenditures for Federal awards are proper and in accordance with the agreement documents and approved project budgets, the annual and/or final fiscal reports or vouchers requesting payment under the agreements will include a certification, signed by an authorized official of the university, which reads "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and intent set forth in the award documents. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code, Title 18, Section 1001 and Title 31, Sections 3729-3733 and 3801-3812)".

### 2. Certification of Indirect (F&A) Costs

- a. **Policy.** Cognizant agencies must not accept a proposed indirect cost rate unless such costs have been certified by the educational institution using the Certificate of indirect (F&A) Costs set forth in subsection F.2.c
- b. The certificate must be signed on behalf of the institution by the chief financial officer or an individual designated by an individual at a level no lower than vice president or chief financial officer.



An indirect (F&A) cost rate is not binding upon the Federal Government if the most recent required proposal from the institution has not been certified. Where it is necessary to establish indirect (F&A) cost rates, and the institution has not submitted a certified proposal for establishing such rates in accordance with the requirements of this section, the Federal Government must unilaterally establish such rates. Such rates may be based upon audited historical data or such other data that have been furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. When indirect (F&A) cost rates are unilaterally established by the Federal Government because of failure of the institution to submit a certified proposal for establishing such rates in accordance with this section, the rates established will be set at a level low enough to ensure that potentially unallowable costs will not be reimbursed.

c. **Certificate.** The certificate required by this section must be in the following form:

### Certificate of Indirect (F&A) Costs

This is to certify that to the best of my knowledge and belief:

- (1) I have reviewed the indirect (F&A) cost proposal submitted herewith;
- (2) All costs included in this proposal [identify date] to establish billing or final indirect (F&A) costs rate for [identify period covered by rate] are allowable in accordance with the requirements of the Federal agreement(s) to which they apply and with the cost principles applicable to those agreements.
- (3) This proposal does not include any costs which are unallowable under subpart E of this part such as (without limitation): Public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, and defense of fraud proceedings; and
- (4) All costs included in this proposal are properly allocable to Federal agreements on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements.

I declare that the foregoing is true and correct.

Institution of Higher Education:

Signature: \_\_\_\_\_

Name of Official: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014; 80 FR 54409, Sept. 10, 2015; 85 FR 49577, Aug. 13, 2020]

## Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations

Link to an amendment published at [89 FR 30206, Apr. 22, 2024](#).

### A. General

1. Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Direct cost of minor amounts may be treated as indirect costs under the conditions described in § 200.413(d). After direct costs have been determined and assigned directly to awards or other work as appropriate, indirect costs are those remaining to be allocated to benefitting cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.
2. *“Major nonprofit organizations”* are defined in paragraph (a) of § 200.414. See indirect cost rate reporting requirements in sections B.2.e and B.3.g of this Appendix.

### B. Allocation of Indirect Costs and Determination of Indirect Cost Rates

#### 1. General

- a. If a nonprofit organization has only one major function, or where all its major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures, as described in section B.2 of this Appendix.
- b. If an organization has several major functions which benefit from its indirect costs in varying degrees, allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitting functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual Federal awards and other activities included in that function by means of an indirect cost rate(s).
- c. The determination of what constitutes an organization's major functions will depend on its purpose in being; the types of services it renders to the public, its clients, and its members; and the amount of effort it devotes to such activities as fundraising, public information and membership activities.
- d. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in section B.2 through B.5 of this Appendix.
- e. The base period for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to work performed in that period. The base period normally should coincide with the organization's fiscal year but, in any event, must be so selected as to avoid inequities in the allocation of the costs.

## 2. Simplified Allocation Method

- a. Where an organization's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by
  - (i) separating the organization's total costs for the base period as either direct or indirect, and
  - (ii) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where an organization has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to an organization is relatively small.
- b. Both the direct costs and the indirect costs must exclude capital expenditures and unallowable costs. However, unallowable costs which represent activities must be included in the direct costs under the conditions described in § 200.413(e).
- c. The distribution base may be total direct costs (excluding capital expenditures and other distorting items, such as subawards for \$25,000 or more), direct salaries and wages, or other base which results in an equitable distribution. The distribution base must exclude participant support costs as defined in § 200.1.
- d. Except where a special rate(s) is required in accordance with section B.5 of this Appendix, the indirect cost rate developed under the above principles is applicable to all Federal awards of the organization. If a special rate(s) is required, appropriate modifications must be made in order to develop the special rate(s).
- e. For an organization that receives more than \$10 million in direct Federal funding in a fiscal year, a breakout of the indirect cost component into two broad categories, Facilities and Administration as defined in paragraph (a) of § 200.414, is required. The rate in each case must be stated as the percentage which the amount of the particular indirect cost category (*i.e.*, Facilities or Administration) is of the distribution base identified with that category.

## 3. Multiple Allocation Base Method

- a. General. Where an organization's indirect costs benefit its major functions in varying degrees, indirect costs must be accumulated into separate cost groupings, as described in subparagraph b. Each grouping must then be allocated individually to benefitting functions by means of a base which best measures the relative benefits. The default allocation bases by cost pool are described in section B.3.c of this Appendix.
- b. Identification of indirect costs. Cost groupings must be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping must constitute a pool of expenses that are of like character in terms of functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The groupings are classified within the two broad categories: "Facilities" and "Administration," as described in section A.3 of this Appendix. The indirect cost pools are defined as follows:

- (1) Depreciation. The expenses under this heading are the portion of the costs of the organization's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with § 200.436.
- (2) Interest. Interest on debt associated with certain buildings, equipment and capital improvements are computed in accordance with § 200.449.
- (3) Operation and maintenance expenses. The expenses under this heading are those that have been incurred for the administration, operation, maintenance, preservation, and protection of the organization's physical plant. They include expenses normally incurred for such items as: janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and other insurance relating to property; space and capital leasing; facility planning and management; and central receiving. The operation and maintenance expenses category must also include its allocable share of fringe benefit costs, depreciation, and interest costs.
- (4) General administration and general expenses. The expenses under this heading are those that have been incurred for the overall general executive and administrative offices of the organization and other expenses of a general nature which do not relate solely to any major function of the organization. This category must also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation, and interest costs. Examples of this category include central offices, such as the director's office, the office of finance, business services, budget and planning, personnel, safety and risk management, general counsel, management information systems, and library costs.

In developing this cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect costs. For example, salaries of technical staff, project supplies, project publication, telephone toll charges, computer costs, travel costs, and specialized services costs must be treated as direct costs wherever identifiable to a particular program. The salaries and wages of administrative and pooled clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate as described in § 200.413. Items such as office supplies, postage, local telephone costs, periodicals and memberships should normally be treated as indirect costs.

- c. Allocation bases. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitting functions. The essential consideration in selecting a method or a base is that it is the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason, where neither the cause nor the effect of the relationship is determinable. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation must be made in that manner. When the expenses in a cost grouping are more general in nature, the allocation must be made through the use of a selected base which produces results that are equitable to both the Federal Government and the organization. The distribution must be made in accordance with the bases described herein unless it can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base

would not increase the costs charged to Federal awards. The results of special cost studies (such as an engineering utility study) must not be used to determine and allocate the indirect costs to Federal awards.

- (1) Depreciation. Depreciation expenses must be allocated in the following manner:
    - (a) Depreciation on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, must be assigned to that function.
    - (b) Depreciation on buildings used for more than one function, and on capital improvements and equipment used in such buildings, must be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas, such as hallways, stairwells, and restrooms.
    - (c) Depreciation on buildings, capital improvements and equipment related space (e.g., individual rooms, and laboratories) used jointly by more than one function (as determined by the users of the space) must be treated as follows. The cost of each jointly used unit of space must be allocated to the benefitting functions on the basis of:
      - (i) the employees and other users on a full-time equivalent (FTE) basis or salaries and wages of those individual functions benefitting from the use of that space; or
      - (ii) organization-wide employee FTEs or salaries and wages applicable to the benefitting functions of the organization.
    - (d) Depreciation on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, must be allocated to user categories on a FTE basis and distributed to major functions in proportion to the salaries and wages of all employees applicable to the functions.
  - (2) Interest. Interest costs must be allocated in the same manner as the depreciation on the buildings, equipment and capital equipment to which the interest relates.
  - (3) Operation and maintenance expenses. Operation and maintenance expenses must be allocated in the same manner as the depreciation.
  - (4) General administration and general expenses. General administration and general expenses must be allocated to benefitting functions based on modified total costs (MTC). The MTC is the modified total direct costs (MTDC), as described in § 200.1, plus the allocated indirect cost proportion. The expenses included in this category could be grouped first according to major functions of the organization to which they render services or provide benefits. The aggregate expenses of each group must then be allocated to benefitting functions based on MTC.
- d. Order of distribution.
- (1) Indirect cost categories consisting of depreciation, interest, operation and maintenance, and general administration and general expenses must be allocated in that order to the remaining indirect cost categories as well as to the major functions of the organization.

Other cost categories should be allocated in the order determined to be most appropriate by the organization. This order of allocation does not apply if cross allocation of costs is made as provided in section B.3.d.2 of this Appendix.

- (2) Normally, an indirect cost category will be considered closed once it has been allocated to other cost objectives, and costs must not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect costs categories could be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect cost categories is required.
- e. Application of indirect cost rate or rates. Except where a special indirect cost rate(s) is required in accordance with section B.5 of this Appendix, the separate groupings of indirect costs allocated to each major function must be aggregated and treated as a common pool for that function. The costs in the common pool must then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.
- f. Distribution basis. Indirect costs must be distributed to applicable Federal awards and other benefitting activities within each major function on the basis of MTDC (see definition in § 200.1).
- g. Individual Rate Components. An indirect cost rate must be determined for each separate indirect cost pool developed. The rate in each case must be stated as the percentage which the amount of the particular indirect cost pool is of the distribution base identified with that pool. Each indirect cost rate negotiation or determination agreement must include development of the rate for each indirect cost pool as well as the overall indirect cost rate. The indirect cost pools must be classified within two broad categories: "Facilities" and "Administration," as described in § 200.414(a).

#### 4. Direct Allocation Method

- a. Some nonprofit organizations treat all costs as direct costs except general administration and general expenses. These organizations generally separate their costs into three basic categories:
  - (i) General administration and general expenses,
  - (ii) fundraising, and
  - (iii) other direct functions (including projects performed under Federal awards). Joint costs, such as depreciation, rental costs, operation and maintenance of facilities, telephone expenses, and the like are prorated individually as direct costs to each category and to each Federal award or other activity using a base most appropriate to the particular cost being prorated.
- b. This method is acceptable, provided each joint cost is prorated using a base which accurately measures the benefits provided to each Federal award or other activity. The bases must be established in accordance with reasonable criteria and be supported by current data. This method is compatible with the Standards of Accounting and Financial Reporting for Voluntary

Health and Welfare Organizations issued jointly by the National Health Council, Inc., the National Assembly of Voluntary Health and Social Welfare Organizations, and the United Way of America.

- c. Under this method, indirect costs consist exclusively of general administration and general expenses. In all other respects, the organization's indirect cost rates must be computed in the same manner as that described in section B.2 of this Appendix.

## 5. Special Indirect Cost Rates

In some instances, a single indirect cost rate for all activities of an organization or for each major function of the organization may not be appropriate, since it would not take into account those different factors which may substantially affect the indirect costs applicable to a particular segment of work. For this purpose, a particular segment of work may be that performed under a single Federal award or it may consist of work under a group of Federal awards performed in a common environment. These factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. When a particular segment of work is performed in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided it is determined that (i) the rate differs significantly from that which would have been obtained under sections B.2, B.3, and B.4 of this Appendix, and (ii) the volume of work to which the rate would apply is material.

## C. Negotiation and Approval of Indirect Cost Rates

### 1. Definitions

As used in this section, the following terms have the meanings set forth in this section:

- a. **Cognizant agency for indirect costs** means the Federal agency responsible for negotiating and approving indirect cost rates for a nonprofit organization on behalf of all Federal agencies.
- b. **Predetermined rate** means an indirect cost rate, applicable to a specified current or future period, usually the organization's fiscal year. The rate is based on an estimate of the costs to be incurred during the period. A predetermined rate is not subject to adjustment.
- c. **Fixed rate** means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.
- d. **Final rate** means an indirect cost rate applicable to a specified past period which is based on the actual costs of the period. A final rate is not subject to adjustment.

- e. **Provisional rate or billing rate** means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a final rate for the period.
- f. **Indirect cost proposal** means the documentation prepared by an organization to substantiate its claim for the reimbursement of indirect costs. This proposal provides the basis for the review and negotiation leading to the establishment of an organization's indirect cost rate.
- g. **Cost objective** means a function, organizational subdivision, contract, Federal award, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, projects, jobs and capitalized projects.

## 2. Negotiation and Approval of Rates

- a. Unless different arrangements are agreed to by the Federal agencies concerned, the Federal agency with the largest dollar value of Federal awards directly funded to an organization will be designated as the cognizant agency for indirect costs for the negotiation and approval of the indirect cost rates and, where necessary, other rates such as fringe benefit and computer charge-out rates. Once an agency is assigned cognizance for a particular nonprofit organization, the assignment will not be changed unless there is a shift in the dollar volume of the Federal awards directly funded to the organization for at least three years. All concerned Federal agencies must be given the opportunity to participate in the negotiation process but, after a rate has been agreed upon, it will be accepted by all Federal agencies. When a Federal agency has reason to believe that special operating factors affecting its Federal awards necessitate special indirect cost rates in accordance with section B.5 of this Appendix, it will, prior to the time the rates are negotiated, notify the cognizant agency for indirect costs. (See also § 200.414.) If the nonprofit does not receive any funding from any Federal agency, the pass-through entity is responsible for the negotiation of the indirect cost rates in accordance with § 200.332(a)(4).
- b. Except as otherwise provided in § 200.414(f), a nonprofit organization which has not previously established an indirect cost rate with a Federal agency must submit its initial indirect cost proposal immediately after the organization is advised that a Federal award will be made and, in no event, later than three months after the effective date of the Federal award.
- c. Unless approved by the cognizant agency for indirect costs in accordance with § 200.414(g), organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency for indirect costs within six months after the close of each fiscal year.
- d. A predetermined rate may be negotiated for use on Federal awards where there is reasonable assurance, based on past experience and reliable projection of the organization's costs, that the rate is not likely to exceed a rate based on the organization's actual costs.
- e. Fixed rates may be negotiated where predetermined rates are not considered appropriate. A fixed rate, however, must not be negotiated if
  - (i) all or a substantial portion of the organization's Federal awards are expected to expire before the carry-forward adjustment can be made;



- (ii) the mix of Federal and non-Federal work at the organization is too erratic to permit an equitable carry-forward adjustment; or
  - (iii) the organization's operations fluctuate significantly from year to year.
- f. Provisional and final rates must be negotiated where neither predetermined nor fixed rates are appropriate. Predetermined or fixed rates may replace provisional rates at any time prior to the close of the organization's fiscal year. If that event does not occur, a final rate will be established and upward or downward adjustments will be made based on the actual allowable costs incurred for the period involved.
- g. The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the nonprofit organization. The cognizant agency for indirect costs must make available copies of the agreement to all concerned Federal agencies.
- h. If a dispute arises in a negotiation of an indirect cost rate between the cognizant agency for indirect costs and the nonprofit organization, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.
- i. To the extent that problems are encountered among the Federal agencies in connection with the negotiation and approval process, OMB will lend assistance as required to resolve such problems in a timely manner.

#### D. Certification of Indirect (F&A) Costs

- (1) Required Certification. No proposal to establish indirect (F&A) cost rates must be acceptable unless such costs have been certified by the nonprofit organization using the Certificate of Indirect (F&A) Costs set forth in section j. of this appendix. The certificate must be signed on behalf of the organization by an individual at a level no lower than vice president or chief financial officer for the organization.
- (2) Each indirect cost rate proposal must be accompanied by a certification in the following form:

#### Certificate of Indirect (F&A) Costs

This is to certify that to the best of my knowledge and belief:

- (1) I have reviewed the indirect (F&A) cost proposal submitted herewith;
- (2) All costs included in this proposal [identify date] to establish billing or final indirect (F&A) costs rate for [identify period covered by rate] are allowable in accordance with the requirements of the Federal awards to which they apply and with subpart E of this part.
- (3) This proposal does not include any costs which are unallowable under subpart E of this part such as (without limitation): Public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, and defense of fraud proceedings; and
- (4) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the Federal awards to which they are allocated in accordance with applicable requirements.

I declare that the foregoing is true and correct.

Nonprofit Organization: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Official: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

[78 FR 78608, Dec. 26, 2013, as amended at 80 FR 54410, Sept. 10, 2015; 85 FR 49579, Aug. 13, 2020]

## Appendix V to Part 200—State/Local Governmentwide Central Service Cost Allocation Plans

### A. General

1. Most governmental units provide certain services, such as motor pools, computer centers, purchasing, accounting, etc., to operating agencies on a centralized basis. Since federally-supported awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process. All costs and other data used to distribute the costs included in the plan should be supported by formal accounting and other records that will support the propriety of the costs assigned to Federal awards.
2. Guidelines and illustrations of central service cost allocation plans are provided in a brochure published by the Department of Health and Human Services entitled "*A Guide for State, Local and Indian Tribal Governments: Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government.*" A copy of this brochure may be obtained from the HHS Cost Allocation Services or at their website.

### B. Definitions

1. **Agency or operating agency** means an organizational unit or sub-division within a governmental unit that is responsible for the performance or administration of Federal awards or activities of the governmental unit.
2. **Allocated central services** means central services that benefit operating agencies but are not billed to the agencies on a fee-for-service or similar basis. These costs are allocated to benefitted agencies on some reasonable basis. Examples of such services might include general accounting, personnel administration, purchasing, etc.
3. **Billed central services** means central services that are billed to benefitted agencies or programs on an individual fee-for-service or similar basis. Typical examples of billed central services include computer services, transportation services, insurance, and fringe benefits.
4. **Cognizant agency for indirect costs** is defined in § 200.1. The determination of cognizant agency for indirect costs for states and local governments is described in section F.1.

5. **Major local government** means local government that receives more than \$100 million in direct Federal awards subject to this Part.

## C. Scope of the Central Service Cost Allocation Plans

The central service cost allocation plan will include all central service costs that will be claimed (either as a billed or an allocated cost) under Federal awards and will be documented as described in section E. omitted from the plan will not be reimbursed.

## D. Submission Requirements

1. Each state will submit a plan to the Department of Health and Human Services for each year in which it claims central service costs under Federal awards. The plan should include
  - (a) a projection of the next year's allocated central service cost (based either on actual costs for the most recently completed year or the budget projection for the coming year), and
  - (b) a reconciliation of actual allocated central service costs to the estimated costs used for either the most recently completed year or the year immediately preceding the most recently completed year.
2. Each major local government is also required to submit a plan to its cognizant agency for indirect costs annually.
3. All other local governments claiming central service costs must develop a plan in accordance with the requirements described in this Part and maintain the plan and related supporting documentation for audit. These local governments are not required to submit their plans for Federal approval unless they are specifically requested to do so by the cognizant agency for indirect costs. Where a local government only receives funds as a subrecipient, the pass-through entity will be responsible for monitoring the subrecipient's plan.
4. All central service cost allocation plans will be prepared and, when required, submitted within six months prior to the beginning of each of the governmental unit's fiscal years in which it proposes to claim central service costs. Extensions may be granted by the cognizant agency for indirect costs on a case-by-case basis.

## E. Documentation Requirements for Submitted Plans

The documentation requirements described in this section may be modified, expanded, or reduced by the cognizant agency for indirect costs on a case-by-case basis. For example, the requirements may be reduced for those central services which have little or no impact on Federal awards. Conversely, if a review of a plan indicates that certain additional information is needed, and will likely be needed in future years, it may be routinely requested in future plan submissions. Items marked with an asterisk (\*) should be submitted only once; subsequent plans should merely indicate any changes since the last plan.

### 1. General

All proposed plans must be accompanied by the following: an organization chart sufficiently detailed to show operations including the central service activities of the state/local government whether or not they are shown as benefitting from central service functions; a copy of the Comprehensive Annual Financial Report (or a copy of the Executive Budget if budgeted costs are being proposed) to support the allowable costs of each central service activity included in the plan; and, a certification (see subsection 4.) that the plan was prepared in accordance with this Part, contains only allowable costs, and was prepared in a manner that treated similar costs consistently among the various Federal awards and between Federal and non-Federal awards/activities.

## 2. Allocated Central Services

For each allocated central service\*, the plan must also include the following: a brief description of the service, an identification of the unit rendering the service and the operating agencies receiving the service, the items of expense included in the cost of the service, the method used to distribute the cost of the service to benefitted agencies, and a summary schedule showing the allocation of each service to the specific benefitted agencies. If any self-insurance funds or fringe benefits costs are treated as allocated (rather than billed) central services, documentation discussed in subsections 3.b. and c. must also be included.

## 3. Billed Services

- a. **General.** The information described in this section must be provided for all billed central services, including internal service funds, self-insurance funds, and fringe benefit funds.
- b. Internal service funds.
  - (1) For each internal service fund or similar activity with an operating budget of \$5 million or more, the plan must include: A brief description of each service; a balance sheet for each fund based on individual accounts contained in the governmental unit's accounting system; a revenue/expenses statement, with revenues broken out by source, e.g., regular billings, interest earned, etc.; a listing of all non-operating transfers (as defined by GAAP) into and out of the fund; a description of the procedures (methodology) used to charge the costs of each service to users, including how billing rates are determined; a schedule of current rates; and, a schedule comparing total revenues (including imputed revenues) generated by the service to the allowable costs of the service, as determined under this part, with an explanation of how variances will be handled.
  - (2) Revenues must consist of all revenues generated by the service, including unbilled and uncollected revenues. If some users were not billed for the services (or were not billed at the full rate for that class of users), a schedule showing the full imputed revenues associated with these users must be provided. Expenses must be broken out by object cost categories (e.g., salaries, supplies, etc.).
- c. **Self-insurance funds.** For each self-insurance fund, the plan must include: the fund balance sheet; a statement of revenue and expenses including a summary of billings and claims paid by agency; a listing of all non-operating transfers into and out of the fund; the type(s) of risk(s) covered by the fund (e.g., automobile liability, workers' compensation, etc.); an explanation of how the level of fund contributions are determined, including a copy of the current actuarial

report (with the actuarial assumptions used) if the contributions are determined on an actuarial basis; and, a description of the procedures used to charge or allocate fund contributions to benefitted activities. Reserve levels in excess of claims

- (1) submitted and adjudicated but not paid,
- (2) submitted but not adjudicated, and
- (3) incurred but not submitted must be identified and explained.

d. **Fringe benefits.** For fringe benefit costs, the plan must include: a listing of fringe benefits provided to covered employees, and the overall annual cost of each type of benefit; current fringe benefit policies; and procedures used to charge or allocate the costs of the benefits to benefitted activities. In addition, for pension and post-retirement health insurance plans, the following information must be provided: the governmental unit's funding policies, e.g., legislative bills, trust agreements, or state-mandated contribution rules, if different from actuarially determined rates; the pension plan's costs accrued for the year; the amount funded, and date(s) of funding; a copy of the current actuarial report (including the actuarial assumptions); the plan trustee's report; and, a schedule from the activity showing the value of the interest cost associated with late funding.

#### 4. Required Certification

Each central service cost allocation plan will be accompanied by a certification in the following form:

##### CERTIFICATE OF COST ALLOCATION PLAN

This is to certify that I have reviewed the cost allocation plan submitted herewith and to the best of my knowledge and belief:

- (1) All costs included in this proposal [identify date] to establish cost allocations or billings for [identify period covered by plan] are allowable in accordance with the requirements of this Part and the Federal award(s) to which they apply. Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.
- (2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the Federal awards to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently.

I declare that the foregoing is true and correct.

Governmental Unit: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Official: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

## F. Negotiation and Approval of Central Service Plans

### 1. Federal Cognizant Agency for Indirect Costs Assignments for Cost Negotiation

In general, unless different arrangements are agreed to by the concerned Federal agencies, for central service cost allocation plans, the cognizant agency responsible for review and approval is the Federal agency with the largest dollar value of total Federal awards with a governmental unit. For indirect cost rates and departmental indirect cost allocation plans, the cognizant agency is the Federal agency with the largest dollar value of direct Federal awards with a governmental unit or component, as appropriate. Once designated as the cognizant agency for indirect costs, the Federal agency must remain so for a period of five years. In addition, the following Federal agencies continue to be responsible for the indicated governmental entities:

*Department of Health and Human Services* –Public assistance and state-wide cost allocation plans for all states (including the District of Columbia and Puerto Rico), state and local hospitals, libraries and health districts.

*Department of the Interior* –Indian tribal governments, territorial governments, and state and local park and recreational districts.

*Department of Labor* –State and local labor departments.

*Department of Education* –School districts and state and local education agencies.

*Department of Agriculture* –State and local agriculture departments.

*Department of Transportation* –State and local airport and port authorities and transit districts.

*Department of Commerce* –State and local economic development districts.

*Department of Housing and Urban Development* –State and local housing and development districts.

*Environmental Protection Agency* –State and local water and sewer districts.

## 2. Review

All proposed central service cost allocation plans that are required to be submitted will be reviewed, negotiated, and approved by the cognizant agency for indirect costs on a timely basis. The cognizant agency for indirect costs will review the proposal within six months of receipt of the proposal and either negotiate/approve the proposal or advise the governmental unit of the additional documentation needed to support/evaluate the proposed plan or the changes required to make the proposal acceptable. Once an agreement with the governmental unit has been reached, the agreement will be accepted and used by all Federal agencies, unless prohibited or limited by statute. Where a Federal awarding agency has reason to believe that special operating factors affecting its Federal awards necessitate special consideration, the funding agency will, prior to the time the plans are negotiated, notify the cognizant agency for indirect costs.

### 3. Agreement

The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The results of the negotiation must be made available to all Federal agencies for their use.

### 4. Adjustments

Negotiated cost allocation plans based on a proposal later found to have included costs that: (a) are unallowable (i) as specified by law or regulation, (ii) as identified in subpart F, General Provisions for selected Items of Cost of this Part, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards, must be adjusted, or a refund must be made at the option of the cognizant agency for indirect costs, including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations. Adjustments or cash refunds may include, at the option of the cognizant agency for indirect costs, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency claims collection regulations. These adjustments or refunds are designed to correct the plans and do not constitute a reopening of the negotiation.

## G. Other Policies

### 1. Billed Central Service Activities

Each billed central service activity must separately account for all revenues (including imputed revenues) generated by the service, expenses incurred to furnish the service, and profit/loss.

### 2. Working Capital Reserves

Internal service funds are dependent upon a reasonable level of working capital reserve to operate from one billing cycle to the next. Charges by an internal service activity to provide for the establishment and maintenance of a reasonable level of working capital reserve, in addition to the full recovery of costs, are allowable. A working capital reserve as part of retained earnings of up to 60 calendar days cash expenses for normal operating purposes is considered reasonable. A working capital reserve exceeding 60 calendar days may be approved by the cognizant agency for indirect costs in exceptional cases.

### 3. Carry-Forward Adjustments of Allocated Central Service Costs

Allocated central service costs are usually negotiated and approved for a future fiscal year on a "fixed with carry-forward" basis. Under this procedure, the fixed amounts for the future year covered by agreement are not subject to adjustment for that year. However, when the actual costs of the year involved become known, the differences between the fixed amounts previously approved and the

actual costs will be carried forward and used as an adjustment to the fixed amounts established for a later year. This "carry-forward" procedure applies to all central services whose costs were fixed in the approved plan. However, a carry-forward adjustment is not permitted, for a central service activity that was not included in the approved plan, or for unallowable costs that must be reimbursed immediately.

#### 4. Adjustments of Billed Central Services

Billing rates used to charge Federal awards must be based on the estimated costs of providing the services, including an estimate of the allocable central service costs. A comparison of the revenue generated by each billed service (including total revenues whether or not billed or collected) to the actual allowable costs of the service will be made at least annually, and an adjustment will be made for the difference between the revenue and the allowable costs. These adjustments will be made through one of the following adjustment methods: (a) a cash refund including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations to the Federal Government for the Federal share of the adjustment, (b) credits to the amounts charged to the individual programs, (c) adjustments to future billing rates, or (d) adjustments to allocated central service costs.

Adjustments to allocated central services will not be permitted where the total amount of the adjustment for a particular service (Federal share and non-Federal) share exceeds \$500,000.

Adjustment methods may include, at the option of the cognizant agency, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency claims collection regulations.

#### 5. Records Retention

All central service cost allocation plans and related documentation used as a basis for claiming costs under Federal awards must be retained for audit in accordance with the records retention requirements contained in subpart D of this part.

#### 6. Appeals

If a dispute arises in the negotiation of a plan between the cognizant agency for indirect costs and the governmental unit, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

#### 7. OMB Assistance

To the extent that problems are encountered among the Federal agencies or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

*[78 FR 78608, Dec. 26, 2013, as amended at 80 FR 54410, Sept. 10, 2015; 85 FR 49581, Aug. 13, 2020]*



## Appendix VI to Part 200—Public Assistance Cost Allocation Plans

### A. General

Federally-financed programs administered by state public assistance agencies are funded predominately by the Department of Health and Human Services (HHS). In support of its stewardship requirements, HHS has published requirements for the development, documentation, submission, negotiation, and approval of public assistance cost allocation plans in Subpart E of 45 CFR Part 95. All administrative costs (direct and indirect) are normally charged to Federal awards by implementing the public assistance cost allocation plan. This Appendix extends these requirements to all Federal awarding agencies whose programs are administered by a state public assistance agency. Major federally-financed programs typically administered by state public assistance agencies include: Temporary Aid to Needy Families (TANF), Medicaid, Food Stamps, Child Support Enforcement, Adoption Assistance and Foster Care, and Social Services Block Grant.

### B. Definitions

1. **State public assistance agency** means a state agency administering or supervising the administration of one or more public assistance programs operated by the state as identified in Subpart E of 45 CFR Part 95. For the purpose of this Appendix, these programs include all programs administered by the state public assistance agency.
2. **State public assistance agency costs** means all costs incurred by, or allocable to, the state public assistance agency, except expenditures for financial assistance, medical contractor payments, food stamps, and payments for services and goods provided directly to program recipients.

### C. Policy

State public assistance agencies will develop, document and implement, and the Federal Government will review, negotiate, and approve, public assistance cost allocation plans in accordance with Subpart E of 45 CFR Part 95. The plan will include all programs administered by the state public assistance agency. Where a letter of approval or disapproval is transmitted to a state public assistance agency in accordance with Subpart E, the letter will apply to all Federal agencies and programs. The remaining sections of this Appendix (except for the requirement for certification) summarize the provisions of Subpart E of 45 CFR Part 95.

### D. Submission, Documentation, and Approval of Public Assistance Cost Allocation Plans

1. State public assistance agencies are required to promptly submit amendments to the cost allocation plan to HHS for review and approval.
2. Under the coordination process outlined in section E, affected Federal agencies will review all new plans and plan amendments and provide comments, as appropriate, to HHS. The effective date of the plan or plan amendment will be the first day of the calendar quarter following the event that required the amendment, unless another date is specifically approved by HHS. HHS, as the cognizant agency for indirect costs acting on behalf of all affected Federal agencies, will, as necessary, conduct negotiations with the state public assistance agency and will inform the state agency of the action taken on the plan or plan amendment.

## E. Review of Implementation of Approved Plans

1. Since public assistance cost allocation plans are of a narrative nature, the review during the plan approval process consists of evaluating the appropriateness of the proposed groupings of costs (cost centers) and the related allocation bases. As such, the Federal Government needs some assurance that the cost allocation plan has been implemented as approved. This is accomplished by reviews by the Federal awarding agencies, single audits, or audits conducted by the cognizant agency for indirect costs.
2. Where inappropriate charges affecting more than one Federal awarding agency are identified, the cognizant HHS cost negotiation office will be advised and will take the lead in resolving the issue(s) as provided for in Subpart E of 45 CFR Part 95.
3. If a dispute arises in the negotiation of a plan or from a disallowance involving two or more Federal awarding agencies, the dispute must be resolved in accordance with the appeals procedures set out in 45 CFR Part 16. Disputes involving only one Federal awarding agency will be resolved in accordance with the Federal awarding agency's appeal process.
4. To the extent that problems are encountered among the Federal awarding agencies or governmental units in connection with the negotiation and approval process, the Office of Management and Budget will lend assistance, as required, to resolve such problems in a timely manner.

## F. Unallowable Costs

Claims developed under approved cost allocation plans will be based on allowable costs as identified in this Part. Where unallowable costs have been claimed and reimbursed, they will be refunded to the program that reimbursed the unallowable cost using one of the following methods: (a) a cash refund, (b) offset to a subsequent claim, or (c) credits to the amounts charged to individual Federal awards. Cash refunds, offsets, and credits may include at the option of the cognizant agency for indirect cost, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency for indirect cost claims collection regulations.

*[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49581, Aug. 13, 2020]*

## Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals

Link to an amendment published at 89 FR 30207, Apr. 22, 2024.

### A. General

1. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to Federal awards and other activities as appropriate, indirect costs are those remaining to be allocated to benefitted cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.

2. Indirect costs include
  - (a) the indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and
  - (b) the costs of central governmental services distributed through the central service cost allocation plan (as described in Appendix V to this part) and not otherwise treated as direct costs.
3. Indirect costs are normally charged to Federal awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal awards. Guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled "A Guide for States and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government." A copy of this brochure may be obtained from HHS Cost Allocation Services or at their website.
4. Because of the diverse characteristics and accounting practices of governmental units, the types of costs which may be classified as indirect costs cannot be specified in all situations. However, typical examples of indirect costs may include certain state/local-wide central service costs, general administration of the non-Federal entity accounting and personnel services performed within the non-Federal entity, depreciation on buildings and equipment, the costs of operating and maintaining facilities.
5. This Appendix does not apply to state public assistance agencies. These agencies should refer instead to Appendix VI to this part.

## B. Definitions

1. **Base** means the accumulated direct costs (normally either total direct salaries and wages or total direct costs exclusive of any extraordinary or distorting expenditures) used to distribute indirect costs to individual Federal awards. The direct cost base selected should result in each Federal award bearing a fair share of the indirect costs in reasonable relation to the benefits received from the costs.
2. **Base period** for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to activities performed in that period. The base period normally should coincide with the governmental unit's fiscal year, but in any event, must be so selected as to avoid inequities in the allocation of costs.
3. **Cognizant agency for indirect costs** means the Federal agency responsible for reviewing and approving the governmental unit's indirect cost rate(s) on the behalf of the Federal Government. The cognizant agency for indirect costs assignment is described in Appendix V, section F.
4. **Final rate** means an indirect cost rate applicable to a specified past period which is based on the actual allowable costs of the period. A final audited rate is not subject to adjustment.
5. **Fixed rate** means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual, allowable costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

6. **Indirect cost pool** is the accumulated costs that jointly benefit two or more programs or other cost objectives.
7. **Indirect cost rate** is a device for determining in a reasonable manner the proportion of indirect costs each program should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base.
8. **Indirect cost rate proposal** means the documentation prepared by a governmental unit or subdivision thereof to substantiate its request for the establishment of an indirect cost rate.
9. **Predetermined rate** means an indirect cost rate, applicable to a specified current or future period, usually the governmental unit's fiscal year. This rate is based on an estimate of the costs to be incurred during the period. Except under very unusual circumstances, a predetermined rate is not subject to adjustment. (Because of legal constraints, predetermined rates are not permitted for Federal contracts; they may, however, be used for grants or cooperative agreements.) Predetermined rates may not be used by governmental units that have not submitted and negotiated the rate with the cognizant agency for indirect costs. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting periods.
10. **Provisional rate** means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a "final" rate for that period.

## C. Allocation of Indirect Costs and Determination of Indirect Cost Rates

### 1. General

- a. Where a governmental unit's department or agency has only one major function, or where all its major functions benefit from the indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures as described in subsection 2.
- b. Where a governmental unit's department or agency has several major functions which benefit from its indirect costs in varying degrees, the allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitted functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual Federal awards and other activities included in that function by means of an indirect cost rate(s).
- c. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in subsections 2, 3 and 4.

### 2. Simplified Method

- a. Where a non-Federal entity's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by

- (1) classifying the non-Federal entity's total costs for the base period as either direct or indirect, and
  - (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where a governmental unit's department or agency has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to that department or agency is relatively small.
- b. Both the direct costs and the indirect costs must exclude capital expenditures and unallowable costs. However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.
- c. The distribution base may be
- (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, subcontracts in excess of \$25,000, participant support costs, etc.),
  - (2) direct salaries and wages, or
  - (3) another base which results in an equitable distribution.

### 3. Multiple Allocation Base Method

- a. Where a non-Federal entity's indirect costs benefit its major functions in varying degrees, such costs must be accumulated into separate cost groupings. Each grouping must then be allocated individually to benefitted functions by means of a base which best measures the relative benefits.
- b. The cost groupings should be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The number of separate groupings should be held within practical limits, taking into consideration the materiality of the amounts involved and the degree of precision needed.
- c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitted functions. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation must be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to both the Federal Government and the governmental unit. In general, any cost element or related factor associated with the governmental unit's activities is potentially adaptable for use as an allocation base provided that:
  - (1) it can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and the like), and
  - (2) it is common to the benefitted functions during the base period.

- d. Except where a special indirect cost rate(s) is required in accordance with paragraph (C)(4) of this Appendix, the separate groupings of indirect costs allocated to each major function must be aggregated and treated as a common pool for that function. The costs in the common pool must then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.
- e. The distribution base used in computing the indirect cost rate for each function may be
  - (1) total direct costs (excluding capital expenditures and other distorting items such as pass-through funds, subawards in excess of \$25,000, participant support costs, etc.),
  - (2) direct salaries and wages, or
  - (3) another base which results in an equitable distribution. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage relationship between the particular indirect cost pool and the distribution base identified with that pool.

## 4. Special Indirect Cost Rates

- a. In some instances, a single indirect cost rate for all activities of a non-Federal entity or for each major function of the agency may not be appropriate. It may not take into account those different factors which may substantially affect the indirect costs applicable to a particular program or group of programs. The factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the organizational arrangements used, or any combination thereof. When a particular Federal award is carried out in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to that Federal award. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided that:
  - (1) The rate differs significantly from the rate which would have been developed under paragraphs (C)(2) and (C)(3) of this Appendix, and
  - (2) the Federal award to which the rate would apply is material in amount.
- b. Where Federal statutes restrict the reimbursement of certain indirect costs, it may be necessary to develop a special rate for the affected Federal award. Where a "restricted rate" is required, the same procedure for developing a non-restricted rate will be used except for the additional step of the elimination from the indirect cost pool those costs for which the law prohibits reimbursement.

## D. Submission and Documentation of Proposals

### 1. Submission of Indirect Cost Rate Proposals

- a. All departments or agencies of the governmental unit desiring to claim indirect costs under Federal awards must prepare an indirect cost rate proposal and related documentation to support those costs. The proposal and related documentation must be retained for audit in accordance with the records retention requirements contained in § 200.334.

- b. A governmental department or agency unit that receives more than \$35 million in direct Federal funding must submit its indirect cost rate proposal to its cognizant agency for indirect costs. Other governmental department or agency must develop an indirect cost proposal in accordance with the requirements of this Part and maintain the proposal and related supporting documentation for audit. These governmental departments or agencies are not required to submit their proposals unless they are specifically requested to do so by the cognizant agency for indirect costs. Where a non-Federal entity only receives funds as a subrecipient, the pass-through entity will be responsible for negotiating and/or monitoring the subrecipient's indirect costs.
- c. Each Indian tribal government desiring reimbursement of indirect costs must submit its indirect cost proposal to the Department of the Interior (its cognizant agency for indirect costs).
- d. Indirect cost proposals must be developed (and, when required, submitted) within six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant agency for indirect costs. If the proposed central service cost allocation plan for the same period has not been approved by that time, the indirect cost proposal may be prepared including an amount for central services that is based on the latest federally-approved central service cost allocation plan. The difference between these central service amounts and the amounts ultimately approved will be compensated for by an adjustment in a subsequent period.

## 2. Documentation of Proposals

The following must be included with each indirect cost proposal:

- a. The rates proposed, including subsidiary work sheets and other relevant data, cross referenced and reconciled to the financial data noted in subsection b. Allocated central service costs will be supported by the summary table included in the approved central service cost allocation plan. This summary table is not required to be submitted with the indirect cost proposal if the central service cost allocation plan for the same fiscal year has been approved by the cognizant agency for indirect costs and is available to the funding agency.
- b. A copy of the financial data (financial statements, comprehensive annual financial report, executive budgets, accounting reports, etc.) upon which the rate is based. Adjustments resulting from the use of unaudited data will be recognized, where appropriate, by the Federal cognizant agency for indirect costs in a subsequent proposal.
- c. The approximate amount of direct base costs incurred under Federal awards. These costs should be broken out between salaries and wages and other direct costs.
- d. A chart showing the organizational structure of the agency during the period for which the proposal applies, along with a functional statement(s) noting the duties and/or responsibilities of all units that comprise the agency. (Once this is submitted, only revisions need be submitted with subsequent proposals.)

## 3. Required certification.

Each indirect cost rate proposal must be accompanied by a certification in the following form:

## Certificate of Indirect Costs

This is to certify that I have reviewed the indirect cost rate proposal submitted herewith and to the best of my knowledge and belief:

- (1) All costs included in this proposal [identify date] to establish billing or final indirect costs rates for [identify period covered by rate] are allowable in accordance with the requirements of the Federal award(s) to which they apply and the provisions of this Part. Unallowable costs have been adjusted for in allocating costs as indicated in the indirect cost proposal
- (2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently and the Federal Government will be notified of any accounting changes that would affect the predetermined rate.

I declare that the foregoing is true and correct.

Governmental Unit: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Official: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

## E. Negotiation and Approval of Rates

1. Indirect cost rates will be reviewed, negotiated, and approved by the cognizant agency on a timely basis. Once a rate has been agreed upon, it will be accepted and used by all Federal agencies unless prohibited or limited by statute. Where a Federal awarding agency has reason to believe that special operating factors affecting its Federal awards necessitate special indirect cost rates, the funding agency will, prior to the time the rates are negotiated, notify the cognizant agency for indirect costs.
2. The use of predetermined rates, if allowed, is encouraged where the cognizant agency for indirect costs has reasonable assurance based on past experience and reliable projection of the non-Federal entity's costs, that the rate is not likely to exceed a rate based on actual costs. Long-term agreements utilizing predetermined rates extending over two or more years are encouraged, where appropriate.
3. The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute, or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The agreed upon rates must be made available to all Federal agencies for their use.



4. Refunds must be made if proposals are later found to have included costs that
  - (a) are unallowable
    - (i) as specified by law or regulation,
    - (ii) as identified in § 200.420, or
    - (iii) by the terms and conditions of Federal awards, or
  - (b) are unallowable because they are clearly not allocable to Federal awards. These adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

## F. Other Policies

### 1. Fringe Benefit Rates

If overall fringe benefit rates are not approved for the governmental unit as part of the central service cost allocation plan, these rates will be reviewed, negotiated and approved for individual recipient agencies during the indirect cost negotiation process. In these cases, a proposed fringe benefit rate computation should accompany the indirect cost proposal. If fringe benefit rates are not used at the recipient agency level (i.e., the agency specifically identifies fringe benefit costs to individual employees), the governmental unit should so advise the cognizant agency for indirect costs.

### 2. Billed Services Provided by the Recipient Agency

In some cases, governmental departments or agencies (components of the governmental unit) provide and bill for services similar to those covered by central service cost allocation plans (e.g., computer centers). Where this occurs, the governmental departments or agencies (components of the governmental unit) should be guided by the requirements in Appendix V relating to the development of billing rates and documentation requirements, and should advise the cognizant agency for indirect costs of any billed services. Reviews of these types of services (including reviews of costing/billing methodology, profits or losses, etc.) will be made on a case-by-case basis as warranted by the circumstances involved.

### 3. Indirect Cost Allocations Not Using Rates

In certain situations, governmental departments or agencies (components of the governmental unit), because of the nature of their Federal awards, may be required to develop a cost allocation plan that distributes indirect (and, in some cases, direct) costs to the specific funding sources. In these cases, a narrative cost allocation methodology should be developed, documented, maintained for audit, or submitted, as appropriate, to the cognizant agency for indirect costs for review, negotiation, and approval.

### 4. Appeals

If a dispute arises in a negotiation of an indirect cost rate (or other rate) between the cognizant agency for indirect costs and the governmental unit, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

## 5. Collection of Unallowable Costs and Erroneous Payments

Costs specifically identified as unallowable and charged to Federal awards either directly or indirectly will be refunded (including interest chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations).

## 6. OMB Assistance

To the extent that problems are encountered among the Federal agencies or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

*[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75889, Dec. 19, 2014; 85 FR 49581, Aug. 13, 2020]*

### Appendix VIII to Part 200—Nonprofit Organizations Exempted From Subpart E of Part 200

1. Advance Technology Institute (ATI), Charleston, South Carolina
2. Aerospace Corporation, El Segundo, California
3. American Institutes of Research (AIR), Washington, DC
4. Argonne National Laboratory, Chicago, Illinois
5. Atomic Casualty Commission, Washington, DC
6. Battelle Memorial Institute, Headquartered in Columbus, Ohio
7. Brookhaven National Laboratory, Upton, New York
8. Charles Stark Draper Laboratory, Incorporated, Cambridge, Massachusetts
9. CNA Corporation (CNAC), Alexandria, Virginia
10. Environmental Institute of Michigan, Ann Arbor, Michigan
11. Georgia Institute of Technology/Georgia Tech Applied Research Corporation/Georgia Tech Research Institute, Atlanta, Georgia
12. Hanford Environmental Health Foundation, Richland, Washington
13. IIT Research Institute, Chicago, Illinois
14. Institute of Gas Technology, Chicago, Illinois
15. Institute for Defense Analysis, Alexandria, Virginia
16. LMI, McLean, Virginia
17. Mitre Corporation, Bedford, Massachusetts
18. Noblis, Inc., Falls Church, Virginia
19. National Radiological Astronomy Observatory, Green Bank, West Virginia
20. National Renewable Energy Laboratory, Golden, Colorado

21. Oak Ridge Associated Universities, Oak Ridge, Tennessee
22. Rand Corporation, Santa Monica, California
23. Research Triangle Institute, Research Triangle Park, North Carolina
24. Riverside Research Institute, New York, New York
25. South Carolina Research Authority (SCRA), Charleston, South Carolina
26. Southern Research Institute, Birmingham, Alabama
27. Southwest Research Institute, San Antonio, Texas
28. SRI International, Menlo Park, California
29. Syracuse Research Corporation, Syracuse, New York
30. Universities Research Association, Incorporated (National Acceleration Lab), Argonne, Illinois
31. Urban Institute, Washington DC
32. Nonprofit insurance companies, such as Blue Cross and Blue Shield Organizations
33. Other nonprofit organizations as negotiated with Federal awarding agencies

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49582, Aug. 13, 2020]

### **Appendix IX to Part 200—Hospital Cost Principles**

Until such time as revised guidance is proposed and implemented for hospitals, the existing principles located at 45 CFR part 75 Appendix IX, entitled “Principles for Determining Cost Applicable to Research and Development Under Grants and Contracts with Hospitals,” remain in effect.

[86 FR 10440, Feb. 22, 2021]

### **Appendix X to Part 200—Data Collection Form (Form SF-SAC)**

Link to an amendment published at 89 FR 30207, Apr. 22, 2024.

The Data Collection Form SF-SAC is available on the FAC Web site.

### **Appendix XI to Part 200—Compliance Supplement**

The compliance supplement is available on the OMB website.

[85 FR 49582, Aug. 13, 2020]

### **Appendix XII to Part 200—Award Term and Condition for Recipient Integrity and Performance Matters**

Link to an amendment published at 89 FR 30207, Apr. 22, 2024.

#### **A. Reporting of Matters Related to Recipient Integrity and Performance**

## 1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

## 2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

- a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- b. Reached its final disposition during the most recent five-year period; and
- c. Is one of the following:
  - (1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
  - (2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
  - (3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
  - (4) Any other criminal, civil, or administrative proceeding if:
    - (i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
    - (ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
    - (iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

## 3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

## 4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

## 5. Definitions

For purposes of this award term and condition:

- a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—
  - (1) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
  - (2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

B. [Reserved]

[80 FR 43310, July 22, 2015, as amended at 85 FR 49582, Aug. 13, 2020]



## CODE OF FEDERAL REGULATIONS

# Title 44

## Emergency Management and Assistance

Revised as of October 1, 2023

Containing a codification of documents  
of general applicability and future effect

As of October 1, 2023

Published by the Office of the Federal Register  
National Archives and Records Administration  
as a Special Edition of the Federal Register



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*Cite this Code:* CFR

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this volume use title,  
part and section num-  
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refers to title 44, part 1,  
section 1.*

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The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

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OLIVER A. POTTS,  
*Director,*  
*Office of the Federal Register*  
*October 1, 2023*



## THIS TITLE

Title 44—EMERGENCY MANAGEMENT AND ASSISTANCE is composed of one volume. The contents of this volume represent all current regulations codified under this title of the CFR as of October 1, 2023.

For this volume, Christine Aurigema was Chief Editor. The Code of Federal Regulations publication program is under the direction of John Hyrum Martinez, assisted by Stephen J. Frattini.



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EDITORIAL NOTE: Nomenclature changes to chapter I appear at 74 FR 15331, Apr. 3, 2009.

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## SUBCHAPTER A—GENERAL

### PART 0—GENERAL STATEMENTS OF POLICY [RESERVED]

### PART 1—RULEMAKING, POLICY, AND PROCEDURES

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- 1.2 Definitions.
- 1.3 Regulatory policy.
- 1.4 Public rulemaking docket.
- 1.5 Public comments.
- 1.6 Ex parte communications.
- 1.7 Hearings.
- 1.8 Petitions for rulemaking.
- 1.9 Petitions for reconsideration.

AUTHORITY: 5 U.S.C. 551, 553; 6 U.S.C. 101 *et seq.*; Department of Homeland Security Delegation 9001.1.

SOURCE: 87 FR 11977, Mar. 3, 2022, unless otherwise noted.

#### § 1.1 Purpose and scope.

(a) This part contains FEMA's procedures for informal rulemaking under the Administrative Procedure Act (5 U.S.C. 553) that affect the public.

(b) This part does not apply to rules issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557).

#### § 1.2 Definitions.

(a) *Rule* or *regulation* have the same meaning as those terms are defined in the Administrative Procedure Act (5 U.S.C. 551(4)).

(b) *Rulemaking* means the FEMA process for considering and formulating the issuance, amendment, or repeal of a rule.

(c) *Administrator* means the Administrator, FEMA, or an official to whom the Administrator has expressly delegated authority to issue rules.

(d) *FEMA* means Federal Emergency Management Agency.

#### § 1.3 Regulatory policy.

(a) It is the general policy of FEMA to provide for public participation in rulemaking regarding its programs and functions, including matters that relate to public property, loans, grants, or benefits, or contracts, even though

these matters are not subject to a requirement for notice and public comment rulemaking by law.

(b) It is the general policy of FEMA that its notices of proposed rulemaking are to afford the public at least 60 days for submission of comments unless the Administrator makes an exception and sets forth the reasons for the exception in the preamble to the notice of proposed rulemaking.

(c) The general policies contained in this section are not intended to and do not create a right or benefit, substantive or procedural, enforceable against the United States or its agencies or officers. FEMA may depart from such policies in its absolute discretion, including for its annual grant programs and in other cases as circumstances warrant.

#### § 1.4 Public rulemaking docket.

(a) FEMA maintains a public docket for each rulemaking after it is published in the FEDERAL REGISTER and until the rulemaking is closed and archived at the National Archives and Records Administration. The public docket includes every document published in the FEDERAL REGISTER in conjunction with a rulemaking. It also includes regulatory assessments and analyses, written comments from the public addressed to the merits of a proposed rule, comments from the public received in response to notices, or to withdrawals or terminations of a proposed rulemaking, requests for a public meeting, requests for extension of time, petitions for rulemaking, grants or denials of petitions or requests, and transcripts or minutes of informal hearings. The public rulemaking docket is maintained by the Regulatory Affairs Division, Office of Chief Counsel.

(b) After FEMA establishes a public rulemaking docket, any person may examine docketed material during established business hours by prearrangement with the Regulatory Affairs Division, Office of Chief Counsel, FEMA, 500 C St. SW, Washington, DC 20472, and may obtain a copy of any docketed material (except for copyrighted material). FEMA also maintains a copy of

## § 1.5

each public docket electronically, with the exception of copyrighted material, on [www.regulations.gov](http://www.regulations.gov). To access the docket on [www.regulations.gov](http://www.regulations.gov), search for the docket ID associated with the rulemaking.

(c) The docket for flood hazard elevation rules issued by the National Flood Insurance Program are partially maintained at the locality that is the subject of the rule. FEMA includes in the preamble of each flood hazard elevation rule the repository address for supporting material.

### § 1.5 Public comments.

A member of the public may submit comments via mail or courier to the Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency, 500 C St. SW, Washington, DC 20472, or may submit comments electronically to the rulemaking docket at [www.regulations.gov](http://www.regulations.gov) under the applicable docket ID.

### § 1.6 Ex parte communications.

(a) All oral or written communications from outside the Federal Executive branch of significant information and argument respecting the merits of a rulemaking document, received after publication of a notice of proposed rulemaking, by FEMA or its offices and divisions or their personnel participating in the decision, must be summarized in writing and placed promptly in the public docket. This applies until the agency publishes a final regulatory action such as a withdrawal of the notice of proposed rulemaking or a final rule.

(b) FEMA may conclude that restrictions on ex parte communications are necessitated at other times by considerations of fairness or for other reasons.

(c) This section does not apply to Tribal consultations.

### § 1.7 Hearings.

(a) When FEMA affords an opportunity for oral presentation, the hearing is an informal, non-adversarial, fact-finding proceeding. Any rulemaking issued in a proceeding under this part in which a hearing is held need not be based exclusively on the record of such hearing.

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(b) When such a hearing is provided, the Administrator will designate a representative to conduct the hearing.

(c) The transcript or minutes of the hearing will be kept and filed in the public rulemaking docket.

### § 1.8 Petitions for rulemaking.

(a) Any interested person may petition the Administrator for the issuance, amendment, or repeal of a rule. For purposes of this section, the term *person* includes any member of the public and any entity outside the Federal Executive branch of Government. Each petitioner must:

(1) Submit the petition to the Regulatory Affairs Division, Office of Chief Counsel, FEMA, 8NE, 500 C Street SW, Washington, DC 20472;

(2) Label the petition with the following: “Petition for Rulemaking” or “Rulemaking Petition”;

(3) Set forth the substance of the rule or amendment proposed or specify the rule sought to be repealed or amended;

(4) Explain the interest of the petitioner in support of the action sought; and

(5) Set forth all data and arguments available to the petitioner in support of the action sought.

(b) FEMA will specify additional methods of submitting rulemaking petitions on its website at [www.fema.gov/about/offices/chief-counsel/rulemaking](http://www.fema.gov/about/offices/chief-counsel/rulemaking) and petitioners seeking to confirm whether FEMA has received or responded to a specific rulemaking petition may inquire at [fema-regulations@fema.dhs.gov](mailto:fema-regulations@fema.dhs.gov). The website may also contain other information about the petition for rulemaking process.

(c)(1) FEMA may solicit public comment on the petition in its discretion. If the Administrator finds that the petition contains adequate justification, a rulemaking proceeding will be initiated, or a final rule will be issued as appropriate. If the Administrator finds that the petition does not contain adequate justification, the petition will be denied by letter or other notice, with a brief statement of the ground for denial. The disposition will be posted on [www.regulations.gov](http://www.regulations.gov) under docket ID FEMA-2022-0011.

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(2) The Administrator may consider new evidence at any time; however, FEMA will not consider repetitious petitions for rulemaking.

SOURCE: 74 FR 15332, Apr. 3, 2009, unless otherwise noted.

**§ 1.9 Petitions for reconsideration.**

Petitions for reconsideration of a final rule will not be considered. Such petitions, if filed, will be treated as petitions for rulemaking in accordance with § 1.8.

**§ 2.1 Purpose.**

This part collects and displays the control numbers assigned to information collection requirements of FEMA by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). FEMA intends that this part comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of OMB for each agency information collection requirement.

**PART 2—OMB CONTROL NUMBERS**

Sec.

2.1 Purpose.

2.2 OMB control numbers assigned to information collections.

**§ 2.2 OMB control numbers assigned to information collections.**

AUTHORITY: 5 U.S.C. 552; 42 U.S.C. 3507; Reorganization Plan No. 3 of 1978, 5 U.S.C. App. 1; E.O. 12127, 3 CFR, 1979 Comp., p. 376; E.O. 12148, as amended, 3 CFR, 1979 Comp., p. 412.

| 44 CFR part or section where identified or described        | Current OMB Control No.         |
|---|---------------------------------|
| 59 .....  | 1660-0023                       |
| 59.22 .....   | 1660-0003, 1660-0004            |
| 59 subpart C .....  | 1660-0045                       |
| 60.6, 60.3 .....  | 1660-0033                       |
| 61.13 .....   | 1660-0006                       |
| 62 subpart B .....  | 1660-0005, 1660-0095            |
| 62.23(l) .....  | 1660-0086                       |
| 62.24 .....   | 1660-0020, 1660-0038            |
| 65, 70 generally .....                                      | 1660-0037                       |
| 71.4 .....  | 1660-0010                       |
| 72 .....  | 1660-0015, 1660-0016            |
| 75.11 .....   | 1660-0013                       |
| 78 .....  | 1660-0062, 1660-0072, 1660-0075 |
| 79.7(d) .....   | 1660-0104                       |
| 80 .....  | 1660-0103                       |
| 151.11 .....  | 1660-0014                       |
| 152.4, 152.7 .....  | 1660-0069                       |
| 201 .....   | 1660-0062, 1660-0072, 1660-0103 |
| 204 .....   | 1660-0058                       |
| 206 subpart B: 206.34, 206.35, 206.36, 206.46, 206.47 ..... | 1660-0009                       |
| 206 subpart D: 206.101(e), 202.110, 206.117, 206.119 .....  | 1660-0002                       |
| 206.112, 206.114, 206.115 .....                             | 1660-0061                       |
| 206.171 .....   | 1660-0085                       |
| 206.202(f)(2), 206.203(c), 206.203(d)(i), 206.204(f) .....  | 1660-0017                       |
| 206 subpart K .....   | 1660-0082, 1660-0083            |
| 206 subpart N .....   | 1660-0076                       |
| 206.437 .....   | 1660-0026                       |
| 206.440 .....   | 1660-0076                       |
| 208 .....   | 1660-0073                       |
| 352 .....   | 1660-0024                       |

**PART 3 [RESERVED]**

**PART 4—INTERGOVERNMENTAL REVIEW OF FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) PROGRAMS AND ACTIVITIES**

Sec.

4.1 What is the purpose of these regulations?



## § 4.1

- 4.2 What definitions apply to these regulations?
- 4.3 What programs and activities of FEMA are subject to these regulations?
- 4.4 [Reserved]
- 4.5 What is the Administrator's obligation with respect to Federal interagency coordination?
- 4.6 What procedures apply to the selection of programs and activities under these regulations?
- 4.7 How does the Administrator communicate with State and local officials concerning FEMA's programs and activities?
- 4.8 How does the Administrator provide an opportunity to comment on proposed Federal financial assistance and direct Federal development?
- 4.9 How does the Administrator receive and respond to comments?
- 4.10 How does the Administrator make efforts to accommodate intergovernmental concerns?
- 4.11 What are the Administrator's obligations in interstate situations?
- 4.12 How may a State simplify, consolidate, or substitute federally required State plans?
- 4.13 May the Administrator waive any provision of these regulations?

AUTHORITY: E.O. 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec. 204, Demonstration Cities and Metropolitan Development Act of 1966, as amended (42 U.S.C. 3334).

SOURCE: 48 FR 29316, June 24, 1983, unless otherwise noted.

EDITORIAL NOTE: For additional information, see related documents published at 47 FR 57369, Dec. 23, 1982; 48 FR 17101, Apr. 21, 1983; and 48 FR 29096, June 24, 1983.

### § 4.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on State, areawide, regional and local coordination for review of proposed Fed-

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eral financial assistance and direct Federal development.

(c) These regulations are intended to aid the internal management of FEMA, and are not intended to create any right or benefit enforceable at law by a party against FEMA or its officers.

### § 4.2 What definitions apply to these regulations?

*Administrator* means the Administrator of FEMA or an official or employee of FEMA acting for the Administrator of FEMA under a delegation of authority.

*FEMA* means the Federal Emergency Management Agency.

*Order* means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled "Intergovernmental Review of Federal Programs."

*State* means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

[48 FR 29316, June 24, 1983, as amended at 74 FR 15332, Apr. 3, 2009]

### § 4.3 What programs and activities of FEMA are subject to these regulations?

The Administrator publishes in the FEDERAL REGISTER a list of FEMA's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

### § 4.4 [Reserved]

### § 4.5 What is the Administrator's obligation with respect to Federal interagency coordination?

The Administrator, to the extent practicable, consults with and seeks advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and FEMA regarding programs and activities covered under these regulations.

**§ 4.6 What procedures apply to the selection of programs and activities under these regulations?**

(a) A State may select any program or activity published in the FEDERAL REGISTER in accordance with § 4.3 of this part for intergovernmental review under these regulations. Each State, before selecting programs and activities, shall consult with local elected officials.

(b) Each State that adopts a process shall notify the Administrator of FEMA's programs and activities selected for that process.

(c) A State may notify the Administrator of changes in its selections at any time. For each change, the State shall submit to the Administrator an assurance that the State has consulted with local elected officials regarding the change. FEMA may establish deadlines by which States are required to inform the Administrator of changes in their program selections.

(d) The Administrator uses a State's process as soon as feasible, depending on individual programs and activities, after the Administrator is notified of its selections.

**§ 4.7 How does the Administrator communicate with State and local officials concerning FEMA's programs and activities?**

(a) For those programs and activities covered by a state process under § 4.6, the Administrator, to the extent permitted by law:

(1) Uses the state process to determine views of State and local elected officials; and,

(2) Communicates with State and local elected officials, through the state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) The Administrator provides notice to directly affected State, areawide, regional, and local entities in a State of proposed Federal financial assistance or direct Federal development if:

(1) The State has not adopted a process under the Order; or

(2) The assistance or development involves a program or activity not selected for the State process.

This notice may be made by publication in the FEDERAL REGISTER or other appropriate means, which FEMA in its discretion deems appropriate.

**§ 4.8 How does the Administrator provide an opportunity to comment on proposed Federal financial assistance and direct Federal development?**

(a) Except in unusual circumstances, the Administrator gives state processes or directly affected State, areawide, regional and local officials and entities at least 60 days from the date established by the Administrator to comment on proposed direct Federal development or Federal financial assistance.

(b) This section also applies to comments in cases in which the review, coordination, and communication with FEMA have been delegated.

(c) Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Act shall allow areawide agencies a 60-day opportunity for review and comment.

**§ 4.9 How does the Administrator receive and respond to comments?**

(a) The Administrator follows the procedures in § 4.10 if:

(1) A State office or official is designated to act as a single point of contact between a state process and all Federal agencies, and

(2) That office or official transmits a state process recommendation for a program selected under § 4.6.

(b)(1) The single point of contact is not obligated to transmit comments from State, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a State has not established a process, or is unable to submit a state process recommendation, State, areawide, regional and local officials and entities may submit comments to FEMA.

(d) If a program or activity is not selected for a state process, State, areawide, regional and local officials

#### § 4.10

and entities may submit comments to FEMA. In addition, if a state process recommendation for a nonselected program or activity is transmitted to FEMA by the single point of contact, the Administrator follows the procedures of § 4.10 of this part.

(e) The Administrator considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Administrator is not required to apply the procedures of § 4.10 of this part, when such comments are provided by a single point of contact, by the applicant or directly to FEMA by a commenting party.

#### § 4.10 How does the Administrator make efforts to accommodate inter-governmental concerns?

(a) If a state process provides a state process recommendation to FEMA through its single point of contact, the Administrator either:

- (1) Accepts the recommendation;
- (2) Reaches a mutually agreeable solution with the state process; or
- (3) Provides the single point of contact with such written explanation of the decision, as the Administrator in his or her discretion deems appropriate. The Administrator may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Administrator informs the single point of contact that:

- (1) FEMA will not implement its decision for at least ten days after the single point of contact receives the explanation; or
- (2) The Administrator has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

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#### § 4.11 What are the Administrator's obligations in interstate situations?

(a) The Administrator is responsible for:

- (1) Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;
- (2) Notifying appropriate officials and entities in states which have adopted a process and which select FEMA's program or activity;
- (3) Making efforts to identify and notify the affected State, areawide, regional, and local officials and entities in those States that have not adopted a process under the Order or do not select FEMA's program or activity;
- (4) Responding pursuant to § 4.10 of this part if the Administrator receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with FEMA have been delegated.

(b) The Administrator uses the procedures in § 4.10 if a state process provides a state process recommendation to FEMA through a single point of contact.

#### § 4.12 How may a State simplify, consolidate, or substitute federally required State plans?

(a) As used in this section:

(1) *Simplify* means that a State may develop its own format, choose its own submission date, and select the planning period for a State plan.

(2) *Consolidate* means that a State may meet statutory and regulatory requirements by combining two or more plans into one document and that the State can select the format, submission date, and planning period for the consolidated plan.

(3) *Substitute* means that a State may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a State may decide to try to simplify, consolidate, or substitute federally required state plans without prior approval by the Administrator.

(c) The Administrator reviews each state plan that a State has simplified,

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consolidated, or substituted and accepts the plan only if its contents meet Federal requirements.

**§ 4.13 May the Administrator waive any provision of these regulations?**

In an emergency, the Administrator may waive any provision of these regulations.

**PART 5—PRODUCTION OR DISCLOSURE OF INFORMATION**

**Subparts A–E [Reserved]**

**Subpart F—Subpoenas or Other Legal Demands for Testimony or the Production or Disclosure of Records or Other Information**

- Sec.
- 5.80 Scope and applicability.
- 5.81 Statement of policy.
- 5.82 Definitions.
- 5.83 Authority to accept service of subpoenas.
- 5.84 Production of documents in private litigation.
- 5.85 Authentication and attestation of copies.
- 5.86 Records involved in litigation or other judicial process.
- 5.87 Testimony of FEMA employees in private litigation.
- 5.88 Testimony in litigation in which the United States is a party.
- 5.89 Waiver.

AUTHORITY: Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301.

SOURCE: 44 FR 50287, Aug. 27, 1979, unless otherwise noted.

**Subparts A–E [Reserved]**

**Subpart F—Subpoenas or Other Legal Demands for Testimony or the Production or Disclosure of Records or Other Information**

SOURCE: 54 FR 11715, Mar. 22, 1989, unless otherwise noted.

**§ 5.80 Scope and applicability.**

(a) This subpart sets forth policies and procedures with respect to the disclosure or production by FEMA employees, in response to a subpoena, order or other demand of a court or other authority, of any material con-

tained in the files of the Agency or any information relating to material contained in the files of the Agency or any information acquired by an employee as part of the performance of that person’s official duties or because of that person’s official status.

(b) This subpart applies to State and local judicial, administrative and legislative proceedings, and Federal judicial and administrative proceedings.

(c) This subpart does not apply to Congressional requests or subpoenas for testimony or documents, or to an employee making an appearance solely in his or her private capacity in judicial or administrative proceedings that do not relate to the Agency (such as cases arising out of traffic accidents, domestic relations, etc.).

(d) The Department of Homeland Security’s regulations, 6 CFR 5.41 through 5.49, apply to any subject matter not already covered by this subpart, including but not limited to demands or requests directed to current or former FEMA contractors.

[54 FR 11715, Mar. 22, 1989, as amended at 72 FR 43546, Aug. 6, 2007]

**§ 5.81 Statement of policy.**

(a) It is the policy of FEMA to make its records available to private litigants to the same extent and in the same manner as such records are made available to members of the general public, except where protected from disclosure by litigation procedural authority (e.g., Federal Rules of Civil Procedure) or other applicable law.

(b) It is FEMA’s policy and responsibility to preserve its human resources for performance of the official functions of the Agency and to maintain strict impartiality with respect to private litigants. Participation by FEMA employees in private litigation in their official capacities is generally contrary to this policy.

**§ 5.82 Definitions.**

For purposes of this subpart, the following terms have the meanings ascribed to them in this section:

(a) *Demand* refers to a subpoena, order, or other demand of a court of competent jurisdiction, or other specific authority (e.g., an administrative or State legislative body), signed by

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the presiding officer, for the production, disclosure, or release of FEMA records or information or for the appearance and testimony of FEMA personnel as witnesses in their official capacities.

(b) *Employee of the Agency* includes all officers and employees of the United States appointed by or subject to the supervision, jurisdiction or control of the Administrator of FEMA.

(c) *Private litigation* refers to any legal proceeding which does not involve as a named party the United States Government, or the Federal Emergency Management Agency, or any official thereof in his or her official capacity.

### **§ 5.83 Authority to accept service of subpoenas.**

In all legal proceedings between private litigants, a subpoena duces tecum or subpoena ad testificandum or other demand by a court or other authority for the production of records held by FEMA Regional offices or for the oral or written testimony of FEMA Regional employees should be addressed to the appropriate Regional Administrator listed in § 5.26. For all other records or testimony, the subpoena should be addressed to the Chief Counsel, FEMA, 500 C Street SW., Washington, DC 20472 Washington, DC 20472. No other official or employee of FEMA is authorized to accept service of subpoenas on behalf of the Agency.

### **§ 5.84 Production of documents in private litigation.**

(a) The production of records held by FEMA in response to a subpoena duces tecum or other demand issued pursuant to private litigation, whether or not served in accordance with the provisions of § 5.83 of this subpart, is prohibited absent authorization by the Chief Counsel.

(b) Whenever an official or employee of FEMA, including any Regional Administrator, receives a subpoena or other demand for the production of Agency documents or material, he or she shall immediately notify and provide a copy of the demand to the Chief Counsel.

(c) The Chief Counsel, after consultation with other appropriate officials as

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deemed necessary, shall promptly determine whether to disclose the material or documents identified in the subpoena or other demand. Generally, authorization to furnish the requested material or documents shall not be withheld unless their disclosure is prohibited by relevant law or for other compelling reasons.

(d) Whenever a subpoena or demand commanding the production of any record is served upon any Agency employee other than as provided in § 5.83 of this subpart, or the response to a demand is required before the receipt of instructions from the Chief Counsel, such employee shall appear in response thereto, respectfully decline to produce the record(s) on the ground that it is prohibited by this section and state that the demand has been referred for the prompt consideration of the Chief Counsel.

(e) Where the release of documents in response to a subpoena duces tecum is authorized by the Chief Counsel, the official having custody of the requested records will furnish, upon the request of the party seeking disclosure, authenticated copies of the documents. No official or employee of FEMA shall respond in strict compliance with the terms of a subpoena duces tecum unless specifically authorized by the Chief Counsel.

### **§ 5.85 Authentication and attestation of copies.**

The Administrator, Deputy Administrators, Regional Administrators, Assistant Administrators, United States Fire Administrator, Federal Insurance Administrator, Chief Counsel, and their designees, and other heads of offices having possession of records are authorized in the name of the Administrator to authenticate and attest for copies or reproductions of records. Appropriate fees will be charged for such copies or reproductions based on the fee schedule set forth in section 5.46 of this part.

[74 FR 15334, Apr. 3, 2009]

### **§ 5.86 Records involved in litigation or other judicial process.**

Subpoenas duces tecum issued pursuant to litigation or any other adjudicatory proceeding in which the United

States is a party shall be referred to the Chief Counsel.

[81 FR 83643, Nov. 22, 2016]

**§ 5.87 Testimony of FEMA employees in private litigation.**

(a) No FEMA employee shall testify in response to a subpoena or other demand in private litigation as to any information relating to material contained in the files of the Agency, or any information acquired as part of the performance of that person's official duties or because of that person's official status, including the meaning of Agency documents.

(b) Whenever a demand is made upon a FEMA employee, for the disclosure of information described in paragraph (a) of this section, that employee shall immediately notify the Office of Chief Counsel. The Chief Counsel, upon receipt of such notice and absent waiver of the general prohibition against employee testimony at his or her discretion, shall arrange with the appropriate United States Attorney the taking of such steps as are necessary to quash the subpoena or seek a protective order.

(c) In the event that an immediate demand for testimony or disclosure is made in circumstances which would preclude prior notice to and consultation with the Chief Counsel, the employee shall respectfully request from the demanding authority a stay in the proceedings to allow sufficient time to obtain advice of counsel.

(d) If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with paragraph (c) of this section pending consultation with counsel, or if the court or other authority rules that the demand must be complied with irrespective of instructions not to testify or disclose the information sought, the employee upon whom the demand has been made shall respectfully decline to comply with the demand, citing these regulations and *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

**§ 5.88 Testimony in litigation in which the United States is a party.**

(a) Whenever, in any legal proceeding in which the United States is a party,

the attorney in charge of presenting the case for the United States requests it, the Chief Counsel shall arrange for an employee of the Agency to testify as a witness for the United States.

(b) The attendance and testimony of named employees of the Agency may not be required in any legal proceeding by the judge or other presiding officer, by subpoena or otherwise. However, the judge or other presiding officer may, upon a showing of exceptional circumstances (such as a case in which a particular named FEMA employee has direct personal knowledge of a material fact not known to the witness made available by the Agency) require the attendance and testimony of named FEMA personnel.

**§ 5.89 Waiver.**

The Chief Counsel may grant, in writing, a waiver of any policy or procedure prescribed by this subpart, where waiver is considered necessary to promote a significant interest of the Agency or for other good cause. In granting such waiver, the Chief Counsel shall attach to the waiver such reasonable conditions and limitations as are deemed appropriate in order that a response in strict compliance with the terms of a subpoena duces tecum or the providing of testimony will not interfere with the duties of the employee and will otherwise conform to the policies of this part. The Administrator may, in his or her discretion, review any decision to authorize a waiver of any policy or procedure prescribed by this subpart.

**PART 6—IMPLEMENTATION OF THE PRIVACY ACT OF 1974**

**Subpart A—General**

Sec.

- 6.1 Purpose and scope of part.
- 6.2 Definitions.
- 6.3 Collection and use of information (Privacy Act statements).
- 6.4 Standards of accuracy.
- 6.5 Rules of conduct.
- 6.6 Safeguarding systems of records.
- 6.7 Records of other agencies.
- 6.8 Subpoena and other legal demands.
- 6.9 Inconsistent issuances of FEMA and/or its predecessor agencies superseded.
- 6.10 Assistance and referrals.

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### Subpart B—Disclosure of Records

- 6.20 Conditions of disclosure.
- 6.21 Procedures for disclosure.
- 6.22 Accounting of disclosures.

### Subpart C—Individual Access to Records

- 6.30 Form of requests.
- 6.31 Special requirements for medical records.
- 6.32 Granting access.
- 6.33 Denials of access.
- 6.34 Appeal of denial of access within FEMA.

### Subpart D—Requests To Amend Records

- 6.50 Submission of requests to amend records.
- 6.51 Review of requests to amend records.
- 6.52 Approval of requests to amend records.
- 6.53 Denial of requests to amend records.
- 6.54 Agreement to alternative amendments.
- 6.55 Appeal of denial of request to amend a record.
- 6.56 Statement of disagreement.
- 6.57 Judicial review.

### Subpart E—Report on New Systems and Alterations of Existing Systems

- 6.70 Reporting requirement.
- 6.71 Federal Register notice of establishment of new system or alteration of existing system.
- 6.72 Effective date of new system of records or alteration of an existing system of records.

### Subpart F—Fees

- 6.80 Records available at fee.
- 6.81 Additional copies.
- 6.82 Waiver of fee.
- 6.83 Prepayment of fees.
- 6.84 Form of payment.
- 6.85 Reproduction fees.

### Subpart G—Exempt Systems of Records

- 6.86 General exemptions.
- 6.87 Specific exemptions.

AUTHORITY: 5 U.S.C. 552a; Reorganization Plan No. 3 of 1978; and E.O. 12127.

SOURCE: 44 FR 50293, Aug. 27, 1979, unless otherwise noted.

## Subpart A—General

### § 6.1 Purpose and scope of part.

This part sets forth policies and procedures concerning the collection, use and dissemination of records maintained by the Federal Emergency Management Agency (FEMA) which are

subject to the provision of 5 U.S.C. 552a, popularly known as the “Privacy Act of 1974” (hereinafter referred to as the Act). These policies and procedures govern only those records as defined in § 6.2. Policies and procedures governing the disclosure and availability of records in general are in part 5 of this chapter. This part also covers: (a) Procedures for notification to individuals of a FEMA system of records pertaining to them; (b) guidance to individuals in obtaining information, including inspections of, and disagreement with, the content of records; (c) accounting of disclosure; (d) special requirements for medical records; and (e) fees.

### § 6.2 Definitions.

For the purpose of this part:

(a) *Agency* includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency (see 5 U.S.C. 552(e)).

(b) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

(c) *Maintain* includes maintain, collect, use, and disseminate.

(d) *Record* means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to those concerning education, financial transactions, medical history, and criminal or employment history, and that contains the name or other identifying particular assigned to the individual, such as a fingerprint, voiceprint, or photograph.

(e) *System of records* means a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identification assigned to that individual.

(f) *Statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an

identifiable individual, except as provided by 13 U.S.C. 8.

(g) *Routine use* means, with respect to the disclosure of a record, the use of that record for a purpose which is compatible with the purpose for which it was collected.

(h) *System manager* means the employee of FEMA who is responsible for the maintenance of a system of records and for the collection, use, and dissemination of information therein.

(i) *Subject individual* means the individual named or discussed in a record of the individual to whom a record otherwise pertains.

(j) *Disclosure* means a transfer of a record, a copy of a record, or any or all of the information contained in a record to a recipient other than the subject individual, or the review of a record by someone other than the subject individual.

(k) *Access* means a transfer of a record, a copy of a record, or the information in a record to the subject individual, or the review of a record by the subject individual.

(l) *Solicitation* means a request by an officer or employee of FEMA that an individual provide information about himself or herself.

(m) *Administrator* means the Administrator, FEMA.

(n) *Deputy Administrator* means the Deputy Administrator, FEMA, or, in the case of the absence of the Deputy Administrator, or a vacancy in that office, a person designated by the Administrator to perform the functions under this regulation of the Deputy Administrator.

(o) *Privacy Appeals Officer* means the FOIA/Privacy Act Specialist or his/her designee.

[44 FR 50293, Aug. 27, 1979, as amended at 45 FR 17152, Mar. 18, 1980; 51 FR 34604, Sept. 30, 1986]

**§ 6.3 Collection and use of information (Privacy Act statements).**

(a) *General.* Any information used in whole or in part in making a determination about an individual's rights, benefits, or privileges under FEMA programs will be collected directly from the subject individual to the extent practicable. The system manager also shall ensure that information collected

is used only in conformance with the provisions of the Act and these regulations.

(b) *Solicitation of information.* System managers shall ensure that at the time information is solicited the solicited individual is informed of the authority for collecting that information, whether providing the information is mandatory or voluntary, the purpose for which the information will be used, the routine uses to be made of the information, and the effects on the individual, if any, of not providing the information. The Director, Records Management Division, Office of Management and Regional Administrators shall ensure that forms used to solicit information are in compliance with the Act and these regulations.

(c) *Solicitation of Social Security numbers.* Before an employee of FEMA can deny to any individual a right, benefit, or privilege provided by law because such individual refuses to disclose his/her social security account number, the employee of FEMA shall ensure that either:

(1) The disclosure is required by Federal statute; or

(2) The disclosure of a social security number was required under a statute or regulation adopted before January 1, 1975, to verify the identity of an individual, and the social security number will become a part of a system of records in existence and operating before January 1, 1975.

If solicitation of the social security number is authorized under paragraph (c) (1) or (2) of this section, the FEMA employee who requests an individual to disclose the social security account number shall first inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority the number is solicited, and the use that will be made of it.

(d) *Soliciting information from third parties.* An employee of FEMA shall inform third parties who are requested to provide information about another individual of the purposes for which the information will be used.

[44 FR 50293, Aug. 27, 1979, as amended at 47 FR 13149, Mar. 29, 1982; 48 FR 12091, Mar. 23, 1983; 50 FR 40006, Oct. 1, 1985]



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### § 6.4 Standards of accuracy.

The system manager shall ensure that all records which are used by FEMA to make determinations about any individual are maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual.

### § 6.5 Rules of conduct.

Employees of FEMA involved in the design, development, operation, or maintenance of any system of records or in maintaining any record, shall conduct themselves in accordance with the rules of conduct concerning the protection of personal information in § 3.25 of this chapter.

### § 6.6 Safeguarding systems of records.

(a) Systems managers shall ensure that appropriate administrative, technical, and physical safeguards are established to ensure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

(b) Personnel information contained in both manual and automated systems of records shall be protected by implementing the following safeguards:

(1) Official personnel folders, authorized personnel operating or work folders and other records of personnel actions effected during an employee's Federal service or affecting the employee's status and service, including information on experience, education, training, special qualification, and skills, performance appraisals, and conduct, shall be stored in a lockable metal filing cabinet when not in use by an authorized person. A system manager may employ an alternative storage system providing that it furnished an equivalent degree of physical security as storage in a lockable metal filing cabinet.

(2) System managers, at their discretion, may designate additional records of unusual sensitivity which require safeguards similar to those described in paragraph (a) of this section.

(3) A system manager shall permit access to and use of automated or manual personnel records only to persons whose official duties require such access, or to a subject individual or his or her representative as provided by this part.

### § 6.7 Records of other agencies.

If FEMA receives a request for access to records which are the primary responsibility of another agency, but which are maintained by or in the temporary possession of FEMA on behalf of that agency, FEMA will advise the requestor that the request has been forwarded to the responsible agency. Records in the custody of FEMA which are the primary responsibility of the Office of Personnel Management are governed by the rules promulgated by it pursuant to the Privacy Act.

### § 6.8 Subpoena and other legal demands.

Access to records in systems of records by subpoena or other legal process shall be in accordance with the provisions of part 5 of this chapter.

### § 6.9 Inconsistent issuances of FEMA and/or its predecessor agencies superseded.

Any policies and procedures in any issuances of FEMA or any of its predecessor agencies which are inconsistent with the policies and procedures in this part are superseded to the extent of that inconsistency.

### § 6.10 Assistance and referrals.

Requests for assistance and referral to the responsible system manager or other FEMA employee charged with implementing these regulations should be made to the Privacy Appeals Officer, Federal Emergency Management Agency, Washington, DC 20472.

[45 FR 17152, Mar. 18, 1980]

## Subpart B—Disclosure of Records

### § 6.20 Conditions of disclosure.

No employee of FEMA shall disclose any record to any person or to another agency without the express written consent of the subject individual unless the disclosure is:

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(a) To officers or employees of FEMA who have a need for the information in the official performance of their duties;

(b) Required by the provisions of the Freedom of Information Act, 5 U.S.C. 552.

(c) For a routine use as published in the notices in the FEDERAL REGISTER;

(d) To the Bureau of the Census for use pursuant to title 13, United States Code;

(e) To a recipient who has provided FEMA with advance adequate written assurance that the record will be used solely as a statistical research or reporting record subject to the following: The record shall be transferred in a form that is not individually identifiable. The written statement should include as a minimum (1) a statement of the purpose for requesting the records; and (2) certification that the records will be used only for statistical purposes. These written statements should be maintained as accounting records. In addition to deleting personal identifying information from records released for statistical purposes, the system manager shall ensure that the identity of the individual cannot reasonably be deduced by combining various statistical records;

(f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of The National Archives and Records Administration or his designee to determine whether the record has such value;

(g) To another agency or instrumentality of any governmental jurisdiction within or under the control of the United States for civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the agency or instrumentality or his designated representative has made a written request to the Administrator specifying the particular portion desired and the law enforcement activity for which the record is sought;

(h) To a person showing compelling circumstances affecting the health and safety of an individual to whom the record pertains. (Upon such disclosure, a notification must be sent to the last

known address of the subject individual.)

(i) To either House of Congress or to a subcommittee or committee (joint or of either House, to the extent that the subject matter falls within their jurisdiction;

(j) To the Comptroller General or any duly authorized representatives of the Comptroller General in the course of the performance of the duties of the Government Accountability Office; or

(k) Pursuant to the order of a court of competent jurisdiction.

(l) To consumer reporting agencies as defined in the Fair Credit Reporting Act (35 U.S.C. 1681a(f) or the Debt Collection Act of 1982 (31 U.S.C. 3711(d)(4)).

[44 FR 50293, Aug. 27, 1979, as amended at 48 FR 44543, Sept. 29, 1983; 50 FR 40006, Oct. 1, 1985]

### § 6.21 Procedures for disclosure.

(a) Upon receipt of a request for disclosure, the system manager shall verify the right of the requestor to obtain disclosure pursuant to § 6.20. Upon that verification and subject to other requirements of this part, the system manager shall make the requested records available.

(b) If the system manager determines that the disclosure is not permitted under the provisions of § 6.20 or other provisions of this part, the system manager shall deny the request in writing and shall inform the requestor of the right to submit a request for review and final determination to the Administrator or designee.

### § 6.22 Accounting of disclosures.

(a) Except for disclosures made pursuant to § 6.20 (a) and (b), an accurate accounting of each disclosure shall be made and retained for 5 years after the disclosure or for the life of the record, whichever is longer. The accounting shall include the date, nature, and purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made;

(b) The system manager also shall maintain in conjunction with the accounting of disclosures;

(1) A full statement of the justification for the disclosure.

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(2) All documentation surrounding disclosure of a record for statistical or law enforcement purposes; and

(3) Evidence of written consent to a disclosure given by the subject individual.

(c) Except for the accounting of disclosures made to agencies or instrumentalities in law enforcement activities in accordance with § 6.20 (g) or of disclosures made from exempt systems the accounting of disclosures shall be made available to the individual upon request. Procedures for requesting access to the accounting are in subpart C of this part.

### Subpart C—Individual Access to Records

#### § 6.30 Form of requests.

(a) An individual who seeks access to his or her record or to any information pertaining to the individual which is contained in a system of records should notify the system manager at the address indicated in the FEDERAL REGISTER notice describing the pertinent system. The notice should bear the legend "Privacy Act Request" both on the request letter and on the envelope. It will help in the processing of a request if the request letter contains the complete name and identifying number of the system as published in the FEDERAL REGISTER; the full name and address of the subject individual; a brief description of the nature, time, place, and circumstances of the individual's association with FEMA; and any other information which the individual believes would help the system manager to determine whether the information about the individual is included in the system of records. The system manager shall answer or acknowledge the request within 10 workdays of its receipt by FEMA.

(b) The system manager, at his discretion, may accept oral requests for access subject to verification of identity.

#### § 6.31 Special requirements for medical records.

(a) A system manager who receives a request from an individual for access to those official medical records which belong to the U.S. Office of Personnel

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Management and are described in Chapter 339, Federal Personnel Manual (medical records about entrance qualifications or fitness for duty, or medical records which are otherwise filed in the Official Personnel Folder), shall refer the pertinent system of records to a Federal Medical Officer for review and determination in accordance with this section. If no Federal Medical Officer is available to make the determination required by this section, the system manager shall refer the request and the medical reports concerned to the Office of Personnel Management for determination.

(b) If, in the opinion of a Federal Medical Officer, medical records requested by the subject individual indicate a condition about which a prudent physician would hesitate to inform a person suffering from such a condition of its exact nature and probable outcome, the system manager shall not release the medical information to the subject individual nor to any person other than a physician designated in writing by the subject individual, or the guardian or conservator of the individual.

(c) If, in the opinion of a Federal Medical Officer, the medical information does not indicate the presence of any condition which would cause a prudent physician to hesitate to inform a person suffering from such a condition of its exact nature and probable outcome, the system manager shall release it to the subject individual or to any person, firm, or organization which the individual authorizes in writing to receive it.

#### § 6.32 Granting access.

(a) Upon receipt of a request for access to non-exempt records, the system manager shall make these records available to the subject individual or shall acknowledge the request within 10 workdays of its receipt by FEMA. The acknowledgment shall indicate when the system manager will make the records available.

(b) If the system manager anticipates more than a 10 day delay in making a record available, he or she also shall include in the acknowledgment specific reasons for the delay.

(c) If a subject individual's request for access does not contain sufficient information to permit the system manager to locate the records, the system manager shall request additional information from the individual and shall have 10 workdays following receipt of the additional information in which to make the records available or to acknowledge receipt of the request and indicate when the records will be available.

(d) Records will be available for authorized access during normal business hours at the offices where the records are located. A requestor should be prepared to identify himself or herself by signature; i.e., to note by signature the date of access and/or produce other identification verifying the signature.

(e) Upon request, a system manager shall permit an individual to examine the original of a non-exempt record, shall provide the individual with a copy of the record, or both. Fees shall be charged in accordance with subpart F.

(f) An individual may request to pick up a record in person or to receive it by mail, directed to the name and address provided by the individual in the request. A system manager shall not make a record available to a third party for delivery to the subject individual except for medical records as outlined in §6.31.

(g) An individual who selects another person to review, or to accompany the individual in reviewing or obtaining a copy of the record must, prior to the disclosure, sign a statement authorizing the disclosure of the record. The system manager shall maintain this statement with the record.

(h) The procedure for access to an accounting of disclosure is identical to the procedure for access to a record as set forth in this section.

**§ 6.33 Denials of access.**

(a) A system manager may deny an individual access to that individual's record only upon the grounds that FEMA has published the rules in the FEDERAL REGISTER exempting the pertinent system of records from the access requirement. These exempt systems of records are described in subpart G of this part.

(b) Upon receipt of a request for access to a record which the system manager believes is contained within an exempt system of records he or she shall forward the request to the appropriate official listed below or to his or her delegate through normal supervisory channels.

- (1) Deputy Administrators.
- (2) [Reserved]
- (3) Federal Insurance Administrator.
- (4) Assistant Administrators.
- (5) United States Fire Administrator.
- (6) Chief of Staff.
- (7) Office Directors.
- (8) Chief Counsel.
- (9) [Reserved]
- (10) Chief Financial Officer.
- (11) Regional Administrators.

(c) In the event that the system manager serves in one of the positions listed in paragraph (b) of this section, he or she shall retain the responsibility for denying or granting the request.

(d) The appropriate official listed in paragraph (b) of this section shall, in consultation with the Office of Chief Counsel and such other officials as deemed appropriate, determine if the request record is contained within an exempt system of records and:

(1) If the record is not contained within an exempt system of records, the above official shall notify the system manager to grant the request in accordance with § 6.32, or

(2) If the record is contained within an exempt system said official shall;

(i) Notify the requestor that the request is denied, including a statement justifying the denial and advising the requestor of a right to judicial review of that decision as provided in § 6.57, or

(ii) Notify the system manager to make record available to the requestor in accordance with § 6.31, notwithstanding the record's inclusion within an exempt system.

(e) The appropriate official listed in paragraph (b) of this section shall provide the Privacy Appeals Office with a copy of any denial of a requested access.

[44 FR 50293, Aug. 27, 1979, as amended at 48 FR 44543, Sept. 29, 1983; 50 FR 40006, Oct. 1, 1985; 51 FR 34604, Sept. 30, 1986; 74 FR 15334, Apr. 3, 2009]

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### § 6.34 Appeal of denial of access within FEMA.

A requestor denied access in whole or in part, to records pertaining to that individual, exclusive of those records for which the system manager is the Administrator, may file an administrative appeal of that denial. Appeals of denied access will be processed in the same manner as processing for appeals from a denial of a request to amend a record set out in § 6.55, regardless whether the denial being appealed is made at headquarters or by a regional official.

### Subpart D—Requests To Amend Records

#### § 6.50 Submission of requests to amend records.

An individual who desires to amend any record containing personal information about the individual should direct a written request to the system manager specified in the pertinent FEDERAL REGISTER notice concerning FEMA's systems of records. A current FEMA employee who desires to amend personnel records should submit a written request to the Director, Human Capital Division, Washington, DC 20472. Each request should include evidence of and justification for the need to amend the pertinent record. Each request should bear the legend "Privacy Act—Request to Amend Record" prominently marked on both the face of the request letter and the envelope.

#### § 6.51 Review of requests to amend records.

(a) The system manager shall acknowledge the receipt of a request to amend a record within 10 workdays. If possible, the acknowledgment shall include the system manager's determination either to amend the record or to deny the request to amend as provided in § 6.53.

(b) When reviewing a record in response to a request to amend, the system manager shall assess the accuracy, relevance, timeliness, and completeness of the existing record in light of the proposed amendment and shall determine whether the request for the amendment is justified. With respect to a request to delete information, the

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system manager also shall review the request and the existing record to determine whether the information is relevant and necessary to accomplish an agency purpose required to be accomplished by statute or Executive Order.

#### § 6.52 Approval of requests to amend records.

If the system manager determines that amendment of a record is proper in accordance with the request to amend, he or she promptly shall make the necessary corrections to the record and shall send a copy of the corrected record to the individual. Where an accounting of disclosure has been maintained, the system manager shall advise all previous recipients of the record of the fact that a correction has been made and the substance of the correction. Where practicable, the system manager shall advise the Privacy Appeals Officer that a request to amend has been approved.

#### § 6.53 Denial of requests to amend records.

(a) If the system manager determines that an amendment of a record is improper or that the record should be amended in a manner other than that requested by an individual, he shall refer the request to amend and his determinations and recommendations to the appropriate official listed in § 6.33(b) through normal supervisory channels.

(b) If the official listed in § 6.33, after reviewing the request to amend a record, determines to amend the record in accordance with the request, said official promptly shall return the request to the system manager with instructions to make the requested amendments in accordance with § 6.52.

(c) If the appropriate official listed in § 6.33, after reviewing the request to amend a record, determines not to amend the record in accordance with the request, the requestor shall be promptly advised in writing of the determination. The refusal letter (1) shall state the reasons for the denial of the request to amend; (2) shall include proposed alternative amendments, if appropriate; (3) shall state the requestor's right to appeal the denial of the request to amend; and (4) shall state

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the procedures for appealing and the name and title of the official to whom the appeal is to be addressed.

(d) The appropriate official listed in § 6.33 shall furnish the Privacy Appeals Officer a copy of each initial denial of a request to amend a record.

[44 FR 50293, Aug. 27, 1979, as amended at 45 FR 17152, Mar. 18, 1980]

### § 6.54 Agreement to alternative amendments.

If the denial of a request to amend a record includes proposed alternative amendments, and if the requestor agrees to accept them, he or she must notify the official who signed the denial. That official immediately shall instruct the system manager to make the necessary amendments in accordance with § 6.52.

### § 6.55 Appeal of denial of request to amend a record.

(a) A requestor who disagrees with a denial of a request to amend a record may file an administrative appeal of that denial. The requestor should address the appeal to the FEMA Privacy Appeals Officer, Washington, DC 20472. If the requestor is an employee of FEMA and the denial to amend involves a record maintained in the employee's Official Personnel Folder covered by an Office of Personnel Management Government-wide system notice, the appeal should be addressed to the Assistant Director, Information Systems, Agency Compliance and Evaluation Group, Office of Personnel Management, Washington, DC 20415.

(b) Each appeal to the Privacy Act Appeals Officer shall be in writing and must be received by FEMA no later than 30 calendar days from the requestor's receipt of a denial of a request to amend a record. The appeal should bear the legend "Privacy Act—Appeal," both on the face of the letter and the envelope.

(c) Upon receipt of an appeal, the Privacy Act Appeals Officer shall consult with the system manager, the official who made the denial, the Chief Counsel or a member of that office, and such other officials as may be appropriate. If the Privacy Act Appeals Officer in consultation with these officials, determines that the record should be amend-

ed, as requested, the system manager shall be instructed immediately to amend the record in accordance with § 6.52 and shall notify the requestor of that action.

(d) If the Privacy Act Appeals Officer, in consultation with the officials specified in paragraph (c) of this section, determines that the appeal should be rejected, the Privacy Act Appeals Officer shall submit the file on the request and appeal, including findings and recommendations, to the Deputy Administrator for a final administrative determination.

(e) If the Deputy Administrator determines that the record should be amended as requested, he or she immediately shall instruct the system manager in writing to amend the record in accordance with § 6.52. The Deputy Administrator shall send a copy of those instructions to the Privacy Act Appeals Officer, who shall notify the requestor of that action.

(f) If the Deputy Administrator determines to reject the appeal, the requestor shall immediately be notified in writing of that determination. This action shall constitute the final administrative determination on the request to amend the record and shall include:

(1) The reasons for the rejection of the appeal.

(2) Proposed alternative amendments, if appropriate, which the requestor subsequently may accept in accordance with § 6.54.

(3) Notice of the requestor's right to file a Statement of Disagreement for distribution in accordance with § 6.56.

(4) Notice of the requestor's right to seek judicial review of the final administrative determination, as provided in § 6.57.

(g) The final agency determination must be made no later than 30 workdays from the date on which the appeal is received by the Privacy Act Appeals Officer.

(h) In extraordinary circumstances, the Administrator may extend this time limit by notifying the requestor in writing before the expiration of the 30 workdays. The Administrator's notification will include a justification for the extension.

[44 FR 50293, Aug. 27, 1979, as amended at 45 FR 17152, Mar. 18, 1980]

**§ 6.56 Statement of disagreement.**

Upon receipt of a final administrative determination denying a request to amend a record, the requestor may file a Statement of Disagreement with the appropriate system manager. The Statement of Disagreement should include an explanation of why the requestor believes the record to be inaccurate, irrelevant, untimely, or incomplete. The system manager shall maintain the Statement of Disagreement in conjunction with the pertinent record, and shall include a copy of the Statement of Disagreement in any disclosure of the pertinent record. The system manager shall provide a copy of the Statement of Disagreement to any person or agency to whom the record has been disclosed only if the disclosure was subject to the accounting requirements of § 6.22.

**§ 6.57 Judicial review.**

Within 2 years of receipt of a final administrative determination as provided in § 6.34 or § 6.55, a requestor may seek judicial review of that determination. A civil action must be filed in the Federal District Court in which the requestor resides or has his or her principal place of business or in which the agency records are situated, or in the District of Columbia.

### Subpart E—Report on New Systems and Alterations of Existing Systems

**§ 6.70 Reporting requirement.**

(a) No later than 90 calendar days prior to the establishment of a new system of records, the prospective system manager shall notify the Privacy Appeals Officer of the proposed new system. The prospective system manager shall include with the notification a completed FEMA Form 11–2, System of Records Covered by the Privacy Act of 1974, and a justification for each system of records proposed to be established. If the Privacy Appeals Officer determines that the establishment of the proposed system is in the best interest of the Government, then no later than 60 calendar days prior to the establishment of that system of records, a report of the proposal shall be sub-

mitted by the Administrator or a designee thereof, to the President of the Senate, the Speaker of the House of Representatives, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget for their evaluation of the probable or potential effect of that proposal on the privacy and other personal or property rights of individuals.

(b) No later than 90 calendar days prior to the alteration of a system of records, the system manager responsible for the maintenance of that system of records shall notify the Privacy Appeals Officer of the proposed alteration. The system manager shall include with the notification a completed FEMA Form 11–2, System of Records Covered by the Privacy Act of 1974, and a justification for each system of records he proposes to alter. If it is determined that the proposed alteration is in the best interest of the Government, then, the Administrator, or a designee thereof, shall submit, no later than 60 calendar days prior to the establishment of that alteration, a report of the proposal to the President of the Senate, the Speaker of the House of Representatives, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget for their evaluation of the probable or potential effect of that proposal on the privacy and other personal or property rights of individuals.

(c) The reports required by this regulation are exempt from reports control.

(d) The Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget may waive the time requirements set out in this section upon a finding that a delay in the establishing or amending the system would not be in the public interest and showing how the public interest would be adversely affected if the waiver were not granted and otherwise complying with OMB Circular A–130.

[44 FR 50293, Aug. 27, 1979, as amended at 45 FR 17152, Mar. 18, 1980; 51 FR 34604, Sept. 30, 1986]

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### § 6.71 Federal Register notice of establishment of new system or alteration of existing system.

Notice of the proposed establishment or alteration of a system of records shall be published in the FEDERAL REGISTER, in accordance with FEMA procedures when:

(a) Notice is received that the Senate, the House of Representatives, and the Office of Management and Budget do not object to the establishment of a new system or records or to the alteration of an existing system of records, or

(b) No fewer than 30 calendar days elapse from the date of submission of the proposal to the Senate, the House of Representatives, and the Office of Management and Budget without receipt of an objection to the proposal. The notice shall include all of the information required to be provided in FEMA Form 11-2, System of Records Covered by the Privacy Act of 1974, and such other information as the Administrator deems necessary.

### § 6.72 Effective date of new system of records or alteration of an existing system of records.

Systems of records proposed to be established or altered in accordance with the provisions of this subpart shall be effective no sooner than 30 calendar days from the publication of the notice required by § 6.71.

## Subpart F—Fees

### § 6.80 Records available at fee.

The system manager shall provide a copy of a record to a requestor at a fee prescribed in § 6.85 unless the fee is waived under § 6.82.

[44 FR 50293, Aug. 27, 1979, as amended at 45 FR 17152, Mar. 18, 1980]

### § 6.81 Additional copies.

A reasonable number of additional copies shall be provided for the applicable fee to a requestor who indicates that he has no access to commercial reproduction services.

### § 6.82 Waiver of fee.

The system manager shall make one copy of a record, up to 300 pages, avail-

able without charge to a requestor who is an employee of FEMA. The system manager may waive the fee requirement for any other requestor if the cost of collecting the fee is an unduly large part of, or greater than, the fee, or when furnishing the record without charge conforms to generally established business custom or is in the public interest.

[44 FR 50287, Aug. 27, 1979, as amended at 52 FR 13679, Apr. 24, 1987]

### § 6.83 Prepayment of fees.

(a) When FEMA estimates or determines that allowable charges that a requestor may be required to pay are likely to exceed \$250.00, FEMA may require a requestor to make an advance payment of the entire fee before continuing to process the request.

(b) When a requestor has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), FEMA may require the requestor to pay the full amount owed plus any applicable interest as provided in § 6.85(d), and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requestor.

(c) When FEMA acts under § 5.44 (a) or (b), the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from the receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after FEMA has received fee payments described under § 5.44 (a) or (b).

[52 FR 13679, Apr. 24, 1987]

### § 6.84 Form of payment.

Payment shall be by check or money order payable to The Federal Emergency Management Agency and shall be addressed to the system manager.

### § 6.85 Reproduction fees.

(a) *Duplication costs.* (1) For copies of documents reproduced on a standard office copying machine in sizes up to 8½ × 14 inches, the charge will be \$.15 per page.

(2) The fee for reproducing copies of records over 8½ × 14 inches or whose



physical characteristics do not permit reproduction by routine electrostatic copying shall be the direct cost of reproducing the records through Government or commercial sources. If FEMA estimates that the allowable duplication charges are likely to exceed \$25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(3) For other methods of reproduction or duplication, FEMA shall charge the actual direct costs of producing the document(s). If FEMA estimates that the allowable duplication charges are likely to exceed \$25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(b) Interest may be charge to those requesters who fail to pay fees charged. FEMA may begin assessing interest charges on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of title 31 U.S.C.

[52 FR 13679, Apr. 24, 1987]

**Subpart G—Exempt Systems of Records**

**§ 6.86 General exemptions.**

(a) Whenever the Administrator, Federal Emergency Management Agency, determines it to be necessary and proper, with respect to any system of records maintained by the Federal Emergency Management Agency, to exercise the right to promulgate rules to exempt such systems in accordance with the provisions of 5 U.S.C. 552a (j) and (k), each specific exemption, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the

justification for each exemption shall be published in the FEDERAL REGISTER as part of FEMA’s Notice of Systems of Records.

(b) Exempt under 5 U.S.C. 552a(j)(2) from the requirements of 5 U.S.C. 552a(c) (3) and (4), (d), (e) (1), (2), (3), (e)(4) (G), (H), and (I), (e) (5) and (8) (f) and (g) of the Privacy Act.

(1) *Exempt systems.* The following systems of records, which contain information of the type described in 5 U.S.C. 552(j)(2), shall be exempt from the provisions of 5 U.S.C. 552a listed in paragraph (b) of this section.

General Investigative Files (FEMA/IG-2)—  
Limited Access

(2) *Reasons for exemptions.* (i) 5 U.S.C. 552a (e)(4)(G) and (f)(1) enable individuals to be notified whether a system of records contains records pertaining to them. The Federal Emergency Management Agency believes that application of these provisions to the above-listed system of records would give individuals an opportunity to learn whether they are of record either as suspects or as subjects of a criminal investigation; this would compromise the ability of the Federal Emergency Management Agency to complete investigations and identify or detect violators of laws administered by the Federal Emergency Management Agency or other Federal agencies. Individuals would be able (A) to take steps to avoid detection, (B) to inform co-conspirators of the fact that an investigation is being conducted, (C) to learn the nature of the investigation to which they are being subjected, (D) to learn the type of surveillance being utilized, (E) to learn whether they are only suspects or identified law violators, (F) to continue to resume their illegal conduct without fear of detection upon learning that they are not in a particular system of records, and (G) to destroy evidence needed to prove the violation.

(ii) 5 U.S.C. 552a (d)(1), (e)(4)(H) and (f)(2), (3) and (5) enable individuals to gain access to records pertaining to them. The Federal Emergency Management Agency believes that application of these provisions to the above-listed system of records would compromise its ability to complete or continue criminal investigations and to detect

or identify violators of laws administered by the Federal Emergency Management Agency or other Federal agencies. Permitting access to records contained in the above-listed system of records would provide individuals with significant information concerning the nature of the investigation, and this could enable them to avoid detection or apprehension in the following ways:

(A) By discovering the collection of facts which would form the basis for their arrest, (B) by enabling them to destroy evidence of criminal conduct which would form the basis for their arrest, and (C) by learning that the criminal investigators had reason to believe that a crime was about to be committed, they could delay the commission of the crime or change the scene of the crime to a location which might not be under surveillance. Granting access to ongoing or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning criminal activity to structure their future operations in such a way as to avoid detection or apprehension, thereby neutralizing law enforcement officers' established investigative tools and procedures. Further, granting access to investigative files and records could disclose the identity of confidential sources and other informers and the nature of the information which they supplied, thereby endangering the life or physical safety of those sources of information by exposing them to possible reprisals for having provided information relating to the criminal activities of those individuals who are the subjects of the investigative files and records; confidential sources and other informers might refuse to provide criminal investigators with valuable information if they could not be secure in the knowledge that their identities would not be revealed through disclosure of either their names or the nature of the information they supplied, and this would seriously impair the ability of the Federal Emergency Management Agency to carry out its mandate to enforce criminal and related laws. Additionally, providing access to records contained in the above-listed system of records could reveal the identities of

undercover law enforcement personnel who compiled information regarding individual's criminal activities, thereby endangering the life or physical safety of those undercover personnel or their families by exposing them to possible reprisals.

(iii) 5 U.S.C. 552a(d) (2), (3) and (4), (e)(4)(H) and (f)(4), which are dependent upon access having been granted to records pursuant to the provisions cited in paragraph (b)(2)(ii) of this section, enable individuals to contest (seek amendment to) the content of records contained in a system of records and require an agency to note an amended record and to provide a copy of an individual's statement (of disagreement with the agency's refusal to amend a record) to persons or other agencies to whom the record has been disclosed. The Federal Emergency Management Agency believes that the reasons set forth in paragraph (b)(2)(ii) of this section are equally applicable to this paragraph and, accordingly, those reasons are hereby incorporated herein by reference.

(iv) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request; such accountings must state the date, nature and purpose of each disclosure of a record and the name and address of the recipient. The Federal Emergency Management Agency believes that application of this provision to the above-listed system of records would impair the ability of other law enforcement agencies to make effective use of information provided by the Federal Emergency Management Agency in connection with the investigation, detection and apprehension of violators of the criminal laws enforced by those other law enforcement agencies. Making accountings of disclosure available to violators or possible violators would alert those individuals to the fact that another agency is conducting an investigation into their criminal activities, and this could reveal the geographic location of the other agency's investigation, the nature and purpose of that investigation, and the dates on which that investigation was active. Violators possessing such knowledge would thereby be able to take appropriate

measures to avoid detection or apprehension by altering their operations, by transferring their criminal activities to other geographic areas or by destroying or concealing evidence which would form the basis for their arrest. In addition, providing violators with accountings of disclosure would alert those individuals to the fact that the Federal Emergency Management Agency has information regarding their criminal activities and could inform those individuals of the general nature of that information; this, in turn, would afford those individuals a better opportunity to take appropriate steps to avoid detection or apprehension for violations of criminal and related laws.

(v) 5 U.S.C. 552a(c)(4) requires that an agency inform any person or other agency about any correction or notation of dispute made by the agency in accordance with 5 U.S.C. 552a(d) of any record that has been disclosed to the person or agency if an accounting of the disclosure was made. Since this provision is dependent on an individual's having been provided an opportunity to contest (seek amendment to) records pertaining to him/her, and since the above-listed system of records is proposed to be exempt from those provisions of 5 U.S.C. 552a relating to amendments of records as indicated in paragraph (b)(2)(iii) of this section, the Federal Emergency Management Agency believes that this provision should not be applicable to the above system of records.

(vi) 5 U.S.C. 552a(e)(4)(I) requires that an agency publish a public notice listing the categories of sources for information contained in a system of records. The categories of sources of this system of records have been published in the FEDERAL REGISTER in broad generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in this system, exemption from this provision is necessary in order to protect the confidentiality of the sources of criminal and other law enforcement information. Such exemption is further necessary to protect the privacy and

physical safety of witnesses and informants.

(vii) 5 U.S.C. 552a(e)(1) requires that an agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term *maintain* as defined in 5 U.S.C. 552a(a)(3) includes “collect” and “disseminate.” At the time that information is collected by the Federal Emergency Management Agency, there is often insufficient time to determine whether the information is relevant and necessary to accomplish a purpose of the Federal Emergency Management Agency; in many cases information collected may not be immediately susceptible to a determination of whether the information is relevant and necessary, particularly in the early stages of an investigation, and in many cases, information which initially appears to be irrelevant or unnecessary may, upon further evaluation or upon continuation of the investigation, prove to have particular relevance to an enforcement program of the Federal Emergency Management Agency. Further, not all violations of law discovered during a criminal investigation fall within the investigative jurisdiction of the Federal Emergency Management Agency; in order to promote effective law enforcement, it often becomes necessary and desirable to disseminate information pertaining to such violations to other law enforcement agencies which have jurisdiction over the offense to which the information relates. The Federal Emergency Management Agency should not be placed in a position of having to ignore information relating to violations of law not within its jurisdiction when that information comes to the attention of the Federal Emergency Management Agency through the conduct of a lawful FEMA investigation. The Federal Emergency Management Agency, therefore, believes that it is appropriate to exempt the above-listed system of records from the provisions of 5 U.S.C. 552a(e)(1).

(viii) 5 U.S.C. 552a(e)(2) requires that an agency collect information to the greatest extent practicable directly from the subject individual when the

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information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The Federal Emergency Management Agency believes that application of this provision to the above-listed system of records would impair the ability of the Federal Emergency Management Agency to conduct investigations and to identify or detect violators of criminal or related laws for the following reasons:

(A) Most information collected about an individual under criminal investigations is obtained from third parties such as witnesses and informers, and it is usually not feasible to rely upon the subject of the investigation as a source for information regarding his/her criminal activities, (B) an attempt to obtain information from the subject of a criminal investigation will often alert that individual to the existence of an investigation, thereby affording the individual an opportunity to attempt to conceal his/her criminal activities so as to avoid apprehension, (C) in certain instances, the subject of a criminal investigation is not required to supply information to criminal investigators as a matter of legal duty, and (D) during criminal investigations it is often a matter of sound investigative procedures to obtain information from a variety of sources in order to verify information already obtained.

(ix) 5 U.S.C. 552a(e)(3) requires that an agency inform each individual whom it asks to supply information, either on the form which the agency uses to collect the information or on a separate form which can be retained by the individual, with the following information: The authority which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary; the principal purposes for which the information is intended to be used; the routine uses which may be made of the information; and the effects on the individual of not providing all or part of the requested information. The Federal Emergency Management Agency believes that the above-listed system of records should be exempted from this provision in order to avoid adverse effects on its ability to identify or detect violators of criminal or related laws. In

many cases, information is obtained by confidential sources, other informers or undercover law enforcement officers under circumstances where it is necessary that the true purpose of their actions be kept secret so as to avoid alerting the subject of the investigation or his/her associates that a criminal investigation is in process. Further, if it became known that the undercover officer was assisting in a criminal investigation, that officer's life or physical safety could be endangered through reprisal, and, under such circumstances it may not be possible to continue to utilize that officer in the investigation. In many cases, individuals, for personal reasons, would feel inhibited in talking to a person representing a criminal law enforcement agency but would be willing to talk to a confidential source or undercover officer who they believe is not involved in law enforcement activities. In addition, providing a source of information with written evidence that he was a source, as required by this provision, could increase the likelihood that the source of information would be the subject of retaliatory action by the subject of the investigation. Further, application of this provision could result in an unwarranted invasion of the personal privacy of the subject of the criminal investigation, particularly where further investigation would result in a finding that the subject was not involved in any criminal activity.

(x) 5 U.S.C. 552a(e)(5) requires that an agency maintain all records used by the agency in making any determination about any individual with such accuracy, relevance, timeliness and completeness as is reasonably necessary to assure fairness to the individual in the determination. Since 5 U.S.C. 552a(a)(3) defines "maintain" to include "collect" and "disseminate," application of this provision to the above-listed system of records would hinder the initial collection of any information which could not, at the moment of collection, be determined to be accurate, relevant, timely and complete. Similarly, application of this provision would seriously

restrict the necessary flow of information from the Federal Emergency Management Agency to other law enforcement agencies when a FEMA investigation revealed information pertaining to a violation of law which was under investigative jurisdiction of another agency. In collecting information during the course of a criminal investigation, it is not possible or feasible to determine accuracy, relevance, timeliness or completeness prior to collection of the information; in disseminating information to other law enforcement agencies it is often not possible to determine accuracy, relevance, timeliness or completeness prior to dissemination because the disseminating agency may not have the expertise with which to make such determinations. Further, information which may initially appear to be inaccurate, irrelevant, untimely or incomplete may, when gathered, grouped, and evaluated with other available information, become more pertinent as an investigation progresses. In addition, application of this provision could seriously impede criminal investigators and intelligence analysts in the exercise of their judgment in reporting on results obtained during criminal investigations. The Federal Emergency Management Agency believes that it is appropriate to exempt the above-listed system of records from the provisions of 5 U.S.C. 552a(e)(5).

(xi) 5 U.S.C. 552a(e)(8) requires that an agency make reasonable effort to serve notice on an individual when any record on the individual is made available to any person under compulsory legal process when such process becomes a matter of public record. The Federal Emergency Management Agency believes that the above-listed system of records should be exempt from this provision in order to avoid revealing investigative techniques and procedures outlined in those records and in order to prevent revelation of the existence on an on-going investigation where there is a need to keep the existence of the investigation secret.

(xii) 5 U.S.C. 552a(g) provides civil remedies to an individual for an agency's refusal to amend a record or to make a review of a request for amendment; for an agency's refusal to grant

access to a record; for an agency's failure to maintain accurate, relevant, timely and complete records which are used to make a determination which is adverse to the individual; and for an agency's failure to comply with any other provision of 5 U.S.C. 552a in such a way as to have an adverse effect on an individual. The Federal Emergency Management Agency believes that the above-listed system of records should be exempted from this provision to the extent that the civil remedies provided therein may relate to provisions of 5 U.S.C. 552a from which the above-listed system of records is proposed to be exempt. Since the provisions of 5 U.S.C. 552a enumerated in paragraphs (b)(2)(i) through (xi) of this section are proposed to be inapplicable to the above-listed systems of records for the reasons stated therein, there should be no corresponding civil remedies for failure to comply with the requirements of those provisions to which the exemption is proposed to apply. Further, the Federal Emergency Management Agency believes that application of this provision to the above-listed system of records would adversely affect its ability to conduct criminal investigations by exposing to civil court action every stage of the criminal investigative process in which information is compiled or used in order to identify, detect, or otherwise investigate persons suspected or known to be engaged in criminal conduct.

(xiii) Individuals may not have access to another agency's records, which are contained in files maintained by the Federal Emergency Management Agency, when that other agency's regulations provide that such records are subject to general exemption under 5 U.S.C. 552a(j). If such exempt records are within a request for access, FEMA will advise the individual of their existence and of the name and address of the source agency. For any further information concerning the record and the exemption, the individual must contact that source agency.

[45 FR 64580, Sept. 30, 1980]

#### § 6.87 Specific exemptions.

(a) *Exempt under 5 U.S.C. 552a(k)(1).* The Administrator, Federal Emergency Management Agency has determined

that certain systems of records may be exempt from the requirements of (c)(3) and (d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12356 or any subsequent Executive order and which are required to be kept secret in the interest of national defense or foreign policy. To the extent that this occurs, such records in the following systems would be exempt:

- Claims (litigation) (FEMA/GC-1)—Limited Access
- FEMA Enforcement (Compliance) (FEMA/GC-2)—Limited Access
- General Investigative Files (FEMA/IG-1)—Limited Access
- Security Management Information System (FEMA/SEC-1)—Limited Access

(b) *Exempt under 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f).* The Federal Emergency Management Agency will not deny individuals access to information which has been used to deny them a right, privilege, or benefit to which they would otherwise be entitled.

(1) *Exempt systems.* The following systems of records, which contain information of the type described in 5 U.S.C. 552a(k)(2), shall be exempt from the provisions of 5 U.S.C. 552a(k)(2) listed in paragraph (b) of this section.

- Claims (litigation) (FEMA/GC-1)—Limited Access
- FEMA Enforcement (Compliance) (FEMA/GC-2)—Limited Access
- General Investigative Files (FEMA/IG-1)—Limited Access
- Equal Employment Opportunity Complaints of Discrimination Files (FEMA/PER-2)—Limited Access

(2) *Reasons for exemptions.* (i) 5 U.S.C. 552a (e)(4)(G) and (f)(1) enable individuals to be notified whether a system of records contains records pertaining to them. The Federal Emergency Management Agency believes that application of these provisions to the above-listed systems of records would impair the ability of FEMA to successfully complete investigations and inquiries of suspected violators of civil and criminal laws and regulations under its jurisdiction. In many cases investigations and inquiries into violations of civil and criminal laws and regulations

involve complex and continuing patterns of behavior. Individuals, if informed, that they have been identified as suspected violators of civil or criminal laws and regulations, would have an opportunity to take measures to prevent detection of illegal action so as to avoid prosecution or the imposition of civil sanctions. They would also be able to learn the nature and location of the investigation or inquiry, the type of surveillance being utilized, and they would be able to transmit this knowledge to co-conspirators. Finally, violators might be given the opportunity to destroy evidence needed to prove the violation under investigation or inquiry.

(ii) 5 U.S.C. 552a (d)(1), (e)(4)(H) and (f)(2), (3) and (5) enable individuals to gain access to records pertaining to them. The Federal Emergency Management Agency believes that application of these provisions to the above-listed systems of records would impair its ability to complete or continue civil or criminal investigations and inquiries and to detect violators of civil or criminal laws. Permitting access to records contained in the above-listed systems of records would provide violators with significant information concerning the nature of the civil or criminal investigation or inquiry. Knowledge of the facts developed during an investigation or inquiry would enable violators of criminal and civil laws and regulations to learn the extent to which the investigation or inquiry has progressed, and this could provide them with an opportunity to destroy evidence that would form the basis for prosecution or the imposition of civil sanctions. In addition, knowledge gained through access to investigatory material could alert a violator to the need to temporarily postpone commission of the violation or to change the intended point where the violation is to be committed so as to avoid detection or apprehension. Further, access to investigatory material would disclose investigative techniques and procedures which, if known, could enable violators to structure their future operations in such a way as to avoid detection or apprehension, thereby neutralizing investigators' established and

effective investigative tools and procedures. In addition, investigatory material may contain the identity of a confidential source of information or other informer who would not want his/her identity to be disclosed for reasons of personal privacy or for fear of reprisal at the hands of the individual about whom he/she supplied information. In some cases mere disclosure of the information provided by an informer would reveal the identity of the informer either through the process of elimination or by virtue of the nature of the information supplied. If informers cannot be assured that their identities (as sources for information) will remain confidential, they would be very reluctant in the future to provide information pertaining to violations of criminal and civil laws and regulations, and this would seriously compromise the ability of the Federal Emergency Management Agency to carry out its mission. Further, application of 5 U.S.C. 552a (d)(1), (e)(4)(H) and (f)(2), (3) and (5) to the above-listed systems of records would make available attorney's work product and other documents which contain evaluations, recommendations, and discussions of ongoing civil and criminal legal proceedings; the availability of such documents could have a chilling effect on the free flow of information and ideas within the Federal Emergency Management Agency which is vital to the agency's predecisional deliberative process, could seriously prejudice the agency's or the Government's position in a civil or criminal litigation, and could result in the disclosure of investigatory material which should not be disclosed for the reasons stated above. It is the belief of the Federal Emergency Management Agency that, in both civil actions and criminal prosecutions, due process will assure that individuals have a reasonable opportunity to learn of the existence of, and to challenge, investigatory records and related materials which are to be used in legal proceedings.

(iii) 5 U.S.C. 552a (d)(2), (3) and (4), (e)(4)(H) and (f)(4) which are dependent upon access having been granted to records pursuant to the provisions cited in paragraph (b)(2)(ii) of this section, enable individuals to contest

(seek amendment to) the content of records contained in a system of records and require an agency to note an amended record and to provide a copy of an individual's statement (of disagreement with the agency's refusal to amend a record) to persons or other agencies to whom the record has been disclosed. The Federal Emergency Management Agency believes that the reasons set forth in paragraphs (b)(2)(i) of this section are equally applicable to this paragraph, and, accordingly, those reasons are hereby incorporated herein by reference.

(iv) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request; such accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. The Federal Emergency Management Agency believes that application of this provision to the above-listed systems of records would impair the ability of the Federal Emergency Management Agency and other law enforcement agencies to conduct investigations and inquiries into civil and criminal violations under their respective jurisdictions. Making accountings available to violators would alert those individuals to the fact that the Federal Emergency Management Agency or another law enforcement authority is conducting an investigation or inquiry into their activities, and such accountings could reveal the geographic location of the investigation or inquiry, the nature and purpose of the investigation or inquiry and the nature of the information disclosed, and the date on which that investigation or inquiry was active. Violators possessing such knowledge would thereby be able to take appropriate measures to avoid detection or apprehension by altering their operations, transferring their activities to other locations or destroying or concealing evidence which would form the basis for prosecution or the imposition of civil sanctions.

(v) 5 U.S.C. 552a(e)(1) requires that an agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required

to be accomplished by statute or executive order. The term *maintain* as defined in 5 U.S.C. 552a(a)(3) includes “collect” and “disseminate.” At the time that information is collected by the Federal Emergency Management Agency there is often insufficient time to determine whether the information is relevant and necessary to accomplish a purpose of the Federal Emergency Management Agency; in many cases information collected may not be immediately susceptible to a determination of whether the information is relevant and necessary, particularly in the early stages of investigation or inquiry, and in many cases information which initially appears to be irrelevant or unnecessary may, upon further evaluation or upon continuation of the investigation or inquiry, prove to have particular relevance to an enforcement program of the Federal Emergency Management Agency. Further, not all violations of law uncovered during a Federal Emergency Management Agency inquiry fall within the civil or criminal jurisdiction of the Federal Emergency Management Agency; in order to promote effective law enforcement, it often becomes necessary and desirable to disseminate information pertaining to such violations to other law enforcement agencies which have jurisdiction over the offense to which the information relates. The Federal Emergency Management Agency should not be placed in a position of having to ignore information relating to violations of law not within its jurisdiction when that information comes to the attention of the Federal Emergency Management Agency through the conduct of a lawful FEMA’s civil or criminal investigation or inquiry. The Federal Emergency Management Agency therefore believes that it is appropriate to exempt the above-listed systems of records from the provisions of 5 U.S.C. 552a(e)(1).

(c) *Exempt under 5 U.S.C. 552a(k)(5).* The Administrator, Federal Emergency Management Agency has determined that certain systems of records are exempt from the requirements of (c)(3) and (d) of 5 U.S.C. 552a.

(1) *Exempt systems.* The following systems of records, which contain information

of the type described in 5 U.S.C. 552a(k)(5), shall be exempted from the provisions of 5 U.S.C. 552a listed in paragraph (c) of this section.

- Claims (litigation) (FEMA/GC-1)—Limited Access
- FEMA Enforcement (Compliance) (FEMA/GC-2)—Limited Access
- General Investigative Files (FEMA/IG-2)—Limited Access
- Security Management Information Systems (FEMA/SEC-1)—Limited Access

(2) *Reasons for exemptions.* All information about individuals in these records that meet the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a (c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosure available to the subject and access to and amendment of records. These exemptions are claimed because the system of records entitled, FEMA/SEC-1, Security Management Information System, contains investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for access to classified information or classified Federal contracts, but only to the extent that the disclosure would reveal the identity of a source who furnished information to the Government under an express promise or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. During the litigation process and investigations, it is possible that certain records from the system of records entitled, FEMA/SEC-1, Security Management System may be necessary and relevant to the litigation or investigation and included in these systems of records. To the extent that this occurs, the Administrator, FEMA, has determined that the records would also be exempted from subsections (c)(3) and (d) pursuant to 5 U.S.C. 552a(k)(5) to protect such records. A determination will be made at the time of the request for a record concerning whether specific information would reveal the identity of a source. This exemption is



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required in order to protect the confidentiality of the sources of information compiled for the purpose of determining access to classified information. This confidentiality helps maintain the Government's continued access to information from persons who would otherwise refuse to give it.

[45 FR 64580, Sept. 30, 1980, as amended at 47 FR 54816, Dec. 6, 1982; 52 FR 5114, Feb. 19, 1987]

**PART 7—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS (FEMA REG. 5)**

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SOURCE: 30 FR 321, Jan. 9, 1965, unless otherwise noted. Redesignated at 45 FR 44575, July 1, 1980.

**Subpart A—Nondiscrimination in FEMA-Assisted Programs—General**

AUTHORITY: FEMA Reg. 5 issued under sec. 602, 78 Stat. 252; 42 U.S.C. 2000 d–1; 42 U.S.C. 1855–1885g; 50 U.S.C. 404.

SOURCE: 30 FR 321, Jan. 9, 1965, unless otherwise noted. Redesignated at 45 FR 44575, July 1, 1980, and further redesignated at 55 FR 23078, June 6, 1990.

**§ 7.1 Purpose.**

The purpose of this regulation is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the “Act”) to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Federal Emergency Management Agency.

§ 7.2 Definitions.

As used in this regulation:

(a) The term *responsible agency official* with respect to any program receiving Federal financial assistance means the Administrator of the Federal Emergency Management Agency or other official of the agency who by law or by delegation has the principal responsibility within the agency for the administration of the law extending such assistance.

(b) The term *United States* means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term *State* means any one of the foregoing.

(c) The term *Federal financial assistance* includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(d) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (d)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (d)(1), (2), or (3) of this section.

(e) The term *facility* includes all or any portion of structure, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(f) The term *recipient* means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary.

(g) The term *primary recipient* means any recipient which is authorized or required to extend Federal financial assistance to another recipient.

(h) The term *applicant* means one who submits an application, request, or plan required to be approved by a responsible agency official, or by a primary recipient, as a condition to eligibility for Federal financial assistance,

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and the term *application* means such an application, request, or plan.

[30 FR 321, Jan. 9, 1965. Redesignated at 45 FR 44575, July 1, 1980, and further redesignated at 55 FR 23078, June 6, 1990. 68 FR 51379, Aug. 26, 2003]

#### § 7.3 Application of this regulation.

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this regulation applies.

[68 FR 51379, Aug. 26, 2003]

#### § 7.4 Further application of this regulation.

This regulation applies to any program for which Federal financial assistance is authorized under a law administered by the Federal Emergency Management Agency. It applies to money paid, property transferred, or other Federal financial assistance extended after the effective date of the regulation pursuant to an application approved prior to such effective date. This regulation does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended before the effective date of this regulation, (c) any assistance to any individual who is the ultimate beneficiary, or (d) any employment practice, under such program, of any employer, employment agency, or labor organization.

(Reorganization Plan No. 3 of 1973, E.O. 12127 and E.O. 12148)

[30 FR 321, Jan. 9, 1965. Redesignated at 45 FR 44575, July 1, 1980, as amended at 48 FR 44543, Sept. 29, 1983; 68 FR 51379, Aug. 26, 2003]

#### § 7.5 Specific discriminatory actions prohibited.

(a) A recipient to which this regulation applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(1) Deny any individual any service, financial aid, or other benefit provided under the program;

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(2) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(3) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(4) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(5) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(6) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program.

(b) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

(c) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

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(d) The enumeration of specific forms of prohibited discrimination in this section does not limit the generality of the prohibition in section 4.

[30 FR 321, Jan. 9, 1965. Redesignated at 45 FR 44575, July 1, 1980, and further redesignated at 55 FR 23078, June 6, 1990. 68 FR 51379, Aug. 26, 2003]

### § 7.6 Life, health, and safety.

Notwithstanding the provisions of section 5, a recipient of Federal financial assistance shall not be deemed to have failed to comply with section 3, if immediate provision of a service or other benefit to an individual is necessary to prevent his death or serious impairment of his health or safety.

### § 7.7 Assurances required.

Every application for Federal financial assistance to which this regulation applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this regulation. In the case of an application for Federal financial assistance to provide real property or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case of personal property the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The responsible agency official shall specify the form of the foregoing assurances and the extent to which like assurances will be required of subgrantee, contractors and subcontractors, transferees, successors in interest, and other participants. Any such assurance shall include provisions

which give the United States a right to seek its judicial enforcement.

[30 FR 321, Jan. 9, 1965. Redesignated at 45 FR 44575, July 1, 1980, and further redesignated at 55 FR 23078, June 6, 1990. 68 FR 51379, Aug. 26, 2003]

### § 7.8 Elementary and secondary schools.

The requirements of section 7 with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (a) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (b) submits a plan for the desegregation of such school or school system which the United States Commissioner of Education determines is adequate to accomplish the purpose of the Act and this regulation, and provides reasonable assurance that it will carry out such plans; in any case of continuing Federal financial assistance the responsible agency official may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and this regulation. In any case to which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order.

### § 7.9 Assurances from institutions.

(a) In the case of any application for Federal financial assistance to an institution of higher education, the assurance required by section 7 shall extend to admission practices and to all other practices relating to the treatment of students.

(b) The assurances required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institutions or to the opportunity to participate in the provision

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of services or other benefits to such individuals, shall be applicable to the entire institution.

[30 FR 321, Jan. 9, 1965. Redesignated at 45 FR 44575, July 1, 1980, and further redesignated at 55 FR 23078, June 6, 1990. 68 FR 51379, Aug. 26, 2003]

### § 7.10 Compliance information.

(a) *Cooperation and assistance.* The responsible official in the Federal Emergency Management Agency shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this regulation and shall provide assistance and guidance to recipients to help them comply voluntarily with this regulation.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible agency official or his designee timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible agency official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this regulation. In the case in which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this regulation.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible agency official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this regulation. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of

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this regulation and its applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible agency official finds necessary to apprise such persons of the protection against discrimination assured them by the Act and this regulation.

[30 FR 321, Jan. 9, 1965. Redesignated at 45 FR 44575, July 1, 1980, and further redesignated at 55 FR 23078, June 6, 1990. 68 FR 51379, Aug. 26, 2003]

### § 7.11 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible agency official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this regulation.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this regulation may by himself or by a representative file a written complaint with the National Headquarters or any Regional Office of the Federal Emergency Management Agency. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible agency official or his designee.

(c) *Investigations.* The responsible agency official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this regulation. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this regulation occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this regulation.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this regulation, the responsible agency official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been

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determined that the matter cannot be resolved by informal means, action will be taken as provided for in section 12.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section the responsible agency official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this regulation, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this regulation. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this regulation, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

[30 FR 321, Jan. 9, 1965. Redesignated at 45 FR 44575, July 1, 1980, and further redesignated at 55 FR 23078, June 6, 1990, as amended at 64 FR 38309, July 16, 1999]

### §7.12 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this regulation, and if the non-compliance or threatened non-compliance cannot be corrected by informal means, compliance with this regulation may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under state or local law.

(b) *Noncompliance with section 7.* If an applicant fails or refuses to furnish an assurance required under section 7 or otherwise fails or refuses to comply

with a requirement imposed by or pursuant to that section Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The agency shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the agency shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application thereof approved prior to the effective date of this regulation.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible agency official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this regulation, (3) the action has been approved by the Administrator of the Federal Emergency Management Agency pursuant to section 14, and (4) the expiration of 30 days after the Administrator has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible agency official has determined that compliance cannot be secured by voluntary means, (2) the action has been approved by the Administrator of the Federal Emergency Management Agency, (3)

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the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (4) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

### § 7.13 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by section 12(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible agency official that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this subsection or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and section 12(c) of this regulation and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the National Headquarters of the Federal Emergency Management Agency in Washington, DC, at a time fixed by the responsible agency official unless he determines that the convenience of the applicant

or recipient or of the agency requires that another place be selected. Hearings shall be held before the responsible agency official or, at his discretion, before a hearing examiner designated in accordance with section 11 of the Administrative Procedure Act.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the agency shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 5–8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the agency and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this regulation, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute non-compliance with this regulation with

respect to two or more Federal statutes, authorities, or other means by which Federal financial assistance is extended and to which this regulation applies, or noncompliance with this regulation and the regulations of one or more other Federal departments or agencies issued under title VI of the Act, the Administrator of the Federal Emergency Management Agency may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this regulation. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with section 14.

[30 FR 321, Jan. 9, 1965. Redesignated at 45 FR 44575, July 1, 1980, and further redesignated at 55 FR 23078, June 6, 1990. 68 FR 51379, Aug. 26, 2003]

#### § 7.14 Decisions and notices.

(a) *Decision by person other than the responsible agency official.* If the hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible agency official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the responsible agency official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible agency official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible agency official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible agency official.

(b) *Decisions on record or review by the responsible agency official.* Whenever a record is certified to the responsible agency official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever he conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of his final decision shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to section 13(a) a decision shall be made by the responsible agency official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or responsible agency official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this regulation with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Administrator.* Any final decision of a responsible agency official (other than the Administrator of the agency) which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this regulation or the Act, shall promptly be transmitted to the Administrator of the Federal Emergency Management Agency who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, to which this regulation applies, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this regulation, including provisions designed to assure that no Federal financial assistance to which this regulation applies will thereafter be extended to the applicant or recipient determined



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by such decision to be in default in its performance of an assurance given by it pursuant to this regulation, or to have otherwise failed to comply with this regulation, unless and until it corrects its noncompliance and satisfies the Administrator of the Federal Emergency Management Agency that it will fully comply with this regulation.

[30 FR 321, Jan. 9, 1965. Redesignated at 45 FR 44575, July 1, 1980, and further redesignated at 55 FR 23078, June 6, 1990. 68 FR 51379, Aug. 26, 2003]

## § 7.15 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

## § 7.16 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of the Federal Emergency Management Agency which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this regulation applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this regulation, except that nothing in this regulation shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this regulation. Nothing in this regulation, however, shall be deemed to supersede Executive Orders 10925 and 11114 (including future amendments thereof) and regulations issued thereunder, or any other regulations or instructions, insofar as such regulations or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this regulation is inapplicable, or prohibit discrimination on any other ground.

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(b) *Forms and instructions.* Each responsible agency official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this regulation as applied to programs to which this regulation applies and for which he is responsible.

(c) *Supervision and coordination.* The Administrator of the Federal Emergency Management Agency may from time to time assign to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this regulation (other than responsibility for final decision as provided in section 14), including the achievement of effective coordination and maximum uniformity within the agency and within the Executive Branch of the Government in the application of title VI and this regulation to similar programs and in similar situations.

[30 FR 321, Jan. 9, 1965. Redesignated at 45 FR 44575, July 1, 1980, and further redesignated at 55 FR 23078, June 6, 1990. 68 FR 51379, Aug. 26, 2003]

## Subparts B–D [Reserved]

## Subpart E—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance From FEMA

AUTHORITY: Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*); 45 CFR part 90.

SOURCE: 55 FR 23078, June 6, 1990, unless otherwise noted.

### GENERAL

## § 7.910 What is the purpose of the Age Discrimination Act of 1975?

The Age Discrimination Act of 1975 (the “Act”), as amended, is designed to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act also permits federally-assisted programs or activities, and recipients of Federal funds, to continue to use certain age distinctions and factors other

than age which meet the requirements of the Act and this regulation.

[55 FR 23078, June 6, 1990, as amended at 68 FR 51380, Aug. 26, 2003]

**§ 7.911 What is the purpose of FEMA’s age discrimination regulation?**

The purpose of this regulation is to set out FEMA’s policies and procedures under the Age Discrimination Act of 1975 and the general governmentwide regulations, 45 CFR part 90. The Act and the general regulations prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act and the general regulations permit federally-assisted programs or activities, and recipients of Federal funds, to continue to use age distinctions and factors other than age which meet the requirements of the Act and its implementing regulations.

[55 FR 23078, June 6, 1990, as amended at 68 FR 51380, Aug. 26, 2003]

**§ 7.912 To what programs or activities does this regulation apply?**

(a) The Act and this regulation apply to each FEMA recipient and to each program or activity operated by the recipient which receives Federal financial assistance provided by FEMA.

(b) The Act and this regulation do not apply to:

(1) An age distinction contained in that part of a Federal, State or local statute or ordinance adopted by an elected, general purpose legislative body which:

- (i) Provides any benefits or assistance to persons based on age; or
- (ii) Establishes criteria for participation in age-related terms; or
- (iii) Describes intended beneficiaries or target groups in age-related terms.

(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program, except for any program or activity receiving Federal financial assistance for public service employment under the Job Training Partnership Act (29 U.S.C. 150, *et seq.*)

[55 FR 23078, June 6, 1990, as amended at 68 FR 51380, Aug. 26, 2003]

**§ 7.913 Definition of terms used in this regulation.**

As used in this regulation, the term *Act* means the Age Discrimination Act of 1975 as amended (title III of Pub. L. 94-135).

*Action* means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard or method of administration.

*Administrator* means the Administrator of the Federal Emergency Management Agency.

*Age* means how old a person is, or the number of years from the date of a person’s birth.

*Age distinction* means any action using age or an age-related term.

*Age-related term* means a word or words which necessarily imply a particular age or range of ages (for example, *children*, *older persons*, but not *student*).

*Agency* means the Federal Emergency Management Agency.

*Federal financial assistance* means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

- (a) Funds; or
- (b) Services or Federal personnel; or
- (c) Real and personal property or any interest in or use of property, including:

(1) Transfers or leases of property for less than fair market value or for reduced consideration; and

(2) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal Government.

*Normal operation* means the operation of a program or activity without significant changes that would impair its ability to meet its objective.

*Program or activity* means all of the operations of any entity described in paragraphs (1) through (4) of this definition, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

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(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3) of this definition.

*Recipient* means any State or its political subdivision, any instrumentality of a State or its political subdivision, institution, organization, or other entity, or any person to which Federal financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee, but excludes the ultimate beneficiary of the assistance.

*Statutory objective* means any purpose of a program or activity expressly stated in any Federal statute, State statute or local statute or ordinance adopted by an elected, general purpose legislative body.

*Subrecipient* means any of the entities in the definition of “recipient” to which a recipient extends or passes on Federal financial assistance. A subrecipient is generally regarded as a recipient of Federal financial assistance

and has all the duties of a recipient in these regulations.

*United States* includes the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Wake Island, the Canal Zone, the Trust Territory of the Pacific Islands and all other territories and possessions of the United States. The term “State” also includes any one of the foregoing.

[55 FR 23078, June 6, 1990, as amended at 68 FR 51380, Aug. 26, 2003; 74 FR 15335, Apr. 3, 2009]

STANDARDS FOR DETERMINING AGE DISCRIMINATION

§ 7.920 Rules against discrimination.

The rules stated in this section are limited by the exceptions contained in §§7.921 and 7.922 of these regulations.

(a) *General rule:* No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

(b) *Specific rules:* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual licensing, or other arrangements, use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) Excluding individuals from, denying them the benefits of, subjecting them to discrimination under, a program or activity receiving Federal financial assistance; or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance. The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

§ 7.921 Exceptions to the rules against age discrimination: Normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action, otherwise prohibited by §7.920, if the action reasonably takes into account age as a factor necessary to the

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normal operation of the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(a) Age is used as a measure or approximation of one or more other characteristics; and

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(d) The other characteristic(s) are impractical to measure directly on an individual basis.

### § 7.922 Exceptions to the rules against age discrimination: Reasonable factors other than age.

A recipient is permitted to take an action otherwise prohibited by § 7.920 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

### § 7.923 Burden of proof for exceptions.

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 7.921 and 7.922 is on the recipient of Federal financial assistance.

### § 7.924 Affirmative action by recipient.

Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in the limited participation in the recipient's program or activity on the basis of age.

### § 7.925 Special benefits for children and the elderly.

If a recipient operating a program or activity provides special benefits to the elderly or to children, such use of age distinctions shall be presumed to be necessary to the normal operation

of the program or activity, notwithstanding the provisions of § 7.921.

[55 FR 23078, June 6, 1990, as amended at 68 FR 51380, Aug. 26, 2003]

### § 7.926 Age distinctions contained in FEMA regulations.

Any age distinctions contained in a rule or regulation issued by FEMA shall be presumed to be necessary to the achievement of a statutory objective of the program or activity to which the rule or regulation applies, notwithstanding the provisions of § 7.921.

[55 FR 23078, June 6, 1990, as amended at 68 FR 51380, Aug. 26, 2003]

## DUTIES OF FEMA RECIPIENTS

### § 7.930 General responsibilities.

Each FEMA recipient has primary responsibility to ensure that its programs or activities are in compliance with the Act and this regulation, and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford FEMA access to its records to the extent FEMA finds necessary to determine whether the recipient is in compliance with the Act and this regulation.

[55 FR 23078, June 6, 1990, as amended at 68 FR 51380, Aug. 26, 2003]

### § 7.931 Notice to subrecipients and beneficiaries.

(a) Where a recipient passes on Federal financial assistance from FEMA to subrecipients, the recipient shall provide the subrecipients written notice of their obligations under the Act and this regulation.

(b) Each recipient shall make necessary information about the Act and this regulation available to its beneficiaries in order to inform them about the protection against discrimination provided by the Act and this regulation.

[55 FR 23078, June 6, 1990, as amended at 68 FR 51380, Aug. 26, 2003]

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**§ 7.932 Assurance of compliance and recipient assessment of age distinctions.**

(a) Each recipient of Federal financial assistance from FEMA shall sign a written assurance as specified by FEMA that it will comply with Act and this regulation.

(b) Recipient assessment of age distinctions. (1) As part of the compliance review under § 7.940 or complaint investigation under § 7.943, FEMA may require a recipient employing the equivalent of fifteen or more employees to complete written evaluation, in a manner specified by the responsible Agency official, of any age distinction imposed in its program or activity receiving Federal financial assistance from FEMA to assess the recipient’s compliance with the Act.

(2) Whenever an assessment indicates a violation of the Act and the FEMA regulations, the recipient shall take corrective action.

**§ 7.933 Information requirement.**

Each recipient shall:

(a) Keep records in a form acceptable to FEMA and containing information which FEMA determines are necessary to ascertain whether the recipient is complying with the Act and this regulation.

(b) Provide to FEMA, upon request, information and reports which FEMA determines are necessary to ascertain whether the recipient is complying with the Act and this regulation.

(c) Permit FEMA reasonable access to the books, records, accounts, and other recipient facilities and sources of information to the extent FEMA determines is necessary to ascertain whether the recipient is complying with the Act and this regulation.

**INVESTIGATION, CONCILIATION, AND ENFORCEMENT PROCEDURES**

**§ 7.940 Compliance reviews.**

(a) FEMA may conduct compliance reviews and preaward reviews or use other similar procedures that will permit it to investigate and correct violations of the Act and this regulation. FEMA may conduct these reviews even in the absence of a complaint against a recipient. The reviews may be as com-

prehensive as necessary to determine whether a violation of the Act and this regulation has occurred.

(b) If a compliance review or preaward review indicates a violation of the Act or this regulation, FEMA will attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, FEMA will arrange for enforcement as described in § 7.945.

**§ 7.941 Complaints.**

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with FEMA, alleging discrimination prohibited by the Act or these regulations occurring after the date of final adoption of this rule. A complainant shall file a complaint within 180 days from the date the complainant first had knowledge of the alleged act of discrimination. However, for good cause showing, FEMA may extend this time limit.

(b) FEMA will consider the date a complaint is filed to be the date upon which the complaint is sufficient to be processed. A complaint is deemed “sufficient” when it contains particulars (e.g., names, addresses, and telephone numbers of parties involved; date(s) of alleged discrimination; kind(s) of alleged discrimination) upon which to begin an investigation.

(c) FEMA will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:

(1) Accepting as a sufficient complaint any written statement which identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and is signed by the complainant.

(2) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint.

(3) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

(4) Notifying the complainant and the recipient (or their representatives)

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of their right to contact FEMA for information and assistance regarding the complaint resolution process.

(d) FEMA will return to the complainant any complaint outside the jurisdiction of this regulation, and will state the reason(s) why it is outside the jurisdiction of this regulation.

### § 7.942 Mediation.

(a) FEMA will promptly refer to a mediation agency designated by the Administrator all sufficient complaints that:

(1) Fall within the jurisdiction of the Act and this regulation, unless the age distinction complained of is clearly within an exception; and,

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or for the mediator to make an informed judgment that an agreement is not possible.

(c) If the complainant and the recipient reach an agreement, the mediator shall prepare a written statement of the agreement and have the complainant and the recipient sign it. The mediator shall send a copy of the agreement to FEMA. FEMA will take no further action on the complaint unless the complainant or the recipient fails to comply with the agreement.

(d) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the mediation agency.

(e) The mediation will proceed for a maximum of 60 days after a complaint is filed with FEMA. Mediation ends if:

(1) Sixty days elapse from the time the complaint is filed; or

(2) Prior to the end of that 60 day period, an agreement is reached; or

(3) Prior to the end of that 60 day period, the mediator determines that an agreement cannot be reached. This 60 day period may be extended by the mediator, with the concurrence of FEMA, for not more than 30 days if the medi-

ator determines agreement will likely be reached during such extended period.

(f) The mediator shall return unresolved complaints to FEMA.

### § 7.943 Investigation.

(a) *Informal investigation.* (1) FEMA will investigate complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement.

(2) As part of the initial investigation, FEMA will use informal fact finding methods, including joint or separate discussion with the complainant and recipient, to establish the facts and, if possible, settle the complaint on terms that are mutually agreeable to the parties. FEMA may seek the assistance of any involved state agency.

(3) FEMA will put any agreement in writing and have it signed by the parties and an authorized official at FEMA.

(4) The settlement shall not affect the operation of any other enforcement effort of FEMA, including compliance reviews and investigation of other complaints which may involve the recipient.

(5) The settlement is not a finding of discrimination against a recipient.

(b) *Formal investigation.* If FEMA cannot resolve the complaint through informal investigation, it will begin to develop formal findings through further investigation of the complaint. If the investigation indicates a violation of this regulation, FEMA will attempt to obtain voluntary compliance, it will begin enforcement as described in § 7.945.

[55 FR 23078, June 6, 1990, as amended at 68 FR 51380, Aug. 26, 2003]

### § 7.944 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act or this regulation; or

(b) Cooperates in any mediation, investigation, hearing, or other part of FEMA's investigation, conciliation and enforcement process.

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### § 7.945 Compliance procedure.

(a) FEMA may enforce the Act and this regulation through:

(1) Termination of a recipient's Federal financial assistance from FEMA under the program or activity involved where the recipient has violated the Act or this regulation. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or this regulation.

(ii) Use of any requirement of or referral to any Federal, State or local government agency that will have the effect of correcting a violation of the Act or this regulation.

(b) FEMA will limit any termination under § 7.945(a)(1) to the particular recipient and particular program or activity or part of such program or activity FEMA finds in violation of this regulation. FEMA will not base any part of a termination on a finding with respect to any program or activity of the recipient which does not receive Federal financial assistance from FEMA.

(c) FEMA will take no action under paragraph (a) until:

(1) The Administrator has advised the recipient of its failure to comply with the Act and this regulation and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the Administrator has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the program or activity involved. The Administrator will file a report whenever any action is taken under paragraph (a).

(d) FEMA also may defer granting new Federal financial assistance from FEMA to a recipient when a hearing under § 7.945(a)(1) is initiated.

(1) New Federal financial assistance from FEMA includes all assistance for which FEMA requires an application or approval, including renewal or continuation of existing activities, or author-

ization of new activities, during the deferral period. New Federal financial assistance from FEMA does not include increases in funding as a result of changed computation of formula awards or assistance approved prior to the beginning of a hearing under § 7.945(a)(1).

(2) FEMA will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under § 7.945(a)(1). FEMA will not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

(3) FEMA will limit any deferral to the particular recipient and particular program or activity or part of such program or activity FEMA finds in violation of this regulation. FEMA will not base any part of a deferral on a finding with respect to any program or activity of the recipient which does not and would not, in connection with new funds, receive Federal financial assistance from FEMA.

[55 FR 23078, June 6, 1990, as amended at 68 FR 51380, Aug. 26, 2003]

### § 7.946 Hearings, decisions, post-termination proceedings.

Certain FEMA procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to FEMA enforcement of this regulation. They are found at 44 CFR 7.10 through 7.16.

### § 7.947 Remedial action by recipient.

Where FEMA finds a recipient has discriminated on the basis of age, the recipient shall take any remedial action that FEMA may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that had discriminated, FEMA may require both recipients to take remedial action.

### § 7.948 Alternate funds disbursement procedure.

(a) When FEMA withholds funds from recipient under this regulation, the Administrator may, if allowable under the statute governing the assistance,

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disburse the withheld funds directly to an alternate recipient: Any public or nonprofit private organization or agency, or State or political subdivision of the State.

(b) The Administrator will require any alternate recipient to demonstrate:

(1) The ability to comply with this regulation; and

(2) The ability to achieve the goals of the Federal statute authorizing the Federal financial assistance.

[55 FR 23078, June 6, 1990, as amended at 68 FR 51380, Aug. 26, 2003]

### § 7.949 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and FEMA had made no finding with regard to the complaint; or

(2) FEMA issues any finding in favor of the recipient.

(b) If FEMA fails to make a finding within 180 days or issues a finding in favor of the recipient, FEMA shall:

(1) Promptly advise the complainant in writing of this fact; and

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant:

(i) That the complainant may bring a civil action only in a United States District Court for the district in which the recipient is located or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint at the time it is filed.

(iii) That before commencing the action, the complainant shall give 30 days notice by registered mail to the Administrator, the Attorney General of the United States, and the recipient;

(iv) That the notice must state: The alleged violation of the Act; the relief requested; the court in which the complainant is bringing the action; and whether or not attorney's fees are de-

manded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court (Federal or State) of the United States.

## PART 8 [RESERVED]

## PART 9—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS

Sec.

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APPENDIX A TO PART 9—DECISION-MAKING PROCESS FOR E.O. 11988

AUTHORITY: E.O. 11988 of May 24, 1977, 3 CFR, 1977 Comp., p. 117; E.O. 11990 of May 24, 1977, 3 CFR, 1977 Comp., p. 121; 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.; E.O. 12127; E.O. 12148; 42 U.S.C. 5201.

SOURCE: 45 FR 59526, Sept. 9, 1980, unless otherwise noted.

### § 9.1 Purpose of part.

This regulation sets forth the policy, procedure and responsibilities to implement and enforce Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands.



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### §9.2 Policy.

(a) FEMA shall take no action unless and until the requirements of this regulation are complied with.

(b) It is the policy of the Agency to provide leadership in floodplain management and the protection of wetlands. Further, the Agency shall integrate the goals of the Orders to the greatest possible degree into its procedures for implementing NEPA. The Agency shall take action to:

(1) Avoid long- and short-term adverse impacts associated with the occupancy and modification of floodplains and the destruction and modification of wetlands;

(2) Avoid direct and indirect support of floodplain development and new construction in wetlands wherever there is a practicable alternative;

(3) Reduce the risk of flood loss;

(4) Promote the use of nonstructural flood protection methods to reduce the risk of flood loss;

(5) Minimize the impact of floods on human health, safety and welfare;

(6) Minimize the destruction, loss or degradation of wetlands;

(7) Restore and preserve the natural and beneficial values served by floodplains;

(8) Preserve and enhance the natural values of wetlands;

(9) Involve the public throughout the floodplain management and wetlands protection decision-making process;

(10) Adhere to the objectives of the Unified National Program for Floodplain Management; and

(11) Improve and coordinate the Agency's plans, programs, functions and resources so that the Nation may attain the widest range of beneficial uses of the environment without degradation or risk to health and safety.

### §9.3 Authority.

The authority for these regulations is (a) Executive Order 11988, May 24, 1977, which replaced Executive Order 11296, August 10, 1966, (b) Executive Order 11990, May 24, 1977, (c) Reorganization Plan No. 3 of 1978 (43 FR 41943); and (d) Executive Order 12127, April 1, 1979 (44 FR 1936). E.O. 11988 was issued in furtherance of the National Flood Insurance Act of 1968, as amended (Pub. L. 90-488); the Flood Disaster Protec-

tion Act of 1973, as amended (Pub. L. 93-234); and the National Environmental Policy Act of 1969 (NEPA) (Pub. L. 91-190). Section 2(d) of Executive Order 11988 requires issuance of new or amended regulations and procedures to satisfy its substantive and procedural provisions. E.O. 11990 was issued in furtherance of NEPA, and at section 6 required issuance of new or amended regulations and procedures to satisfy its substantive and procedural provisions.

[45 FR 59526, Sept. 9, 1980, as amended at 48 FR 44543, Sept. 29, 1983]

### §9.4 Definitions.

The following definitions shall apply throughout this regulation.

*Action* means any action or activity including: (a) Acquiring, managing and disposing of Federal lands and facilities; (b) providing federally undertaken, financed or assisted construction and improvements; and (c) conducting Federal activities and programs affecting land use, including, but not limited to, water and related land resources, planning, regulating and licensing activities.

*Actions Affecting or Affected by Floodplains or Wetlands* means actions which have the potential to result in the long- or short-term impacts associated with (a) the occupancy or modification of floodplains, and the direct or indirect support of floodplain development, or (b) the destruction and modification of wetlands and the direct or indirect support of new construction in wetlands.

*Administrator* means the Administrator of the Federal Emergency Management Agency.

*Agency* means the Federal Emergency Management Agency (FEMA).

*Agency Assistance* means grants for projects or planning activities, loans, and all other forms of financial or technical assistance provided by the Agency.

*Base Flood* means the flood which has a one percent chance of being equalled or exceeded in any given year (also known as a 100-year flood). This term is used in the National Flood Insurance Program (NFIP) to indicate the minimum level of flooding to be used by a community in its floodplain management regulations.

*Base Floodplain* means the 100-year floodplain (one percent chance floodplain).

*Coastal High Hazard Area* means the areas subject to high velocity waters including but not limited to hurricane wave wash or tsunamis. On a Flood Insurance Rate Map (FIRM), this appears as zone V1-30, VE or V.

*Critical Action* means an action for which even a slight chance of flooding is too great. The minimum floodplain of concern for critical actions is the 500-year floodplain, i.e., critical action floodplain. Critical actions include, but are not limited to, those which create or extend the useful life of structures or facilities:

(a) Such as those which produce, use or store highly volatile, flammable, explosive, toxic or water-reactive materials;

(b) Such as hospitals and nursing homes, and housing for the elderly, which are likely to contain occupants who may not be sufficiently mobile to avoid the loss of life or injury during flood and storm events;

(c) Such as emergency operation centers, or data storage centers which contain records or services that may become lost or inoperative during flood and storm events; and

(d) Such as generating plants, and other principal points of utility lines.

*Direct Impacts* means changes in floodplain or wetland values and functions and changes in the risk to lives and property caused or induced by an action or related activity. Impacts are caused whenever these natural values and functions are affected as a direct result of an action. An action which would result in the discharge of polluted storm waters into a floodplain or wetland, for example, would directly affect their natural values and functions. Construction-related activities, such as dredging and filling operations within the floodplain or a wetland would be another example of impacts caused by an action.

*Emergency Actions* means emergency work essential to save lives and protect property and public health and safety performed under sections 305 and 306 of the Disaster Relief Act of 1974 (42 U.S.C. 5145 and 5146). See 44 CFR part 205, subpart E.

*Enhance* means to increase, heighten, or improve the natural and beneficial values associated with wetlands.

*Facility* means any man-made or man-placed item other than a structure.

*FEMA* means the Federal Emergency Management Agency.

*FIA* means the Federal Insurance Administration.

*Five Hundred Year Floodplain* (the 500-year floodplain or 0.2 percent change floodplain) means that area, including the base floodplain, which is subject to inundation from a flood having a 0.2 percent chance of being equalled or exceeded in any given year.

*Flood or flooding* means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters, and/or the unusual and rapid accumulation or runoff of surface waters from any source.

*Flood Fringe* means that portion of the floodplain outside of the floodway (often referred to as “floodway fringe”).

*Flood Hazard Boundary Map* (FHBM) means an official map of a community, issued by the Administrator, where the boundaries of the flood, mudslide (i.e., mudflow) and related erosion areas having special hazards have been designated as Zone A, M, or E.

*Flood Insurance Rate Map* (FIRM) means an official map of a community on which the Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. FIRMs are also available digitally, and are called Digital Flood Insurance Rate Maps (DFIRM).

*Flood Insurance Study* (FIS) means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

*Floodplain* means the lowland and relatively flat areas adjoining inland and coastal waters including, at a minimum, that area subject to a one percent or greater chance of flooding in any given year. Wherever in this regulation the term “floodplain” is used, if

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a critical action is involved, “floodplain” shall mean the area subject to inundation from a flood having a 0.2 percent chance of occurring in any given year (500-year floodplain). “Floodplain” does not include areas subject only to mudflow until FIA adopts maps identifying “M” Zones.

*Floodproofing* means the modification of individual structures and facilities, their sites, and their contents to protect against structural failure, to keep water out, or to reduce effects of water entry.

*Floodway* means that portion of the floodplain which is effective in carrying flow, within which this carrying capacity must be preserved and where the flood hazard is generally highest, i.e., where water depths and velocities are the greatest. It is that area which provides for the discharge of the base flood so the cumulative increase in water surface elevation is no more than one foot.

*Functionally Dependent Use* means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, (e.g., bridges, and piers).

*Indirect Impacts* means an indirect result of an action whenever the action induces or makes possible related activities which effect the natural values and functions of floodplains or wetlands or the risk to lives and property. Such impacts occur whenever these values and functions are potentially affected, either in the short- or long-term, as a result of undertaking an action.

*Minimize* means to reduce to the smallest amount or degree possible.

*Mitigation* means all steps necessary to minimize the potentially adverse effects of the proposed action, and to restore and preserve the natural and beneficial floodplain values and to preserve and enhance natural values of wetlands.

*Mitigation Directorate* means the Mitigation Directorate of the Federal Emergency Management Agency.

*Natural Values of Floodplains and Wetlands* means the qualities of or functions served by floodplains and wetlands which include but are not limited to: (a) Water resource values (natural moderation of floods, water quality

maintenance, groundwater recharge); (b) living resource values (fish, wildlife, plant resources and habitats); (c) cultural resource values (open space, natural beauty, scientific study, outdoor education, archeological and historic sites, recreation); and (d) cultivated resource values (agriculture, aquaculture, forestry).

*New Construction* means the construction of a new structure (including the placement of a mobile home) or facility or the replacement of a structure or facility which has been totally destroyed.

*New Construction in Wetlands* includes draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities begun or authorized after the effective dates of the Orders, May 24, 1977.

*Orders* means Executive Orders 11988, Floodplain Management, and 11990, Protection of Wetlands.

*Practicable* means capable of being done within existing constraints. The test of what is practicable depends upon the situation and includes consideration of all pertinent factors, such as environment, cost and technology.

*Preserve* means to prevent alterations to natural conditions and to maintain the values and functions which operate the floodplains or wetlands in their natural states.

*Regional Administrator* means the Regional Administrator of the Federal Emergency Management Agency for the Region in which FEMA is acting, or the Disaster Recovery Manager when one is designated.

*Regulatory Floodway* means the area regulated by federal, State or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated amount (not to exceed one foot as set by the National Flood Insurance Program).

*Restore* means to reestablish a setting or environment in which the natural functions of the floodplain can again operate.

*Structures* means walled or roofed buildings, including mobile homes and gas or liquid storage tanks.

*Substantial Improvement* means any repair, reconstruction or other improvement of a structure or facility,

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which has been damaged in excess of, or the cost of which equals or exceeds, 50% of the market value of the structure or replacement cost of the facility (including all “public facilities” as defined in the Disaster Relief Act of 1974) (a) before the repair or improvement is started, or (b) if the structure or facility has been damaged and is proposed to be restored, before the damage occurred. If a facility is an essential link in a larger system, the percentage of damage will be based on the relative cost of repairing the damaged facility to the replacement cost of the portion of the system which is operationally dependent on the facility. The term “substantial improvement” does not include any alteration of a structure or facility listed on the National Register of Historic Places or a State Inventory of Historic Places.

*Support* means to encourage, allow, serve or otherwise facilitate floodplain or wetland development. Direct support results from actions within a floodplain or wetland, and indirect support results from actions outside of floodplains or wetlands.

*Wetlands* means those areas which are inundated or saturated by surface or ground water with a frequency sufficient to support, or that under normal hydrologic conditions does or would support, a prevalence of vegetation or aquatic life typically adapted for life in saturated or seasonally saturated soil conditions. Examples of wetlands include, but are not limited to, swamps, fresh and salt water marshes, estuaries, bogs, beaches, wet meadows, sloughs, potholes, mud flats, river overflows and other similar areas. This definition includes those wetlands areas separated from their natural supply of water as a result of activities such as the construction of structural flood protection methods or solid-fill road beds and activities such as mineral extraction and navigation improvements. This definition is intended to be consistent with the definition utilized by the U.S. Fish and Wildlife Service in the publication entitled *Classification of Wetlands and Deep*

*Water Habitats of the United States* (Cowardin, et al., 1977).

[45 FR 59526, Sept. 9, 1980, as amended at 47 FR 13149, Mar. 29, 1982; 50 FR 40006, Oct. 1, 1985; 74 FR 15335, Apr. 3, 2009]

### § 9.5 Scope.

(a) *Applicability.* (1) These regulations apply to all Agency actions which have the potential to affect floodplains or wetlands or their occupants, or which are subject to potential harm by location in floodplains or wetlands.

(2) The basic test of the potential of an action to affect floodplains or wetlands is the action’s potential (both by itself and when viewed cumulatively with other proposed actions) to result in the long- or short-term adverse impacts associated with:

(i) The occupancy or modification of floodplains, and the direct and indirect support of floodplain development; or

(ii) The destruction or modification of wetlands and the direct or indirect support of new construction in wetlands.

(3) This regulation applies to actions that were, on the effective date of the Orders (May 24, 1977), ongoing, in the planning and/or development stages, or undergoing implementation, and are incomplete as of the effective date of these regulations. The regulation also applies to proposed (new) actions. The Agency shall:

(i) Determine the applicable provisions of the Orders by analyzing whether the action in question has progressed beyond critical stages in the floodplain management and wetlands protection decision-making process, as set out below in § 9.6. This determination need only be made at the time that followup actions are being taken to complete or implement the action in question; and

(ii) Apply the provisions of the Orders and of this regulation to all such actions to the fullest extent practicable.

(b) *Limited exemption of ongoing actions involving wetlands located outside the floodplains.* (1) Executive Order 11990, Protection of Wetlands, contains a limited exemption not found in Executive Order 11988, Floodplain Management. Therefore, this exemption applies only to actions affecting wetlands

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which are located outside the floodplains, and which have no potential to result in harm to or within floodplains or to support floodplain development.

(2) The following proposed actions that impact wetlands located outside of floodplains are exempt from this regulation:

(i) Agency-assisted or permitted projects which were under construction before May 24, 1977; and

(ii) Projects for which the Agency has proposed a draft of a final environmental impact statement (EIS) which adequately analyzes the action and which was filed before October 1, 1977. Proposed actions that impact wetlands outside of floodplains are not exempt if the EIS:

(A) Only generally covers the proposed action;

(B) Is devoted largely to related activities; or

(C) Treats the project area or program without an adequate and specific analysis of the floodplain and wetland implications of the proposed action.

(c) *Decision-making involving certain categories of actions.* The provisions set forth in this regulation are *not applicable* to the actions enumerated below except that the Regional Administrators shall comply with the spirit of the Order to the extent practicable. For any action which is excluded from the actions enumerated below, the full 8-step process applies (see §9.6) (except as indicated at paragraphs (d), (f) and (g) of this section regarding other categories of partial or total exclusions). The provisions of these regulations do not apply to the following (all references are to the Disaster Relief Act of 1974, Pub. L. 93–288, as amended, except as noted):

(1) Assistance provided for emergency work essential to save lives and protect property and public health and safety performed pursuant to sections 305 and 306;

(2) Emergency Support Teams (section 304);

(3) Unemployment Assistance (section 407);

(4) Emergency Communications (section 415);

(5) Emergency Public Transportation (section 416);

(6) Fire Management Assistance (Section 420);

(7) Community Disaster Loans (section 414), except to the extent that the proceeds of the loan will be used for repair of facilities or structures or for construction of additional facilities or structures;

(8) The following Individual and Family Grant Program (section 408) actions:

(i) Housing needs or expenses, except for restoring, repairing or building private bridges, purchase of mobile homes and provision of structures as minimum protective measures;

(ii) Personal property needs or expenses;

(iii) Transportation expenses;

(iv) Medical/dental expenses;

(v) Funeral expenses;

(vi) Limited home repairs;

(vii) Flood insurance premium;

(viii) Cost estimates;

(ix) Food expenses; and

(x) Temporary rental accommodations.

(9) Mortgage and rental assistance under section 404(b);

(10) Use of existing resources in the temporary housing assistance program [section 404(a)], except that Step 1 (§9.7) shall be carried out;

(11) Minimal home repairs [section 404(c)];

(12) Debris removal (section 403), except those grants involving non-emergency disposal of debris within a floodplain or wetland;

(13) Repairs or replacements under section 402, of less than \$5,000 to damaged structures or facilities.

(14) Placement of families in existing resources and Temporary Relocation Assistance provided to those families so placed under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96–510.

(d) For each action enumerated below, the Regional Administrator shall apply steps 1, 2, 4, 5 and 8 of the decision-making process (§§9.7, 9.8, 9.10 and 9.11, see §9.6). Steps 3 and 6 (§9.9) shall be carried out except that alternative sites outside the floodplain or wetland need not be considered. After assessing impacts of the proposed action on the floodplain or wetlands and

of the site on the proposed action, alternative actions to the proposed action, if any, and the “no action” alternative shall be considered. The Regional Administrator may also require certain other portions of the decision-making process to be carried out for individual actions as is deemed necessary. For any action which is excluded from the actions listed below. (except as indicated in paragraphs (c), (f) and (g) of this section regarding other categories of partial or total exclusion), the full 8-step process applies (see §9.6). The references are to the Disaster Relief Act of 1974, Public Law 93-288, as amended.

(1) Actions performed under the Individual and Family Grant Program (section 408) for restoring or repairing a private bridge, except where two or more individuals or families are authorized to pool their grants for this purpose.

(2) Small project grants (section 419), except to the extent that Federal funding involved is used for construction of new facilities or structures.

(3) Replacement of building contents, materials and equipment. (sections 402 and 419).

(4) Repairs under section 402 to damaged facilities or structures, except any such action for which one or more of the following is applicable:

(i) FEMA estimated cost of repairs is more than 50% of the estimated reconstruction cost of the entire facility or structure, or is more than \$100,000, or

(ii) The action is located in a floodway or coastal high hazard area, or

(iii) The facility or structure is one which has previously sustained structural damage from flooding due to a major disaster or emergency or on which a flood insurance claim has been paid, or

(iv) The action is a critical action.

(e) *Other categories of actions.* Based upon the completion of the 8-step decision-making process (§9.6), the Director may find that a specific category of actions either offers no potential for carrying out the purposes of the Orders and shall be treated as those actions listed in §9.5(c), or has no practicable alternative sites and shall be treated as those actions listed in §9.5(d), or has no

practicable alternative actions or sites and shall be treated as those actions listed in §9.5(g). This finding will be made in consultation with the Federal Insurance Administration and the Council on Environmental Quality as provided in section 2(d) of E.O. 11988. Public notice of each of these determinations shall include publication in the FEDERAL REGISTER and a 30-day comment period.

(f) *The National Flood Insurance Program (NFIP).* (1) Most of what is done by FIA or the Mitigation Directorate, in administering the National Flood Insurance Program is performed on a program-wide basis. For all regulations, procedures or other issuances making or amending program policy, FIA or the Mitigation Directorate, shall apply the 8-step decision-making process to that program-wide action. The action to which the 8-step process must be applied is the establishment of programmatic standards or criteria, not the application of programmatic standards or criteria to specific situations. Thus, for example, FIA or the Mitigation Directorate, would apply the 8-step process to a programmatic determination of categories of structures to be insured, but not to whether to insure each individual structure. The two prime examples of where FIA or the Mitigation Directorate, does take site specific actions which would require individual application of the 8-step process are property acquisition under section 1362 of the National Flood Insurance Act of 1968, as amended, and the issuance of an exception to a community under 44 CFR 60.6(b). (See also §9.9(e)(6) and §9.11(e).)

(2) The provisions set forth in this regulation are not applicable to the actions enumerated below except that the Federal Insurance Administrator or the Assistant Administrator for Mitigation, as appropriate shall comply with the spirit of the Orders to the extent practicable:

(i) The issuance of individual flood insurance policies and policy interpretations;

(ii) The adjustment of claims made under the Standard Flood Insurance Policy;

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(iii) The hiring of independent contractors to assist in the implementation of the National Flood Insurance Program;

(iv) The issuance of individual flood insurance maps, Map Information Facility map determinations, and map amendments; and

(v) The conferring of eligibility for emergency or regular program (NFIP) benefits upon communities.

(g) For the action listed below, the Regional Administrator shall apply steps 1, 4, 5 and 8 of the decision-making process (§§9.7, 9.10 and 9.11). For any action which is excluded from the actions listed below, (except as indicated in paragraphs (c), (d) and (f) of this section regarding other categories of partial or total exclusion), the full 8-step process applies (See §9.6). The Regional Administrator may also require certain other portions of the decision-making process to be carried out for individual actions as is deemed necessary. The references are to the Disaster Relief Act of 1974, Public Law 93-288. The above requirements apply to repairs, under section 402, between \$5,000 and \$25,000 to damaged structures of facilities except for:

(1) Actions in a floodway or coastal high hazard area; or

(2) New or substantially improved structures or facilities; or

(3) Facilities or structures which have previously sustained structural damage from flooding due to a major disaster or emergency.

[45 FR 59526, Sept. 9, 1980, as amended at 47 FR 13149, Mar. 29, 1982; 49 FR 35583, Sept. 10, 1984; 50 FR 40006, Oct. 1, 1985; 51 FR 39531, Oct. 29, 1986; 66 FR 57347, Nov. 14, 2001]

### §9.6 Decision-making process.

(a) *Purpose.* The purpose of this section is to set out the floodplain management and wetlands protection decision-making process to be followed by the Agency in applying the Orders to its actions. While the decision-making process was initially designed to address the floodplain Order's requirements, the process will also satisfy the wetlands Order's provisions due to the close similarity of the two directives. The numbering of Steps 1 through 8 does not firmly require that the steps be followed sequentially. As informa-

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tion is gathered throughout the decision-making process and as additional information is needed, reevaluation of lower numbered steps may be necessary.

(b) Except as otherwise provided in §9.5 (c), (d), (f), and (g) regarding categories of partial or total exclusion when proposing an action, the Agency shall apply the 8-step decision-making process. FEMA shall:

*Step 1.* Determine whether the proposed action is located in a wetland and/or the 100-year floodplain (500-year floodplain for critical actions); and whether it has the potential to affect or be affected by a floodplain or wetland (see §9.7);

*Step 2.* Notify the public at the earliest possible time of the intent to carry out an action in a floodplain or wetland, and involve the affected and interested public in the decision-making process (see §9.8);

*Step 3.* Identify and evaluate practicable alternatives to locating the proposed action in a floodplain or wetland (including alternative sites, actions and the "no action" option) (see §9.9). If a practicable alternative exists outside the floodplain or wetland FEMA must locate the action at the alternative site.

*Step 4.* Identify the potential direct and indirect impacts associated with the occupancy or modification of floodplains and wetlands and the potential direct and indirect support of floodplain and wetland development that could result from the proposed action (see §9.10);

*Step 5.* Minimize the potential adverse impacts and support to or within floodplains and wetlands to be identified under Step 4, restore and preserve the natural and beneficial values served by floodplains, and preserve and enhance the natural and beneficial values served by wetlands (see §9.11);

*Step 6.* Reevaluate the proposed action to determine first, if it is still practicable in light of its exposure to flood hazards, the extent to which it will aggravate the hazards to others, and its potential to disrupt floodplain and wetland values and second, if alternatives preliminarily rejected at Step 3 are practicable in light of the information gained in Steps 4 and 5. FEMA

shall not act in a floodplain or wetland unless it is the only practicable location (see §9.9);

*Step 7.* Prepare and provide the public with a finding and public explanation of any final decision that the floodplain or wetland is the only practicable alternative (see §9.12); and

*Step 8.* Review the implementation and post-implementation phases of the proposed action to ensure that the requirements stated in §9.11 are fully implemented. Oversight responsibility shall be integrated into existing processes.

[45 FR 59526, Sept. 9, 1980, as amended at 49 FR 35583, Sept. 10, 1984; 50 FR 40006, Oct. 1, 1985]

**§9.7 Determination of proposed action's location.**

(a) The purpose of this section is to establish Agency procedures for determining whether any action as proposed is located in or affects (1) the base floodplain (the Agency shall substitute the 500-year floodplain for the base floodplain where the action being proposed involves a critical action), or (2) a wetland.

(b) *Information needed.* The Agency shall obtain enough information so that it can fulfill the requirements of the Orders to (1) avoid floodplain and wetland locations unless they are the only practicable alternatives; and (2) minimize harm to and within floodplains and wetlands. In all cases, FEMA shall determine whether the proposed action is located in a floodplain or wetland. In the absence of a finding to the contrary, FEMA may assume that a proposed action involving a facility or structure that has been flooded is in the floodplain. Information about the 100-year and 500-year floods and location of floodways and coastal high hazard areas may also be needed to comply with these regulations, especially §9.11. The following additional flooding characteristics shall be identified by the Regional Administrator as appropriate:

- (i) Velocity of floodwater;
- (ii) Rate of rise of floodwater;
- (iii) Duration of flooding;
- (iv) Available warning and evacuation time and routes;
- (v) Special problems:

- (A) Levees;
- (B) Erosion;
- (C) Subsidence;
- (D) Sink holes;
- (E) Ice jams;
- (F) Debris load;
- (G) Pollutants;
- (H) Wave heights;
- (I) Groundwater flooding;
- (J) Mudflow.

(c) *Floodplain determination.* (1) In the search for flood hazard information, FEMA shall follow the sequence below:

(i) The Regional Administrator shall consult the FEMA Flood Insurance Rate Map (FIRM) the Flood Boundary Floodway Map (FBFM) and the Flood Insurance Study (FIS).

(ii) If a detailed map (FIRM or FBFM) is not available, the Regional Administrator shall consult an FEMA Flood Hazard Boundary Map (FHBM). If data on flood elevations, floodways, or coastal high hazard areas are needed, or if the map does not delineate the flood hazard boundaries in the vicinity of the proposed site, the Regional Administrator shall seek the necessary detailed information and assistance from the sources listed below.

SOURCES OF MAPS AND TECHNICAL INFORMATION

- Department of Agriculture: Soil Conservation Service
- Department of the Army: Corps of Engineers
- Department of Commerce: National Oceanic and Atmospheric Administration
- Federal Insurance Administration
- FEMA Regional Offices/Natural and Technological Hazards Division
- Department of the Interior:
  - Geological Survey
  - Bureau of Land Management
  - Bureau of Reclamation
- Tennessee Valley Authority
- Delaware River Basin Commission
- Susquehanna River Basin Commission
- States

(iii) If the sources listed do not have or know of the information necessary to comply with the Orders' requirements, the Regional Administrator shall seek the services of a Federal or other engineer experienced in this type of work.

(2) If a decision involves an area or location within extensive Federal or state holdings or a headwater area, and an FIS, FIRM, FBFM, or FHBM is not available, the Regional Administrator



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shall seek information from the land administering agency before information and/or assistance is sought from the sources listed in this section. If none of these sources has information or can provide assistance, the services of an experienced Federal or other engineer shall be sought as described above.

(d) *Wetland determination.* The following sequence shall be followed by the Agency in making the wetland determination.

(1) The Agency shall consult with the U.S. Fish and Wildlife Service (FWS) for information concerning the location, scale and type of wetlands within the area which could be affected by the proposed action.

(2) If the FWS does not have adequate information upon which to base the determination, the Agency shall consult wetland inventories maintained by the Army Corps of Engineers, the Environmental Protection Agency, various states, communities and others.

(3) If state or other sources do not have adequate information upon which to base the determination, the Agency shall carry out an on-site analysis performed by a representative of the FWS or other qualified individual for wetlands characteristics based on the performance definition of what constitutes a wetland.

(4) If an action is in a wetland but not in a floodplain, and the action is new construction, the provisions of this regulation shall apply. Even if the action is not in a wetland, the Regional Administrator shall determine if the action has the potential to result in indirect impacts on wetlands. If so, all adverse impacts shall be minimized. For actions which are in a wetland and the floodplain, completion of the decision-making process is required. (See §9.6.) In such a case the wetland will be considered as one of the natural and beneficial values of floodplain.

[45 FR 59526, Sept. 9, 1980, as amended at 47 FR 13149, Mar. 29, 1982; 49 FR 33879, Aug. 27, 1984; 50 FR 40006, Oct. 1, 1985; 51 FR 34605, Sept. 30, 1986]

### §9.8 Public notice requirements.

(a) *Purpose.* The purpose of this section is to establish the initial notice procedures to be followed when pro-

posing any action in or affecting floodplains or wetlands.

(b) *General.* The Agency shall provide adequate information to enable the public to have impact on the decision outcome for all actions having potential to affect, adversely, or be affected by floodplains or wetlands that it proposes. To achieve this objective, the Agency shall:

(1) Provide the public with adequate information and opportunity for review and comment at the earliest possible time and throughout the decision-making process; and upon completion of this process, provide the public with an accounting of its final decisions (see §9.12); and

(2) Rely on its environmental assessment processes, to the extent possible, as vehicles for public notice, involvement and explanation.

(c) *Early public notice.* The Agency shall provide opportunity for public involvement in the decision-making process through the provision of public notice upon determining that the proposed action can be expected to affect or be affected by floodplains or wetlands. Whenever possible, notice shall precede major project site identification and analysis in order to preclude the foreclosure of options consistent with the Orders.

(1) For an action for which an environmental impact statement is being prepared, the Notice of Intent to File an EIS is adequate to constitute the early public notice, if it includes the information required under paragraph (c)(5) of this section.

(2) For each action having national significance for which notice is being provided, the Agency shall use the FEDERAL REGISTER as the minimum means for notice, and shall provide notice by mail to national organizations reasonably expected to be interested in the action. The additional notices listed in paragraph (c)(4) of this section shall be used in accordance with the determination made under paragraph (c)(3) of this section.

(3) The Agency shall base its determination of appropriate notices, adequate comment periods, and whether to issue cumulative notices (paragraphs

(c)(4), (6) and (7) of this section) on factors which include, but are not limited to:

- (i) Scale of the action;
- (ii) Potential for controversy;
- (iii) Degree of public need;
- (iv) Number of affected agencies and individuals; and
- (v) Its anticipated potential impact.

(4) For each action having primarily local importance for which notice is being provided, notice shall be made in accordance with the criteria under paragraph (c)(3) of this section, and shall entail as appropriate:

- (i) [Reserved]
- (ii) Notice to Indian tribes when effects may occur on reservations.
- (iii) Information required in the affected State's public notice procedures for comparable actions.
- (iv) Publication in local newspapers (in papers of general circulation rather than legal papers).
- (v) Notice through other local media.
- (vi) Notice to potentially interested community organizations.
- (vii) Publication in newsletters that may be expected to reach potentially interested persons.
- (viii) Direct mailing to owners and occupants of nearby or affected property.
- (ix) Posting of notice on and off site in the area where the action is to be located.

(x) Holding a public hearing.

(5) The notice shall include:

- (i) A description of the action, its purpose and a statement of the intent to carry out an action affecting or affected by a floodplain or wetland;
- (ii) Based on the factors in paragraph (c)(3) of this section, a map of the area or other identification of the floodplain and/or wetland areas which is of adequate scale and detail so that the location is discernible; instead of publication of such map, FEMA may state that such map is available for public inspection, including the location at which such map may be inspected and a telephone number to call for information;
- (iii) Based on the factors in paragraph (c)(3) of this section, a description of the type, extent and degree of hazard involved and the floodplain or wetland values present; and

(iv) Identification of the responsible official or organization for implementing the proposed action, and from whom further information can be obtained.

(6) The Agency shall provide for an adequate comment period.

(7) In a post-disaster situation in particular, the requirement for early public notice may be met in a cumulative manner based on the factors set out in paragraph (c)(3) of this section. Several actions may be addressed in one notice or series of notices. For some actions involving limited public interest a single notice in a local newspaper or letter to interested parties may suffice.

(d) *Continuing public notice.* The Agency shall keep the public informed of the progress of the decision-making process through additional public notices at key points in the process. The preliminary information provided under paragraph (c)(5) of this section shall be augmented by the findings of the adverse effects of the proposed actions and steps necessary to mitigate them. This responsibility shall be performed for actions requiring the preparation of an EIS, and all other actions having the potential for major adverse impacts, or the potential for harm to the health and safety of the general public.

[45 FR 59526, Sept. 9, 1980, as amended at 48 FR 29318, June 24, 1983]

**§9.9 Analysis and reevaluation of practicable alternatives.**

(a) *Purpose.* (1) The purpose of this section is to expand upon the directives set out in §9.6, of this part, in order to clarify and emphasize the Orders' key requirements to avoid floodplains and wetlands unless there is no practicable alternative.

(2) Step 3 is a preliminary determination as to whether the floodplain is the only practicable location for the action. It is a preliminary determination because it comes early in the decision-making process when the Agency has a limited amount of information. If it is clear that there is a practicable alternative, or the floodplain or wetland is itself not a practicable location, FEMA shall then act on that basis. Provided that the location outside the floodplain or wetland does not indirectly impact

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floodplains or wetlands or support development therein (see §9.10), the remaining analysis set out by this regulation is not required. If such location does indirectly impact floodplains or wetlands or support development therein, the remaining analysis set out by this regulation is required. If the preliminary determination is to act in the floodplain, FEMA shall gather the additional information required under Steps 4 and 5 and then reevaluate all the data to determine if the floodplain or wetland is the only practicable alternative.

(b) *Analysis of practicable alternatives.* The Agency shall identify and evaluate practicable alternatives to carrying out a proposed action in floodplains or wetlands, including:

(1) Alternative sites outside the floodplain or wetland;

(2) Alternative actions which serve essentially the same purpose as the proposed action, but which have less potential to affect or be affected by the floodplain or wetlands; and

(3) *No action.* The floodplain and wetland site itself must be a practicable location in light of the factors set out in this section.

(c) The Agency shall analyze the following factors in determining the practicability of the alternatives set out in paragraph (b) of this section:

(1) Natural environment (topography, habitat, hazards, etc.);

(2) Social concerns (aesthetics, historical and cultural values, land patterns, etc.);

(3) Economic aspects (costs of space, construction, services, and relocation); and

(4) Legal constraints (deeds, leases, etc.).

(d) *Action following the analysis of practicable alternatives.* (1) The Agency shall not locate the proposed action in the floodplain or in a wetland if a practicable alternative exists outside the floodplain or wetland.

(2) For critical actions, the Agency shall not locate the proposed action in the 500-year floodplain if a practicable alternative exists outside the 500-year floodplain.

(3) Even if no practicable alternative exists outside the floodplain or wetland, in order to carry out the action

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the floodplain or wetland must itself be a practicable location in light of the review required in this section.

(e) *Reevaluation of alternatives.* Upon determination of the impact of the proposed action to or within the floodplain or wetland and of what measures are necessary to comply with the requirement to minimize harm to and within floodplains and wetlands (§9.11), FEMA shall:

(1) Determine whether:

(i) The action is still practicable at a floodplain or wetland site in light of the exposure to flood risk and the ensuing disruption of natural values;

(ii) The floodplain or wetland site is the only practicable alternative;

(iii) There is a potential for limiting the action to increase the practicability of previously rejected non-floodplain or wetland sites and alternative actions; and

(iv) Minimization of harm to or within the floodplain can be achieved using all practicable means.

(2) Take no action in a floodplain unless the importance of the floodplain site clearly outweighs the requirement of E.O. 11988 to:

(i) Avoid direct or indirect support of floodplain development;

(ii) Reduce the risk of flood loss;

(iii) Minimize the impact of floods on human safety, health and welfare; and

(iv) Restore and preserve floodplain values.

(3) Take no action in a wetland unless the importance of the wetland site clearly outweighs the requirements of E.O. 11990 to:

(i) Avoid the destruction or modification of the wetlands;

(ii) Avoid direct or indirect support of new construction in wetlands;

(iii) Minimize the destruction, loss or degradation of wetlands; and

(iv) Preserve and enhance the natural and beneficial values of wetlands.

(4) In carrying out this balancing process, give the factors in paragraphs (e)(2) and (3) of this section, the great weight intended by the Orders.

(5) Choose the “no action” alternative where there are no practicable alternative actions or sites and where the floodplain or wetland is not itself a practicable alternative. In making the assessment of whether a floodplain or

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wetland location is itself a practicable alternative, the practicability of the floodplain or wetland location shall be balanced against the practicability of not carrying out the action at all. That is, even if there is no practicable alternative outside of the floodplain or wetland, the floodplain or wetland itself must be a practicable location in order for the action to be carried out there. To be a practicable location, the importance of carrying out the action must clearly outweigh the requirements of the Orders listed in paragraphs (e)(2) and (e)(3) of this section. Unless the importance of carrying out the action clearly outweighs those requirements, the “no action” alternative shall be selected.

(6) In any case in which the Regional Director has selected the “no action” option, FIA may not provide a new or renewed contract of flood insurance for that structure.

EFFECTIVE DATE NOTE: At 45 FR 79070, Nov. 28, 1980, §9.9(e)(6) was temporarily suspended until further notice.

### §9.10 Identify impacts of proposed actions.

(a) *Purpose.* The purpose of this section is to ensure that the effects of proposed Agency actions are identified.

(b) The Agency shall identify the potential direct and indirect adverse impacts associated with the occupancy and modification of floodplains and wetlands and the potential direct and indirect support of floodplain and wetland development that could result from the proposed action. Such identification of impacts shall be to the extent necessary to comply with the requirements of the Orders to avoid floodplain and wetland locations unless they are the only practicable alternatives and to minimize harm to and within floodplains and wetlands.

(c) This identification shall consider whether the proposed action will result in an increase in the useful life of any structure or facility in question, maintain the investment at risk and exposure of lives to the flood hazard or forego an opportunity to restore the natural and beneficial values served by floodplains or wetlands. Regional Offices of the U.S. Fish and Wildlife Service may be contacted to aid in the iden-

tification and evaluation of potential impacts of the proposed action on natural and beneficial floodplain and wetland values.

(d) In the review of a proposed or alternative action, the Regional Administrator shall specifically consider and evaluate: impacts associated with modification of wetlands and floodplains regardless of its location; additional impacts which may occur when certain types of actions may support subsequent action which have additional impacts of their own; adverse impacts of the proposed actions on lives and property and on natural and beneficial floodplain and wetland values; and the three categories of factors listed below:

(1) *Flood hazard-related factors.* These include for example, the factors listed in §9.7(b)(2);

(2) *Natural values-related factors.* These include, for example, the following: Water resource values (natural moderation of floods, water quality maintenance, and ground water recharge); living resource values (fish and wildlife and biological productivity); cultural resource values (archeological and historic sites, and open space recreation and green belts); and agricultural, aquacultural and forestry resource values.

(3) *Factors relevant to a proposed action's effects on the survival and quality of wetlands.* These include, for example, the following: Public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion; maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

### §9.11 Mitigation.

(a) *Purpose.* The purpose of this section is to expand upon the directives set out in §9.6 of this part, and to set out the mitigative actions required if the preliminary determination is made

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to carry out an action that affects or is in a floodplain or wetland.

(b) *General provisions.* (1) The Agency shall design or modify its actions so as to minimize harm to or within the floodplain;

(2) The Agency shall minimize the destruction, loss or degradation of wetlands;

(3) The Agency shall restore and preserve natural and beneficial floodplain values; and

(4) The Agency shall preserve and enhance natural and beneficial wetland values.

(c) *Minimization provisions.* The Agency shall minimize:

(1) Potential harm to lives and the investment at risk from the base flood, or, in the case of critical actions, from the 500-year flood;

(2) Potential adverse impacts the action may have on others; and

(3) Potential adverse impact the action may have on floodplain and wetland values.

(d) *Minimization Standards.* In its implementation of the Disaster Relief Act of 1974, the Agency shall apply at a minimum, the following standards to its actions to comply with the requirements of paragraphs (b) and (c), of this section, (except as provided in §9.5 (c), (d), and (g) regarding categories of partial or total exclusion). Any Agency action to which the following specific requirements do not apply, shall nevertheless be subject to the full 8-step process (§9.6) including the general requirement to minimize harm to and within floodplains:

(1) There shall be no new construction or substantial improvement in a floodway, and no new construction in a coastal high hazard area, except for:

(i) A functionally dependent use; or

(ii) A structure or facility which facilitates an open space use.

(2) For a structure which is a functionally dependent use, or which facilitates an open space use, the following applies. There shall be no construction of a new or substantially improved structure in a coastal high hazard area unless it is elevated on adequately anchored pilings or columns, and securely anchored to such piles or columns so that the lowest portion of the structural members of the lowest floor (ex-

cluding the pilings or columns) is elevated to or above the base flood level (the 500-year flood level for critical actions) (including wave height). The structure shall be anchored so as to withstand velocity waters and hurricane wave wash. The Regional Administrator shall be responsible for determining the base flood level, including the wave height, in all cases. Where there is a FIRM in effect, it shall be the basis of the Regional Administrator's determination. If the FIRM does not reflect wave heights, or if there is no FIRM in effect, the Regional Administrator is responsible for delineating the base flood level, including wave heights.

(3) *Elevation of structures.* (i) There shall be no new construction or substantial improvement of structures unless the lowest floor of the structures (including basement) is at or above the level of the base flood.

(ii) There shall be no new construction or substantial improvement of structures involving a critical action unless the lowest floor of the structure (including the basement) is at or above the level of the 500-year flood.

(iii) If the subject structure is non-residential, FEMA may, instead of elevating the structure to the 100-year or 500-year level, as appropriate, approve the design of the structure and its attendant utility and sanitary facilities so that below the flood level the structure is water tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(iv) The provisions of paragraphs (d)(3)(i), (ii), and (iii) of this section do not apply to the extent that the Federal Insurance Administration has granted an exception under 44 CFR §60.6(b) (formerly 24 CFR 1910.6(b)), or the community has granted a variance which the Regional Administrator determines is consistent with 44 CFR 60.6(a) (formerly 24 CFR 1910.6(a)). In a community which does not have a FIRM in effect, FEMA may approve a variance from the standards of paragraphs (d)(3)(i), (ii), and (iii) of this section, after compliance with the standards of 44 CFR 60.6(a).

(4) There shall be no encroachments, including fill, new construction, substantial improvements of structures or facilities, or other development within a designated regulatory floodway that would result in any increase in flood levels within the community during the occurrence of the base flood discharge. Until a regulatory floodway is designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within the base floodplain unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(5) Even if an action is a functionally dependent use or facilitates open space uses (under paragraph (d) (1) or (2) of this section) and does not increase flood heights (under paragraph (d)(4) of this section), such action may only be taken in a floodway or coastal high hazard area if:

- (i) Such site is the only practicable alternative; and
- (ii) Harm to and within the floodplain is minimized.

(6) In addition to standards (d)(1) through (d)(5) of this section, no action may be taken if it is inconsistent with the criteria of the National Flood Insurance Program (44 CFR part 59 *et seq.*) or any more restrictive Federal, State or local floodplain management standards.

(7) New construction and substantial improvement of structures shall be elevated on open works (walls, columns, piers, piles, etc.) rather than on fill, in all cases in coastal high hazard areas and elsewhere, where practicable.

(8) To minimize the effect of floods on human health, safety and welfare, the Agency shall:

- (i) Where appropriate, integrate all of its proposed actions in floodplains into existing flood warning and preparedness plans and ensure that available flood warning time is reflected;
- (ii) Facilitate adequate access and egress to and from the site of the proposed action; and

(iii) Give special consideration to the unique hazard potential in flash flood, rapid-rise or tsunami areas.

(9) In the replacement of building contents, materials and equipment, the Regional Administrator shall require as appropriate, disaster proofing of the building and/or elimination of such future losses by relocation of those building contents, materials and equipment outside or above the base floodplain or the 500-year floodplain for critical actions.

(e) *In the implementation of the National Flood Insurance Program.* (1) The Federal Insurance Administration shall make identification of all coastal high hazard areas a priority;

(2) Beginning October 1, 1981, the Federal Insurance Administration of FEMA may only provide flood insurance for new construction or substantial improvements in a coastal high hazard area if:

(i) Wave heights have been designated for the site of the structure either by the Administrator of FEMA based upon data generated by FEMA or by another source, satisfactory to the Administrator; and

(ii) The structure is rated by FEMA-FIA based on a system which reflects the capacity to withstand the effects of the 100-year frequency flood including, but not limited to, the following factors:

- (A) Wave heights;
- (B) The ability of the structure to withstand the force of waves.

(3)(i) FEMA shall accept and take fully into account information submitted by a property owner indicating that the rate for a particular structure is too high based on the ability of the structure to withstand the force of waves. In order to obtain a rate adjustment, a property owner must submit to FEMA specific information regarding the structure and its immediate environment. Such information must be certified by a registered professional architect or engineer who has demonstrable experience and competence in the fields of foundation, soils, and structural engineering. Such information should include:

- (A) Elevation of the structure (bottom of lowest floor beam) in relation to

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the Base Flood Elevation including wave height;

(B) Distance of the structure from the shoreline;

(C) Dune protection and other environmental factors;

(D) Description of the building support system; and

(E) Other relevant building details.

Adequate completion of the "V-Zone Risk Factor Rating Form" is sufficient for FEMA to determine whether a rate adjustment is appropriate. The form is available from and applications for rate adjustments should be submitted to:

National Flood Insurance Program
Attention: V-Zone Underwriting Specialist
9901-A George Palmer Highway
Lanham, MD 20706

Pending a determination on a rate adjustment, insurance will be issued at the class rate. If the rate adjustment is granted, a refund of the appropriate portion of the premium will be made. Unless a property owner is seeking an adjustment of the rate prescribed by FEMA-FIA, this information need not be submitted.

(ii) FIA shall notify communities with coastal high hazard areas and federally related lenders in such communities, of the provisions of this paragraph. Notice to the lenders may be accomplished by the Federal instrumentalities to which the lenders are related.

(4) In any case in which the Regional Director has been, pursuant to §9.11(d)(1), precluded from providing assistance for a new or substantially improved structure in a floodway, FIA may not provide a new or renewed policy of flood insurance for that structure.

(f) Restore and preserve. (1) For any action taken by the Agency which affects the floodplain or wetland and which has resulted in, or will result in, harm to the floodplain or wetland, the Agency shall act to restore and preserve the natural and beneficial values served by floodplains and wetlands.

(2) Where floodplain or wetland values have been degraded by the proposed action, the Agency shall identify, evaluate and implement measures to restore the values.

(3) If an action will result in harm to or within the floodplain or wetland, the Agency shall design or modify the action to preserve as much of the natural and beneficial floodplain and wetland values as is possible.

[45 FR 59526, Sept. 9, 1980, as amended at 46 FR 51752, Oct. 22, 1981; 48 FR 44543, Sept. 29, 1983; 49 FR 33879, Aug. 27, 1984; 49 FR 35584, Sept. 10, 1984; 50 FR 40006, Oct. 1, 1985]

EFFECTIVE DATE NOTE: At 45 FR 79070, Nov. 28, 1980, §9.11(e)(4) was temporarily suspended until further notice.

§9.12 Final public notice.

If the Agency decides to take an action in or affecting a floodplain or wetland, it shall provide the public with a statement of its final decision and shall explain the relevant factors considered by the Agency in making this determination.

(a) In addition, those sent notices under §9.8 shall also be provided the final notice.

(b) For actions for which an environmental impact statement is being prepared, the FEIS is adequate to constitute final notice in all cases except where:

(1) Significant modifications are made in the FEIS after its initial publication;

(2) Significant modifications are made in the development plan for the proposed action; or

(3) Significant new information becomes available in the interim between issuance of the FEIS and implementation of the proposed action.

If any of these situations develop, the Agency shall prepare a separate final notice that contains the contents of paragraph (e) of this section and shall make it available to those who received the FEIS. A minimum of 15 days shall, without good cause shown, be allowed for comment on the final notice.

(c) For actions for which an environmental assessment was prepared, the Notice of No Significant Impact is adequate to constitute final public notice, if it includes the information required under paragraph (e) of this section.

(d) For all other actions, the finding shall be made in a document separate from those described in paragraphs (a), (b), and (c) of this section. Based on an assessment of the following factors, the

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requirement for final notice may be met in a cumulative manner:

- (1) Scale of the action;
- (2) Potential for controversy;
- (3) Degree of public need;
- (4) Number of affected agencies and individuals;
- (5) Its anticipated potential impact; and

(6) Similarity of the actions, i.e., to the extent that they are susceptible of common descriptions and assessments. When a damaged structure or facility is already being repaired by the State or local government at the time of the Damage Survey Report, the requirements of Steps 2 and 7 (§§9.8 and 9.12) may be met by a single notice. Such notice shall contain all the information required by both sections.

(e) The final notice shall include the following:

- (1) A statement of why the proposed action must be located in an area affecting or affected by a floodplain or a wetland;
- (2) A description of all significant facts considered in making this determination;
- (3) A list of the alternatives considered;
- (4) A statement indicating whether the action conforms to applicable state and local floodplain protection standards;
- (5) A statement indicating how the action affects or is affected by the floodplain and/or wetland, and how mitigation is to be achieved;
- (6) Identification of the responsible official or organization for implementation and monitoring of the proposed action, and from whom further information can be obtained; and
- (7) A map of the area or a statement that such map is available for public inspection, including the location at which such map may be inspected and a telephone number to call for information.

(f) After providing the final notice, the Agency shall, without good cause shown, wait at least 15 days before carrying out the action.

[45 FR 59526, Sept. 9, 1980, as amended at 48 FR 29318, June 24, 1983]

**§9.13 Particular types of temporary housing.**

(a) The purpose of this section is to set forth the procedures whereby the Agency will provide certain specified types of temporary housing.

(b) Prior to providing the types of temporary housing enumerated in paragraph (c) of this section, the Agency shall comply with the provisions of this section. For all temporary housing not enumerated below, the full 8-step process (see §9.6) applies.

(c) The following temporary housing actions are subject to the provisions of this section and not the full 8-step process:

- (1) [Reserved]
- (2) Placing a mobile home or readily fabricated dwelling on a private or commercial site, but not a group site.
- (d) The actions set out in paragraph (c) of this section are subject to the following decision-making process:

- (1) The temporary housing action shall be evaluated in accordance with the provisions of §9.7 to determine if it is in or affects a floodplain or wetland.
- (2) No mobile home or readily fabricated dwelling may be placed on a private or commercial site in a floodway or coastal high hazard area.
- (3) An individual or family shall not be housed in a floodplain or wetland unless the Regional Administrator has complied with the provisions of §9.9 to determine that such site is the only practicable alternative. The following factors shall be substituted for the factors in §9.9 (c) and (e) (2) through (4):
  - (i) Speedy provision of temporary housing;
  - (ii) Potential flood risk to the temporary housing occupant;
  - (iii) Cost effectiveness;
  - (iv) Social and neighborhood patterns;
  - (v) Timely availability of other housing resources; and
  - (vi) Potential harm to the floodplain or wetland.

(4) An individual or family shall not be housed in a floodplain or wetland (except in existing resources) unless the Regional Administrator has complied with the provisions of §9.11 to minimize harm to and within floodplains and wetlands. The following



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provisions shall be substituted for the provisions of §9.11(d) for mobile homes:

(i) No mobile home or readily fabricated dwelling may be placed on a private or commercial site unless it is elevated to the fullest extent practicable up to the base flood level and adequately anchored.

(ii) No mobile home or readily fabricated dwelling may be placed if such placement is inconsistent with the criteria of the National Flood Insurance Program (44 CFR part 59 *et seq.*) or any more restrictive Federal, State or local floodplain management standard. Such standards may require elevation to the base flood level in the absence of a variance.

(iii) Mobile homes shall be elevated on open works (walls, columns, piers, piles, etc.) rather than on fill where practicable.

(iv) To minimize the effect of floods on human health, safety and welfare, the Agency shall:

(A) Where appropriate, integrate all of its proposed actions in placing mobile homes for temporary housing in floodplains into existing flood warning and preparedness plans and ensure that available flood warning time is reflected;

(B) Provide adequate access and egress to and from the proposed site of the mobile home; and

(C) Give special consideration to the unique hazard potential in flash flood and rapid-rise areas.

(5) FEMA shall comply with Step 2 Early Public Notice (§9.8(c)) and Step 7 Final Public Notice (§9.12). In providing these notices, the emergency nature of temporary housing shall be taken into account.

(e) FEMA shall not sell or otherwise dispose of mobile homes or other readily fabricated dwellings which would be located in floodways or coastal high hazard areas. FEMA shall not sell or otherwise dispose of mobile homes or other readily fabricated dwellings which would be located in floodplains or wetlands unless there is full compliance with the 8-step process. Given the vulnerability of mobile homes to flooding, a rejection of a non-floodplain location alternative and of the no-action alternative shall be based on (1) a compelling need of the family or individual

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to buy a mobile home for permanent housing, and (2) a compelling requirement to locate the unit in a floodplain. Further, FEMA shall not sell or otherwise dispose of mobile homes or other readily fabricated dwellings in a floodplain unless they are elevated at least to the level of the 100-year flood. The Regional Administrator shall notify the Assistant Administrator for Mitigation of each instance where a floodplain location has been found to be the only practicable alternative for a mobile home sale.

[45 FR 59526, Sept. 9, 1980, as amended at 47 FR 13149, Mar. 29, 1982; 49 FR 35584, Sept. 10, 1984; 50 FR 40006, Oct. 1, 1985]

### §9.14 Disposal of Agency property.

(a) The purpose of this section is to set forth the procedures whereby the Agency shall dispose of property.

(b) Prior to its disposal by sale, lease or other means of disposal, property proposed to be disposed of by the Agency shall be reviewed according to the decision-making process set out in §9.6 of this part, as follows:

(1) The property shall be evaluated in accordance with the provisions of §9.7 to determine if it affects or is affected by a floodplain or wetland;

(2) The public shall be notified of the proposal and involved in the decision-making process in accordance with the provisions of §9.8;

(3) Practicable alternatives to disposal shall be evaluated in accordance with the provisions of §9.9. For disposals, this evaluation shall focus on alternative actions (conveyance for an alternative use that is more consistent with the floodplain management and wetland protection policies set out in §9.2 than the one proposed, e.g., open space use for park or recreational purposes rather than high intensity uses), and on the “no action” option (retain the property);

(4) Identify the potential impacts and support associated with the disposal of the property in accordance with §9.10;

(5) Identify the steps necessary to minimize, restore, preserve and enhance in accordance with §9.11. For disposals, this analysis shall address all four of these components of mitigation where unimproved property is involved, but shall focus on minimization

through floodproofing and restoration of natural values where improved property is involved;

(6) Reevaluate the proposal to dispose of the property in light of its exposure to the flood hazard and its natural values-related impacts, in accordance with §9.9. This analysis shall focus on whether it is practicable in light of the findings from §§9.10 and 9.11 to dispose of the property, or whether it must be retained. If it is determined that it is practicable to dispose of the property, this analysis shall identify the practicable alternative that best achieves all of the components of the Orders' mitigation responsibility;

(7) To the extent that it would decrease the flood hazard to lives and property, the Agency shall, wherever practicable, dispose of the properties according to the following priorities:

- (i) Properties located outside the floodplain;
- (ii) Properties located in the flood fringe; and
- (iii) Properties located in a floodway, regulatory floodway or coastal high hazard area.

(8) The Agency shall prepare and provide the public with a finding and public explanation in accordance with §9.12.

(9) The Agency shall ensure that the applicable mitigation requirements are fully implemented in accordance with §9.11.

(c) At the time of disposal, for all disposed property, the Agency shall reference in the conveyance uses that are restricted under existing Federal, State and local floodplain management and wetland protection standards relating to flood hazards and floodplain and wetland values.

**§9.15 Planning programs affecting land use.**

The Agency shall take floodplain management into account when formulating or evaluating any water and land use plans. No plan may be approved unless it:

- (a) Reflects consideration of flood hazards and floodplain management and wetlands protection; and
- (b) Prescribes planning procedures to implement the policies and require-

ments of the Orders and this regulation.

**§9.16 Guidance for applicants.**

(a) The Agency shall encourage and provide adequate guidance to applicants for agency assistance to evaluate the effects of their plans and proposals in or affecting floodplains and wetlands.

(b) This shall be accomplished primarily through amendment of all Agency instructions to applicants, e.g., program handbooks, contracts, application and agreement forms, etc., and also through contact made by agency staff during the normal course of their activities, to fully inform prospective applicants of:

- (1) The Agency's policy on floodplain management and wetlands protection as set out in §9.2;
- (2) The decision-making process to be used by the Agency in making the determination of whether to provide the required assistance as set out in §9.6;
- (3) The nature of the Orders' practicability analysis as set out in §9.9;
- (4) The nature of the Orders' mitigation responsibilities as set out in §9.11;
- (5) The nature of the Orders' public notice and involvement process as set out in §§9.8 and 9.12; and
- (6) The supplemental requirements applicable to applications for the lease or other disposal of Agency owned properties set out in §9.14.

(c) Guidance to applicants shall be provided where possible, prior to the time of application in order to minimize potential delays in process application due to failure of applicants to recognize and reflect the provisions of the Orders and this regulation.

**§9.17 Instructions to applicants.**

(a) *Purpose.* In accordance with Executive Orders 11988 and 11990, the Federal executive agencies must respond to a number of floodplain management and wetland protection responsibilities before carrying out any of their activities, including the provision of Federal financial and technical assistance. The purpose of this section is to put applicants for Agency assistance on notice concerning both the criteria that it is required to follow under the Orders,

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and applicants' responsibilities under this regulation.

(b) *Responsibilities of Applicants.* Based upon the guidance provided by the Agency under §9.16, that guidance included in the U.S. Water Resources Council's *Guidance for Implementing E.O. 11988*, and based upon the provisions of the Orders and this regulation, applicants for Agency assistance shall recognize and reflect in their application:

(1) The Agency's policy on floodplain management and wetlands protection as set out in §9.2;

(2) The decision-making process to be used by the Agency in making the determination of whether to provide the requested assistance as set out in §9.6;

(3) The nature of the Orders' practicability analysis as set out in §9.9;

(4) The nature of the Orders' mitigation responsibilities as set out in §9.11;

(5) The nature of the Orders' public and involvement process as set out in §§9.8 and 9.12; and

(6) The supplemental requirements for application for the lease or other disposal of Agency-owned properties, as set out in §9.13.

(c) *Provision of supporting information.* Applicants for Agency assistance may be called upon to provide supporting information relative to the various responsibilities set out in paragraph (b) of this section as a prerequisite to the approval of their applications.

(d) *Approval of applications.* Applications for Agency assistance shall be reviewed for the recognition and reflection of the provisions of this regulation in addition to the Agency's existing approval criteria.

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### §9.18 Responsibilities.

(a) *Regional Administrators' responsibilities.* Regional Administrators shall, for all actions falling within their respective jurisdictions:

(1) Implement the requirements of the Orders and this regulation. Anywhere in §§9.2, 9.6 through 9.13, and 9.15 where a direction is given to the Agency, it is the responsibility of the Regional Administrator.

(2) Consult with the Chief Counsel regarding any question of interpretation concerning this regulation or the Orders.

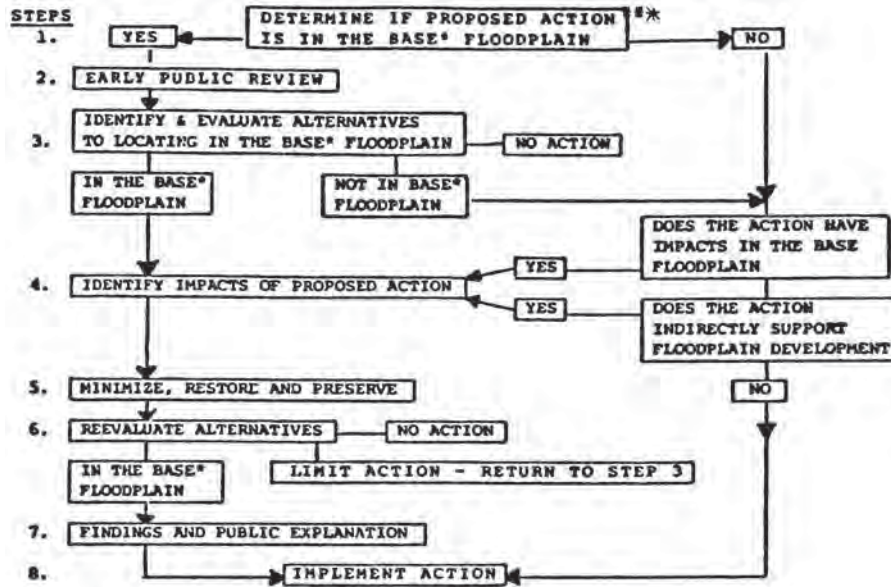
(b) The Heads of the Offices, Directors and Administrations of FEMA shall:

(1) Implement the requirements of the Orders and this regulation. When a decision of a Regional Administrator relating to disaster assistance is appealed, the Assistant Administrator for Mitigation may make determinations under these regulations on behalf of the Agency.

(2) Prepare and submit to the Office of Chief Counsel reports to the Office of Management and Budget in accordance with section 2(b) of E.O. 11988 and section 3 of E.O. 11990. If a proposed action is to be located in a floodplain or wetland, any requests to the Office of Management and Budget for new authorizations or appropriations shall be accompanied by a report indicating whether the proposed action is in accord with the Orders and these regulations.

[45 FR 59526, Sept. 9, 1980, as amended at 49 FR 33879, Aug. 27, 1984; 74 FR 15336, Apr. 3, 2009]

APPENDIX A TO PART 9—DECISION-MAKING PROCESS FOR E.O. 11988



\* FOR CRITICAL ACTIONS SUBSTITUTE "500 YEAR" FOR "BASE" AND FOR WETLANDS DELETE "BASE FLOODPLAIN" AND SUBSTITUTE " WETLANDS".

\*\* FOR WETLANDS "ACTION" INCLUDES "NEW CONSTRUCTION" ONLY.

PART 10 [RESERVED]

- 11.18 Final denial of claim.
- 11.19 Action on approved claim.

PART 11—CLAIMS

Subpart C [Reserved]

Subpart A—General

Subpart D—Personnel Claims Regulations

Sec.

- 11.1 General collection standards.
- 11.2 Delegations of authority.

Subpart B—Administrative Claims Under Federal Tort Claims Act

- 11.10 Scope of regulation.
- 11.11 Administrative claim; when presented; appropriate FEMA office.
- 11.12 Administrative claim; who may file.
- 11.13 Investigations.
- 11.14 Administrative claim; evidence and information to be submitted.
- 11.15 Authority to adjust, determine, compromise and settle.
- 11.16 Limitations on authority.
- 11.17 Referral to Department of Justice.

- 11.70 Scope and purpose.
- 11.71 Claimants.
- 11.72 Time limitations.
- 11.73 Allowable claims.
- 11.74 Claims not allowed.
- 11.75 Claims involving carriers and insurers.
- 11.76 Claims procedures.
- 11.77 Settlement of claims.
- 11.78 Computation of amount of award.
- 11.79 Attorney's fees.

AUTHORITY: 31 U.S.C. 3701 *et seq.*

SOURCE: 45 FR 15930, Mar. 12, 1980, unless otherwise noted.

### Subpart A—General

#### § 11.1 General collection standards.

The general standards and procedures governing the collection, compromise, termination and referral to the Department of Justice of claims for money and property that are prescribed in the regulations issued jointly by the Government Accountability Office and the Department of Justice pursuant to the Federal Claims Collection Act of 1966 (4 CFR part 101 *et seq.*), apply to the administrative claim collection activities of the Federal Emergency Management Agency (FEMA).

#### § 11.2 Delegations of authority.

Any and all claims that arise under subchapter III of chapter 83, chapter 87 and chapter 88 of title 5, the United States Code, the Retired Federal Employees Health Benefits Act (74 Stat. 849), the Panama Canal Construction Annuity Act (58 Stat. 257), and the Lighthouse Service Widow's Annuity Act (64 Stat. 465) shall be referred to the Director of the Bureau of Retirement and Insurance, Office of Personnel Management, for handling. The Chief Counsel, FEMA shall act on all other claims against FEMA for money and property.

### Subpart B—Administrative Claims Under Federal Tort Claims Act

#### § 11.10 Scope of regulation.

This regulation applies to claims asserted under the Federal Tort Claims Act against the Federal Emergency Management Agency (FEMA). It does not include any contractor with FEMA.

#### § 11.11 Administrative claim; when presented; appropriate FEMA office.

(a) For the purpose of this part, and the provisions of the Federal Tort Claims Act a claim is deemed to have been presented when FEMA receives, at a place designated in paragraph (b) or (c) of this section, an executed "Claim for Damage or Injury," Standard Form 95, or other written notification of an incident, accompanied by a claim for money damages in a sum certain for in-

jury to or loss of property, for personal injury, or for death alleged to have occurred by reason of the incident. A claim which should have been presented to FEMA, but which was mistakenly addressed to or filed with another Federal agency, is deemed to be presented to FEMA as of the date that the claim is received by FEMA. If a claim is mistakenly addressed to or filed with FEMA, the claim shall forthwith be transferred to the appropriate Federal Agency, if ascertainable, or returned to the claimant.

(b) Except as provided in paragraph (c) of this section, a claimant shall mail or deliver his or her claim to the Office of Chief Counsel, Federal Emergency Management Agency, Washington, DC, 20472.

(c) When a claim is for \$200 or less, does not involve a personal injury, and involves a FEMA regional employee, the claimant shall mail or deliver the claim to the Administrator of the FEMA Regional Office in which is employed the FEMA employee whose negligence or wrongful act or omission is alleged to have caused the loss or injury complained of. The addresses of the Regional Offices of FEMA are set out in part 2 of this chapter.

(d) A claim presented in compliance with paragraph (a) of this section may be amended by the claimant at any time prior to final FEMA action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). Amendments shall be submitted in writing and signed by the claimant or his or her duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, FEMA shall have six months in which to make a final disposition of the claim as amended and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until six months after the filing of an amendment.

[45 FR 15930, Mar. 12, 1980, as amended at 48 FR 6711, Feb. 15, 1983; 49 FR 33879, Aug. 27, 1984]

#### § 11.12 Administrative claim; who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property interest which is

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the subject of the claim, his or her authorized agent, or legal representative.

(b) A claim for personal injury may be presented by the injured person or, his or her authorized agent or legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate or by any other person legally entitled to assert such a claim under applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer or the insured individually, as their respective interests appear, or jointly. When an insurer presents a claim asserting the rights of a subrogee, he or she shall present with the claim appropriate evidence that he or she has the rights of a subrogee.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title of legal capacity of the person signing, and be accompanied by evidence of his or her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

### § 11.13 Investigations.

FEMA may investigate, or may request any other Federal agency to investigate, a claim filed under this part.

### § 11.14 Administrative claim; evidence and information to be submitted.

(a) *Death.* In support of a claim based on death the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at time of death, including his or her monthly or yearly salary or earnings (if any), and the duration of his or her last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were de-

pendent for support on the decedent at the time of his or her death.

(4) Degree of support afforded by the decedent to each survivor dependent on him or her for support at the time of death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills or medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering before death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the amount of damages claimed.

(b) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by his or her attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by FEMA or another Federal agency. FEMA shall make available to the claimant a copy of the report of the examining physician on written request by the claimant, if he or she has, on request, furnished the report referred to in the first sentence of this subparagraph and has made or agrees to make available to FEMA any other physician's reports previously or thereafter made of the physical or mental condition which is the subject matter of the claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment of such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement

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of expected expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from the employer showing actual time lost from employment, whether he or she is a full- or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(c) *Property damage.* In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership of the property interest which is the subject of the claim.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price, and salvage value, where repair is not economical.

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for the injury to or loss of property or the damages claimed.

### § 11.15 Authority to adjust, determine, compromise and settle.

(a) The Chief Counsel of FEMA, or a designee of the Chief Counsel, is delegated authority to consider, ascertain, adjust, determine, compromise, and settle claims under the provisions of section 2672 of title 28, United States Code, and this part.

(b) Notwithstanding the delegation of authority in paragraph (a) of this section, a Regional Administrator is delegated authority to be exercised in his or her discretion, to consider, ascertain, adjust, determine, compromise, and settle under the provisions of section 2672 of title 28, United States Code, and this part, any claim for \$200

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or less which is based on alleged negligence or wrongful act or omission of an employee of the appropriate Region, except when:

(1) There are personal injuries to either Government personnel or individuals not employed by the Government; or

(2) All damage to Government property or to property being used by FEMA, or both, is more than \$200, or all damage to non-Government property being used by individuals not employed by the Government is more than \$200.

[45 FR 15930, Mar. 12, 1980, as amended at 48 FR 6711, Feb. 15, 1983]

### § 11.16 Limitations on authority.

(a) An award, compromise, or settlement of a claim under this part in excess of \$25,000 may be effected only with the advance written approval of the Attorney General or his or her designee. For the purpose of this paragraph, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

(b) An administrative claim may be adjusted, determined, compromised, or settled under this part only after consultation with the Department of Justice, when, in the opinion of the Chief Counsel of FEMA or his or her designee:

(1) A new precedent or a new point of law is involved; or

(2) A question of policy is or may be involved; or

(3) The United States is or may be entitled to indemnity or contribution from a third party and FEMA is unable to adjust the third party claim; or

(4) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed \$25,000.

(c) An administrative claim may be adjusted, determined, compromised or settled under this part only after consultation with the Department of Justice when FEMA is informed or is otherwise aware that the United States or an employee, agent or cost-type contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

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**§ 11.17 Referral to Department of Justice.**

When Department of Justice approval or consultation is required under §11.16, the referral or request shall be transmitted to the Department of Justice by the Chief Counsel or his or her designee.

**§ 11.18 Final denial of claim.**

(a) Final denial of an administrative claim under this part shall be in writing and sent to the claimant, his or her attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the FEMA action, he or she may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification.

(b) Prior to the commencement of suit and prior to the expiration of the 6-month period provided in 28 U.S.C. 2401(b), a claimant, his or her duly authorized agent, or legal representative, may file a written request with FEMA for reconsideration of a final denial of a claim under paragraph (a) of this section. Upon the timely filing of a request for reconsideration the FEMA shall have 6 months from the date of filing in which to make a final FEMA disposition of the claim and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of a request for reconsideration. Final FEMA action on a request for reconsideration shall be effected in accordance with the provisions of paragraph (a) of this section.

**§ 11.19 Action on approved claim.**

(a) Payment of a claim approved under this part is contingent on claimant's execution of (1) a "Claim for Damage or Injury," Standard Form 95, or a claims settlement agreement, and (2) a "Voucher for Payment," Standard Form 1145, as appropriate. When a claimant is represented by an attorney, the voucher for payment shall designate both the claimant and his or her attorney as payees, and the check shall be delivered to the attorney, whose address shall appear on the voucher.

(b) Acceptance by the claimant, his or her agent, or legal representative, of an award, compromise, or settlement made under section 2672 or 2677 of title 28, United States Code, is final and conclusive on the claimant, his or her agent or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented, and constitutes a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

**Subpart C [Reserved]**

**Subpart D—Personnel Claims Regulations**

AUTHORITY: 31 U.S.C. 3721.

SOURCE: 50 FR 8112, Feb. 28, 1985, unless otherwise noted.

**§ 11.70 Scope and purpose.**

(a) The Administrator, Federal Emergency Management Agency (FEMA), is authorized by 31 U.S.C. 3721 to settle and pay (including replacement in kind) claims of officers and employees of FEMA, amounting to not more than \$25,000 for damage to or loss of personal property incident to their service. Property may be replaced in-kind at the option of the Government. Claims are payable only for such types, quantities, or amounts of tangible personal property (including money) as the approving authority shall determine to be reasonable, useful, or proper under the circumstances existing at the time and place of the loss. In determining what is reasonable, useful, or proper, the approving authority will consider the type and quantity of property involved, circumstances attending acquisition and use of the property, and whether possession or use by the claimant at the time of damage or loss was incident to service.

(b) The Government does not underwrite all personal property losses that a claimant may sustain and it does not underwrite individual tastes. While the Government does not attempt to limit possession of property by an individual, payment for damage or loss is made



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only to the extent that the possession of the property is determined to be reasonable, useful, or proper. If individuals possess excessive quantities of items, or expensive items, they should have such property privately insured. Failure of the claimant to comply with these procedures may reduce or preclude payment of the claim under this subpart.

§ 11.71 Claimants.

(a) A claim pursuant to this subpart may only be made by: (1) An employee of FEMA; (2) a former employee of FEMA whose claim arises out of an incident occurring before his/her separation from FEMA; (3) survivors of a person named in paragraph (a) (1) or (2) of this section, in the following order of precedence: (i) Spouse; (ii) children; (iii) father or mother, or both or (iv) brothers or sisters, or both; (4) the authorized agent or legal representative of a person named in paragraphs (a) (1), (2), and (3) of this section.

(b) A claim may not be presented by or for the benefit of a subrogee, assignee, conditional vendor, or other third party.

§ 11.72 Time limitations.

(a) A claim under this part may be allowed only if it is in writing, specifies a sum certain and is received in the Office of Chief Counsel, Federal Emergency Management Agency, Washington, DC 20472: (1) Within 2 years after it accrues; (2) or if it cannot be filed within the time limits of paragraph (a)(1) of this section because it accrues in time of war or in time of armed conflict in which any armed force of the United States is engaged or if such a war or armed conflict intervenes within 2 years after the claim accrues, when the claimant shows good cause, the claim may be filed within 2 years after the cause ceases to exist but not more than 2 years after termination of the war or armed conflict.

(b) For purposes of this subpart, a claim accrues at the time of the accident or incident causing the loss or damage, or at such time as the loss or damage should have been discovered by the claimant by the exercise of due diligence.

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§ 11.73 Allowable claims.

(a) A claim may be allowed only if: (1) The damage or loss was not caused wholly or partly by the negligent or wrongful act of the claimant, his/her agent, the members of his/her family, or his/her private employee (the standard to be applied is that of reasonable care under the circumstances); and (2) the possession of the property lost or damaged and the quantity possessed is determined to have been reasonable, useful, or proper under the circumstances; and (3) the claim is substantiated by proper and convincing evidence.

(b) Claims which are otherwise allowable under this subpart shall not be disallowed solely because the property was not in the possession of the claimant at the time of the damage or loss, or solely because the claimant was not the legal owner of the property for which the claim is made. For example, borrowed property may be the subject of a claim.

(c) Subject to the conditions in paragraph (a) of this section, and the other provisions of this subpart, any claim for damage to, or loss of, personal property incident to service with FEMA may be considered and allowed. The following are examples of the principal types of claims which may be allowed, unless excluded by § 11.74.

(1) *Property loss or damage in quarters or other authorized places.* Claims may be allowed for damage to, or loss of, property arising from fire, flood, hurricane, other natural disaster, theft, or other unusual occurrence, while such property is located at:

(i) Quarters within the 50 states or the District of Columbia that were assigned to the claimant or otherwise provided in-kind by the United States; or

(ii) Any warehouse, office, working area, or other place (except quarters) authorized for the reception or storage of property.

(2) *Transportation or travel losses.* Claims may be allowed for damage to, or loss of, property incident to transportation or storage pursuant to orders, or in connection with travel under orders, including property in the custody of a carrier, an agent or agency of the Government, or the claimant.

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(3) *Motor vehicles.* Claims may be allowed for automobiles and other motor vehicles damaged or lost by overseas shipments provided by the Government. "Shipments provided by the Government" means via Government vessels, charter of commercial vessels, or by Government bills of lading on commercial vessels, and includes storage, unloading, and offloading incident thereto. Other claims for damage to or loss of automobiles and other major vehicles may be allowed when use of the vehicles on a nonreimbursable basis was required by the claimant's supervisor, but these claims shall be limited to a maximum of \$1,000.00.

(4) *Mobile homes.* Claims may be allowed for damage to or loss of mobile homes and their content under the provisions of paragraph (c)(2) of this section. Claims for structural damage to mobile homes resulting from such structural damage must contain conclusive evidence that the damage was not caused by structural deficiency of the mobile home and that it was not overloaded. Claims for damage to or loss of tires mounted on mobile homes may be allowed only in cases of collision, theft, or vandalism.

(5) *Money.* Claims for money in an amount that is determined to be reasonable for the claimant to possess at the time of the loss are payable:

(i) Where personal funds were accepted by responsible Government personnel with apparent authority to receive them for safekeeping, deposit, transmittal, or other authorized disposition, but were neither applied as directed by the owner nor returned;

(ii) When lost incident to a marine or aircraft disaster;

(iii) When lost by fire, flood, hurricane, or other natural disaster;

(iv) When stolen from the quarters of the claimant where it is conclusively shown that the money was in a locked container and that the quarters themselves were locked. Exceptions to the foregoing "double lock" rule are permitted when the adjudicating authority determines that the theft loss was not caused wholly or partly by the negligent or wrongful act of the claimant, their agent, or their employee. The adjudicating authority should use the test of whether the claimant did their

best under the circumstances to protect the property; or

(v) When taken by force from the claimant's person.

(6) *Clothing.* Claims may be allowed for clothing and accessories customarily worn on the person which are damaged or lost:

(i) During the performance of official duties in an unusual or extraordinary-risk situation;

(ii) In cases involving emergency action required by natural disaster such as fire, flood, hurricane, or by enemy or other belligerent action;

(iii) In cases involving faulty equipment or defective furniture maintained by the Government and used by the claimant required by the job situation; or

(iv) When using a motor vehicle.

(7) *Property used for benefit of the Government.* Claims may be allowed for damage to or loss of property (except motor vehicles, see §§11.73(c)(3) and 11.74(b)(13)) used for the benefit of the Government at the request of, or with the knowledge and consent of, superior authority or by reason of necessity.

(8) *Enemy action or public service.* Claims may be allowed for damage to or loss of property as a direct consequence of:

(i) Enemy action or threat thereof, or combat, guerrilla, brigandage, or other belligerent activity, or unjust confiscation by a foreign power or its nation;

(ii) Action by the claimant to quiet a civil disturbance or to alleviate a public disaster; or

(iii) Efforts by the claimant to save human life or Government property.

(9) *Marine or aircraft disaster.* Claims may be allowed for personal property damaged or lost as a result of marine or aircraft disaster or accident.

(10) *Government property.* Claims may be allowed for property owned by the United States only when the claimant is financially responsible to an agency of the Government other than FEMA.

(11) *Borrowed property.* Claims may be allowed for borrowed property that has been damaged or lost.

(12)(i) A claim against the Government may be made for not more than \$40,000 by an officer or employee of the agency for damage to, or loss of, personal property in a foreign country

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that was incurred incident to service, and—

(A) The officer, or employee was evacuated from the country on a recommendation or order of the Secretary of State or other competent authority that was made in responding to an incident of political unrest or hostile act by people in that country; and the damage or loss resulted from the evacuation, incident, or hostile act; or

(B) The damage or loss resulted from a hostile act directed against the Government or its officers, or employees.

(ii) On paying the claim under this section, the Government is subrogated for the amount of the payment to a right or claim that the claimant may have against the foreign country for the damage or loss for which the Government made the payment.

(iii) Amounts may be obligated or expended for claims under this section only to the extent provided in advance in appropriation laws.

§ 11.74 Claims not allowed.

(a) A claim is not allowable if:

(1) The damage or loss was caused wholly or partly by the negligent or wrongful act of the claimant, claimant's agent, claimant's employee, or a member of claimant's family;

(2) The damage or loss occurred in quarters occupied by the claimant within the 50 states and the District of Columbia that were not assigned to the claimant or otherwise provided in-kind by the United States;

(3) Possession of the property lost or damaged was not incident to service or not reasonable or proper under the circumstances.

(b) In addition to claims falling within the categories of paragraph (a) of this section, the following are examples of claims which are not payable:

(1) *Claims not incident to service.* Claims which arose during the conduct of personal business are not payable.

(2) *Subrogation claims.* Claims based upon payment or other consideration to a proper claimant are not payable.

(3) *Assigned claims.* Claims based upon assignment of a claim by a proper claimant are not payable.

(4) *Conditional vendor claims.* Claims asserted by or on behalf of a conditional vendor are not payable.

(5) *Claims by improper claimants.* Claims by persons not designated in § 11.71 are not payable.

(6) *Articles of extraordinary value.* Claims are not payable for valuable or expensive articles, such as cameras, watches, jewelry, furs, or other articles of extraordinary value, when shipped with household goods or as unaccompanied baggage (shipment includes storage). This prohibition does not apply to articles in the personal custody of the claimant or articles properly checked, provided that reasonable protection or security measures have been taken, by the claimant.

(7) *Articles acquired for other persons.* Claims are not payable for articles intended directly or indirectly for persons other than the claimant or members of the claimants' immediate household. This prohibition includes articles acquired at the request of others and articles for sale.

(8) *Property used for business.* Claims are not payable for property normally used for business or profit.

(9) *Unserviceable property.* Claims are not payable for wornout or unserviceable property.

(10) *Violation of law or directive.* Claims are not payable for property acquired, possessed, or transported in violation of law, regulation, or other directive. This does not apply to limitation imposed on the weight of shipments of household goods.

(11) *Intangible property.* Claims are not payable for intangible property such as bank books, checks, promissory notes, stock certificates, bonds, bills of lading, warehouse receipts, baggage checks, insurance policies, money orders, and traveler's checks.

(12) *Government property.* Claims are not payable for property owned by the United States unless the claimant is financially responsible for the property to an agency of the Government other than FEMA.

(13) *Motor vehicles.* Claims for motor vehicles, except as provided for by § 11.73(c)(3), will ordinarily not be paid. However, in exceptional cases, meritorious claims for damage to or loss of motor vehicles, limited to a maximum of \$1,000.00, may be recommended to the Office of Chief Counsel for consideration and approval for payment.

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(14) *Enemy property.* Claims are not payable for enemy property, including war trophies.

(15) *Losses recoverable from carrier, insurer or contractor.* Claims are not payable for losses, or any portion thereof, which have been recovered or are recoverable from a carrier, insurer or under contract except as permitted under § 11.75.

(16) *Fees for estimates.* Claims are not normally payable for fees paid to obtain estimates of repair in conjunction with submitting a claim under this subpart. However, where, in the opinion of the adjudicating authority, the claimant could not obtain an estimate without paying a fee, such a claim may be considered in an amount reasonable in relation to the value for the cost of repairs of the articles involved, provided that the evidence furnished clearly indicates that the amount of the fee paid will not be deducted from the cost of repairs if the work is accomplished by the estimator.

(17) *Items fraudulently claimed.* Claims are not payable for items fraudulently claimed. When investigation discloses that a claimant, claimant's agent, claimant's employee, or member of claimant's family has intentionally misrepresented an item claimed as to cost, condition, costs to repair, etc., the item will be disallowed in its entirety even though some actual damage has been sustained. However, if the remainder of the claim is proper, it may be paid. This does not preclude appropriate disciplinary action if warranted.

(18) *Minimum amount.* Loss or damage amounting to less than \$10.

**§ 11.75 Claims involving carriers and insurers.**

In the event the property which is the subject of a claim was lost or damaged while in the possession of a carrier or was insured, the following procedures will apply:

(a) Whenever property is damaged, lost, or destroyed while being shipped pursuant to authorized travel orders, the owner must file a written claim for reimbursement with the last commercial carrier known or believed to have handled the goods, or the carrier known to be in possession of the property when the damage or loss occurred,

according to the terms of its bill of lading or contract, before submitting a claim against the Government under this subpart.

(1) If more than one bill of lading or contract was issued, a separate demand should be made against the last carrier on each such document.

(2) The demand should be made within the time limit provided in the policy and prior to the filing of a claim against the Government.

(3) If it is apparent that the damage or loss is attributable to packing, storage, or unpacking while in the custody of the Government, no demand need be made against the carrier.

(b) Whenever property which is damaged, lost, or destroyed incident to the claimant's service is insured in whole or in part, the claimant must make demand in writing against the insurer for reimbursement under terms and conditions of the insurance coverage, prior to the filing of the concurrent claim against the Government.

(c) Failure to make a demand on a carrier or insurer or to make all reasonable efforts to protect and prosecute rights available against a carrier or insurer and to collect the amount recoverable from the carrier or insurer may result in reducing the amount recoverable from the Government by the maximum amount which would have been recoverable from the carrier or insurer, had the claim been timely or diligently prosecuted. However, no deduction will be made where the circumstances of the claimant's service preclude reasonable filing of such a claim or diligent prosecution, or the evidence indicates a demand was impracticable or would have been unavailing.

(d) Following the submission of the claim against the carrier or insurer, the claimant may immediately submit a claim against the Government in accordance with the provisions of this subpart, without waiting until either final approval or denial of the claim is made by the carrier or insurer.

(1) Upon submission of a claim to the Government, the claimant must certify in the claim that no recovery (or the amount of recovery) has been gained from a carrier or insurer, and enclose all correspondence pertinent thereto.

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(2) If the carrier or insurer has not taken final action on the claim against them, by the time the claimant submits a claim to the Government, the claimant will immediately notify them to address all correspondence in regard to the claim to him/her, in care of the Chief Counsel of FEMA.

(3) The claimant shall timely advise the Chief Counsel in writing, of any action which is taken by the carrier or insurer on the claim. On request, the claimant also will furnish such evidence as may be required to enable the United States to enforce the claim.

(e) When a claim is paid by FEMA, the claimant will assign to the United States, to the extent of any payment on the claim accepted by claimant, all rights, title, and interest in any claim against the carrier, insurer, or other party arising out of the incident on which the claim against the Government is based. After payment of the claim by the Government, the claimant will, upon receipt of any payment from a carrier or insurer, pay the proceeds to the United States to the extent of the payment received by the claimant from the United States.

(f) When a claimant recovers for the loss from the carrier or insurer before the claim against the Government under this subpart is settled, the amount or recovery shall be applied to the claim as follows:

(1) When the amount recovered from a carrier, insurer, or other third party is greater than or equal to the claimant's total loss as determined under this subpart, no compensation is allowable under this subpart.

(2) When the amount recovered is less than such total loss, the allowable amount is determined by deducting the recovery from the amount of such total loss;

(3) For the purpose of this paragraph (f) the claimant's total loss is to be determined without regard to the \$25,000 maximum set forth above. However, if the resulting amount, after making this deduction, exceeds \$25,000, the claimant will be allowed only \$25,000.

§ 11.76 Claims procedures.

(a) *Filing a claim.* Applicants shall file claims in writing with the Chief Counsel, Federal Emergency Management

Agency, Washington, DC 20472. Each written claim shall contain, as a minimum:

(1) Name, address, and place of employment of the claimant;

(2) Place and date of the damage or loss;

(3) A brief statement of the facts and circumstances surrounding the damage or loss;

(4) Cost, date, and place of acquisition of each price of property damaged or lost;

(5) Two itemized repair estimates, or value estimates, whichever is applicable;

(6) Copies of police reports, if applicable;

(7) A statement from the claimant's supervisor that the loss was incident to service;

(8) A statement that the property was or was not insured;

(9) With respect to claims involving thefts or losses in quarters or other places where the property was reasonably kept, a statement as to what security precautions were taken to protect the property involved;

(10) With respect to claims involving property being used for the benefit of the Government, a statement by the claimant's supervisor that the claimant was required to provide such property or that the claimant's providing it was in the interest of the Government; and

(11) Other evidence as may be required.

(b) *Single claim.* A single claim shall be presented for all lost or damaged property resulting from the same incident. If this procedure causes a hardship, the claimant may present an initial claim with notice that it is a partial claim, an explanation of the circumstances causing the hardship, and an estimate of the balance of the claim and the date it will be submitted. Payment may be made on a partial claim if the adjudicating authority determines that a genuine hardship exists.

(c) *Loss in quarters.* Claims for property loss in quarters or other authorized places should be accompanied by a statement indicating:

(1) Geographical location;

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(2) Whether the quarters were assigned or provided in-kind by the Government;

(3) Whether the quarters are regularly occupied by the claimant;

(4) Names of the authority, if any, who designated the place of storage of the property if other than quarters;

(5) Measures taken to protect the property; and

(6) Whether the claimant is a local inhabitant.

(d) *Loss by theft or robbery.* Claims for property loss by theft or robbery should be accompanied by a statement indicating:

(1) Geographical location;

(2) Facts and circumstances surrounding the loss, including evidence of the crime such as breaking and entering, capture of the thief or robber, or recovery of part of the stolen goods; and

(3) Evidence that the claimant exercised due care in protecting the property prior to the loss, including information as to the degree of care normally exercised in the locale of the loss due to any unusual risks involved.

(e) *Transportation losses.* Claims for transportation losses should be accompanied by the following:

(1) Copies of orders authorizing the travel, transportation, or shipment or a certificate explaining the absence of orders and stating their substance;

(2) Statement in cases where property was turned over to a shipping officer, supply officer, or contract packer indicating:

(i) Name (or designation) and address of the shipping officer, supply officer, or contract packer indicating;

(ii) Date the property was turned over;

(iii) Inventoried condition when the property was turned over;

(iv) When and where the property was packed and by whom;

(v) Date of shipment;

(vi) Copies of all bills of lading, inventories, and other applicable shipping documents;

(vii) Date and place of delivery to the claimant;

(viii) Date the property was unpacked by the carrier, claimant, or Government;

(ix) Statement of disinterested witnesses as to the condition of the property when received and delivered, or as to handling or storage;

(x) Whether the negligence of any Government employee acting within the scope of his/her employment caused the damage or loss;

(xi) Whether the last common carrier or local carrier was given a clear receipt, except for concealed damages;

(xii) Total gross, tare, and new weight of shipment;

(xiii) Insurance certificate or policy if losses are privately insured;

(xiv) Copy of the demand on carrier or insured, or both, when required, and the reply, if any;

(xv) Action taken by the claimant to locate missing baggage or household effects, including related correspondence.

(f) *Marine or aircraft disaster.* Claims for property losses due to marine or aircraft disaster should be accompanied by a copy of orders or other evidence to establish the claimant's right to be, or to have property on board.

(g) *Enemy action, public disaster, or public service.* Claims for property losses due to enemy action, public disaster, or public service should be accompanied by:

(1) Copies of orders or other evidence establishing the claimant's required presence in the area involved; and

(2) A detailed statement of facts and circumstances showing an applicable case enumerated in § 11.73(c)(8).

(h) *Money.* Claims for loss of money deposited for safekeeping, transmittal, or other authorized disposition should be accompanied by:

(1) Name, grade, and address of the person or persons who received money and any others involved;

(2) Name and designation of the authority who authorized such person or persons to accept personal funds and the disposition required; and

(3) Receipts and written sworn statements explaining the failure to account for funds or return them to the claimant.

(i) *Motor vehicles or mobile homes in transit.* Claims for damage to motor vehicles or mobile homes in transit

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should be accompanied by a copy of orders or other available evidence to establish the claimant's lawful right to have the property shipped and evidence to establish damage in transit.

**§ 11.77 Settlement of claims.**

(a) The Chief Counsel, FEMA, is authorized to settle (consider, ascertain, adjust, determine, and dispose of, whether by full or partial allowance or disallowance) any claim under this subpart.

(b) The Chief Counsel may formulate such procedures and make such redelegations as may be required to fulfill the objectives of this subpart.

(c) The Chief Counsel shall conduct or request the Office of Inspector General to conduct such investigation as may be appropriate in order to determine the validity of a claim.

(d) The Chief Counsel shall notify a claimant in writing of action taken on their claim, and if partial or full disallowance is made, the reasons therefor.

(e) In the event a claim submitted against a carrier under §11.75 has not been settled, before settlement of the claim against the Government pursuant to this subpart, the Chief Counsel shall notify such carrier or insurer to pay the proceeds of the claim to FEMA to the extent FEMA has paid such to claimant in settlement.

(f) The settlement of a claim under this subpart, whether by full or partial allowance or disallowance, is final and conclusive.

**§ 11.78 Computation of amount of award.**

(a) The amount allowed for damage to or loss of any items of property may not exceed the cost of the item (either the price paid in cash or property, or the value at the time of acquisition if not acquired by purchase or exchange), and there will be no allowance for replacement cost or for appreciation in the value of the property. Subject to these limitations, the amount allowable is either:

(1) The depreciated value, immediately prior to the loss or damage, of property lost or damaged beyond economical repair, less any salvage value; or

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(2) The reasonable cost or repairs, when property is economically repairable, provided that the cost of repairs does not exceed the amount allowable under paragraph (a)(1) of this section.

(b) Depreciation in value is determined by considering the type of article involved, its costs, its conditions when damaged or lost, and the time elapsed between the date of acquisition and the date of damage or loss.

(c) Replacement of lost or damaged property may be made in-kind whenever appropriate.

**§ 11.79 Attorney's fees.**

No more than 10 per centum of the amount paid in settlement of each individual claim submitted and settled under this subpart shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim. A person violating this section shall be fined not more than \$1,000.

[45 FR 15930, Mar. 12, 1980, as amended at 74 FR 15337, Apr. 3, 2009]

**PARTS 12-14 [RESERVED]**

**PART 15—CONDUCT AT THE MT. WEATHER EMERGENCY ASSISTANCE CENTER AND AT THE NATIONAL EMERGENCY TRAINING CENTER**

- Sec.
- 15.1 Applicability.
- 15.2 Definitions.
- 15.3 Access to Mt. Weather.
- 15.4 Inspection.
- 15.5 Preservation of property.
- 15.6 Compliance with signs and directions.
- 15.7 Disturbances.
- 15.8 Gambling.
- 15.9 Alcoholic beverages and narcotics.
- 15.10 Soliciting, vending, and debt collection.
- 15.11 Distribution of handbills.
- 15.12 Photographs and other depictions.
- 15.13 Dogs and other animals.
- 15.14 Vehicular and pedestrian traffic.
- 15.15 Weapons and explosives.
- 15.16 Penalties.
- 15.17 Other laws.

AUTHORITY: Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 13239, 3

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CFR, 1979 Comp., p. 412; Federal Fire Prevention and Control Act of 1974, 15 U.S.C. 2201 *et seq.*; delegation of authority from the Administrator of General Services, dated July 18, 1979; Pub. L. 80-566, approved June 1, 1948, 40 U.S.C. 318-318d; and the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 271 *et seq.*

SOURCE: 64 FR 31137, June 10, 1999, unless otherwise noted.

### § 15.1 Applicability.

The rules and regulations in this part apply to all persons entering, while on, or leaving all the property known as the Mt. Weather Emergency Operations Center (Mt. Weather) located at 19844 Blue Ridge Mountain Road, Bluemont, Virginia 20135, and all the property known as the National Emergency Training Center (NETC), located on 16825 South Seton Avenue in Emmitsburg, Maryland, which the Federal Emergency Management Agency (FEMA) owns, operates and controls.

### § 15.2 Definitions.

Terms used in part 15 have these meanings:

*Administrator* means the Administrator of the Federal Emergency Management Agency.

*Assistant Administrator* means the Assistant Administrator, United States Fire Administration, FEMA.

*FEMA* means the Federal Emergency Management Agency.

*Mt. Weather* means the Mt. Weather Emergency Operations Center, Bluemont, Virginia.

*Mt. Weather Executive Director* means the Executive Director of the Mt. Weather Emergency Operations Center.

*NETC* means the National Emergency Training Center, Emmitsburg, MD.

*We* means the Federal Emergency Management Agency or FEMA.

[64 FR 31137, June 10, 1999, as amended at 74 FR 15338, Apr. 3, 2009]

### § 15.3 Access to Mt. Weather.

Mt. Weather contains classified material and areas that we must protect in the interest of national security. The facility is a restricted area. We deny access to Mt. Weather to the general public and limit access to those persons having official business related to the missions and operations of Mt.

Weather. The Administrator or the Mt. Weather Executive Director must approve all persons and vehicles entering Mt. Weather. All persons must register with the Mt. Weather Police/Security Force and must receive a Mt. Weather identification badge and vehicle parking decal or permit to enter or remain on the premises. No person will enter or remain on Mt. Weather premises unless he or she has received permission from the Administrator or the Mt. Weather Executive Director and has complied with these procedures.

### § 15.4 Inspection.

(a) *In general.* All vehicles, packages, handbags, briefcases, and other containers being brought into, while on or being removed from Mt. Weather or the NETC are subject to inspection by the Police/Security Force and other authorized officials. A full search of a vehicle or person may accompany an arrest.

(b) *Inspection at Mt. Weather.* We authorize inspection at Mt. Weather to prevent the possession and use of items prohibited by these rules and regulations or by other applicable laws, to prevent theft of property and to prevent the wrongful obtaining of defense information under 18 U.S.C. 793. If individuals object to such inspections they must tell the officer on duty at the entrance gate before entering Mt. Weather. The Police/Security Force and other authorized officials must not authorize or allow individuals who refuse to permit an inspection of their vehicle or possessions to enter the premises of Mt. Weather.

### § 15.5 Preservation of property.

At both Mt. Weather and NETC we prohibit:

- (a) The improper disposal of rubbish;
- (b) Willful destruction of or damage to property;
- (c) Theft of property;
- (d) Creation of any hazard on the property to persons or things;
- (e) Throwing articles of any kind from or at a building;
- (f) Climbing upon a fence; or
- (g) Climbing upon the roof or any part of a building.



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### § 15.6 Compliance with signs and directions.

Persons at Mt. Weather and the NETC must comply at all times with official signs that prohibit, regulate, or direct, and with the directions of the Police/Security Force and other authorized officials.

### § 15.7 Disturbances.

At both Mt. Weather and NETC we prohibit any unwarranted loitering, disorderly conduct, or other conduct at Mt. Weather and NETC that:

- (a) Creates loud or unusual noise or a nuisance;
- (b) Unreasonably obstructs the usual use of classrooms, dormitory rooms, entrances, foyers, lobbies, corridors, offices, elevators, stairways, roadways or parking lots;
- (c) Otherwise impedes or disrupts the performance of official duties by government employees or government contractors;
- (d) Interferes with the delivery of educational or other programs; or
- (e) Prevents persons from obtaining in a timely manner the administrative services provided at both facilities.

### § 15.8 Gambling.

We prohibit participating in games for money or other personal property, including the operation of gambling devices, the conduct of a lottery or pool, or the sale or purchase of numbers tickets at both facilities.

### § 15.9 Alcoholic beverages and narcotics.

At both Mt. Weather and the NETC we prohibit:

- (a) Operating a motor vehicle by any person under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates or amphetamines as defined in Title 21 of the Annotated Code of Maryland, Transportation, sec. 21-902 or in Title 18.2, ch. 7, Art. 2 of the Code of Virginia, secs. 18.2-266 and 18.2-266.1, as applicable;
- (b) Entering upon or while on either property being under the influence of or using or possessing any narcotic drug, marijuana, hallucinogen, barbiturate or amphetamine. This prohibition does not apply in cases where a li-

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censed physician has prescribed the drug for the person;

(c) Entering upon either property or being on either property under the influence of alcoholic beverages;

(d) Bringing alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates or amphetamines onto the premises unless the Assistant Administrator, the Mt. Weather Executive Director, or the Administrator or designee for the NETC authorizes it in writing; and

(e) Use of alcoholic beverages on the property except:

(1) In the Balloon Shed Lounge at Mt. Weather and in other locations that the Administrator or the Mt. Weather Executive Director authorizes in writing; and

(2) In the NETC Recreation Association and other locations that the Assistant Administrator for the United States Fire Administration or the Administrator, or designee, authorizes in writing.

### § 15.10 Soliciting, vending, and debt collection.

(a) We prohibit soliciting alms and contributions, commercial or political soliciting and vending of all kinds, displaying or distributing commercial advertising, or collecting private debts unless the Assistant Administrator for the United States Fire Administration or the Mt. Weather Executive Director approve the activities in writing and in advance.

(b) The prohibitions of this section do not apply to:

(1) National or local drives for funds for welfare, health, or other purposes as authorized by 5 CFR part 950, Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations. The Administrator, or the Senior Resident Manager, or the Assistant Administrator for the United States Fire Administration or designee, must approve all such national or local drives before they are conducted on either premises;

(2) Authorized concessions;

(3) Personal notices posted by employees on authorized bulletin boards; and

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(4) Solicitation of labor organization membership or dues authorized by occupant agencies under the Civil Service Reform Act of 1978, 5 U.S.C. 7101 *et seq.*

### § 15.11 Distribution of handbills.

We prohibit the distribution of materials such as pamphlets, handbills or flyers, and the displaying of placards or posting of materials on bulletin boards or elsewhere at Mt. Weather and the NETC unless the Administrator, the Mt. Weather Executive Director, or the Deputy Assistant Administrator for the United States Fire Administration or designee, approves such distribution or display, or when such distribution or display is conducted as part of authorized government activities.

### § 15.12 Photographs and other depictions.

(a) *Photographs and other depictions at Mt. Weather.* We prohibit taking photographs and making notes, sketches, or diagrams of buildings, grounds or other features of Mt. Weather, or the possession of a camera while at Mt. Weather except when the Administrator or Mt. Weather Executive Director approves in advance.

(b) *Photographs and other depictions at the NETC.* (1) Photographs may be taken inside classroom or office areas of the NETC only with the consent of the occupants. Except where security regulations apply or a Federal court order or rule prohibits it, photographs may be taken in entrances, lobbies, foyers, corridors, or auditoriums when used for public meetings.

(2) Subject to the foregoing prohibitions, photographs for advertising and commercial purposes may be taken only with written permission of the Director of Management Operations and Systems Support, United States Fire Administration, Federal Emergency Management Agency, Emmitsburg, MD 21727, (telephone) (301) 447-1223, (facsimile) (301) 447-1052, or other authorized official where photographs are to be taken.

### § 15.13 Dogs and other animals.

Dogs and other animals, except seeing-eye dogs, must not be brought onto Mt. Weather grounds or into the build-

ings at NETC for other than official purposes.

### § 15.14 Vehicular and pedestrian traffic.

(a) Drivers of all vehicles entering or while at Mt. Weather or the NETC must drive carefully and safely at all times and must obey the signals and directions of the Police/Security Force or other authorized officials and all posted traffic signs;

(b) Drivers must comply with NETC parking requirements and vehicle registration requirements;

(c) At both Mt. Weather and the NETC we prohibit:

(1) Blocking entrances, driveways, walks, loading platforms, or fire hydrants on the property; and

(2) Parking without authority, parking in unauthorized locations or in locations reserved for other persons, or parking contrary to the direction of posted signs.

(3) Where warning signs are posted vehicles parked in violation may be removed at the owners' risk and expense.

(d) The Administrator, Mt. Weather Executive Director, or the Assistant Administrator for the United States Fire Administration or designee may issue and post specific supplemental traffic directives if needed. When issued and posted supplemental traffic directives will have the same force and effect as if they were in these rules. Proof that a parked motor vehicle violated these rules or directives may be taken as prima facie evidence that the registered owner was responsible for the violation.

### § 15.15 Weapons and explosives.

No person entering or while at Mt. Weather or the NETC will carry or possess firearms, other dangerous or deadly weapons, explosives or items intended to be used or that could reasonably be used to fabricate an explosive or incendiary device, either openly or concealed, except:

(a) For official purposes if the Administrator, Mt. Weather Executive Director, or the Assistant Administrator for the United States Fire Administration or designee approves; and

(b) In accordance with FEMA policy governing the possession of firearms.

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**§ 15.16 Penalties.**

(a) *Misconduct.* (1) Whoever is found guilty of violating any of these rules and regulations is subject to a fine of not more than \$50 or imprisonment for not more than 30 days, or both. (See 40 U.S.C. 318c.)

(2) We will process any misconduct at NETC according to FEMA/NETC policy or instructions.

(b) *Parking violations.* We may tow at the owner's expense any vehicles parked in violation of State law, FEMA, Mt. Weather, or NETC instructions.

**§ 15.17 Other laws.**

Nothing in the rules and regulations in this part will be construed to abolish any other Federal laws or any State and local laws and regulations applicable to Mt. Weather or NETC premises. The rules and regulations in this part supplement penal provisions of Title 18, United States Code, relating to Crimes and Criminal Procedure, which apply without regard to the place of the offense and to those penal provisions that apply in areas under the special maritime and territorial jurisdiction of the United States, as defined in 18 U.S.C. 7. They supersede provisions of State law, however, that Federal law makes criminal offenses under the Assimilated Crimes Act (18 U.S.C. 13) to the extent that State laws conflict with these regulations. State and local criminal laws apply as such only to the extent that the State reserved such authority to itself by the State consent or cession statute or that a Federal statute vests such authority in the State.

**PART 16—ENFORCEMENT OF NON-DISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY**

- Sec.
- 16.101 Purpose.
- 16.102 Application.
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- 16.104–16.109 [Reserved]
- 16.110 Self-evaluation.
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- 16.149 Program accessibility: Discrimination prohibited.
- 16.150 Program accessibility: Existing facilities.
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- 16.161–16.169 [Reserved]
- 16.170 Compliance procedures.
- 16.171–16.999 [Reserved]

AUTHORITY: 29 U.S.C. 794.

SOURCE: 53 FR 25885, July 8, 1988, unless otherwise noted.

**§ 16.101 Purpose.**

The purpose of this regulation is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

**§ 16.102 Application.**

This regulation (§§16.101 through 16.170) applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

**§ 16.103 Definitions.**

For purposes of this regulation, the term—

*Assistant Attorney General* means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

*Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids

useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

*Complete complaint* means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

*Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

*Historic preservation programs* means programs conducted by the agency that have preservation of historic properties as a primary purpose.

*Historic properties* means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

*Individual with handicaps* means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited

to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

*Qualified individual with handicaps* means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, an individual with handicaps who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency;

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, an individual with

handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this regulation by §16.140.

*Section 504* means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810). As used in this regulation, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

*Substantial impairment* means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 16.104–16.109 [Reserved]

§ 16.110 Self-evaluation.

(a) The agency shall, by September 6, 1989, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this regulation and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

- (1) A description of areas examined and any problems identified; and
- (2) A description of any modifications made.

§ 16.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 16.112–16.129 [Reserved]

§ 16.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

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(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards;

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permiscibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by

the agency are not, themselves, covered by this regulation.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this regulation.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

**§§ 16.131–16.139 [Reserved]**

**§ 16.140 Employment.**

No qualified individual with handicaps shall, on the basis of handicap, be subject to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

**§§ 16.141–16.148 [Reserved]**

**§ 16.149 Program accessibility: Discrimination prohibited.**

Except as otherwise provided in §16.150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

**§ 16.150 Program accessibility: Existing facilities.**

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps;

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(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §16.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General*. The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amend-

ed (42 U.S.C. 4151 through 4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(2) *Historic preservation programs*. In meeting the requirements of §16.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to an historic property is not required because of §16.150(a) (2) or (3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance*. The agency shall comply with the obligations established under this section by November 7, 1988, except that where structural changes in facilities are undertaken, such changes shall be made by September 6, 1991, but in any event as expeditiously as possible.

(d) *Transition plan*. In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by March 6, 1989, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

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(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

**§ 16.151 Program accessibility: New construction and alterations.**

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

**§§ 16.152-16.159 [Reserved]**

**§ 16.160 Communications.**

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally ef-

fective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §16.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

**§§ 16.161-16.169 [Reserved]**

**§ 16.170 Compliance procedures.**

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the agency.



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(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director of the Office of Equal Rights shall be responsible for coordinating implementation of this section. Complaints may be sent to Director of the Office of Equal Rights, Room 810, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

- (1) Findings of fact and conclusions of law;
- (2) A description of a remedy for each violation found; and
- (3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by paragraph (g) of this section. The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

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(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

**§§ 16.171–16.999 [Reserved]**

**PART 17 [RESERVED]**

**PART 18—NEW RESTRICTIONS ON LOBBYING**

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- 18.100 Conditions on use of funds.
- 18.105 Definitions.
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- 18.600 Semi-annual compilation.
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- APPENDIX B TO PART 18—DISCLOSURE FORM TO REPORT LOBBYING

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AUTHORITY: Section 319, Public Law 101-121 (31 U.S.C. 1352); 5 U.S.C. 551, 552, 553; 5 U.S.C. 601, *et seq.*; E.O. 12291. Reorganization Plan No. 3 of 1978, E.O. 12127, E.O. 12148, E.O. 12657, E.O. 12699.

SOURCE: 55 FR 6737, 6754, Feb. 26, 1990, unless otherwise noted.

CROSS REFERENCE: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

### Subpart A—General

#### § 18.100 Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, set forth in appendix A, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form, set forth in appendix B, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in appendix A, whether that person has made or has agreed to make any pay-

ment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form, set forth in appendix B, if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

#### § 18.105 Definitions.

For purposes of this part:

(a) *Agency*, as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

(b) *Covered Federal action* means any of the following Federal actions:

- (1) The awarding of any Federal contract;
- (2) The making of any Federal grant;
- (3) The making of any Federal loan;
- (4) The entering into of any cooperative agreement; and,
- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. Loan guarantees and loan insurance are addressed independently within this part.

(c) *Federal contract* means an acquisition contract awarded by an agency, including those subject to the Federal Acquisition Regulation (FAR), and any other acquisition contract for real or personal property or services not subject to the FAR.

(d) *Federal cooperative agreement* means a cooperative agreement entered into by an agency.

(e) *Federal grant* means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government or a direct appropriation made by law to any person. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, loan insurance, interest subsidies, insurance, or direct United States cash assistance to an individual.

(f) *Federal loan* means a loan made by an agency. The term does not include loan guarantee or loan insurance.

(g) *Indian tribe* and *tribal organization* have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

(h) *Influencing or attempting to influence* means making, with the intent to influence, any communication to or appearance before an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

(i) *Loan guarantee* and *loan insurance* means an agency's guarantee or insurance of a loan made by a person.

(j) *Local government* means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

(k) *Officer or employee of an agency* includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;

(2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;

(3) A special Government employee as defined in section 202, title 18, U.S. Code; and,

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.

(l) *Person* means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(m) *Reasonable compensation* means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

(n) *Reasonable payment* means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(o) *Recipient* includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(p) *Regularly employed* means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or a commitment providing for the United States to insure or guarantee a loan, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, cooperative agreement, loan insurance commitment, or loan guarantee commitment. An officer or employee who is employed by such person for less than

130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

(q) *State* means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

**§ 18.110 Certification and disclosure.**

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

(1) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or

(2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000, unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

(1) A subcontract exceeding \$100,000 at any tier under a Federal contract;

(2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;

(3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,

(4) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement,

shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions,

**§ 18.200**

but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

**Subpart B—Activities by Own Employees**

**§ 18.200 Agency and legislative liaison.**

(a) The prohibition on the use of appropriated funds, in §18.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph (a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(c) For purposes of paragraph (a) of this section, the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) For purposes of paragraph (a) of this section, the following agencies and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

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(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95–507 and other subsequent amendments.

(e) Only those activities expressly authorized by this section are allowable under this section.

**§ 18.205 Professional and technical services.**

(a) The prohibition on the use of appropriated funds, in §18.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or an extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) For purposes of paragraph (a) of this section, “professional and technical services” shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence

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made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by this section are allowable under this section.

**§ 18.210 Reporting.**

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

**Subpart C—Activities by Other Than Own Employees**

**§ 18.300 Professional and technical services.**

(a) The prohibition on the use of appropriated funds, in §18.100 (a), does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) The reporting requirements in §18.110 (a) and (b) regarding filing a dis-

closure form by each person, if required, shall not apply with respect to professional or technical services rendered directly in the preparation, submission, or negotiation of any commitment providing for the United States to insure or guarantee a loan.

(c) For purposes of paragraph (a) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting or a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(d) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

## § 18.400

(e) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(f) Only those services expressly authorized by this section are allowable under this section.

### Subpart D—Penalties and Enforcement

#### § 18.400 Penalties.

(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see appendix B) to be filed or amended if required herein, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(c) A filing or amended filing on or after the date on which an administrative action for the imposition of a civil penalty is commenced does not prevent the imposition of such civil penalty for a failure occurring before that date. An administrative action is commenced with respect to a failure when an investigating official determines in writing to commence an investigation of an allegation of such failure.

(d) In determining whether to impose a civil penalty, and the amount of any such penalty, by reason of a violation by any person, the agency shall consider the nature, circumstances, extent, and gravity of the violation, the effect on the ability of such person to continue in business, any prior violations by such person, the degree of culpability of such person, the ability of the person to pay the penalty, and such other matters as may be appropriate.

(e) First offenders under paragraphs (a) or (b) of this section shall be subject to a civil penalty of \$10,000, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between \$10,000 and \$100,000, as determined by the agency head or his or her designee.

(f) An imposition of a civil penalty under this section does not prevent the

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United States from seeking any other remedy that may apply to the same conduct that is the basis for the imposition of such civil penalty.

#### § 18.405 Penalty procedures.

Agencies shall impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. 3803 (except subsection (c)), 3804, 3805, 3806, 3807, 3808, and 3812, insofar as these provisions are not inconsistent with the requirements herein.

#### § 18.410 Enforcement.

The head of each agency shall take such actions as are necessary to ensure that the provisions herein are vigorously implemented and enforced in that agency.

### Subpart E—Exemptions

#### § 18.500 Secretary of Defense.

(a) The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibition whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of each such written exemption to Congress immediately after making such a determination.

(b) The Department of Defense may issue supplemental regulations to implement paragraph (a) of this section.

### Subpart F—Agency Reports

#### § 18.600 Semi-annual compilation.

(a) The head of each agency shall collect and compile the disclosure reports (see appendix B) and, on May 31 and November 30 of each year, submit to the Secretary of the Senate and the Clerk of the House of Representatives a report containing a compilation of the information contained in the disclosure reports received during the six-month period ending on March 31 or September 30, respectively, of that year.

(b) The report, including the compilation, shall be available for public inspection 30 days after receipt of the report by the Secretary and the Clerk.

(c) Information that involves intelligence matters shall be reported only to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(d) Information that is classified under Executive Order 12356 or any successor order shall be reported only to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives or the Committees on Armed Services of the Senate and the House of Representatives (whichever such committees have jurisdiction of matters involving such information) and to the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(e) The first semi-annual compilation shall be submitted on May 31, 1990, and shall contain a compilation of the disclosure reports received from December 23, 1989 to March 31, 1990.

(f) Major agencies, designated by the Office of Management and Budget (OMB), are required to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives no later than with the compilations due on May 31, 1991. OMB shall provide detailed specifications in a memorandum to these agencies.

(g) Non-major agencies are requested to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives.

(h) Agencies shall keep the originals of all disclosure reports in the official files of the agency.

**§ 18.605 Inspector General report.**

(a) The Inspector General, or other official as specified in paragraph (b) of this section, of each agency shall prepare and submit to Congress each year, commencing with submission of the

President's Budget in 1991, an evaluation of the compliance of that agency with, and the effectiveness of, the requirements herein. The evaluation may include any recommended changes that may be necessary to strengthen or improve the requirements.

(b) In the case of an agency that does not have an Inspector General, the agency official comparable to an Inspector General shall prepare and submit the annual report, or, if there is no such comparable official, the head of the agency shall prepare and submit the annual report.

(c) The annual report shall be submitted at the same time the agency submits its annual budget justifications to Congress.

(d) The annual report shall include the following: All alleged violations relating to the agency's covered Federal actions during the year covered by the report, the actions taken by the head of the agency in the year covered by the report with respect to those alleged violations and alleged violations in previous years, and the amounts of civil penalties imposed by the agency in the year covered by the report.

**APPENDIX A TO PART 18—CERTIFICATION REGARDING LOBBYING**

**CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative



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agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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**STATEMENT FOR LOAN GUARANTEES AND LOAN INSURANCE**

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

APPENDIX B TO PART 18—DISCLOSURE FORM TO REPORT LOBBYING

| <b>DISCLOSURE OF LOBBYING ACTIVITIES</b>  |  |  |
|---|--|--|
| Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352<br>(See reverse for public burden disclosure.)  |  |  |
| Approved by OMB<br>0348-0046  |  |  |
| <b>1. Type of Federal Action:</b><br><input type="checkbox"/> a. contract<br><input type="checkbox"/> b. grant<br><input type="checkbox"/> c. cooperative agreement<br><input type="checkbox"/> d. loan<br><input type="checkbox"/> e. loan guarantee<br><input type="checkbox"/> f. loan insurance   | <b>2. Status of Federal Action:</b><br><input type="checkbox"/> a. bid/offer/application<br><input type="checkbox"/> b. initial award<br><input type="checkbox"/> c. post-award  | <b>3. Report Type:</b><br><input type="checkbox"/> a. initial filing<br><input type="checkbox"/> b. material change<br><b>For Material Change Only:</b><br>year _____ quarter _____<br>date of last report _____ |
| <b>4. Name and Address of Reporting Entity:</b><br><input type="checkbox"/> Prime <input type="checkbox"/> Subawardee<br>Tier _____, if known:<br><br>Congressional District, if known: _____   | <b>5. If Reporting Entity in No. 4 is Subawardee. Enter Name and Address of Prime:</b><br><br>Congressional District, if known: _____  |  |
| <b>6. Federal Department/Agency:</b>  | <b>7. Federal Program Name/Description:</b><br><br>CFDA Number, if applicable: _____   |  |
| <b>8. Federal Action Number, if known:</b>  | <b>9. Award Amount, if known:</b><br>\$ _____  |  |
| <b>10. a. Name and Address of Lobbying Entity</b><br><i>(if individual, last name, first name, MI):</i><br><br><b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a)</i><br><i>(last name, first name, MI):</i><br><br>(attach Continuation Sheet(s) SF-LLL-A, if necessary)   |  |  |
| <b>11. Amount of Payment</b> <i>(check all that apply):</i><br>\$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned  | <b>13. Type of Payment</b> <i>(check all that apply):</i><br><input type="checkbox"/> a. retainer<br><input type="checkbox"/> b. one-time fee<br><input type="checkbox"/> c. commission<br><input type="checkbox"/> d. contingent fee<br><input type="checkbox"/> e. deferred<br><input type="checkbox"/> f. other; specify: _____ |  |
| <b>12. Form of Payment</b> <i>(check all that apply):</i><br><input type="checkbox"/> a. cash<br><input type="checkbox"/> b. in-kind; specify: nature _____<br>value _____  | <b>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:</b><br><br><br>(attach Continuation Sheet(s) SF-LLL-A, if necessary)  |  |
| <b>15. Continuation Sheet(s) SF-LLL-A attached:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No  |  |  |
| <b>16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the user above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b> |  |  |
| <b>Signature:</b> _____<br><b>Print Name:</b> _____<br><b>Title:</b> _____<br><b>Telephone No.:</b> _____ <b>Date:</b> _____  |  | <b>Federal Use Only:</b> Authorized for Local Reproduction<br>Standard Form - LLL  |

**INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

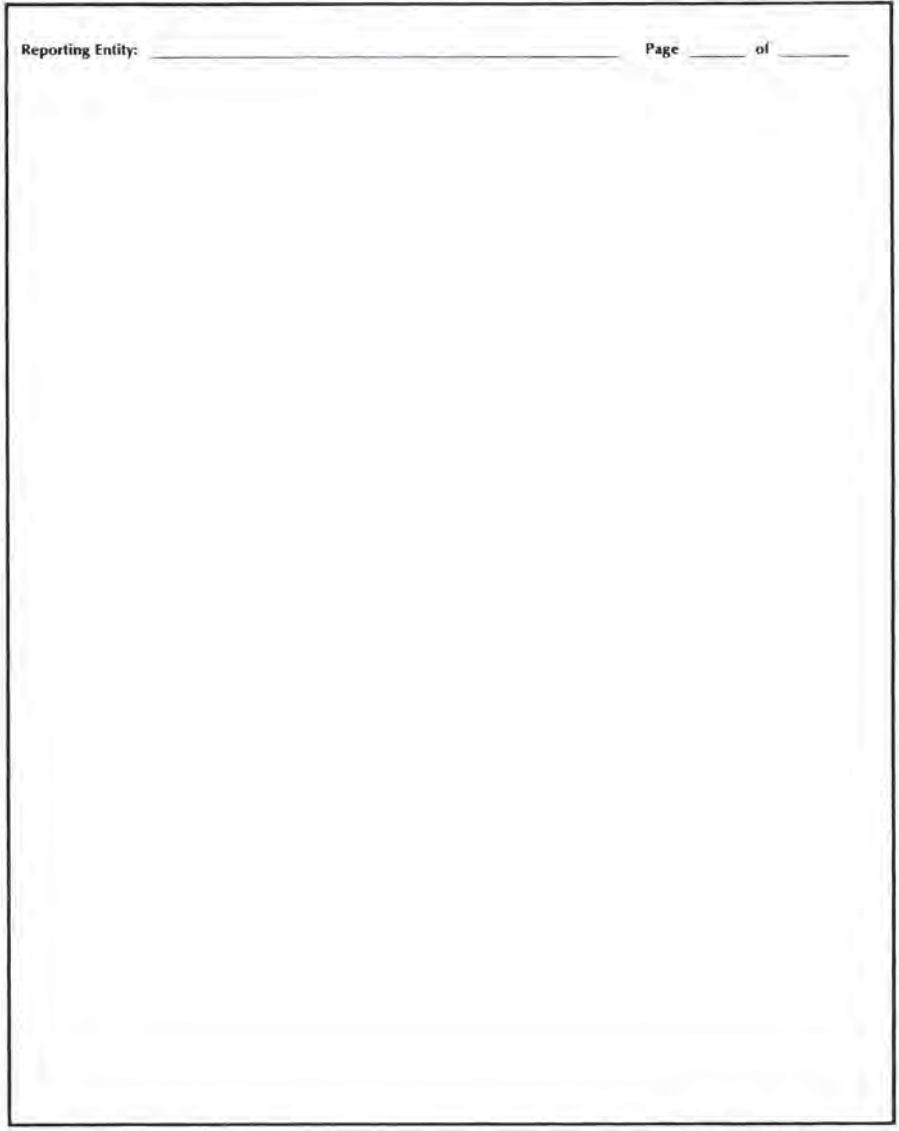
1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

**DISCLOSURE OF LOBBYING ACTIVITIES  
CONTINUATION SHEET**

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**PART 19—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

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AUTHORITY: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

SOURCE: 65 FR 52865, 52892, Aug. 30, 2000, unless otherwise noted.

**Subpart A—Introduction**

**§ 19.100 Purpose and effective date.**

The purpose of these Title IX regulations is to effectuate Title IX of the Education Amendments of 1972, as amended (except sections 904 and 906 of those Amendments) (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688), which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in these Title IX regulations. The effective date of these Title IX regulations shall be September 29, 2000.

**§ 19.105 Definitions.**

As used in these Title IX regulations, the term:

*Administratively separate unit* means a school, department, or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

*Admission* means selection for part-time, full-time, special, associate,

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transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

*Applicant* means one who submits an application, request, or plan required to be approved by an official of the Federal agency that awards Federal financial assistance, or by a recipient, as a condition to becoming a recipient.

*Designated agency official* means Director, Office of Equal Rights.

*Educational institution* means a local educational agency (LEA) as defined by 20 U.S.C. 8801(18), a preschool, a private elementary or secondary school, or an applicant or recipient that is an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, as defined in this section.

*Federal financial assistance* means any of the following, when authorized or extended under a law administered by the Federal agency that awards such assistance:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages, or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to

use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement that has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

*Institution of graduate higher education* means an institution that:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences;

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

*Institution of professional education* means an institution (except any institution of undergraduate higher education) that offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the Secretary of Education.

*Institution of undergraduate higher education* means:

(1) An institution offering at least two but less than four years of college-level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body that certifies credentials or offers degrees, but that may or may not offer academic study.

*Institution of vocational education* means a school or institution (except an institution of professional or graduate or undergraduate higher education) that has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a

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technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers full-time study.

*Recipient* means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and that operates an education program or activity that receives such assistance, including any subunit, successor, assignee, or transferee thereof.

*Student* means a person who has gained admission.

*Title IX* means Title IX of the Education Amendments of 1972, Public Law 92-318, 86 Stat. 235, 373 (codified as amended at 20 U.S.C. 1681-1688) (except sections 904 and 906 thereof), as amended by section 3 of Public Law 93-568, 88 Stat. 1855, by section 412 of the Education Amendments of 1976, Public Law 94-482, 90 Stat. 2234, and by Section 3 of Public Law 100-259, 102 Stat. 28, 28-29 (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688).

*Title IX regulations* means the provisions set forth at §§19.100 through 19.605.

*Transition plan* means a plan subject to the approval of the Secretary of Education pursuant to section 901(a)(2) of the Education Amendments of 1972, 20 U.S.C. 1681(a)(2), under which an educational institution operates in making the transition from being an educational institution that admits only students of one sex to being one that admits students of both sexes without discrimination.

### § 19.110 Remedial and affirmative action and self-evaluation.

(a) *Remedial action.* If the designated agency official finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the designated agency official deems necessary to overcome the effects of such discrimination.

(b) *Affirmative action.* In the absence of a finding of discrimination on the basis of sex in an education program or

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activity, a recipient may take affirmative action consistent with law to overcome the effects of conditions that resulted in limited participation therein by persons of a particular sex. Nothing in these Title IX regulations shall be interpreted to alter any affirmative action obligations that a recipient may have under Executive Order 11246, 3 CFR, 1964-1965 Comp., p. 339; as amended by Executive Order 11375, 3 CFR, 1966-1970 Comp., p. 684; as amended by Executive Order 11478, 3 CFR, 1966-1970 Comp., p. 803; as amended by Executive Order 12086, 3 CFR, 1978 Comp., p. 230; as amended by Executive Order 12107, 3 CFR, 1978 Comp., p. 264.

(c) *Self-evaluation.* Each recipient education institution shall, within one year of September 29, 2000:

(1) Evaluate, in terms of the requirements of these Title IX regulations, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;

(2) Modify any of these policies and practices that do not or may not meet the requirements of these Title IX regulations; and

(3) Take appropriate remedial steps to eliminate the effects of any discrimination that resulted or may have resulted from adherence to these policies and practices.

(d) *Availability of self-evaluation and related materials.* Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the designated agency official upon request, a description of any modifications made pursuant to paragraph (c)(2) of this section and of any remedial steps taken pursuant to paragraph (c)(3) of this section.

### § 19.115 Assurance required.

(a) *General.* Either at the application stage or the award stage, Federal agencies must ensure that applications for Federal financial assistance or awards of Federal financial assistance contain, be accompanied by, or be covered by a specifically identified assurance from

the applicant or recipient, satisfactory to the designated agency official, that each education program or activity operated by the applicant or recipient and to which these Title IX regulations apply will be operated in compliance with these Title IX regulations. An assurance of compliance with these Title IX regulations shall not be satisfactory to the designated agency official if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with §19.110(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior to or subsequent to the submission to the designated agency official of such assurance.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.

(2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Form.* (1) The assurances required by paragraph (a) of this section, which may be included as part of a document that addresses other assurances or obligations, shall include that the applicant or recipient will comply with all applicable Federal statutes relating to nondiscrimination. These include but are not limited to: Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, 1685-1688).

(2) The designated agency official will specify the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

#### § 19.120 Transfers of property.

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee that operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government, both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of §§19.205 through 19.235(a).

#### § 19.125 Effect of other requirements.

(a) *Effect of other Federal provisions.* The obligations imposed by these Title IX regulations are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, 3 CFR, 1964-1965 Comp., p. 339; as amended by Executive Order 11375, 3 CFR, 1966-1970 Comp., p. 684; as amended by Executive Order 11478, 3 CFR, 1966-1970 Comp., p. 803; as amended by Executive Order 12087, 3 CFR, 1978 Comp., p. 230; as amended by Executive Order 12107, 3 CFR, 1978 Comp., p. 264; sections 704 and 855 of the Public Health Service Act (42 U.S.C. 295m, 298b-2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*); the Equal Pay Act of 1963 (29 U.S.C. 206); and any other Act of Congress or Federal regulation.

(b) *Effect of State or local law or other requirements.* The obligation to comply with these Title IX regulations is not obviated or alleviated by any State or local law or other requirement that would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) *Effect of rules or regulations of private organizations.* The obligation to comply with these Title IX regulations is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association that would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and that receives Federal financial assistance.



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**§ 19.130 Effect of employment opportunities.**

The obligation to comply with these Title IX regulations is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

**§ 19.135 Designation of responsible employee and adoption of grievance procedures.**

(a) *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under these Title IX regulations, including any investigation of any complaint communicated to such recipient alleging its noncompliance with these Title IX regulations or alleging any actions that would be prohibited by these Title IX regulations. The recipient shall notify all its students and employees of the name, office address, and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by these Title IX regulations.

**§ 19.140 Dissemination of policy.**

(a) *Notification of policy.* (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities that it operates, and that it is required by Title IX and these Title IX regulations not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the designated agency official finds necessary to apprise such persons of

the protections against discrimination assured them by Title IX and these Title IX regulations, but shall state at least that the requirement not to discriminate in education programs or activities extends to employment therein, and to admission thereto unless §§ 19.300 through 19.310 do not apply to the recipient, and that inquiries concerning the application of Title IX and these Title IX regulations to such recipient may be referred to the employee designated pursuant to § 19.135, or to the designated agency official.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of September 29, 2000 or of the date these Title IX regulations first apply to such recipient, whichever comes later, which notification shall include publication in:

(i) Newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and

(ii) Memoranda or other written communications distributed to every student and employee of such recipient.

(b) *Publications.* (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form that it makes available to any person of a type, described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in paragraph (b)(1) of this section that suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by these Title IX regulations.

(c) *Distribution.* Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b)(1) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of non-discrimination described in paragraph (a) of this section, and shall require such representatives to adhere to such policy.

**Subpart B—Coverage**

**§ 19.200 Application.**

Except as provided in §§19.205 through 19.235(a), these Title IX regulations apply to every recipient and to each education program or activity operated by such recipient that receives Federal financial assistance.

**§ 19.205 Educational institutions and other entities controlled by religious organizations.**

(a) *Exemption.* These Title IX regulations do not apply to any operation of an educational institution or other entity that is controlled by a religious organization to the extent that application of these Title IX regulations would not be consistent with the religious tenets of such organization.

(b) *Exemption claims.* An educational institution or other entity that wishes to claim the exemption set forth in paragraph (a) of this section shall do so by submitting in writing to the designated agency official a statement by the highest-ranking official of the institution, identifying the provisions of these Title IX regulations that conflict with a specific tenet of the religious organization.

**§ 19.210 Military and merchant marine educational institutions.**

These Title IX regulations do not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.

**§ 19.215 Membership practices of certain organizations.**

(a) *Social fraternities and sororities.* These Title IX regulations do not apply to the membership practices of social fraternities and sororities that are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, 26 U.S.C. 501(a), the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) *YMCA, YWCA, Girl Scouts, Boy Scouts, and Camp Fire Girls.* These Title IX regulations do not apply to the membership practices of the Young Men's Christian Association (YMCA),

the Young Women's Christian Association (YWCA), the Girl Scouts, the Boy Scouts, and Camp Fire Girls.

(c) *Voluntary youth service organizations.* These Title IX regulations do not apply to the membership practices of a voluntary youth service organization that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, 26 U.S.C. 501(a), and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

**§ 19.220 Admissions.**

(a) Admissions to educational institutions prior to June 24, 1973, are not covered by these Title IX regulations.

(b) *Administratively separate units.* For the purposes only of this section, §§19.225 and 19.230, and §§19.300 through 19.310, each administratively separate unit shall be deemed to be an educational institution.

(c) *Application of §§19.300 through .310.* Except as provided in paragraphs (d) and (e) of this section, §§19.300 through 19.310 apply to each recipient. A recipient to which §§19.300 through 19.310 apply shall not discriminate on the basis of sex in admission or recruitment in violation of §§19.300 through 19.310.

(d) *Educational institutions.* Except as provided in paragraph (e) of this section as to recipients that are educational institutions, §§19.300 through 19.310 apply only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) *Public institutions of undergraduate higher education.* §§19.300 through 19.310 do not apply to any public institution of undergraduate higher education that traditionally and continually from its establishment has had a policy of admitting students of only one sex.

**§ 19.225 Educational institutions eligible to submit transition plans.**

(a) *Application.* This section applies to each educational institution to which §§19.300 through 19.310 apply that:

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(1) Admitted students of only one sex as regular students as of June 23, 1972; or

(2) Admitted students of only one sex as regular students as of June 23, 1965, but thereafter admitted, as regular students, students of the sex not admitted prior to June 23, 1965.

(b) *Provision for transition plans.* An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of §§19.300 through 19.310.

### § 19.230 Transition plans.

(a) *Submission of plans.* An institution to which §19.225 applies and that is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) *Content of plans.* In order to be approved by the Secretary of Education, a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each

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class during the period covered by the plan.

(c) *Nondiscrimination.* No policy or practice of a recipient to which §19.225 applies shall result in treatment of applicants to or students of such recipient in violation of §§19.300 through 19.310 unless such treatment is necessitated by an obstacle identified in paragraph (b)(3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b)(4) of this section.

(d) *Effects of past exclusion.* To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which §19.225 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment programs that emphasize the institution's commitment to enrolling students of the sex previously excluded.

### § 19.235 Statutory amendments.

(a) This section, which applies to all provisions of these Title IX regulations, addresses statutory amendments to Title IX.

(b) These Title IX regulations shall not apply to or preclude:

(1) Any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference;

(2) Any program or activity of a secondary school or educational institution specifically for:

(i) The promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) The selection of students to attend any such conference;

(3) Father-son or mother-daughter activities at an educational institution or in an education program or activity, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided to students of the other sex;

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(4) Any scholarship or other financial assistance awarded by an institution of higher education to an individual because such individual has received such award in a single-sex pageant based upon a combination of factors related to the individual's personal appearance, poise, and talent. The pageant, however, must comply with other non-discrimination provisions of Federal law.

(c) *Program or activity* or *program* means:

(1) All of the operations of any entity described in paragraphs (c)(1)(i) through (iv) of this section, any part of which is extended Federal financial assistance:

(i)(A) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(ii)(A) A college, university, or other postsecondary institution, or a public system of higher education; or

(B) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(iii)(A) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(1) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(2) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(iv) Any other entity that is established by two or more of the entities described in paragraphs (c)(1)(i), (ii), or (iii) of this section.

(2)(i) *Program or activity* does not include any operation of an entity that is controlled by a religious organization if the application of 20 U.S.C. 1681 to such operation would not be consistent with the religious tenets of such organization.

(ii) For example, all of the operations of a college, university, or other postsecondary institution, including but not limited to traditional educational operations, faculty and student housing, campus shuttle bus service, campus restaurants, the bookstore, and other commercial activities are part of a "program or activity" subject to these Title IX regulations if the college, university, or other institution receives Federal financial assistance.

(d)(1) Nothing in these Title IX regulations shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Medical procedures, benefits, services, and the use of facilities, necessary to save the life of a pregnant woman or to address complications related to an abortion are not subject to this section.

(2) Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion. Accordingly, subject to paragraph (d)(1) of this section, no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, employment, or other educational program or activity operated by a recipient that receives Federal financial assistance because such individual has sought or received, or is seeking, a legal abortion, or any benefit or service related to a legal abortion.

**Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited**

**§ 19.300 Admission.**

(a) *General.* No person shall, on the basis of sex, be denied admission, or be

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subjected to discrimination in admission, by any recipient to which §§19.300 through §§19.310 apply, except as provided in §§19.225 and 19.230.

(b) *Specific prohibitions.* (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§19.300 through 19.310 apply shall not:

- (i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;
- (ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or
- (iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission that has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria that do not have such a disproportionately adverse effect are shown to be unavailable.

(c) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§19.300 through 19.310 apply:

- (1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant that treats persons differently on the basis of sex;
- (2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice that so discriminates or excludes;
- (3) Subject to §19.235(d), shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and
- (4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is “Miss” or “Mrs.”

A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

**§ 19.305 Preference in admission.**

A recipient to which §§19.300 through 19.310 apply shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity that admits as students only or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of §§19.300 through 19.310.

**§ 19.310 Recruitment.**

(a) *Nondiscriminatory recruitment.* A recipient to which §§19.300 through 19.310 apply shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to §19.110(a), and may choose to undertake such efforts as affirmative action pursuant to §19.110(b).

(b) *Recruitment at certain institutions.* A recipient to which §§19.300 through 19.310 apply shall not recruit primarily or exclusively at educational institutions, schools, or entities that admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of §§19.300 through 19.310.

**Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited**

**§ 19.400 Education programs or activities.**

(a) *General.* Except as provided elsewhere in these Title IX regulations, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient that

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receives Federal financial assistance. Sections 19.400 through 19.455 do not apply to actions of a recipient in connection with admission of its students to an education program or activity of a recipient to which §§19.300 through 19.310 do not apply, or an entity, not a recipient, to which §§19.300 through 19.310 would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in §§19.400 through 19.455, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(6) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person that discriminates on the basis of sex in providing any aid, benefit, or service to students or employees;

(7) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) *Assistance administered by a recipient educational institution to study at a foreign institution.* A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, that are designed to provide opportunities to study abroad, and that are awarded to students who are already matriculating at or who are graduates of the recipient institution; *Provided*, that a recipient educational institution that administers or assists in the adminis-

tration of such scholarships, fellowships, or other awards that are restricted to members of one sex provides, or otherwise makes available, reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) *Aids, benefits or services not provided by recipient.* (1) This paragraph (d) applies to any recipient that requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or that facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient:

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of such recipient that these Title IX regulations would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

**§ 19.405 Housing.**

(a) *Generally.* A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) *Housing provided by recipient.* (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

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(c) *Other housing.* (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than that provided by such recipient.

(2)(i) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole:

(A) Proportionate in quantity; and

(B) Comparable in quality and cost to the student.

(ii) A recipient may render such assistance to any agency, organization, or person that provides all or part of such housing to students of only one sex.

**§ 19.410 Comparable facilities.**

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

**§ 19.415 Access to course offerings.**

(a) A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

(b)(1) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from September 29, 2000. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from September 29, 2000.

(2) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(3) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(4) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards that do not have such effect.

(5) Portions of classes in elementary and secondary schools, or portions of education programs or activities, that deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(6) Recipients may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.

**§ 19.420 Access to schools operated by LEAs.**

A recipient that is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

**§ 19.425 Counseling and use of appraisal and counseling materials.**

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient that uses testing or

other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials that permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) *Disproportion in classes.* Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

**§ 19.430 Financial assistance.**

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not:

(1) On the basis of sex, provide different amounts or types of such assistance, limit eligibility for such assistance that is of any particular type or source, apply different criteria, or otherwise discriminate;

(2) Through solicitation, listing, approval, provision of facilities, or other services, assist any foundation, trust, agency, organization, or person that provides assistance to any of such recipient's students in a manner that discriminates on the basis of sex; or

(3) Apply any rule or assist in application of any rule concerning eligibility for such assistance that treats

persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) *Financial aid established by certain legal instruments.* (1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government that require that awards be made to members of a particular sex specified therein; *Provided,* that the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in paragraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (b)(2)(i) of this section; and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) *Athletic scholarships.* (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) A recipient may provide separate athletic scholarships or grants-in-aid for members of each sex as part of separate athletic teams for members of each sex to the extent consistent with this paragraph (c) and § 19.450.



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**§ 19.435 Employment assistance to students.**

(a) *Assistance by recipient in making available outside employment.* A recipient that assists any agency, organization, or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person that discriminates on the basis of sex in its employment practices.

(b) *Employment of students by recipients.* A recipient that employs any of its students shall not do so in a manner that violates §§ 19.500 through 19.550.

**§ 19.440 Health and insurance benefits and services.**

Subject to § 19.235(d), in providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner that would violate §§ 19.500 through 19.550 if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service that may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient that provides full coverage health service shall provide gynecological care.

**§ 19.445 Marital or parental status.**

(a) *Status generally.* A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex.

(b) *Pregnancy and related conditions.* (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extra-curricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a

physician that the student is physically and emotionally able to continue participation as long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient that operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section, shall ensure that the separate portion is comparable to that offered to non-pregnant students.

(4) Subject to § 19.235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan, or policy that such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient that does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence for as long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status that she held when the leave began.

**§ 19.450 Athletics.**

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person, or otherwise be discriminated against in any interscholastic, inter-collegiate, club, or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill

or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try out for the team offered unless the sport involved is a contact sport. For the purposes of these Title IX regulations, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(c) *Equal opportunity.* (1) A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available, the designated agency official will consider, among other factors:

- (i) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
- (ii) The provision of equipment and supplies;
- (iii) Scheduling of games and practice time;
- (iv) Travel and per diem allowance;
- (v) Opportunity to receive coaching and academic tutoring;
- (vi) Assignment and compensation of coaches and tutors;
- (vii) Provision of locker rooms, practice, and competitive facilities;
- (viii) Provision of medical and training facilities and services;
- (ix) Provision of housing and dining facilities and services;
- (x) Publicity.

(2) For purposes of paragraph (c)(1) of this section, unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the designated agency official may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from September 29, 2000. A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics at the secondary or postsecondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from September 29, 2000.

**§ 19.455 Textbooks and curricular material.**

Nothing in these Title IX regulations shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

**Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited**

**§ 19.500 Employment.**

(a) *General.* (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient that receives Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way that could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by §§ 19.500 through 19.550, including relationships with employment and referral agencies, with labor unions, and

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with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity that admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of these Title IX regulations.

(b) *Application.* The provisions of §§ 19.500 through 19.550 apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications, and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including social or recreational programs; and

(10) Any other term, condition, or privilege of employment.

**§ 19.505 Employment criteria.**

A recipient shall not administer or operate any test or other criterion for any employment opportunity that has a disproportionately adverse effect on persons on the basis of sex unless:

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(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

**§ 19.510 Recruitment.**

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have so discriminated in the past, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) *Recruitment patterns.* A recipient shall not recruit primarily or exclusively at entities that furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of §§ 19.500 through 19.550.

**§ 19.515 Compensation.**

A recipient shall not make or enforce any policy or practice that, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and that are performed under similar working conditions.

**§ 19.520 Job classification and structure.**

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for

similar jobs, position descriptions, or job requirements that classify persons on the basis of sex, unless sex is a bona fide occupational qualification for the positions in question as set forth in §19.550.

**§ 19.525 Fringe benefits.**

(a) *“Fringe benefits” defined.* For purposes of these Title IX regulations, *fringe benefits* means: Any medical, hospital, accident, life insurance, or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of §19.515.

(b) *Prohibitions.* A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee’s sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan that does not provide for equal periodic benefits for members of each sex and for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan that establishes different optional or compulsory retirement ages based on sex or that otherwise discriminates in benefits on the basis of sex.

**§ 19.530 Marital or parental status.**

(a) *General.* A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment that treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee’s or applicant’s family unit.

(b) *Pregnancy.* A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) *Pregnancy as a temporary disability.* Subject to §19235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, recovery therefrom, and any temporary disability resulting therefrom as any other temporary disability for all job-related purposes, including commencement, duration, and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave.* In the case of a recipient that does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status that she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

**§ 19.535 Effect of state or local law or other requirements.**

(a) *Prohibitory requirements.* The obligation to comply with §§19.500 through 19.550 is not obviated or alleviated by the existence of any State or local law or other requirement that imposes prohibitions or limits upon employment of members of one sex that are not imposed upon members of the other sex.

(b) *Benefits.* A recipient that provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

**§ 19.540 Advertising.**

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job in question.

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**§ 19.545 Pre-employment inquiries.**

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is “Miss” or “Mrs.”

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

**§ 19.550 Sex as a bona fide occupational qualification.**

A recipient may take action otherwise prohibited by §§19.500 through 19.550 provided it is shown that sex is a bona fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section that is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee’s sex in relation to employment in a locker room or toilet facility used only by members of one sex.

**Subpart F—Procedures**

**§ 19.600 Notice of covered programs.**

Within 60 days of September 29, 2000, each Federal agency that awards Federal financial assistance shall publish in the FEDERAL REGISTER a notice of the programs covered by these Title IX regulations. Each such Federal agency shall periodically republish the notice

of covered programs to reflect changes in covered programs. Copies of this notice also shall be made available upon request to the Federal agency’s office that enforces Title IX.

**§ 19.605 Enforcement procedures.**

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (“Title VI”) are hereby adopted and applied to these Title IX regulations. These procedures may be found at 32 CFR 195.7 through 195.12.

**PARTS 20–24 [RESERVED]**

**PART 25—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS**

**AUTHORITY:** Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

**§ 25.1 Uniform relocation assistance and real property acquisition.**

Regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646, 84 Stat. 1894, 42 U.S.C. 4601), as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (title IV of Pub. L. 100–17, 101 Stat. 246–256, 42 U.S.C. 4601 note) are set forth in 49 CFR part 24.

[52 FR 48026, Dec. 17, 1987 and 54 FR 8912, Mar. 2, 1989]

**PARTS 26–49 [RESERVED]**

## SUBCHAPTER B—INSURANCE AND HAZARD MITIGATION

### PARTS 50–54 [RESERVED]

#### National Insurance Development Program

### PARTS 55–58 [RESERVED]

#### National Flood Insurance Program

### PART 59—GENERAL PROVISIONS

#### Subpart A—General

Sec.

- 59.1 Definitions.
- 59.2 Description of program.
- 59.3 Emergency program.
- 59.4 References.

#### Subpart B—Eligibility Requirements

- 59.21 Purpose of subpart.
- 59.22 Prerequisites for the sale of flood insurance.
- 59.23 Priorities for the sale of flood insurance under the regular program.
- 59.24 Suspension of community eligibility.

AUTHORITY: 42 U.S.C. 4001 *et seq.*; 6 U.S.C. 101 *et seq.*

#### Subpart A—General

##### § 59.1 Definitions.

As used in this subchapter—

*Act* means the statutes authorizing the National Flood Insurance Program that are incorporated in 42 U.S.C. 4001-*et seq.*

*Actuarial rates*—see *risk premium rates*.

*Administrator* means the Administrator of the Federal Emergency Management Agency.

*Agency* means the Federal Emergency Management Agency, Washington DC.

*Alluvial fan flooding* means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and, unpredictable flow paths.

*Apex* means a point on an alluvial fan or similar landform below which the flow path of the major stream that

formed the fan becomes unpredictable and alluvial fan flooding can occur.

*Applicant* means a community which indicates a desire to participate in the Program.

*Appurtenant structure* means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

*Area of future-conditions flood hazard* means the land area that would be inundated by the 1-percent-annual-chance (100-year) flood based on future-conditions hydrology.

*Area of shallow flooding* means a designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

*Area of special flood-related erosion hazard* is the land within a community which is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the Flood Hazard Boundary Map (FHBM). After the detailed evaluation of the special flood-related erosion hazard area in preparation for publication of the FIRM, Zone E may be further refined.

*Area of special flood hazard* is the land in the flood plain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the flood insurance rate map, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, or V1-30, VE, or V. For purposes of these regulations, the term "special flood hazard area" is synonymous in meaning with the phrase "area of special flood hazard".

*Area of special mudslide (i.e., mudflow) hazard* is the land within a community

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most likely to be subject to severe mudslides (i.e., mudflows). The area may be designated as Zone M on the FHBM. After the detailed evaluation of the special mudslide (i.e., mudflow) hazard area in preparation for publication of the FIRM, Zone M may be further refined.

*Base flood* means the flood having a one percent chance of being equalled or exceeded in any given year.

*Basement* means any area of the building having its floor subgrade (below ground level) on all sides.

*Breakaway wall* means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

*Building*—see *structure*.

*Chargeable rates* mean the rates established by the Federal Insurance Administrator pursuant to section 1308 of the Act for first layer limits of flood insurance on existing structures.

*Chief Executive Officer* of the community (*CEO*) means the official of the community who is charged with the authority to implement and administer laws, ordinances and regulations for that community.

*Coastal high hazard area* means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

*Community* means any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native village or authorized native organization, which has authority to adopt and enforce flood plain management regulations for the areas within its jurisdiction.

*Condominium building* means a type of building in the form of ownership in which each unit owner has an undivided interest in common elements of the building.

*Contents coverage* is the insurance on personal property within an enclosed structure, including the cost of debris removal, and the reasonable cost of removal of contents to minimize damage.

Personal property may be household goods usual or incidental to residential occupancy, or merchandise, furniture, fixtures, machinery, equipment and supplies usual to other than residential occupancies.

*Criteria* means the comprehensive criteria for land management and use for flood-prone areas developed under 42 U.S.C. 4102 for the purposes set forth in part 60 of this subchapter.

*Critical feature* means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

*Curvilinear Line* means the border on either a FHBM or FIRM that delineates the special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazard areas and consists of a curved or contour line that follows the topography.

*Deductible* means the amount of an insured loss that is the responsibility of the insured and that is incurred before any amounts are paid for the insured loss under the insurance policy.

*Developed area* means an area of a community that is:

(a) A primarily urbanized, built-up area that is a minimum of 20 contiguous acres, has basic urban infrastructure, including roads, utilities, communications, and public facilities, to sustain industrial, residential, and commercial activities, and

(1) Within which 75 percent or more of the parcels, tracts, or lots contain commercial, industrial, or residential structures or uses; or

(2) Is a single parcel, tract, or lot in which 75 percent of the area contains existing commercial or industrial structures or uses; or

(3) Is a subdivision developed at a density of at least two residential structures per acre within which 75 percent or more of the lots contain existing residential structures at the time the designation is adopted.

(b) Undeveloped parcels, tracts, or lots, the combination of which is less than 20 acres and contiguous on at least 3 sides to areas meeting the criteria of paragraph (a) at the time the designation is adopted.

(c) A subdivision that is a minimum of 20 contiguous acres that has obtained all necessary government approvals, provided that the actual "start of construction" of structures has occurred on at least 10 percent of the lots or remaining lots of a subdivision or 10 percent of the maximum building coverage or remaining building coverage allowed for a single lot subdivision at the time the designation is adopted and construction of structures is underway. Residential subdivisions must meet the density criteria in paragraph (a)(3).

*Development* means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

*Eligible community or participating community* means a community for which the Federal Insurance Administrator has authorized the sale of flood insurance under the National Flood Insurance Program..

*Elevated building* means, for insurance purposes, a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

*Emergency program* means the initial phase of a community's participation in the National Flood Insurance Program, as prescribed by Section 1306 of the Act.

*Erosion* means the process of the gradual wearing away of land masses. This peril is not per se covered under the Program.

*Exception* means a waiver from the provisions of part 60 of this subchapter directed to a community which relieves it from the requirements of a rule, regulation, order or other determination made or issued pursuant to the Act.

*Existing construction*, means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

*Existing manufactured home park or subdivision* means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

*Existing structures* see *existing construction*.

*Expansion to an existing manufactured home park or subdivision* means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

*Federal agency* means any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, and includes the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

*Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions* means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, and the National Credit Union Administration.

*Financial assistance* means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance, other than general or special revenue sharing or formula grants made to States.

*Financial assistance for acquisition or construction purposes* means any form of financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home,



and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein, and shall include the purchase or subsidization of mortgages or mortgage loans but shall exclude assistance pursuant to the Disaster Relief Act of 1974 other than assistance under such Act in connection with a flood. It includes only financial assistance insurable under the Standard Flood Insurance Policy.

*First-layer coverage* is the maximum amount of structural and contents insurance coverage available under the Emergency Program.

*Flood or Flooding* means:

(a) A general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters.

(2) The unusual and rapid accumulation or runoff of surface waters from any source.

(3) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (a)(2) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

(b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a)(1) of this definition.

*Flood elevation determination* means a determination by the Federal Insurance Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

*Flood elevation study* means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and de-

termination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

*Flood Hazard Boundary Map* means an official map of a community, issued by the Federal Insurance Administrator, where the boundaries of the flood, mudslide (i.e., mudflow) related erosion areas having special hazards have been designated as Zones A, M, and/or E.

*Flood insurance* means the insurance coverage provided under the Program.

*Flood Insurance Rate Map (FIRM)* means an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

*Flood Insurance Study* see *flood elevation study*.

*Flood plain or flood-prone area* means any land area susceptible to being inundated by water from any source (see definition of “flooding”).

*Flood plain management* means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and flood plain management regulations.

*Flood plain management regulations* means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a flood plain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

*Flood protection system* means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a “special flood hazard” and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those

constructed in conformance with sound engineering standards.

*Flood proofing* means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

*Flood-related erosion* means the collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

*Flood-related erosion area* or *flood-related erosion prone area* means a land area adjoining the shore of a lake or other body of water, which due to the composition of the shoreline or bank and high water levels or wind-driven currents, is likely to suffer flood-related erosion damage.

*Flood-related erosion area management* means the operation of an overall program of corrective and preventive measures for reducing flood-related erosion damage, including but not limited to emergency preparedness plans, flood-related erosion control works, and flood plain management regulations.

*Floodway*—see *regulatory floodway*.

*Floodway encroachment lines* mean the lines marking the limits of floodways on Federal, State and local flood plain maps.

*Freeboard* means a factor of safety usually expressed in feet above a flood level for purposes of flood plain management. “Freeboard” tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

*Functionally dependent use* means a use which cannot perform its intended

purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

*Future-conditions flood hazard area*, or *future-conditions floodplain*—see *Area of future-conditions flood hazard*.

*Future-conditions hydrology* means the flood discharges associated with projected land-use conditions based on a community’s zoning maps and/or comprehensive land-use plans and without consideration of projected future construction of flood detention structures or projected future hydraulic modifications within a stream or other waterway, such as bridge and culvert construction, fill, and excavation.

*Highest adjacent grade* means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

*Historic Structure* means any structure that is:

(a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

(d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(1) By an approved state program as determined by the Secretary of the Interior or

(2) Directly by the Secretary of the Interior in states without approved programs.

*Independent scientific body* means a non-Federal technical or scientific organization involved in the study of land use planning, flood plain management, hydrology, geology, geography, or any other related field of study concerned with flooding.

*Insurance adjustment organization* means any organization or person engaged in the business of adjusting loss claims arising under the Standard Flood Insurance Policy.

*Insurance company* or *insurer* means any person or organization authorized to engage in the insurance business under the laws of any State.

*Levee* means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

*Levee System* means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

*Lowest Floor* means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; *Provided*, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of §60.3.

*Mangrove stand* means an assemblage of mangrove trees which are mostly low trees noted for a copious development of interlacing adventitious roots above the ground and which contain one or more of the following species: Black mangrove (*Avicennia Nitida*); red mangrove (*Rhizophora Mangle*); white mangrove (*Languncularia Racemosa*); and buttonwood (*Conocarpus Erecta*).

*Manufactured home* means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The

term "manufactured home" does not include a "recreational vehicle".

*Manufactured home park or subdivision* means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

*Map* means the Flood Hazard Boundary Map (FHBM) or the Flood Insurance Rate Map (FIRM) for a community issued by the Agency.

*Mean sea level* means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

*Mixed use building* means a building that has both residential and non-residential uses.

*Mudslide (i.e., mudflow)* describes a condition where there is a river, flow or inundation of liquid mud down a hillside usually as a result of a dual condition of loss of brush cover, and the subsequent accumulation of water on the ground preceded by a period of unusually heavy or sustained rain. A mudslide (i.e., mudflow) may occur as a distinct phenomenon while a landslide is in progress, and will be recognized as such by the Administrator only if the mudflow, and not the landslide, is the proximate cause of damage that occurs.

*Mudslide (i.e., mudflow) area management* means the operation of an overall program of corrective and preventive measures for reducing mudslide (i.e., mudflow) damage, including but not limited to emergency preparedness plans, mudslide control works, and flood plain management regulations.

*Mudslide (i.e., mudflow) prone area* means an area with land surfaces and slopes of unconsolidated material where the history, geology and climate indicate a potential for mudflow.

*Multifamily building* means an other residential building that is not a condominium building.

*New construction* means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is

later, and includes any subsequent improvements to such structures. For floodplain management purposes, *new construction* means structures for which the *start of construction* commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

*New manufactured home park or subdivision* means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

*Non-residential building* means a commercial or mixed-use building where the primary use is commercial or non-habitational.

*Non-residential property* means either a non-residential building, the contents within a non-residential building, or both.

*100-year flood* see *base flood*.

*Other residential building* means a residential building that is designed for use as a residential space for 5 or more families or a mixed use building in which the total floor area devoted to non-residential uses is less than 25 percent of the total floor area within the building.

*Other residential property* means either an other residential building, the contents within an other residential building, or both.

*Participating community*, also known as an *eligible community*, means a community in which the Administrator has authorized the sale of flood insurance.

*Person* includes any individual or group of individuals, corporation, partnership, association, or any other entity, including State and local governments and agencies.

*Policy* means the Standard Flood Insurance Policy.

*Premium* means the total premium payable by the insured for the coverage or coverages provided under the policy. The calculation of the premium may be based upon either chargeable rates or

risk premium rates, or a combination of both.

*Primary frontal dune* means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

*Principally above ground* means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

*Program* means the National Flood Insurance Program authorized by 42 U.S.C. 4001 through 4128.

*Program deficiency* means a defect in a community's flood plain management regulations or administrative procedures that impairs effective implementation of those flood plain management regulations or of the standards in § 60.3, § 60.4, § 60.5, or § 60.6.

*Project cost* means the total financial cost of a flood protection system (including design, land acquisition, construction, fees, overhead, and profits), unless the Federal Insurance Administrator determines a given "cost" not to be a part of such project cost.

*Recreational vehicle* means a vehicle which is:

- (a) Built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towable by a light duty truck; and
- (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

*Reference feature* is the receding edge of a bluff or eroding frontal dune, or if such a feature is not present, the normal high-water line or the seaward line of permanent vegetation if a high-water line cannot be identified.

*Regular Program* means the Program authorized by the Act under which risk premium rates are required for the first half of available coverage (also known as "first layer" coverage) for all

new construction and substantial improvements started on or after the effective date of the FIRM, or after December 31, 1974, for FIRM's effective on or before that date. All buildings, the construction of which started before the effective date of the FIRM, or before January 1, 1975, for FIRMs effective before that date, are eligible for first layer coverage at either subsidized rates or risk premium rates, whichever are lower. Regardless of date of construction, risk premium rates are always required for the second layer coverage and such coverage is offered only after the Administrator has completed a risk study for the community.

*Regulatory floodway* means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

*Remedy a violation* means to bring the structure or other development into compliance with State or local flood plain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

*Residential building* means a non-commercial building designed for habitation by one or more families or a mixed use building that qualifies as a single-family, two-to-four family, or other residential building.

*Residential property* means either a residential building or the contents within a residential building, or both.

*Risk premium rates* means those rates established by the Federal Insurance Administrator pursuant to individual community studies and investigations which are undertaken to provide flood insurance in accordance with section 1307 of the Act and the accepted actuarial principles. "Risk premium rates" include provisions for operating costs and allowances.

*Riverine* means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

*Sand dunes* mean naturally occurring accumulations of sand in ridges or mounds landward of the beach.

*Scientifically incorrect*. The methodology(ies) and/or assumptions which have been utilized are inappropriate for the physical processes being evaluated or are otherwise erroneous.

*Second layer coverage* means an additional limit of coverage equal to the amounts made available under the Emergency Program, and made available under the Regular Program.

*Servicing company* means a corporation, partnership, association, or any other organized entity which contracts with the Federal Insurance Administration to service insurance policies under the National Flood Insurance Program for a particular area.

*Sheet flow area*—see *area of shallow flooding*.

*Single-family dwelling* means either (a) a residential single-family building in which the total floor area devoted to non-residential uses is less than 50 percent of the building's total floor area, or (b) a single-family residential unit within a two-to-four family building, other-residential building, business, or non-residential building, in which commercial uses within the unit are limited to less than 50 percent of the unit's total floor area.

*60-year setback* means a distance equal to 60 times the average annual long term recession rate at a site, measured from the reference feature.

*Special flood hazard area*—see "area of special flood hazard".

*Special hazard area* means an area having special flood, mudslide (i.e., mudflow), or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, A99, AH, VO, V1-30, VE, V, M, or E.

*Standard Flood Insurance Policy* means the flood insurance policy issued by the Federal Insurance Administrator or an insurer pursuant to an arrangement with the Federal Insurance Administrator pursuant to Federal statutes and regulations.

*Start of Construction* (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

*State* means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

*State Coordinating Agency* means the agency of the state government (or other office designated by the Governor of the state or by state statute) that, at the request of the Federal Insurance Administrator, assists in the implementation of the National Flood Insurance Program in that state.

*Storm cellar* means a space below grade used to accommodate occupants of the structure and emergency supplies as a means of temporary shelter against severe tornado or similar wind storm activity.

*Structure* means, for floodplain management purposes, a walled and roofed

building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. *Structure*, for insurance purposes, means:

(1) A building with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;

(2) A manufactured home ("a manufactured home," also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or

(3) A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

For the latter purpose, "structure" does not mean a recreational vehicle or a park trailer or other similar vehicle, except as described in paragraph (3) of this definition, or a gas or liquid storage tank.

*Subsidized rates* mean the rates established by the Federal Insurance Administrator involving in the aggregate a subsidization by the Federal Government.

*Substantial damage* means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

*Substantial improvement* means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

(1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or

(2) Any alteration of a “historic structure”, provided that the alteration will not preclude the structure’s continued designation as a “historic structure”.

*30-year setback* means a distance equal to 30 times the average annual long term recession rate at a site, measured from the reference feature.

*Technically incorrect.* The methodology(ies) utilized has been erroneously applied due to mathematical or measurement error, changed physical conditions, or insufficient quantity or quality of input data.

*Two-to-four family building* means a residential building, including an apartment building, containing two-to-four residential spaces and in which commercial uses are limited to less than 25 percent of the building’s total floor area.

*V Zone*—see “coastal high hazard area.”

*Variance* means a grant of relief by a community from the terms of a flood plain management regulation.

*Violation* means the failure of a structure or other development to be fully compliant with the community’s flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in § 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

*Water surface elevation* means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.

*Zone of imminent collapse* means an area subject to erosion adjacent to the shoreline of an ocean, bay, or lake and within a distance equal to 10 feet plus 5 times the average annual long-term erosion rate for the site, measured from the reference feature.

[41 FR 46968, Oct. 26, 1976]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 59.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

### § 59.2 Description of program.

(a) The National Flood Insurance Act of 1968 was enacted by title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448, August 1, 1968) to provide previously unavailable flood insurance protection to property owners in flood-prone areas. Mudslide (as defined in § 59.1) protection was added to the Program by the Housing and Urban Development Act of 1969 (Pub. L. 91–152, December 24, 1969). Flood-related erosion (as defined in § 59.1) protection was added to the Program by the Flood Disaster Protection Act of 1973 (Pub. L. 93–234, December 31, 1973). The Flood Disaster Protection Act of 1973 requires the purchase of flood insurance on and after March 2, 1974, as a condition of receiving any form of Federal or federally-related financial assistance for acquisition or construction purposes with respect to insurable buildings and mobile homes within an identified special flood, mudslide (i.e., mudflow), or flood-related erosion hazard area that is located within any community participating in the Program. The Act also requires that on and after July 1, 1975, or one year after a community has been formally notified by the Federal Insurance Administrator, of its identification as community containing one or more special flood, mudslide (i.e., mudflow), or flood-related erosion hazard areas, no such Federal financial assistance, shall be provided within such an area unless the community in which the area is located is then participating in the Program, subject to certain exceptions. See FIA published Guidelines at § 59.4(c).

(b) To qualify for the sale of federally-subsidized flood insurance a community must adopt and submit to the Federal Insurance Administrator as part of its application, flood plain management regulations, satisfying at a minimum the criteria set forth at part 60 of this subchapter, designed to reduce or avoid future flood, mudslide (i.e., mudflow) or flood-related erosion damages. These regulations must include effective enforcement provisions.

(c) Minimum requirements for adequate flood plain management regulations are set forth in § 60.3 for flood-prone areas, in § 60.4 for mudslide (i.e.,

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mudflow) areas and in § 60.5 for flood-related erosion areas. Those applicable requirements and standards are based on the amount of technical information available to the community.

[41 FR 46968, Oct. 26, 1976, as amended at 43 FR 7140, Feb. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

### § 59.3 Emergency program.

The 1968 Act required a risk study to be undertaken for each community before it could become eligible for the sale of flood insurance. Since this requirement resulted in a delay in providing insurance, the Congress, in section 408 of the Housing and Urban Development Act of 1969 (Pub. L. 91-152, December 24, 1969), established an Emergency Flood Insurance Program as a new section 1336 of the National Flood Insurance Act (42 U.S.C. 4056) to permit the early sale of insurance in flood-prone communities. The emergency program does not affect the requirement that a community must adopt adequate flood plain management regulations pursuant to part 60 of this subchapter but permits insurance to be sold before a study is conducted to determine risk premium rates for the community. The program still requires upon the effective date of a FIRM the charging of risk premium rates for all new construction and substantial improvements and for higher limits of coverage for existing structures.

[43 FR 7140, Feb. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44543, Sept. 29, 1983]

### § 59.4 References.

(a) The following are statutory references for the National Flood Insurance Program, under which these regulations are issued:

(1) National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), Pub. L. 90-448, approved August 1, 1968, 42 U.S.C. 4001 *et seq.*

(2) Housing and Urban Development Act of 1969 (Pub. L. 91-152, approved December 24, 1969).

(3) Flood Disaster Protection Act of 1973 (87 Stat. 980), Public Law 93-234, approved December 31, 1973.

(4) Section 816 of the Housing and Community Development Act of 1974 (87 Stat. 975), Public Law 93-383, approved August 22, 1974.

(5) Public Law 5-128 (effective October 12, 1977).

(6) The above statutes are included in 42 U.S.C. 4001 *et seq.*

(b) The following are references relevant to the National Flood Insurance Program:

(1) Executive Order 11988 (Floodplain Management, dated May 24, 1977 (42 FR 26951, May 25, 1977)).

(2) The Flood Control Act of 1960 (Pub. L. 86-645).

(3) Title II, section 314 of title III and section 406 of title IV of the Disaster Relief Act of 1974 (Pub. L. 93-288).

(4) Coastal Zone Management Act (Pub. L. 92-583), as amended Public Law 94-370.

(5) Water Resources Planning Act (Pub. L. 89-90), as amended Public Law 94-112 (October 16, 1975).

(6) Title I, National Environmental Policy Act (Pub. L. 91-190).

(7) Land and Water Conservation Fund Act (Pub. L. 89-578), and subsequent amendments thereto.

(8) Water Resources Council, Principals and Standards for Planning, Water and Related Land Resources (38 FR 24778-24869, September 10, 1973).

(9) Executive Order 11593 (Protection and Enhancement of the Cultural Environment), dated May 13, 1971 (36 FR 8921, May 15, 1971).

(10) 89th Cong., 2nd Session, H.D. 465.

(11) Required land use element for comprehensive planning assistance under section 701 of the Housing Act of 1954, as amended by the Housing and Community Development Act of 1974 (24 CFR 600.72).

(12) Executive Order 11990 (Protection of Wetlands, dated May 24, 1977 (42 FR 26951, May 25, 1977)).

(13) Water Resources Council (Guidance for Floodplain Management) (42 FR 52590, September 30, 1977).

(14) Unified National Program for Floodplain Management of the United States Water Resources Council, July 1976.

(c) The following reference guidelines represent the views of the Federal Insurance Administration with respect to



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the mandatory purchase of flood insurance under section 102 of the Flood Disaster Protection Act of 1973: Mandatory Purchase of Flood Insurance Guidelines (54 FR 29666–29695, July 13, 1989).

[41 FR 46968, Oct. 26, 1976, as amended at 43 FR 7140, Feb. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 57 FR 19540, May 7, 1992]

### Subpart B—Eligibility Requirements

#### § 59.21 Purpose of subpart.

This subpart lists actions that must be taken by a community to become eligible and to remain eligible for the Program.

[41 FR 46968, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979]

#### § 59.22 Prerequisites for the sale of flood insurance.

(a) To qualify for flood insurance availability a community shall apply for the entire area within its jurisdiction, and shall submit:

(1) Copies of legislative and executive actions indicating a local need for flood insurance and an explicit desire to participate in the National Flood Insurance Program;

(2) Citations to State and local statutes and ordinances authorizing actions regulating land use and copies of the local laws and regulations cited;

(3) A copy of the flood plain management regulations the community has adopted to meet the requirements of §§ 60.3, 60.4 and/or § 60.5 of this subchapter. This submission shall include copies of any zoning, building, and subdivision regulations, health codes, special purpose ordinances (such as a flood plain ordinance, grading ordinance, or flood-related erosion control ordinance), and any other corrective and preventive measures enacted to reduce or prevent flood, mudslide (i.e., mudflow) or flood-related erosion damage;

(4) A list of the incorporated communities within the applicant's boundaries;

(5) Estimates relating to the community as a whole and to the flood, mudslide (i.e., mudflow) and flood-related erosion prone areas concerning:

(i) Population;

(ii) Number of one to four family residences;

(iii) Number of small businesses; and

(iv) Number of all other structures.

(6) Address of a local repository, such as a municipal building, where the Flood Hazard Boundary Maps (FHBM's) and Flood Insurance Rate Maps (FIRM's) will be made available for public inspection;

(7) A summary of any State or Federal activities with respect to flood plain, mudslide (i.e., mudflow) or flood-related erosion area management within the community, such as federally-funded flood control projects and State-administered flood plain management regulations;

(8) A commitment to recognize and duly evaluate flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards in all official actions in the areas having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards and to take such other official action reasonably necessary to carry out the objectives of the program; and

(9) A commitment to:

(i) Assist the Federal Insurance Administrator at his/her request, in his/her delineation of the limits of the areas having special flood, mudslide (i.e., mudflow) or flood-related erosion hazards;

(ii) Provide such information concerning present uses and occupancy of the flood plain, mudslide (i.e., mudflow) or flood-related erosion areas as the Federal Insurance Administrator may request;

(iii) Maintain for public inspection and furnish upon request, for the determination of applicable flood insurance risk premium rates within all areas having special flood hazards identified on a FHBM or FIRM, any certificates of floodproofing, and information on the elevation (in relation to mean sea level) of the level of the lowest floor (including basement) of all new or substantially improved structures, and include whether or not such structures contain a basement, and if the structure has been floodproofed, the elevation (in relation to mean sea level) to which the structure was floodproofed;

(iv) Cooperate with Federal, State, and local agencies and private firms which undertake to study, survey, map, and identify flood plain, mudslide (i.e., mudflow) or flood-related erosion areas, and cooperate with neighboring communities with respect to the management of adjoining flood plain, mudslide (i.e., mudflow) and/or flood-related erosion areas in order to prevent aggravation of existing hazards;

(v) Upon occurrence, notify the Federal Insurance Administrator in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce flood plain management regulations for a particular area. In order that all FHBM's and FIRM's accurately represent the community's boundaries, include with-in such notification a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished flood plain management regulatory authority.

(b) An applicant shall legislatively:

(1) Appoint or designate the agency or official with the responsibility, authority, and means to implement the commitments made in paragraph (a) of this section, and

(2) Designate the official responsible to submit a report to the Federal Insurance Administrator concerning the community participation in the Program, including, but not limited to the development and implementation of flood plain management regulations. This report shall be submitted annually or biennially as determined by the Federal Insurance Administrator.

(c) The documents required by paragraph (a) of this section and evidence of the actions required by paragraph (b) of this section shall be submitted to the Federal Emergency Management Agency, Washington DC 20472.

[41 FR 46968, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979 and amended at 48 FR 29318, June 24, 1983; 48 FR 44543 and 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 49 FR 33656, Aug. 24, 1984; 50 FR 36023, Sept. 4, 1985]

**§ 59.23 Priorities for the sale of flood insurance under the regular program.**

Flood-prone, mudslide (i.e., mudflow) and flood-related erosion prone communities are placed on a register of areas eligible for ratemaking studies and then selected from this register for ratemaking studies on the basis of the following considerations—

(a) Recommendations of State officials;

(b) Location of community and urgency of need for flood insurance;

(c) Population of community and intensity of existing or proposed development of the flood plain, the mudslide (i.e., mudflow) and the flood-related erosion area;

(d) Availability of information on the community with respect to its flood, mudslide (i.e., mudflow) and flood-related erosion characteristics and previous losses;

(e) Extent of State and local progress in flood plain, mudslide (i.e., mudflow) area and flood-related erosion area management, including adoption of flood plain management regulations consistent with related ongoing programs in the area.

[41 FR 46968, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979]

**§ 59.24 Suspension of community eligibility.**

(a) A community eligible for the sale of flood insurance shall be subject to suspension from the Program for failing to submit copies of adequate flood plain management regulations meeting the minimum requirements of paragraphs (b), (c), (d), (e) or (f) of § 60.3 or paragraph (b) of § 60.4 or § 60.5, within six months from the date the Federal Insurance Administrator provides the data upon which the flood plain regulations for the applicable paragraph shall be based. Where there has not been any submission by the community, the Federal Insurance Administrator shall notify the community that 90 days remain in the six month period in order to submit adequate flood plain management regulations. Where there has been an inadequate submission, the Federal Insurance Administrator shall notify the community of the specific deficiencies in its submitted flood plain

management regulations and inform the community of the amount of time remaining within the six month period. If, subsequently, copies of adequate flood plain management regulations are not received by the Administrator, no later than 30 days before the expiration of the original six month period the Federal Insurance Administrator shall provide written notice to the community and to the state and assure publication of the community's loss of eligibility for the sale of flood insurance on the internet or by another comparable method, such suspension to become effective upon the expiration of the six month period. Should the community remedy the defect and the Federal Insurance Administrator receive copies of adequate flood plain management regulations within the notice period, the suspension notice shall be rescinded by the Federal Insurance Administrator. If the Federal Insurance Administrator receives notice from the State that it has enacted adequate flood plain management regulations for the community within the notice period, the suspension notice shall be rescinded by the Federal Insurance Administrator. The community's eligibility shall remain terminated after suspension until copies of adequate flood plain management regulations have been received and approved by the Federal Insurance Administrator.

(b) A community eligible for the sale of flood insurance which fails to adequately enforce flood plain management regulations meeting the minimum requirements set forth in §§ 60.3, 60.4 and/or 60.5 shall be subject to probation. Probation shall represent formal notification to the community that the Federal Insurance Administrator regards the community's flood plain management program as not compliant with NFIP criteria. Prior to imposing probation, the Federal Insurance Administrator (1) shall inform the community upon 90 days prior written notice of the impending probation and of the specific program deficiencies and violations relative to the failure to enforce, (2) shall, at least 60 days before probation is to begin, issue a press release to local media explaining the reasons for and the effects of probation, and (3) shall, at least 90 days before

probation is to begin, advise all policyholders in the community of the impending probation and the additional premium that will be charged, as provided in this paragraph, on policies sold or renewed during the period of probation. During this 90-day period the community shall have the opportunity to avoid probation by demonstrating compliance with Program requirements, or by correcting Program deficiencies and remedying all violations to the maximum extent possible. If, at the end of the 90-day period, the Federal Insurance Administrator determines that the community has failed to do so, the probation shall go into effect. Probation may be continued for up to one year after the community corrects all Program deficiencies and remedies all violations to the maximum extent possible. Flood insurance may be sold or renewed in the community while it is on probation. Where a policy covers property located in a community placed on probation on or after October 1, 1986, but prior to October 1, 1992, an additional premium of \$25.00 shall be charged on each such policy newly issued or renewed during the one-year period beginning on the date the community is placed on probation and during any successive one-year periods that begin prior to October 1, 1992. Where a community's probation begins on or after October 1, 1992, the additional premium described in the preceding sentence shall be \$50.00, which shall also be charged during any successive one-year periods during which the community remains on probation for any part thereof. This \$50.00 additional premium shall further be charged during any successive one-year periods that begin on or after October 1, 1992, where the preceding one-year probation period began prior to October 1, 1992.

(c) A community eligible for the sale of flood insurance which fails to adequately enforce its flood plain management regulations meeting the minimum requirements set forth in §§ 60.3, 60.4 and/or 60.5 and does not correct its Program deficiencies and remedy all violations to the maximum extent possible in accordance with compliance deadlines established during a period of

probation shall be subject to suspension of its Program eligibility. Under such circumstances, the Federal Insurance Administrator shall grant the community 30 days in which to show cause why it should not be suspended. The Federal Insurance Administrator may conduct a hearing, written or oral, before commencing suspensive action. If a community is to be suspended, the Federal Insurance Administrator shall inform it upon 30 days prior written notice and upon publication of its loss of eligibility for the sale of flood insurance on the internet or by another comparable method. In the event of impending suspension, the Federal Insurance Administrator shall issue a press release to the local media explaining the reasons and effects of the suspension. The community's eligibility shall only be reinstated by the Federal Insurance Administrator upon his receipt of a local legislative or executive measure reaffirming the community's formal intent to adequately enforce the flood plain management requirements of this subpart, together with evidence of action taken by the community to correct Program deficiencies and remedy to the maximum extent possible those violations which caused the suspension. In certain cases, the Federal Insurance Administrator, in order to evaluate the community's performance under the terms of its submission, may withhold reinstatement for a period not to exceed one year from the date of his receipt of the satisfactory submission or place the community on probation as provided for in paragraph (b) of this section.

(d) A community eligible for the sale of flood insurance which repeals its flood plain management regulations, allows its regulations to lapse, or amends its regulations so that they no longer meet the minimum requirements set forth in §§60.3, 60.4 and/or 60.5 shall be suspended from the Program. If a community is to be suspended, the Federal Insurance Administrator shall inform it upon 30 days prior written notice and upon publication of its loss of eligibility for the sale of flood insurance on the internet or by another comparable method. The community eligibility shall remain termi-

nated after suspension until copies of adequate flood plain management regulations have been received and approved by the Federal Insurance Administrator.

(e) A community eligible for the sale of flood insurance may withdraw from the Program by submitting to the Federal Insurance Administrator a copy of a legislative action that explicitly states its desire to withdraw from the National Flood Insurance Program. Upon receipt of a certified copy of a final legislative action, the Federal Insurance Administrator shall withdraw the community from the Program and publish its loss of eligibility for the sale of flood insurance on the internet or by another comparable method. A community that has withdrawn from the Program may be reinstated if its submits the application materials specified in §59.22(a).

(f) If during a period of ineligibility under paragraphs (a), (d), or (e) of this section, a community has permitted actions to take place that have aggravated existing flood plain, mudslide (i.e., mudflow) and/or flood related erosion hazards, the Federal Insurance Administrator may withhold reinstatement until the community submits evidence that it has taken action to remedy to the maximum extent possible the increased hazards. The Federal Insurance Administrator may also place the reinstated community on probation as provided for in paragraph (b) of this section.

(g) The Federal Insurance Administrator shall promptly notify the servicing company and any insurers issuing flood insurance pursuant to an arrangement with the Federal Insurance Administrator of those communities whose eligibility has been suspended or which have withdrawn from the program. Flood insurance shall not be sold or renewed in those communities. Policies sold or renewed within a community during a period of ineligibility are deemed to be voidable by the Federal Insurance Administrator whether or

not the parties to sale or renewal had actual notice of the ineligibility.

[41 FR 46968, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44543 and 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 50 FR 36023, Sept. 4, 1985; 57 FR 19540, May 7, 1992; 59 FR 53598, Oct. 25, 1994; 62 FR 55715, Oct. 27, 1997; 85 FR 68789, Oct. 30, 2020]

## PART 60—CRITERIA FOR LAND MANAGEMENT AND USE

### Subpart A—Requirements for Flood Plain Management Regulations

Sec.

- 60.1 Purpose of subpart.
- 60.2 Minimum compliance with flood plain management criteria.
- 60.3 Flood plain management criteria for flood-prone areas.
- 60.4 Flood plain management criteria for mudslide (i.e., mudflow)-prone areas.
- 60.5 Flood plain management criteria for flood-related erosion-prone areas.
- 60.6 Variances and exceptions.
- 60.7 Revisions of criteria for flood plain management regulations.
- 60.8 Definitions.

### Subpart B—Requirements for State Flood Plain Management Regulations

- 60.11 Purpose of this subpart.
- 60.12 Flood plain management criteria for State-owned properties in special hazard areas.
- 60.13 Noncompliance.

### Subpart C—Additional Considerations in Managing Flood-Prone, Mudslide (i.e., Mudflow)-Prone, and Flood-Related Erosion-Prone Areas

- 60.21 Purpose of this subpart.
- 60.22 Planning considerations for flood-prone areas.
- 60.23 Planning considerations for mudslide (i.e., mudflow)-prone areas.
- 60.24 Planning considerations for flood-related erosion-prone areas.
- 60.25 Designation, duties, and responsibilities of State Coordinating Agencies.
- 60.26 Local coordination.

**AUTHORITY:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**SOURCE:** 41 FR 46975, Oct. 26, 1976, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

## Subpart A—Requirements for Flood Plain Management Regulations

### § 60.1 Purpose of subpart.

(a) The Act provides that flood insurance shall not be sold or renewed under the program within a community, unless the community has adopted adequate flood plain management regulations consistent with Federal criteria. Responsibility for establishing such criteria is delegated to the Federal Insurance Administrator.

(b) This subpart sets forth the criteria developed in accordance with the Act by which the Federal Insurance Administrator will determine the adequacy of a community's flood plain management regulations. These regulations must be legally-enforceable, applied uniformly throughout the community to all privately and publicly owned land within flood-prone, mudslide (i.e., mudflow) or flood-related erosion areas, and the community must provide that the regulations take precedence over any less restrictive conflicting local laws, ordinances or codes. Except as otherwise provided in § 60.6, the adequacy of such regulations shall be determined on the basis of the standards set forth in § 60.3 for flood-prone areas, § 60.4 for mudslide areas and § 60.5 for flood-related erosion areas.

(c) Nothing in this subpart shall be construed as modifying or replacing the general requirement that all eligible communities must take into account flood, mudslide (i.e., mudflow) and flood-related erosion hazards, to the extent that they are known, in all official actions relating to land management and use.

(d) The criteria set forth in this subpart are minimum standards for the adoption of flood plain management regulations by flood-prone, mudslide (i.e., mudflow)-prone and flood-related erosion-prone communities. Any community may exceed the minimum criteria under this part by adopting more comprehensive flood plain management regulations utilizing the standards such as contained in subpart C of this part. In some instances, community officials may have access to information

or knowledge of conditions that require, particularly for human safety, higher standards than the minimum criteria set forth in subpart A of this part. Therefore, any flood plain management regulations adopted by a State or a community which are more restrictive than the criteria set forth in this part are encouraged and shall take precedence.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

**§ 60.2 Minimum compliance with flood plain management criteria.**

(a) A flood-prone community applying for flood insurance eligibility shall meet the standards of § 60.3(a) in order to become eligible if a FHBM has not been issued for the community at the time of application. Thereafter, the community will be given a period of six months from the date the Federal Insurance Administrator provides the data set forth in § 60.3 (b), (c), (d), (e) or (f), in which to meet the requirements of the applicable paragraph. If a community has received a FHBM, but has not yet applied for Program eligibility, the community shall apply for eligibility directly under the standards set forth in § 60.3(b). Thereafter, the community will be given a period of six months from the date the Federal Insurance Administrator provides the data set forth in § 60.3 (c), (d), (e) or (f) in which to meet the requirements of the applicable paragraph.

(b) A mudslide (i.e., mudflow)-prone community applying for flood insurance eligibility shall meet the standards of § 60.4(a) to become eligible. Thereafter, the community will be given a period of six months from the date the mudslide (i.e., mudflow) areas having special mudslide hazards are delineated in which to meet the requirements of § 60.4(b).

(c) A flood-related erosion-prone community applying for flood insurance eligibility shall meet the standards of § 60.5(a) to become eligible. Thereafter, the community will be given a period of six months from the date the flood-related erosion areas having special erosion hazards are delineated in which to meet the requirements of § 60.5(b).

(d) Communities identified in part 65 of this subchapter as containing more than one type of hazard (e.g., any combination of special flood, mudslide (i.e., mudflow), and flood-related erosion hazard areas) shall adopt flood plain management regulations for each type of hazard consistent with the requirements of §§ 60.3, 60.4 and 60.5.

(e) Local flood plain management regulations may be submitted to the State Coordinating Agency designated pursuant to § 60.25 for its advice and concurrence. The submission to the State shall clearly describe proposed enforcement procedures.

(f) The community official responsible for submitting annual or biennial reports to the Federal Insurance Administrator pursuant to § 59.22(b)(2) of this subchapter shall also submit copies of each annual or biennial report to any State Coordinating Agency.

(g) A community shall assure that its comprehensive plan is consistent with the flood plain management objectives of this part.

(h) The community shall adopt and enforce flood plain management regulations based on data provided by the Federal Insurance Administrator. Without prior approval of the Federal Insurance Administrator, the community shall not adopt and enforce flood plain management regulations based upon modified data reflecting natural or man-made physical changes.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 29318, June 24, 1983; 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 50 FR 36024, Sept. 4, 1985; 59 FR 53598, Oct. 25, 1994; 62 FR 55716, Oct. 27, 1997]

**§ 60.3 Flood plain management criteria for flood-prone areas.**

The Federal Insurance Administrator will provide the data upon which flood plain management regulations shall be based. If the Federal Insurance Administrator has not provided sufficient data to furnish a basis for these regulations in a particular community, the community shall obtain, review and reasonably utilize data available from other Federal, State or other sources pending receipt of data from the Federal Insurance Administrator. However, when special flood hazard area

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designations and water surface elevations have been furnished by the Federal Insurance Administrator, they shall apply. The symbols defining such special flood hazard designations are set forth in § 64.3 of this subchapter. In all cases the minimum requirements governing the adequacy of the flood plain management regulations for flood-prone areas adopted by a particular community depend on the amount of technical data formally provided to the community by the Federal Insurance Administrator. Minimum standards for communities are as follows:

(a) When the Federal Insurance Administrator has not defined the special flood hazard areas within a community, has not provided water surface elevation data, and has not provided sufficient data to identify the floodway or coastal high hazard area, but the community has indicated the presence of such hazards by submitting an application to participate in the Program, the community shall:

(1) Require permits for all proposed construction or other development in the community, including the placement of manufactured homes, so that it may determine whether such construction or other development is proposed within flood-prone areas;

(2) Review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334;

(3) Review all permit applications to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall (i) be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, (ii) be constructed with materials resistant to flood damage, (iii) be constructed by methods and practices that minimize flood damages, and (iv) be constructed with electrical, heating, ventilation,

plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(4) Review subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding. If a subdivision proposal or other proposed new development is in a flood-prone area, any such proposals shall be reviewed to assure that (i) all such proposals are consistent with the need to minimize flood damage within the flood-prone area, (ii) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage, and (iii) adequate drainage is provided to reduce exposure to flood hazards;

(5) Require within flood-prone areas new and replacement water supply systems to be designed to minimize or eliminate infiltration of flood waters into the systems; and

(6) Require within flood-prone areas (i) new and replacement sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and (ii) onsite waste disposal systems to be located to avoid impairment to them or contamination from them during flooding.

(b) When the Federal Insurance Administrator has designated areas of special flood hazards (A zones) by the publication of a community's FHBM or FIRM, but has neither produced water surface elevation data nor identified a floodway or coastal high hazard area, the community shall:

(1) Require permits for all proposed construction and other developments including the placement of manufactured homes, within Zone A on the community's FHBM or FIRM;

(2) Require the application of the standards in paragraphs (a) (2), (3), (4), (5) and (6) of this section to development within Zone A on the community's FHBM or FIRM;

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(3) Require that all new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, include within such proposals base flood elevation data;

(4) Obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other source, including data developed pursuant to paragraph (b)(3) of this section, as criteria for requiring that new construction, substantial improvements, or other development in Zone A on the community's FHBM or FIRM meet the standards in paragraphs (c)(2), (c)(3), (c)(5), (c)(6), (c)(12), (c)(14), (d)(2) and (d)(3) of this section;

(5) Where base flood elevation data are utilized, within Zone A on the community's FHBM or FIRM:

(i) Obtain the elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures, and

(ii) Obtain, if the structure has been floodproofed in accordance with paragraph (c)(3)(ii) of this section, the elevation (in relation to mean sea level) to which the structure was floodproofed, and

(iii) Maintain a record of all such information with the official designated by the community under §59.22 (a)(9)(iii);

(6) Notify, in riverine situations, adjacent communities and the State Coordinating Office prior to any alteration or relocation of a watercourse, and submit copies of such notifications to the Federal Insurance Administrator;

(7) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained;

(8) Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame

ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

(c) When the Federal Insurance Administrator has provided a notice of final flood elevations for one or more special flood hazard areas on the community's FIRM and, if appropriate, has designated other special flood hazard areas without base flood elevations on the community's FIRM, but has not identified a regulatory floodway or coastal high hazard area, the community shall:

(1) Require the standards of paragraph (b) of this section within all A1-30 zones, AE zones, A zones, AH zones, and AO zones, on the community's FIRM;

(2) Require that all new construction and substantial improvements of residential structures within Zones A1-30, AE and AH zones on the community's FIRM have the lowest floor (including basement) elevated to or above the base flood level, unless the community is granted an exception by the Federal Insurance Administrator for the allowance of basements in accordance with §60.6 (b) or (c);

(3) Require that all new construction and substantial improvements of non-residential structures within Zones A1-30, AE and AH zones on the community's firm (i) have the lowest floor (including basement) elevated to or above the base flood level or, (ii) together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

(4) Provide that where a non-residential structure is intended to be made watertight below the base flood level, (i) a registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of



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construction are in accordance with accepted standards of practice for meeting the applicable provisions of paragraph (c)(3)(ii) or (c)(8)(ii) of this section, and (ii) a record of such certificates which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained with the official designated by the community under § 59.22(a)(9)(iii);

(5) Require, for all new construction and substantial improvements, that fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(6) Require that manufactured homes that are placed or substantially improved within Zones A1–30, AH, and AE on the community's FIRM on sites

(i) Outside of a manufactured home park or subdivision,

(ii) In a new manufactured home park or subdivision,

(iii) In an expansion to an existing manufactured home park or subdivision, or

(iv) In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation collapse and lateral movement.

(7) Require within any AO zone on the community's FIRM that all new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified);

(8) Require within any AO zone on the community's FIRM that all new construction and substantial improvements of nonresidential structures (i) have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified), or (ii) together with attendant utility and sanitary facilities be completely floodproofed to that level to meet the floodproofing standard specified in § 60.3(c)(3)(ii);

(9) Require within any A99 zones on a community's FIRM the standards of paragraphs (a)(1) through (a)(4)(i) and (b)(5) through (b)(9) of this section;

(10) Require until a regulatory floodway is designated, that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1–30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(11) Require within Zones AH and AO, adequate drainage paths around structures on slopes, to guide floodwaters around and away from proposed structures.

(12) Require that manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A–1–30, AH, and AE on the community's FIRM that are not subject to the provisions of paragraph (c)(6) of this section be elevated so that either

(i) The lowest floor of the manufactured home is at or above the base flood elevation, or

(ii) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement.

(13) Notwithstanding any other provisions of §60.3, a community may approve certain development in Zones A1-30, AE, and AH, on the community's FIRM which increase the water surface elevation of the base flood by more than one foot, provided that the community first applies for a conditional FIRM revision, fulfills the requirements for such a revision as established under the provisions of §65.12, and receives the approval of the Federal Insurance Administrator.

(14) Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either

(i) Be on the site for fewer than 180 consecutive days,

(ii) Be fully licensed and ready for highway use, or

(iii) Meet the permit requirements of paragraph (b)(1) of this section and the elevation and anchoring requirements for "manufactured homes" in paragraph (c)(6) of this section.

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

(d) When the Federal Insurance Administrator has provided a notice of final base flood elevations within Zones A1-30 and/or AE on the community's FIRM and, if appropriate, has designated AO zones, AH zones, A99 zones, and A zones on the community's FIRM, and has provided data from which the community shall designate its regulatory floodway, the community shall:

(1) Meet the requirements of paragraphs (c) (1) through (14) of this section;

(2) Select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the

waters of the base flood, without increasing the water surface elevation of that flood more than one foot at any point;

(3) Prohibit encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge;

(4) Notwithstanding any other provisions of §60.3, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional FIRM and floodway revision, fulfills the requirements for such revisions as established under the provisions of §65.12, and receives the approval of the Federal Insurance Administrator.

(e) When the Federal Insurance Administrator has provided a notice of final base flood elevations within Zones A1-30 and/or AE on the community's FIRM and, if appropriate, has designated AH zones, AO zones, A99 zones, and A zones on the community's FIRM, and has identified on the community's FIRM coastal high hazard areas by designating Zones V1-30, VE, and/or V, the community shall:

(1) Meet the requirements of paragraphs (c)(1) through (14) of this section;

(2) Within Zones V1-30, VE, and V on a community's FIRM, (i) obtain the elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures, and whether or not such structures contain a basement, and (ii) maintain a record of all such information with the official designated by the community under §59.22(a)(9)(iii);

(3) Provide that all new construction within Zones V1-30, VE, and V on the community's FIRM is located landward of the reach of mean high tide;

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(4) Provide that all new construction and substantial improvements in Zones V1-30 and VE, and also Zone V if base flood elevation data is available, on the community's FIRM, are elevated on pilings and columns so that (i) the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level; and (ii) the pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable State or local building standards. A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of paragraphs (e)(4) (i) and (ii) of this section.

(5) Provide that all new construction and substantial improvements within Zones V1-30, VE, and V on the community's FIRM have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purposes of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or State codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

(i) Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and,

(ii) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable State or local building standards.

Such enclosed space shall be useable solely for parking of vehicles, building access, or storage.

(6) Prohibit the use of fill for structural support of buildings within Zones V1-30, VE, and V on the community's FIRM;

(7) Prohibit man-made alteration of sand dunes and mangrove stands within Zones V1-30, VE, and V on the community's FIRM which would increase potential flood damage.

(8) Require that manufactured homes placed or substantially improved within Zones V1-30, V, and VE on the community's FIRM on sites

(i) Outside of a manufactured home park or subdivision,

(ii) In a new manufactured home park or subdivision,

(iii) In an expansion to an existing manufactured home park or subdivision, or

(iv) In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, meet the standards of paragraphs (e)(2) through (7) of this section and that manufactured homes placed or substantially improved on other sites in an existing manufactured home park or subdivision within Zones V1-30, V, and VE on the community's FIRM meet the requirements of paragraph (c)(12) of this section.

(9) Require that recreational vehicles placed on sites within Zones V1-30, V, and VE on the community's FIRM either

(i) Be on the site for fewer than 180 consecutive days,

(ii) Be fully licensed and ready for highway use, or

(iii) Meet the requirements in paragraphs (b)(1) and (e) (2) through (7) of this section.

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

(f) When the Federal Insurance Administrator has provided a notice of final base flood elevations within Zones A1-30 or AE on the community's FIRM, and, if appropriate, has designated AH zones, AO zones, A99 zones, and A zones on the community's FIRM, and has identified flood protection restoration areas by designating Zones AR, AR/A1-30, AR/AE, AR/AH, AR/AO, or AR/A, the community shall:

(1) Meet the requirements of paragraphs (c)(1) through (14) and (d)(1) through (4) of this section.

(2) Adopt the official map or legal description of those areas within Zones AR, AR/A1-30, AR/AE, AR/AH, AR/A, or AR/AO that are designated developed areas as defined in §59.1 in accordance with the eligibility procedures under §65.14.

(3) For all new construction of structures in areas within Zone AR that are designated as developed areas and in other areas within Zone AR where the AR flood depth is 5 feet or less:

(i) Determine the lower of either the AR base flood elevation or the elevation that is 3 feet above highest adjacent grade; and

(ii) Using this elevation, require the standards of paragraphs (c)(1) through (14) of this section.

(4) For all new construction of structures in those areas within Zone AR that are not designated as developed areas where the AR flood depth is greater than 5 feet:

(i) Determine the AR base flood elevation; and

(ii) Using that elevation require the standards of paragraphs (c)(1) through (14) of this section.

(5) For all new construction of structures in areas within Zone AR/A1-30, AR/AE, AR/AH, AR/AO, and AR/A:

(i) Determine the applicable elevation for Zone AR from paragraphs (a)(3) and (4) of this section;

(ii) Determine the base flood elevation or flood depth for the underlying A1-30, AE, AH, AO and A Zone; and

(iii) Using the higher elevation from paragraphs (a)(5)(i) and (ii) of this section require the standards of paragraphs (c)(1) through (14) of this section.

(6) For all substantial improvements to existing construction within Zones AR/A1-30, AR/AE, AR/AH, AR/AO, and AR/A:

(i) Determine the A1-30 or AE, AH, AO, or A Zone base flood elevation; and

(ii) Using this elevation apply the requirements of paragraphs (c)(1) through (14) of this section.

(7) Notify the permit applicant that the area has been designated as an AR, AR/A1-30, AR/AE, AR/AH, AR/AO, or AR/A Zone and whether the structure will be elevated or protected to or above the AR base flood elevation.

[41 FR 46975, Oct. 26, 1976]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §60.3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

**§ 60.4 Flood plain management criteria for mudslide (i.e., mudflow)-prone areas.**

The Federal Insurance Administrator will provide the data upon which flood plain management regulations shall be based. If the Federal Insurance Administrator has not provided sufficient data to furnish a basis for these regulations in a particular community, the community shall obtain, review, and reasonably utilize data available from other Federal, State or other sources pending receipt of data from the Federal Insurance Administrator. However, when special mudslide (i.e., mudflow) hazard area designations have been furnished by the Federal Insurance Administrator, they shall apply. The symbols defining such special mudslide (i.e., mudflow) hazard designations are set forth in §64.3 of this subchapter. In all cases, the minimum requirements for mudslide (i.e., mudflow)-prone areas adopted by a particular community depend on the amount of technical data provided to the community by the Federal Insurance Administrator. Minimum standards for communities are as follows:

(a) When the Federal Insurance Administrator has not yet identified any

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area within the community as an area having special mudslide (i.e., mudflow) hazards, but the community has indicated the presence of such hazards by submitting an application to participate in the Program, the community shall

(1) Require permits for all proposed construction or other development in the community so that it may determine whether development is proposed within mudslide (i.e., mudflow)-prone areas;

(2) Require review of each permit application to determine whether the proposed site and improvements will be reasonably safe from mudslides (i.e., mudflows). Factors to be considered in making such a determination should include but not be limited to (i) the type and quality of soils, (ii) any evidence of ground water or surface water problems, (iii) the depth and quality of any fill, (iv) the overall slope of the site, and (v) the weight that any proposed structure will impose on the slope;

(3) Require, if a proposed site and improvements are in a location that may have mudslide (i.e., mudflow) hazards, that (i) a site investigation and further review be made by persons qualified in geology and soils engineering, (ii) the proposed grading, excavations, new construction, and substantial improvements are adequately designed and protected against mudslide (i.e., mudflow) damages, (iii) the proposed grading, excavations, new construction and substantial improvements do not aggravate the existing hazard by creating either on-site or off-site disturbances, and (iv) drainage, planting, watering, and maintenance be such as not to endanger slope stability.

(b) When the Federal Insurance Administrator has delineated Zone M on the community's FIRM, the community shall:

(1) Meet the requirements of paragraph (a) of this section; and

(2) Adopt and enforce a grading ordinance or regulation in accordance with data supplied by the Federal Insurance Administrator which (i) regulates the location of foundation systems and utility systems of new construction and substantial improvements, (ii) regulates the location, drainage and main-

tenance of all excavations, cuts and fills and planted slopes, (iii) provides special requirements for protective measures including but not necessarily limited to retaining walls, buttress fills, sub-drains, diverter terraces, benchings, etc., and (iv) requires engineering drawings and specifications to be submitted for all corrective measures, accompanied by supporting soils engineering and geology reports. Guidance may be obtained from the provisions of the 1973 edition and any subsequent edition of the Uniform Building Code, sections 7001 through 7006, and 7008 through 7015. The Uniform Building Code is published by the International Conference of Building Officials, 50 South Los Robles, Pasadena, California 91101.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

### § 60.5 Flood plain management criteria for flood-related erosion-prone areas.

The Federal Insurance Administrator will provide the data upon which flood plain management regulations for flood-related erosion-prone areas shall be based. If the Federal Insurance Administrator has not provided sufficient data to furnish a basis for these regulations in a particular community, the community shall obtain, review, and reasonably utilize data available from other Federal, State or other sources, pending receipt of data from the Federal Insurance Administrator. However, when special flood-related erosion hazard area designations have been furnished by the Federal Insurance Administrator they shall apply. The symbols defining such special flood-related erosion hazard designations are set forth in §64.3 of this subchapter. In all cases the minimum requirements governing the adequacy of the flood plain management regulations for flood-related erosion-prone areas adopted by a particular community depend on the amount of technical data provided to the community by the Federal Insurance Administrator. Minimum standards for communities are as follows:

(a) When the Federal Insurance Administrator has not yet identified any area within the community as having

special flood-related erosion hazards, but the community has indicated the presence of such hazards by submitting an application to participate in the Program, the community shall

(1) Require the issuance of a permit for all proposed construction, or other development in the area of flood-related erosion hazard, as it is known to the community;

(2) Require review of each permit application to determine whether the proposed site alterations and improvements will be reasonably safe from flood-related erosion and will not cause flood-related erosion hazards or otherwise aggravate the existing flood-related erosion hazard; and

(3) If a proposed improvement is found to be in the path of flood-related erosion or to increase the erosion hazard, require the improvement to be relocated or adequate protective measures to be taken which will not aggravate the existing erosion hazard.

(b) When the Federal Insurance Administrator has delineated Zone E on the community's FIRM, the community shall

(1) Meet the requirements of paragraph (a) of this section; and

(2) Require a setback for all new development from the ocean, lake, bay, riverfront or other body of water, to create a safety buffer consisting of a natural vegetative or contour strip. This buffer will be designated by the Federal Insurance Administrator according to the flood-related erosion hazard and erosion rate, in conjunction with the anticipated "useful life" of structures, and depending upon the geologic, hydrologic, topographic and climatic characteristics of the community's land. The buffer may be used for suitable open space purposes, such as for agricultural, forestry, outdoor recreation and wildlife habitat areas, and for other activities using temporary and portable structures only.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

**§ 60.6 Variances and exceptions.**

(a) The Federal Insurance Administrator does not set forth absolute criteria for granting variances from the criteria set forth in §§ 60.3, 60.4, and

60.5. The issuance of a variance is for flood plain management purposes only. Insurance premium rates are determined by statute according to actuarial risk and will not be modified by the granting of a variance. The community, after examining the applicant's hardships, shall approve or disapprove a request. While the granting of variances generally is limited to a lot size less than one-half acre (as set forth in paragraph (a)(2) of this section), deviations from that limitation may occur. However, as the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases. The Federal Insurance Administrator may review a community's findings justifying the granting of variances, and if that review indicates a pattern inconsistent with the objectives of sound flood plain management, the Federal Insurance Administrator may take appropriate action under § 59.24(b) of this subchapter. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure. Procedures for the granting of variances by a community are as follows:

(1) Variances shall not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result;

(2) Variances may be issued by a community for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the procedures of paragraphs (a) (3), (4), (5) and (6) of this section;

(3) Variances shall only be issued by a community upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public

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safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances;

(4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;

(5) A community shall notify the applicant in writing over the signature of a community official that (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions as required in paragraph (a)(6) of this section; and

(6) A community shall (i) maintain a record of all variance actions, including justification for their issuance, and (ii) report such variances issued in its annual or biennial report submitted to the Federal Insurance Administrator.

(7) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that (i) the criteria of paragraphs (a)(1) through (a)(4) of this section are met, and (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(b)(1) The requirement that each flood-prone, mudslide (i.e., mudflow)-prone, and flood-related erosion prone community must adopt and submit adequate flood plain management regulations as a condition of initial and continued flood insurance eligibility is statutory and cannot be waived, and such regulations shall be adopted by a community within the time periods specified in § 60.3, § 60.4 or § 60.5. However, certain exceptions from the standards contained in this subpart may be permitted where the Federal Insurance Administrator recognizes that, because of extraordinary circumstances, local conditions may render the application of certain standards the cause for severe hardship and

gross inequity for a particular community. Consequently, a community proposing the adoption of flood plain management regulations which vary from the standards set forth in § 60.3, § 60.4, or § 60.5, shall explain in writing to the Federal Insurance Administrator the nature and extent of and the reasons for the exception request and shall include sufficient supporting economic, environmental, topographic, hydrologic, and other scientific and technical data, and data with respect to the impact on public safety and the environment.

(2) The Federal Insurance Administrator shall prepare a Special Environmental Clearance to determine whether the proposal for an exception under paragraph (b)(1) of this section will have significant impact on the human environment. The decision whether an Environmental Impact Statement or other environmental document will be prepared, will be made in accordance with applicable environmental and historic preservation laws, regulations, Executive Orders, and agency policy. Ninety or more days may be required for an environmental quality clearance if the proposed exception will have significant impact on the human environment thereby requiring an EIS.

(c) A community may propose flood plain management measures which adopt standards for floodproofed residential basements below the base flood level in zones A1–30, AH, AO, and AE which are not subject to tidal flooding. Notwithstanding the requirements of paragraph (b) of this section the Federal Insurance Administrator may approve the proposal provided that:

(1) The community has demonstrated that areas of special flood hazard in which basements will be permitted are subject to shallow and low velocity flooding and that there is adequate flood warning time to ensure that all residents are notified of impending floods. For the purposes of this paragraph flood characteristics must include:

(i) Flood depths that are five feet or less for developable lots that are contiguous to land above the base flood level and three feet or less for other lots;

(ii) Flood velocities that are five feet per second or less; and

(iii) Flood warning times that are 12 hours or greater. Flood warning times of two hours or greater may be approved if the community demonstrates that it has a flood warning system and emergency plan in operation that is adequate to ensure safe evacuation of flood plain residents.

(2) The community has adopted flood plain management measures that require that new construction and substantial improvements of residential structures with basements in zones A1-30, AH, AO, and AE shall:

(i) Be designed and built so that any basement area, together with attendant utilities and sanitary facilities below the floodproofed design level, is watertight with walls that are impermeable to the passage of water without human intervention. Basement walls shall be built with the capacity to resist hydrostatic and hydrodynamic loads and the effects of buoyancy resulting from flooding to the floodproofed design level, and shall be designed so that minimal damage will occur from floods that exceed that level. The floodproofed design level shall be an elevation one foot above the level of the base flood where the difference between the base flood and the 500-year flood is three feet or less and two feet above the level of the base flood where the difference is greater than three feet.

(ii) Have the top of the floor of any basement area no lower than five feet below the elevation of the base flood;

(iii) Have the area surrounding the structure on all sides filled to or above the elevation of the base flood. Fill must be compacted with slopes protected by vegetative cover;

(iv) Have a registered professional engineer or architect develop or review the building's structural design, specifications, and plans, including consideration of the depth, velocity, and duration of flooding and type and permeability of soils at the building site, and certify that the basement design and methods of construction proposed are in accordance with accepted standards of practice for meeting the provisions of this paragraph;

(v) Be inspected by the building inspector or other authorized representative of the community to verify that the structure is built according to its design and those provisions of this section which are verifiable.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44543 and 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 50 FR 36025, Sept. 4, 1985; 51 FR 30308, Aug. 25, 1986; 54 FR 33550, Aug. 15, 1989; 81 FR 56533, Aug. 22, 2016]

**§ 60.7 Revisions of criteria for flood plain management regulations.**

From time to time part 60 may be revised as experience is acquired under the Program and new information becomes available. Communities will be given six months from the effective date of any new regulation to revise their flood plain management regulations to comply with any such changes.

**§ 60.8 Definitions.**

The definitions set forth in part 59 of this subchapter are applicable to this part.

**Subpart B—Requirements for State Flood Plain Management Regulations**

**§ 60.11 Purpose of this subpart.**

(a) A State is considered a "community" pursuant to §59.1 of this subchapter; and, accordingly, the Act provides that flood insurance shall not be sold or renewed under the Program unless a community has adopted adequate flood plain management regulations consistent with criteria established by the Federal Insurance Administrator.

(b) This subpart sets forth the flood plain management criteria required for State-owned properties located within special hazard areas identified by the Federal Insurance Administrator. A State shall satisfy such criteria as a condition to the purchase of a Standard Flood Insurance Policy for a State-owned structure or its contents, or as a condition to the approval by the Federal Insurance Administrator, pursuant



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to part 75 of this subchapter, of its plan of self-insurance.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

### § 60.12 Flood plain management criteria for State-owned properties in special hazard areas.

(a) The State shall comply with the minimum flood plain management criteria set forth in §§ 60.3, 60.4, and 60.5. A State either shall:

(1) Comply with the flood plain management requirements of all local communities participating in the program in which State-owned properties are located; or

(2) Establish and enforce flood plain management regulations which, at a minimum, satisfy the criteria set forth in §§ 60.3, 60.4, and 60.5.

(b) The procedures by which a state government adopts and administers flood plain management regulations satisfying the criteria set forth in §§ 60.3, 60.4 and 60.5 may vary from the procedures by which local governments satisfy the criteria.

(c) If any State-owned property is located in a non-participating local community, then the State shall comply with the requirements of paragraph (a)(2) of this section for the property.

### § 60.13 Noncompliance.

If a State fails to submit adequate flood plain management regulations applicable to State-owned properties pursuant to § 60.12 within six months of the effective date of this regulation, or fails to adequately enforce such regulations, the State shall be subject to suspensive action pursuant to § 59.24. Where the State fails to adequately enforce its flood plain management regulations, the Federal Insurance Administrator shall conduct a hearing before initiating such suspensive action.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

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### Subpart C—Additional Considerations in Managing Flood-Prone, Mudslide (i.e., Mudflow)-Prone and Flood-Related Erosion-Prone Areas

#### § 60.21 Purpose of this subpart.

The purpose of this subpart is to encourage the formation and adoption of overall comprehensive management plans for flood-prone, mudslide (i.e., mudflow)-prone and flood-related erosion-prone areas. While adoption by a community of the standards in this subpart is not mandatory, the community shall completely evaluate these standards.

#### § 60.22 Planning considerations for flood-prone areas.

(a) The flood plain management regulations adopted by a community for flood-prone areas should:

(1) Permit only that development of flood-prone areas which (i) is appropriate in light of the probability of flood damage and the need to reduce flood losses, (ii) is an acceptable social and economic use of the land in relation to the hazards involved, and (iii) does not increase the danger to human life;

(2) Prohibit nonessential or improper installation of public utilities and public facilities in flood-prone areas.

(b) In formulating community development goals after the occurrence of a flood disaster, each community shall consider—

(1) Preservation of the flood-prone areas for open space purposes;

(2) Relocation of occupants away from flood-prone areas;

(3) Acquisition of land or land development rights for public purposes consistent with a policy of minimization of future property losses;

(4) Acquisition of frequently flood-damaged structures;

(c) In formulating community development goals and in adopting flood plain management regulations, each community shall consider at least the following factors—

(1) Human safety;

(2) Diversion of development to areas safe from flooding in light of the need to reduce flood damages and in light of

the need to prevent environmentally incompatible flood plain use;

(3) Full disclosure to all prospective and interested parties (including but not limited to purchasers and renters) that (i) certain structures are located within flood-prone areas, (ii) variances have been granted for certain structures located within flood-prone areas, and (iii) premium rates applied to new structures built at elevations below the base flood substantially increase as the elevation decreases;

(4) Adverse effects of flood plain development on existing development;

(5) Encouragement of floodproofing to reduce flood damage;

(6) Flood warning and emergency preparedness plans;

(7) Provision for alternative vehicular access and escape routes when normal routes are blocked or destroyed by flooding;

(8) Establishment of minimum floodproofing and access requirements for schools, hospitals, nursing homes, orphanages, penal institutions, fire stations, police stations, communications centers, water and sewage pumping stations, and other public or quasi-public facilities already located in the flood-prone area, to enable them to withstand flood damage, and to facilitate emergency operations;

(9) Improvement of local drainage to control increased runoff that might increase the danger of flooding to other properties;

(10) Coordination of plans with neighboring community's flood plain management programs;

(11) The requirement that all new construction and substantial improvements in areas subject to subsidence be elevated above the base flood level equal to expected subsidence for at least a ten year period;

(12) For riverine areas, requiring subdividers to furnish delineations for floodways before approving a subdivision;

(13) Prohibition of any alteration or relocation of a watercourse, except as part of an overall drainage basin plan. In the event of an overall drainage basin plan, provide that the flood carrying capacity within the altered or relocated portion of the watercourse is maintained;

(14) Requirement of setbacks for new construction within Zones V1-30, VE, and V on a community's FIRM;

(15) Requirement of additional elevation above the base flood level for all new construction and substantial improvements within Zones A1-30, AE, V1-30, and VE on the community's FIRM to protect against such occurrences as wave wash and floating debris, to provide an added margin of safety against floods having a magnitude greater than the base flood, or to compensate for future urban development;

(16) Requirement of consistency between state, regional and local comprehensive plans and flood plain management programs;

(17) Requirement of pilings or columns rather than fill, for the elevation of structures within flood-prone areas, in order to maintain the storage capacity of the flood plain and to minimize the potential for negative impacts to sensitive ecological areas;

(18) Prohibition, within any floodway or coastal high hazard area, of plants or facilities in which hazardous substances are manufactured.

(19) Requirement that a plan for evacuating residents of all manufactured home parks or subdivisions located within flood prone areas be developed and filed with and approved by appropriate community emergency management authorities.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 50 FR 36025, Sept. 4, 1985; 54 FR 40284, Sept. 29, 1989]

**§ 60.23 Planning considerations for mudslide (i.e., mudflow)-prone areas.**

The planning process for communities identified under part 65 of this subchapter as containing Zone M, or which indicate in their applications for flood insurance pursuant to § 59.22 of this subchapter that they have mudslide (i.e., mudflow) areas, should include—

(a) The existence and extent of the hazard;

(b) The potential effects of inappropriate hillside development, including

(1) Loss of life and personal injuries, and

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(2) Public and private property losses, costs, liabilities, and exposures resulting from potential mudslide (i.e., mudflow) hazards;

(c) The means of avoiding the hazard including the (1) availability of land which is not mudslide (i.e., mudflow)-prone and the feasibility of developing such land instead of further encroaching upon mudslide (i.e., mudflow) areas, (2) possibility of public acquisition of land, easements, and development rights to assure the proper development of hillsides, and (3) advisability of preserving mudslide (i.e., mudflow) areas as open space;

(d) The means of adjusting to the hazard, including the (1) establishment by ordinance of site exploration, investigation, design, grading, construction, filing, compacting, foundation, sewerage, drainage, subdrainage, planting, inspection and maintenance standards and requirements that promote proper land use, and (2) provision for proper drainage and subdrainage on public property and the location of public utilities and service facilities, such as sewer, water, gas and electrical systems and streets in a manner designed to minimize exposure to mudslide (i.e., mudflow) hazards and prevent their aggravation;

(e) Coordination of land use, sewer, and drainage regulations and ordinances with fire prevention, flood plain, mudslide (i.e., mudflow), soil, land, and water regulation in neighboring communities;

(f) Planning subdivisions and other developments in such a manner as to avoid exposure to mudslide (i.e., mudflow) hazards and the control of public facility and utility extension to discourage inappropriate development;

(g) Public facility location and design requirements with higher site stability and access standards for schools, hospitals, nursing homes, orphanages, correctional and other residential institutions, fire and police stations, communication centers, electric power transformers and substations, water and sewer pumping stations and any other public or quasi-public institutions located in the mudslide (i.e., mudflow) area to enable them to withstand mudslide (i.e., mudflow) damage

and to facilitate emergency operations; and

(h) Provision for emergencies, including:

(1) Warning, evacuation, abatement, and access procedures in the event of mudslide (i.e., mudflow),

(2) Enactment of public measures and initiation of private procedures to limit danger and damage from continued or future mudslides (i.e., mudflow),

(3) Fire prevention procedures in the event of the rupture of gas or electrical distribution systems by mudslides,

(4) Provisions to avoid contamination of water conduits or deterioration of slope stability by the rupture of such systems,

(5) Similar provisions for sewers which in the event of rupture pose both health and site stability hazards and

(6) Provisions for alternative vehicular access and escape routes when normal routes are blocked or destroyed by mudslides (i.e., mudflow);

(i) The means for assuring consistency between state, areawide, and local comprehensive plans with the plans developed for mudslide (i.e., mudflow)-prone areas;

(j) Deterring the nonessential installation of public utilities and public facilities in mudslide (i.e., mudflow)-prone areas.

§ 60.24 Planning considerations for flood-related erosion-prone areas.

The planning process for communities identified under part 65 of this subchapter as containing Zone E or which indicate in their applications for flood insurance coverage pursuant to § 59.22 of this subchapter that they have flood-related erosion areas should include—

(a) The importance of directing future developments to areas not exposed to flood-related erosion;

(b) The possibility of reserving flood-related erosion-prone areas for open space purposes;

(c) The coordination of all planning for the flood-related erosion-prone areas with planning at the State and Regional levels, and with planning at the level of neighboring communities;

(d) Preventive action in E zones, including setbacks, shore protection works, relocating structures in the

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path of flood-related erosion, and community acquisition of flood-related erosion-prone properties for public purposes;

(e) Consistency of plans for flood-related erosion-prone areas with comprehensive plans at the state, regional and local levels.

### § 60.25 Designation, duties, and responsibilities of State Coordinating Agencies.

(a) States are encouraged to demonstrate a commitment to the minimum flood plain management criteria set forth in §§ 60.3, 60.4, and 60.5 as evidenced by the designation of an agency of State government to be responsible for coordinating the Program aspects of flood plain management in the State.

(b) State participation in furthering the objectives of this part shall include maintaining capability to perform the appropriate duties and responsibilities as follows:

(1) Enact, whenever necessary, legislation enabling counties and municipalities to regulate development within flood-prone areas;

(2) Encourage and assist communities in qualifying for participation in the Program;

(3) Guide and assist county and municipal public bodies and agencies in developing, implementing, and maintaining local flood plain management regulations;

(4) Provide local governments and the general public with Program information on the coordination of local activities with Federal and State requirements for managing flood-prone areas;

(5) Assist communities in disseminating information on minimum elevation requirements for development within flood-prone areas;

(6) Assist in the delineation of riverine and coastal flood-prone areas, whenever possible, and provide all relevant technical information to the Federal Insurance Administrator;

(7) Recommend priorities for Federal flood plain management activities in relation to the needs of county and municipal localities within the State;

(8) Provide notification to the Federal Insurance Administrator in the event of apparent irreconcilable dif-

ferences between a community's local flood plain management program and the minimum requirements of the Program;

(9) Establish minimum State flood plain management regulatory standards consistent with those established in this part and in conformance with other Federal and State environmental and water pollution standards for the prevention of pollution during periods of flooding;

(10) Assure coordination and consistency of flood plain management activities with other State, areawide, and local planning and enforcement agencies;

(11) Assist in the identification and implementation of flood hazard mitigation recommendations which are consistent with the minimum flood plain management criteria for the Program;

(12) Participate in flood plain management training opportunities and other flood hazard preparedness programs whenever practicable.

(c) Other duties and responsibilities, which may be deemed appropriate by the State and which are to be officially designated as being conducted in the capacity of the State Coordinating Agency for the Program, may be carried out with prior notification of the Federal Insurance Administrator.

(d) For States which have demonstrated a commitment to and experience in application of the minimum flood plain management criteria set forth in §§ 60.3, 60.4, and 60.5 as evidenced by the establishment and implementation of programs which substantially encompass the activities described in paragraphs (a), (b), and (c) of this section, the Federal Insurance Administrator shall take the foregoing into account when:

(1) Considering State recommendations prior to implementing Program activities affecting State communities;

(2) Considering State approval or certifications of local flood plain management regulations as meeting the requirements of this part.

[51 FR 30309, Aug. 25, 1986]

### § 60.26 Local coordination.

(a) Local flood plain, mudslide (i.e., mudflow) and flood-related erosion

area management, forecasting, emergency preparedness, and damage abatement programs should be coordinated with relevant Federal, State, and regional programs;

(b) A community adopting flood plain management regulations pursuant to these criteria should coordinate with the appropriate State agency to promote public acceptance and use of effective flood plain, mudslide, (i.e., mudflow) and flood-related erosion regulations;

(c) A community should notify adjacent communities prior to substantial commercial developments and large subdivisions to be undertaken in areas having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards.

## PART 61—INSURANCE COVERAGE AND RATES

Sec.

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- 61.16 Probation additional premium.
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APPENDIX A(1) TO PART 61—FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE AND MITIGATION ADMINISTRATION, STANDARD FLOOD INSURANCE POLICY, DWELLING FORM

APPENDIX A(2) TO PART 61—FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE AND MITIGATION ADMINISTRATION, STANDARD FLOOD INSURANCE POLICY, GENERAL PROPERTY FORM

APPENDIX A(3) TO PART 61—FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE AND MITIGATION ADMINISTRATION, STANDARD FLOOD INSURANCE POL-

ICY, RESIDENTIAL CONDOMINIUM BUILDING ASSOCIATION POLICY

AUTHORITY: 42 U.S.C. 4001 *et seq.*; 6 U.S.C. 101 *et seq.*

SOURCE: 43 FR 2570, Jan. 17, 1978, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

### § 61.1 Purpose of part.

This part describes the types of properties eligible for flood insurance coverage under the Program, the limits of such coverage, and the premium rates actually to be paid by insureds.

[85 FR 43957, July 20, 2020]

### § 61.2 Definitions.

The definitions set forth in part 59 of this subchapter are applicable to this part.

### § 61.3 Coverage and benefits provided under the Standard Flood Insurance Policy.

(a) Insurance coverage under the Program is available for buildings and their contents. Coverage for each may be purchased separately.

(b) In addition to building and contents coverage, the Dwelling Form of the Standard Flood Insurance Policy (SFIP) covers debris removal, loss avoidance measures, and condominium loss assessments. The General Property Form of the SFIP covers debris removal, loss avoidance measures, and pollution damage. The Residential Condominium Building Association Policy Form of the SFIP covers debris removal and loss avoidance measures.

(c) With the purchase of building coverage, the Standard Flood Insurance Policy covers the costs associated with bringing the building into compliance with local floodplain ordinances.

[85 FR 43957, July 20, 2020]

### § 61.4 Special terms and conditions.

(a) No new flood insurance or renewal of flood insurance policies will be written for properties declared by a duly constituted State or local zoning or other authority to be in violation of any floodplain, mudslide (*i.e.*, mudflow), or flood-related erosion area management or control law, regulation, or ordinance.

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(b) In order to reduce the administrative costs of the Program, of which the Federal Government pays a major share, applicants must pay the full policy premium at the time of application.

[85 FR 43957, July 20, 2020]

**§61.5 Deductibles.**

FEMA must provide policyholders with deductible options in various amounts, up to and including \$10,000, subject to the following minimum deductible amounts:

(a) The minimum deductible for policies covering pre-FIRM buildings charged less than full-risk rates with building coverage amounts less than or equal to \$100,000 is \$1,500.

(b) The minimum deductible for policies covering pre-FIRM buildings charged less than full-risk rates with

building coverage amounts greater than \$100,000 is \$2,000.

(c) The minimum deductible for policies covering post-FIRM buildings and pre-FIRM buildings charged full risk rates, with building coverage amounts equal to or less than \$100,000 is \$1,000.

(d) The minimum deductible for policies covering post-FIRM buildings and pre-FIRM buildings charged full risk rates, with building coverage amounts greater than \$100,000 is \$1,250.

[85 FR 43958, July 20, 2020]

**§61.6 Maximum amounts of coverage available.**

(a) Pursuant to section 1306 of the Act, the following are the limits of coverage available under the emergency program and under the regular program.

TABLE 1 TO PARAGRAPH (a)—MAXIMUM AMOUNTS OF COVERAGE AVAILABLE <sup>1</sup>

| Occupancy   | Emergency Program | Regular Program                                      |
|---|-------------------|--|
|   | Amount            | Amount   |
| <b>Building Coverage</b>  |                   |  |
| Single-Family Dwelling .....                                      | * \$35,000        | \$250,000.   |
| Two-to-Four Family Building .....                                 | * 35,000          | \$250,000.   |
| Other Residential Building (including Multifamily Building) ..... | ** 100,000        | \$500,000.   |
| Residential Condominium Building .....                            | N/A               | \$250,000 times the number of units in the building. |
| Non-Residential Building .....                                    | 100,000           | \$500,000.   |
| <b>Contents Coverage<sup>2</sup></b>                              |                   |  |
| Residential Property <sup>3</sup> .....                           | 10,000            | \$100,000.   |
| Non-Residential Property .....                                    | 100,000           | \$500,000.   |

<sup>1</sup> This Table provides the maximum coverage amounts available under the Emergency Program and the Regular Program, and the columns cannot be aggregated to exceed the limits in the Regular Program, which are established by statute. The aggregate limits for building coverage are the maximum coverage amounts allowed by statute for each building included in the relevant Occupancy Category.

<sup>2</sup> The policy limits for contents coverage are not per building. Although a single insured may not have more than one policy covering contents in a building, several insureds may have separate policies of up to the policy limits.

<sup>3</sup> The Residential Property occupancy category includes the Single-Family Dwelling, Two-to-Four Family Building, Other Residential Building, and Condominium Building occupancies categories.

\* In Alaska, Guam, Hawaii, and U.S. Virgin Islands, the amount available is \$50,000.

\*\* In Alaska, Guam, Hawaii, and U.S. Virgin Islands, the amount available is \$150,000.

(b) Coverage and benefits payable under the SFIP pursuant to §61.3(b) and (c) are included in, not in addition to, the coverage limits provided by the Act or stated in paragraph (a) of this section.

[85 FR 43958, July 20, 2020; 86 FR 10029, Feb. 18, 2021, as amended at 86 FR 62104, Nov. 9, 2021]

**§61.7 Risk premium rate determinations.**

(a) Pursuant to section 1307 of the Act, the Federal Insurance Administrator is authorized to undertake studies and investigations to enable him/her to estimate the risk premium rates necessary to provide flood insurance in accordance with accepted actuarial principles, including applicable operating costs and allowances. Such rates

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are also referred to in this subchapter as “actuarial rates.”

(b) The Federal Insurance Administrator is also authorized to prescribe by regulation the rates which can reasonably be charged to insureds in order to encourage them to purchase the flood insurance made available under the Program. Such rates are referred to in this subchapter as “chargeable rates.” For areas having special flood, mudslide (i.e., mudflow), and flood-related erosion hazards, chargeable rates are usually lower than actuarial rates.

§61.8 Applicability of risk premium rates.

Risk premium rates are applicable to all flood insurance made available for:

(a) Any structure, the construction or substantial improvement of which was started after December 31, 1974 or on or after the effective date of the initial FIRM, whichever is later.

(b) Coverage which exceeds the following limits:

(1) For dwelling properties in States other than Alaska, Hawaii, the Virgin Islands, and Guam (i) \$35,000 aggregate liability for any property containing

only one unit, (ii) \$100,000 for any property containing more than one unit, and (iii) \$10,000 liability per unit for any contents related to such unit.

(2) For dwelling properties in Alaska, Hawaii, the Virgin Islands, and Guam (i) \$50,000 aggregate liability for any property containing only one unit, (ii) \$150,000 for property containing more than one unit, and (iii) \$10,000 aggregate liability per unit for any contents related to such unit.

(3) For churches and other properties (i) \$100,000 for the structure and (ii) \$100,000 for contents of any such unit.

(c) Any structure or the contents thereof for which the chargeable rates prescribed by this part would exceed the risk premium rates.

§61.9 Establishment of chargeable rates.

(a) Under section 1308 of the Act, we are establishing annual chargeable rates for each \$100 of flood insurance coverage as follows for Pre-FIRM, A zone properties, Pre-FIRM, V-zone properties, and emergency program properties.

| Type of structure  | A zone <sup>1</sup> rates per year per \$100 coverage on: |          |           | Contents | V zone <sup>2</sup> rates per year per \$100 coverage on: |          |           | Contents |
|--|---|----------|-----------|----------|---|----------|-----------|----------|
|  | structure   |          |           |          | Structure   |          |           |          |
|  | RCBAP <sup>3</sup>  |          | All other |          | RCBAP <sup>3</sup>  |          | All other |          |
|  | High rise   | Low rise |           |          | High rise   | Low rise |           |          |
| 1. Residential:  |   |          |           |          |   |          |           |          |
| No Basement or Enclosure .....   | .85   | .70      | .76       | .96      | 1.08  | .93      | .99       | 1.23     |
| With Basement or Enclosure .....   | .90   | .75      | .81       | .96      | 1.15  | 1.00     | 1.06      | 1.23     |
| 2. All other including hotels and motels with normal occupancy of less than 6 months duration: |   |          |           |          |   |          |           |          |
| No Basement or Enclosure .....   | N/A   | N/A      | .83       | 1.62     | N/A   | N/A      | 1.10      | 2.14     |
| With Basement or Enclosure .....   | N/A   | N/A      | .88       | 1.62     | N/A   | N/A      | 1.16      | 2.14     |

<sup>1</sup> A zones are zones A1–A30, AE, AO, AH, and unnumbered A zones.  
<sup>2</sup> V zones are zones V1–V30, VE, and unnumbered V zones.  
<sup>3</sup> Residential Condominium Building Association Policies (RCBAP) are distinguished between High Rise (those structures that have 3 or more floors and 5 or more units) and Low Rise (those structures that have either less than 3 floors or less than 5 units).

(b) We will charge rates for contents in pre-FIRM buildings according to the use of the building.

(c) A-zone rates for buildings without basements or enclosures apply uniformly to all buildings throughout emergency program communities.

(d) Properties that meet the definition of Severe Repetitive Loss properties as defined in §79.2(g) of this sub-

chapter, and who refuse an offer of mitigation pursuant to §79.7 of this subchapter are not eligible for the rates identified in paragraphs (a) through (c) of this section.

(e) Properties leased from the Federal Government and located either on the river-facing side of a dike, levee, or other riverine flood control structure, or seaward of any seawall or other

coastal flood control structure are not eligible for the rates identified in paragraphs (a) through (c) of this section.

[64 FR 13116, Mar. 17, 1999, as amended at 67 FR 8905, Feb. 27, 2002; 68 FR 15668, Apr. 1, 2003; 72 FR 61737, Oct. 31, 2007]

**§61.10 Requirements for issuance or renewal of flood insurance coverage.**

FEMA will not issue or renew flood insurance unless FEMA receives:

- (a) The full amount due (including applicable premiums, surcharges, and fees); and
- (b) A complete application, including the information necessary to establish a premium rate for the policy, or submission of corrected or additional information necessary to calculate the premium for the renewal of the policy.

[85 FR 43958, July 20, 2020]

**§61.11 Effective date and time of coverage under the Standard Flood Insurance Policy—New Business Applications and Endorsements.**

(a) During the 13-month period beginning on the effective date of a revised Flood Hazard Boundary Map or Flood Insurance Rate Map for a community, the effective date and time of any initial flood insurance coverage shall be 12:01 a.m. (local time) on the first calendar day after the application date and the presentment of payment of premium; for example, a flood insurance policy applied for with the payment of the premium on May 1 will become effective at 12:01 a.m. on May 2.

(b) Where the initial purchase of flood insurance is in connection with the making, increasing, extension, or renewal of a loan, the coverage with respect to the property which is the subject of the loan shall be effective as of the time of the loan closing, provided the written request for the coverage is received by the NFIP and the flood insurance policy is applied for and the presentment of payment of premium is made at or prior to the loan closing.

(c) Where the following conditions are met, the effective date and time of any initial purchase of flood insurance coverage for any privately-owned property will be 12:01 a.m. (local time) on the first calendar day after the applica-

tion date and the presentment of payment of premium:

(1) The Administrator has determined that the property is affected by flooding on Federal land that is a result of, or is exacerbated by, post-wildfire conditions, after consultation with an authorized employee of the Federal agency that has jurisdiction of the land on which the wildfire that caused the post-wildfire conditions occurred; and

(2) The flood insurance coverage was purchased not later than 60 calendar days after the fire containment date, as determined by the appropriate Federal employee, relating to the wildfire that caused the post-wildfire conditions described in clause (1).

(d) Except as provided by paragraphs (a), (b), and (c) of this section, the effective date and time of any new policy, added coverage, or increase in the amount of coverage will be 12:01 a.m. (local time) on the 30th calendar day after the application date and the presentment of payment of premium; for example, a flood insurance policy applied for with the payment of the premium on May 1 will become effective at 12:01 a.m. on May 31.

(e) Adding new coverage or increasing the amount of coverage in force is permitted during the term of any policy, subject to any applicable waiting periods. The additional premium for any new coverage or increase in the amount of coverage will be calculated pro rata in accordance with the rates currently in force.

(f) With respect to any submission of an application in connection with new business, the payment by an insured to an agent or the issuance of premium payment by the agent does not constitute payment to the NFIP. Therefore, it is important that an application for flood insurance, as well as the full amount due, be mailed to the NFIP promptly in order to have the effective date of the coverage based on the application date plus the waiting period. If the application and the full amount due are received at the office of the NFIP within ten (10) calendar days from the date of application, the waiting period will be calculated from the date of application. Also, as an alternative, in those cases where the application and premium payment are



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mailed by certified mail within four (4) calendar days from the date of application, the waiting period will be calculated from the date of application even though the application and full amount due are received at the office of the NFIP after ten (10) calendar days following the date of application. Thus, if the application and premium payment are received after ten (10) calendar days from the date of the application or are not mailed by certified mail within four (4) calendar days from the date of application, the waiting period will be calculated from the date of receipt at the office of the NFIP. To determine the effective date of any coverage added by endorsement to a flood insurance policy already in effect, substitute the term *endorsement* for the term *application* in this paragraph (f).

(g) The rules set forth in paragraphs (a) through (f) of this section apply to Write Your Own (WYO) companies, except that agents must mail the premium payments and accompanying applications and endorsements to the WYO company and the WYO company must receive the applications and endorsements, rather than the NFIP.

[43 FR 50427, Oct. 30, 1978. Redesignated at 44 FR 31177, May 31, 1979, as amended at 46 FR 13514, Feb. 23, 1981; 48 FR 39069, Aug. 29, 1983; 48 FR 44544, Sept. 29, 1983; 49 FR 33656, Aug. 24, 1984; 50 FR 16242, Apr. 25, 1985; 50 FR 36026, Sept. 4, 1985; 51 FR 30309, Aug. 25, 1986; 53 FR 15211, Apr. 28, 1988; 60 FR 5585, 5586, Jan. 30, 1995; 85 FR 43958, July 20, 2020]

### §61.12 Rates based on a flood protection system involving Federal funds.

(a) Where the Federal Insurance Administrator determines that a community has made adequate progress on the construction of a flood protection system involving Federal funds which will significantly limit the area of special flood hazards, the applicable risk premium rates for any property, located within a special flood hazard area intended to be protected directly by such system will be those risk premium rates which would be applicable when the system is complete.

(b) Adequate progress in paragraph (a) of this section means that the community has provided information to the Federal Insurance Administrator sufficient to determine that substan-

tial completion of the flood protection system has been effected because:

(1) 100 percent of the total financial project cost of the completed flood protection system has been authorized;

(2) At least 60 percent of the total financial project cost of the completed flood protection system has been appropriated;

(3) At least 50 percent of the total financial project cost of the completed flood protection system has been expended;

(4) All critical features of the flood protection system, as identified by the Federal Insurance Administrator, are under construction, and each critical feature is 50 percent completed as measured by the actual expenditure of the estimated construction budget funds; and

(5) The community has not been responsible for any delay in the completion of the system.

(c) Each request by a community for a determination must be submitted in writing to the Risk Analysis Division, Mitigation Directorate, Federal Emergency Management Agency, Washington DC, and contain a complete statement of all relevant facts relating to the flood protection system, including, but not limited to, supporting technical data (e.g., U.S. Army Corps of Engineers flood protection project data), cost schedules, budget appropriation data and the extent of Federal funding of the system's construction. Such facts shall include information sufficient to identify all persons affected by such flood protection system or by such request: A full and precise statement of intended purposes of the flood protection system; and a carefully detailed description of such project, including construction completion target dates. In addition, true copies of all contracts, agreements, leases, instruments, and other documents involved must be submitted with the request. Relevant facts reflected in documents, however, must be included in the statement and not merely incorporated by reference, and must be accompanied by an analysis of their bearing on the requirements of paragraph (b) of this section, specifying the pertinent provisions. The request must contain a statement whether, to the best

of the knowledge of the person responsible for preparing the application for the community, the flood protection system is currently the subject matter of litigation before any Federal, State or local court or administrative agency, and the purpose of that litigation. The request must also contain a statement as to whether the community has previously requested a determination with respect to the same subject matter from the Federal Insurance Administrator, detailing the disposition of such previous request. As documents become part of the file and cannot be returned, the original documents should not be submitted.

(d) The effective date for any risk premium rates established under this section shall be the date of final determination by the Federal Insurance Administrator that adequate progress toward completion of a flood protection system has been made in a community.

(e) A responsible official of a community which received a determination that adequate progress has been made towards completion of a flood protection system shall certify to the Federal Insurance Administrator annually on the anniversary date of receipt of such determination that no present delay in completion of the system is attributable to local sponsors of the system, and that a good faith effort is being made to complete the project.

(f) A community for which risk premium rates have been made available under section 1307(e) of the National Flood Insurance Act of 1968, as amended, shall notify the Federal Insurance Administrator if, at any time, all progress on the completion of the flood protection system has been halted or if the project for the completion of the flood protection system has been canceled.

[43 FR 2570, Jan. 17, 1978, Redesignated at 44 FR 31177, May 31, 1979, as amended at 47 FR 43061 Sept. 30, 1982; 48 FR 39069, Aug. 29, 1983; 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 51 FR 30310, Aug. 25, 1986]

**§61.13 Standard Flood Insurance Policy.**

(a) *Incorporation of forms.* Each of the Standard Flood Insurance Policy forms included in appendix "A" hereto (General Property, Dwelling, and Residen-

tial Condominium Building Association) and by reference incorporated herein shall be incorporated into the Standard Flood Insurance Policy.

(b) *Endorsements.* All endorsements to the Standard Flood Insurance Policy shall be final upon publication in the FEDERAL REGISTER for inclusion in appendix A.

(c) *Applications.* The application and renewal application forms utilized by the National Flood Insurance Program shall be the only application forms used in connection with the Standard Flood Insurance Policy.

(d) *Waivers.* The Standard Flood Insurance Policy and required endorsements must be used in the Flood Insurance Program, and no provision of the said documents shall be altered, varied, or waived other than by the express written consent of the Federal Insurance Administrator through the issuance of an appropriate amendatory endorsement, approved by the Federal Insurance Administrator as to form and substance for uniform use.

(e) *Authorized only under terms and conditions established by the Act and Regulation.* The Standard Flood Insurance Policy is authorized only under terms and conditions established by Federal statute, the program's regulations, the Federal Insurance Administrator's interpretations, and the express terms of the policy itself. Accordingly, representations regarding the extent and scope of coverage that are not consistent with Federal statute, the program's regulations, the Federal Insurance Administrator's interpretations, and the express terms of the policy itself, are void.

(f) *Agent acts only for policyholder.* The duly licensed property or casualty agent acts for the policyholder and does not act as agent for the Federal Government, the Federal Emergency Management Agency, the Write Your Own (WYO) program participating insurance company authorized by part 62 of this chapter, or the NFIP servicing agent.

(g) *Oral and written binders.* No oral binder or contract will be effective. No written binder will be effective unless issued with express authorization of the Federal Insurance Administrator.

## §61.14

(h) The Standard Flood Insurance Policy and endorsements may be issued by private sector Write Your Own (WYO) property insurance companies, based upon flood insurance applications and renewal forms, all of which instruments of flood insurance may bear the name, as Insurer, of the issuing WYO company. In the case of any Standard Flood Insurance Policy, and its related forms, issued by a WYO company, wherever the names "Federal Emergency Management Agency" and "Federal Insurance and Mitigation Administration" appear, a WYO company must substitute its own name therefore. Standard Flood Insurance Policies issued by WYO companies may be executed by the issuing WYO company as Insurer, in the place and stead of the Federal Insurance Administrator, but the risk of loss is borne by the National Flood Insurance Fund, not the WYO company.

[43 FR 2570, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, as amended at 44 FR 62517, Oct. 31, 1979; 48 FR 46791, Oct. 14, 1983; 58 FR 62424, Nov. 26, 1993; 85 FR 43959, July 20, 2020]

### §61.14 Standard Flood Insurance Policy Interpretations.

(a) *Definition.* A Standard Flood Insurance Policy Interpretation is a written determination by the Federal Insurance Administrator construing the scope of the flood insurance coverage that has been and is provided under the policy.

(b) *Publication and requests for interpretation.* The Federal Insurance Administrator shall, pursuant to these regulations from time to time, issue interpretative rulings regarding the provisions of the Standard Flood Insurance Policy. Such Interpretations shall be published in the FEDERAL REGISTER, made a part of appendix C to these regulations, and incorporated by reference as part of these regulations. Any policyholder or person in privity with a policyholder may file a request for an interpretation in writing with the Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472.

[43 FR 2570, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 39072, Aug. 29, 1983]

## 44 CFR Ch. I (10–1–23 Edition)

### §61.16 Probation additional premium.

The additional premium charged pursuant to §59.24(b) on each policy sold or renewed within a community placed on probation prior to October 1, 1992, is \$25.00. Where the community was placed on probation on or after October 1, 1992, the additional premium charge is \$50.00."

[50 FR 36026, Sept. 4, 1985, as amended at 57 FR 19541, May 7, 1992; 74 FR 15340, Apr. 3, 2009]

### §61.17 Group Flood Insurance Policy.

(a) A Group Flood Insurance Policy (GFIP) is a policy covering all individuals named by a State as recipients under section 408 of the Stafford Act (42 U.S.C. 5174) of an Individuals and Households Program (IHP) award for flood damage as a result of major disaster declaration by the President.

(b) The premium for the GFIP is a flat fee of \$600 per insured. We may adjust the premium to reflect NFIP loss experience and any adjustment of benefits under the IHP program.

(c) The amount of coverage is equivalent to the maximum grant amount established under section 408 of the Stafford Act (42 U.S.C. 5174).

(d) The term of the GFIP is for 36 months and begins 60 days after the date of the disaster declaration.

(e) Coverage for individual grantees begins on the thirtieth day after the NFIP receives the required data for individual grantees and their premium payments.

(f) We will send a Certificate of Flood Insurance to each individual insured under the GFIP.

(g) The GFIP is the Standard Flood Insurance Policy Dwelling Form (a copy of which is included in appendix A(1) of this part), except that:

(1) VI. DEDUCTIBLES does not apply to the GFIP. A special deductible of \$200 (applicable separately to any building loss and any contents loss) applies to insured flood-damage losses sustained by the insured property in the course of any subsequent flooding event during the term of the GFIP. The deductible does not apply to:

- (i) III.C.2. Loss Avoidance Measures; or
- (ii) III. C.3. Condominium Loss Assessments coverage.

(2) VIII. POLICY NULLIFICATION, CANCELLATION, AND NON-RENEWAL, C. Cancellation of the Policy by You, does not apply to the GFIP.

(3) VII. GENERAL CONDITIONS, E. Policy Renewal, does not apply to the GFIP.

(h) We will send a notice to the GFIP certificate holders approximately 60 days before the end of the thirty-six month term of the GFIP. The notice will encourage them to contact a local insurance agent or producer or a private insurance company selling NFIP policies under the Write Your Own program of the NFIP Standard Flood Insurance Policy, and advise them as to the amount of coverage they must maintain in order not to jeopardize their eligibility for future disaster assistance. The IHP program will provide the NFIP the amount of flood insurance coverage to be maintained by certificate holders.

[65 FR 60769, Oct. 12, 2000, as amended at 67 FR 61462, Sept. 30, 2002; 85 FR 43959, July 20, 2020]

APPENDIX A(1) TO PART 61

FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE AND MITIGATION ADMINISTRATION

Standard Flood Insurance Policy

Dwelling Form

Please read the policy carefully. The flood insurance provided is subject to limitations, restrictions, and exclusions.

I. AGREEMENT

A. This policy insures the following types of property only:

- 1. A one to four family residential building, not under a condominium form of ownership;
2. A single-family dwelling unit in a condominium building; and
3. Personal property in a building.

B. The Federal Emergency Management Agency (FEMA) provides flood insurance under the terms of the National Flood Insurance Act of 1968 and its amendments, and Title 44 of the Code of Federal Regulations.

C. We will pay you for direct physical loss by or from flood to your insured property if you:

- 1. Have paid the full amount due (including applicable premiums, surcharges, and fees);
2. Comply with all terms and conditions of this policy; and
3. Have furnished accurate information and statements.

D. We have the right to review the information you give us at any time and revise your policy based on our review.

E. This policy insures only one building. If you own more than one building, coverage will apply to the single building specifically described in the Flood Insurance Application.

F. Subject to the exception in I.G below, multiple policies with building coverage cannot be issued to insure a single building to one insured or to different insureds, even if separate policies were issued through different NFIP insurers. Payment for damages may only be made under a single policy for building damages under Coverage A—Building Property.

G. A Dwelling Form policy with building coverage may be issued to a unit owner in a condominium building that is also insured under a Residential Condominium Building Association Policy (RCBAP). However, no more than \$250,000 may be paid in combined benefits for a single unit under the Dwelling Form policy and the RCBAP. We will only pay for damage once. Items of damage paid for under an RCBAP cannot also be claimed under the Dwelling Form policy.

II. DEFINITIONS

A. In this policy, “you” and “your” refer to the named insured(s) shown on the Declarations Page of this policy and the spouse of the named insured, if a resident of the same household. Insured(s) also includes: Any mortgagee and loss payee named in the Application and Declarations Page, as well as any other mortgagee or loss payee determined to exist at the time of loss, in the order of precedence. “We,” “us,” and “our” refer to the insurer.

Some definitions are complex because they are provided as they appear in the law or regulations, or result from court cases.

B. Flood, as used in this flood insurance policy, means:

1. A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties (one of which is your property) from:

- a. Overflow of inland or tidal waters;
b. Unusual and rapid accumulation or runoff of surface waters from any source;
c. Mudflow.

2. Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined in B.1.a above.

C. The following are the other key definitions we use in this policy:

1. Act. The National Flood Insurance Act of 1968 and any amendments to it.

2. *Actual Cash Value.* The cost to replace an insured item of property at the time of loss, less the value of its physical depreciation.

3. *Application.* The statement made and signed by you or your agent in applying for this policy. The application gives information we use to determine the eligibility of the risk, the kind of policy to be issued, and the correct premium payment. The application is part of this flood insurance policy.

4. *Base Flood.* A flood having a one percent chance of being equaled or exceeded in any given year.

5. *Basement.* Any area of a building, including any sunken room or sunken portion of a room, having its floor below ground level on all sides.

6. *Building*

a. A structure with two or more outside rigid walls and a fully secured roof that is affixed to a permanent site;

b. A manufactured home, also known as a mobile home, is a structure: Built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation; or

c. A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

*Building* does not mean a gas or liquid storage tank, shipping container, or a recreational vehicle, park trailer, or other similar vehicle, except as described in C.6.c above.

7. *Cancellation.* The ending of the insurance coverage provided by this policy before the expiration date.

8. *Condominium.* That form of ownership of one or more buildings in which each unit owner has an undivided interest in common elements.

9. *Condominium Association.* The entity made up of the unit owners responsible for the maintenance and operation of:

a. Common elements owned in undivided shares by unit owners; and

b. Other buildings in which the unit owners have use rights; where membership in the entity is a required condition of ownership.

10. *Condominium Building.* A type of building for which the form of ownership is one in which each unit owner has an undivided interest in common elements of the building.

11. *Declarations Page.* A computer-generated summary of information you provided in your application for insurance. The Declarations Page also describes the term of the policy, limits of coverage, and displays the premium and our name. The Declarations Page is a part of this flood insurance policy.

12. *Deductible.* The amount of an insured loss that is your responsibility and that is incurred by you before any amounts are paid for the insured loss under this policy.

13. *Described Location.* The location where the insured building(s) or personal property are found. The described location is shown on the Declarations Page.

14. *Direct Physical Loss By or From Flood.* Loss or damage to insured property, directly caused by a flood. There must be evidence of physical changes to the property.

15. *Dwelling.* A building designed for use as a residence for no more than four families or a single-family unit in a condominium building.

16. *Elevated Building.* A building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

17. *Emergency Program.* The initial phase of a community's participation in the National Flood Insurance Program. During this phase, only limited amounts of insurance are available under the Act and the regulations prescribed pursuant to the Act.

18. *Federal Policy Fee.* A flat rate charge you must pay on each new or renewal policy to defray certain administrative expenses incurred in carrying out the National Flood Insurance Program.

19. *Improvements.* Fixtures, alterations, installations, or additions comprising a part of the dwelling or apartment in which you reside.

20. *Mudflow.* A river of liquid and flowing mud on the surface of normally dry land areas, as when earth is carried by a current of water. Other earth movements, such as landslide, slope failure, or a saturated soil mass moving by liquidity down a slope, are not mudflows.

21. *National Flood Insurance Program (NFIP).* The program of flood insurance coverage and floodplain management administered under the Act and applicable Federal regulations in Title 44 of the Code of Federal Regulations, Subchapter B.

22. *Policy.* The entire written contract between you and us. It includes:

a. This printed form;

b. The application and Declarations Page;

c. Any endorsement(s) that may be issued; and

d. Any renewal certificate indicating that coverage has been instituted for a new policy and new policy term. Only one dwelling, which you specifically described in the application, may be insured under this policy.

23. *Pollutants.* Substances that include, but are not limited to, any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. "Waste" includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.

24. *Post-FIRM Building.* A building for which construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of an initial Flood

Insurance Rate Map (FIRM), whichever is later.

25. *Principal Residence.* The dwelling in which you or your spouse have lived for at least 80 percent of:

- a. The 365 days immediately preceding the time of loss; or
- b. The period of ownership of you or your spouse, if either you or your spouse owned the dwelling for less than 365 days immediately preceding the time of loss.

26. *Probation Surcharge.* A flat charge you must pay on each new or renewal policy issued covering property in a community the NFIP has placed on probation under the provisions of 44 CFR 59.24.

27. *Regular Program.* The final phase of a community's participation in the National Flood Insurance Program. In this phase, a Flood Insurance Rate Map is in effect and full limits of coverage are available under the Act and the regulations prescribed pursuant to the Act.

28. *Special Flood Hazard Area (SFHA).* An area having special flood or mudflow, and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1-A30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1-A30, V1-V30, VE, or V.

29. *Unit.* A single-family residential space you own in a condominium building.

30. *Valued Policy.* A policy in which the insured and the insurer agree on the value of the property insured, that value being payable in the event of a total loss. The Standard Flood Insurance Policy is not a valued policy.

III. PROPERTY INSURED

A. Coverage A—Building Property

We insure against direct physical loss by or from flood to:

- 1. The dwelling at the described location, or for a period of 45 days at another location as set forth in III.C.2.b, Property Removed to Safety.
- 2. Additions and extensions attached to and in contact with the dwelling by means of a rigid exterior wall, a solid load-bearing interior wall, a stairway, an elevated walkway, or a roof. At your option, additions and extensions connected by any of these methods may be separately insured. Additions and extensions attached to and in contact with the building by means of a common interior wall that is not a solid load-bearing wall are always considered part of the dwelling and cannot be separately insured.
- 3. A detached garage at the described location. Coverage is limited to no more than 10 percent of the limit of liability on the dwelling. Use of this insurance is at your option but reduces the building limit of liability. We do not cover any detached garage used or

held for use for residential (*i.e.*, dwelling), business, or farming purposes.

4. Materials and supplies to be used for construction, alteration, or repair of the dwelling or a detached garage while the materials and supplies are stored in a fully enclosed building at the described location or on an adjacent property.

5. A building under construction, alteration, or repair at the described location.

a. If the structure is not yet walled or roofed as described in the definition for building (*see* II.C.6.a) then coverage applies:

- (1) Only while such work is in progress; or
- (2) If such work is halted, only for a period of up to 90 continuous days thereafter.

b. However, coverage does not apply until the building is walled and roofed if the lowest floor, including the basement floor, of a non-elevated building or the lowest elevated floor of an elevated building is:

- (1) Below the base flood elevation in Zones AH, AE, A1-A30, AR, AR/AE, AR/AH, AR/A1-A30, AR/A, AR/AO; or
- (2) Below the base flood elevation adjusted to include the effect of wave action in Zones VE or V1-V30.

The lowest floor level is based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1-V30 or the top of the floor in Zones AH, AE, A1-A30, AR, AR/AE, AR/AH, AR/A1-A30, AR/A, and AR/AO.

6. A manufactured home or a travel trailer, as described in the II.C.6. If the manufactured home or travel trailer is in a special flood hazard area, it must be anchored in the following manner at the time of the loss:

- a. By over-the-top or frame ties to ground anchors; or
- b. In accordance with the manufacturer's specifications; or
- c. In compliance with the community's floodplain management requirements unless it has been continuously insured by the NFIP at the same described location since September 30, 1982.

7. The following items of property which are insured under Coverage A only:

- a. Awnings and canopies;
- b. Blinds;
- c. Built-in dishwashers;
- d. Built-in microwave ovens;
- e. Carpet permanently installed over unfinished flooring;
- f. Central air conditioners;
- g. Elevator equipment;
- h. Fire sprinkler systems;
- i. Walk-in freezers;
- j. Furnaces and radiators;
- k. Garbage disposal units;
- l. Hot water heaters, including solar water heaters;
- m. Light fixtures;
- n. Outdoor antennas and aerials fastened to buildings;

- o. Permanently installed cupboards, bookcases, cabinets, paneling, and wallpaper;
  - p. Plumbing fixtures;
  - q. Pumps and machinery for operating pumps;
  - r. Ranges, cooking stoves, and ovens;
  - s. Refrigerators; and
  - t. Wall mirrors, permanently installed.
8. Items of property below the lowest elevated floor of an elevated post-FIRM building located in Zones A1–A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–V30, or VE, or in a basement regardless of the zone. Coverage is limited to the following:
- a. Any of the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:
    - (1) Central air conditioners;
    - (2) Cisterns and the water in them;
    - (3) Drywall for walls and ceilings in a basement and the cost of labor to nail it, unfinished and unflashed and not taped, to the framing;
    - (4) Electrical junction and circuit breaker boxes;
    - (5) Electrical outlets and switches;
    - (6) Elevators, dumbwaiters and related equipment, except for related equipment installed below the base flood elevation after September 30, 1987;
    - (7) Fuel tanks and the fuel in them;
    - (8) Furnaces and hot water heaters;
    - (9) Heat pumps;
    - (10) Nonflammable insulation in a basement;
    - (11) Pumps and tanks used in solar energy systems;
    - (12) Stairways and staircases attached to the building, not separated from it by elevated walkways;
    - (13) Sump pumps;
    - (14) Water softeners and the chemicals in them, water filters, and faucets installed as an integral part of the plumbing system;
    - (15) Well water tanks and pumps;
    - (16) Required utility connections for any item in this list; and
    - (17) Footings, foundations, posts, pilings, piers, or other foundation walls and anchorage systems required to support a building.
  - b. Clean-up.

*B. Coverage B—Personal Property*

1. If you have purchased personal property coverage, we insure against direct physical loss by or from flood to personal property inside a building at the described location, if:
- a. The property is owned by you or your household family members; and
  - b. At your option, the property is owned by guests or servants.
2. Personal property is also insured for a period of 45 days at another location as set forth in III.C.2.b, Property Removed to Safety.

3. Personal property in a building that is not fully enclosed must be secured to prevent flotation out of the building. If the personal property does float out during a flood, it will be conclusively presumed that it was not reasonably secured. In that case, there is no coverage for such property.

4. Coverage for personal property includes the following property, subject to B.1 above, which is insured under Coverage B only:

- a. Air conditioning units, portable or window type;
- b. Carpets, not permanently installed, over unfinished flooring;
- c. Carpets over finished flooring;
- d. Clothes washers and dryers;
- e. “Cook-out” grills;
- f. Food freezers, other than walk-in, and food in any freezer; and
- g. Portable microwave ovens and portable dishwashers.

5. Coverage for items of property below the lowest elevated floor of an elevated post-FIRM building located in Zones A1–A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–V30, or VE, or in a basement regardless of the zone, is limited to the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

- a. Air conditioning units, portable or window type;
- b. Clothes washers and dryers; and
- c. Food freezers, other than walk-in, and food in any freezer.

6. If you are a tenant and have insured personal property under Coverage B in this policy, we will cover such property, including your cooking stove or range and refrigerator. The policy will also cover improvements made or acquired solely at your expense in the dwelling or apartment in which you reside, but for not more than 10 percent of the limit of liability shown for personal property on the Declarations Page. Use of this insurance is at your option but reduces the personal property limit of liability.

7. If you are the owner of a unit and have insured personal property under Coverage B in this policy, we will also cover your interior walls, floor, and ceiling (not otherwise insured under a flood insurance policy purchased by your condominium association) for not more than 10 percent of the limit of liability shown for personal property on the Declarations Page. Use of this insurance is at your option but reduces the personal property limit of liability.

8. Special Limits. We will pay no more than \$2,500 for any one loss to one or more of the following kinds of personal property:

- a. Artwork, photographs, collectibles, or memorabilia, including but not limited to, porcelain or other figures, and sports cards;
- b. Rare books or autographed items;

c. Jewelry, watches, precious and semi-precious stones, or articles of gold, silver, or platinum;

d. Furs or any article containing fur that represents its principal value; or

e. Personal property used in any business.

9. We will pay only for the functional value of antiques.

C. Coverage C—Other Coverages

1. Debris Removal

a. We will pay the expense to remove non-owned debris that is on or in insured property and debris of insured property anywhere.

b. If you or a member of your household perform the removal work, the value of your work will be based on the Federal minimum wage.

c. This coverage does not increase the Coverage A or Coverage B limit of liability.

2. Loss Avoidance Measures

a. Sandbags, Supplies, and Labor

(1) We will pay up to \$1,000 for costs you incur to protect the insured building from a flood or imminent danger of flood, for the following:

- (a) Your reasonable expenses to buy:
  - (i) Sandbags, including sand to fill them;
  - (ii) Fill for temporary levees;
  - (iii) Pumps; and
  - (iv) Plastic sheeting and lumber used in connection with these items.

(b) The value of work, at the Federal minimum wage, that you or a member of your household perform.

(2) This coverage for Sandbags, Supplies, and Labor only applies if damage to insured property by or from flood is imminent and the threat of flood damage is apparent enough to lead a person of common prudence to anticipate flood damage. One of the following must also occur:

(a) A general and temporary condition of flooding in the area near the described location must occur, even if the flood does not reach the building; or

(b) A legally authorized official must issue an evacuation order or other civil order for the community in which the building is located calling for measures to preserve life and property from the peril of flood.

This coverage does not increase the Coverage A or Coverage B limit of liability.

b. Property Removed to Safety

(1) We will pay up to \$1,000 for the reasonable expenses you incur to move insured property to a place other than the described location that contains the property in order to protect it from flood or the imminent danger of flood. Reasonable expenses include the value of work, at the Federal minimum

wage, you or a member of your household perform.

(2) If you move insured property to a location other than the described location that contains the property in order to protect it from flood or the imminent danger of flood, we will cover such property while at that location for a period of 45 consecutive days from the date you begin to move it there. The personal property that is moved must be placed in a fully enclosed building or otherwise reasonably protected from the elements.

(3) Any property removed, including a moveable home described in II.6.b and c, must be placed above ground level or outside of the special flood hazard area.

(4) This coverage does not increase the Coverage A or Coverage B limit of liability.

3. Condominium Loss Assessments

a. Subject to III.C.3.b below, if this policy insures a condominium unit, we will pay, up to the Coverage A limit of liability, your share of loss assessments charged against you by the condominium association in accordance with the condominium association's articles of association, declarations and your deed. The assessment must be made because of direct physical loss by or from flood during the policy term, to the unit or to the common elements of the NFIP insured condominium building in which this unit is located.

b. We will not pay any loss assessment:

(1) Charged against you and the condominium association by any governmental body;

(2) That results from a deductible under the insurance purchased by the condominium association insuring common elements;

(3) That results from a loss to personal property, including contents of a condominium building;

(4) In which the total payment combined under all policies exceeds the maximum amount of coverage available under the Act for a single unit in a condominium building where the unit is insured under both a Dwelling Policy and a RCBAP; or

(5) On any item of damage that has already been paid under a RCBAP where a single unit in a condominium building is insured by both a Dwelling Policy and a RCBAP.

c. Condominium Loss Assessment coverage does not increase the Coverage A Limit of Liability and is subject to the maximum coverage limits available for a single-family dwelling under the Act, payable between all policies issued and covering the unit, under the Act.



*D. Coverage D—Increased Cost of Compliance*

## 1. General

This policy pays you to comply with a State or local floodplain management law or ordinance affecting repair or reconstruction of a building suffering flood damage. Compliance activities eligible for payment are: elevation, floodproofing, relocation, or demolition (or any combination of these activities) of your building. Eligible floodproofing activities are limited to:

- a. Non-residential buildings.
- b. Residential buildings with basements that satisfy FEMA's standards published in the Code of Federal Regulations [44 CFR 60.6(b) or (c)].

## 2. Limit of Liability

We will pay you up to \$30,000 under this Coverage D—Increased Cost of Compliance, which only applies to policies with building coverage (Coverage A). Our payment of claims under Coverage D is in addition to the amount of coverage which you selected on the application and which appears on the Declarations Page. But the maximum you can collect under this policy for both Coverage A—Building Property and Coverage D—Increased Cost of Compliance cannot exceed the maximum permitted under the Act. We do not charge a separate deductible for a claim under Coverage D.

## 3. Eligibility

a. A building insured under Coverage A—Building Property sustaining a loss caused by a flood as defined by this policy must:

(1) Be a "repetitive loss building." A repetitive loss building is one that meets the following conditions:

(a) The building is insured by a contract of flood insurance issued under the NFIP.

(b) The building has suffered flood damage on two occasions during a 10-year period which ends on the date of the second loss.

(c) The cost to repair the flood damage, on average, equaled or exceeded 25 percent of the market value of the building at the time of each flood loss.

(d) In addition to the current claim, the NFIP must have paid the previous qualifying claim, and the State or community must have a cumulative, substantial damage provision or repetitive loss provision in its floodplain management law or ordinance being enforced against the building; or

(2) Be a building that has had flood damage in which the cost to repair equals or exceeds 50 percent of the market value of the building at the time of the flood. The State or community must have a substantial damage provision in its floodplain management law or ordinance being enforced against the building.

b. This Coverage D pays you to comply with State or local floodplain management laws or ordinances that meet the minimum standards of the National Flood Insurance Program found in the Code of Federal Regulations at 44 CFR 60.3. We pay for compliance activities that exceed those standards under these conditions:

(1) 3.a.1 above.

(2) Elevation or floodproofing in any risk zone to preliminary or advisory base flood elevations provided by FEMA which the State or local government has adopted and is enforcing for flood-damaged buildings in such areas. (This includes compliance activities in B, C, X, or D zones which are being changed to zones with base flood elevations. This also includes compliance activities in zones where base flood elevations are being increased, and a flood-damaged building must comply with the higher advisory base flood elevation.) Increased Cost of Compliance coverage does not apply to situations in B, C, X, or D zones where the community has derived its own elevations and is enforcing elevation or floodproofing requirements for flood-damaged buildings to elevations derived solely by the community.

(3) Elevation or floodproofing above the base flood elevation to meet State or local "free-board" requirements, *i.e.*, that a building must be elevated above the base flood elevation.

c. Under the minimum NFIP criteria at 44 CFR 60.3(b)(4), States and communities must require the elevation or floodproofing of buildings in unnumbered A zones to the base flood elevation where elevation data is obtained from a Federal, State, or other source. Such compliance activities are eligible for Coverage D.

d. Coverage D will pay for the incremental cost, after demolition or relocation, of elevating or floodproofing a building during its rebuilding at the same or another site to meet State or local floodplain management laws or ordinances, subject to Coverage D Exclusion 5.g below.

e. Coverage D will pay to bring a flood-damaged building into compliance with State or local floodplain management laws or ordinances even if the building had received a variance before the present loss from the applicable floodplain management requirements.

## 4. Conditions

a. When a building insured under Coverage A—Building Property sustains a loss caused by a flood, our payment for the loss under this Coverage D will be for the increased cost to elevate, floodproof, relocate, or demolish (or any combination of these activities) caused by the enforcement of current State or local floodplain management ordinances or laws. Our payment for eligible demolition activities will be for the cost to demolish

and clear the site of the building debris or a portion thereof caused by the enforcement of current State or local floodplain management ordinances or laws. Eligible activities for the cost of clearing the site will include those necessary to discontinue utility service to the site and ensure proper abandonment of on-site utilities.

b. When the building is repaired or rebuilt, it must be intended for the same occupancy as the present building unless otherwise required by current floodplain management ordinances or laws.

5. Exclusions

Under this Coverage D (Increased Cost of Compliance), we will not pay for:

a. The cost to comply with any floodplain management law or ordinance in communities participating in the Emergency Program.

b. The cost associated with enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

c. The loss in value to any insured building due to the requirements of any ordinance or law.

d. The loss in residual value of the undamaged portion of a building demolished as a consequence of enforcement of any State or local floodplain management law or ordinance.

e. Any Increased Cost of Compliance under this Coverage D:

(1) Until the building is elevated, floodproofed, demolished, or relocated on the same or to another premises; and

(2) Unless the building is elevated, floodproofed, demolished, or relocated as soon as reasonably possible after the loss, not to exceed two years.

f. Any code upgrade requirements, e.g., plumbing or electrical wiring, not specifically related to the State or local floodplain management law or ordinance.

g. Any compliance activities needed to bring additions or improvements made after the loss occurred into compliance with State or local floodplain management laws or ordinances.

h. Loss due to any ordinance or law that you were required to comply with before the current loss.

i. Any rebuilding activity to standards that do not meet the NFIP's minimum requirements. This includes any situation where the insured has received from the State or community a variance in connection with the current flood loss to rebuild the property to an elevation below the base flood elevation.

j. Increased Cost of Compliance for a garage or carport.

k. Any building insured under an NFIP Group Flood Insurance Policy.

1. Assessments made by a condominium association on individual condominium unit owners to pay increased costs of repairing commonly owned buildings after a flood in compliance with State or local floodplain management ordinances or laws.

6. Other Provisions

a. Increased Cost of Compliance coverage will not be included in the calculation to determine whether coverage meets the 80 percent insurance-to-value requirement for replacement cost coverage as set forth in Art. VII.R ("Loss Settlement") of this policy.

b. All other conditions and provisions of this policy apply.

IV. PROPERTY NOT INSURED

We do not insure any of the following:

1. Personal property not inside a building.

2. A building, and personal property in it, located entirely in, on, or over water or seaward of mean high tide if it was constructed or substantially improved after September 30, 1982.

3. Open structures, including a building used as a boathouse or any structure or building into which boats are floated, and personal property located in, on, or over water.

4. Recreational vehicles other than travel trailers described in the Definitions section (see II.C.6.c) whether affixed to a permanent foundation or on wheels.

5. Self-propelled vehicles or machines, including their parts and equipment. However, we do cover self-propelled vehicles or machines not licensed for use on public roads that are:

a. Used mainly to service the described location; or

b. Designed and used to assist handicapped persons, while the vehicles or machines are inside a building at the described location.

6. Land, land values, lawns, trees, shrubs, plants, growing crops, or animals.

7. Accounts, bills, coins, currency, deeds, evidences of debt, medals, money, scrip, stored value cards, postage stamps, securities, bullion, manuscripts, or other valuable papers.

8. Underground structures and equipment, including wells, septic tanks, and septic systems.

9. Those portions of walks, walkways, decks, driveways, patios and other surfaces, all whether protected by a roof or not, located outside the perimeter, exterior walls of the insured building or the building in which the insured unit is located.

10. Containers, including related equipment, such as, but not limited to, tanks containing gases or liquids.

11. Buildings or units and all their contents if more than 49 percent of the actual cash value of the building is below ground, unless the lowest level is at or above the base flood elevation and is below ground by reason of earth having been used as insulation material in conjunction with energy efficient building techniques.

12. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks.

13. Aircraft or watercraft, or their furnishings and equipment.

14. Hot tubs and spas that are not bathroom fixtures, and swimming pools, and their equipment, such as, but not limited to, heaters, filters, pumps, and pipes, wherever located.

15. Property not eligible for flood insurance pursuant to the provisions of the Coastal Barrier Resources Act and the Coastal Barrier Improvement Act and amendments to these acts.

16. Personal property you own in common with other unit owners comprising the membership of a condominium association.

#### V. EXCLUSIONS

A. We only pay for direct physical loss by or from flood, which means that we do not pay you for:

1. Loss of revenue or profits;
2. Loss of access to the insured property or described location;
3. Loss of use of the insured property or described location;
4. Loss from interruption of business or production;
5. Any additional living expenses incurred while the insured building is being repaired or is unable to be occupied for any reason;
6. The cost of complying with any ordinance or law requiring or regulating the construction, demolition, remodeling, renovation, or repair of property, including removal of any resulting debris. This exclusion does not apply to any eligible activities we describe in Coverage D—Increased Cost of Compliance; or
7. Any other economic loss you suffer.

B. *Flood in Progress.* If this policy became effective as of the time of a loan closing, as provided by 44 CFR 61.11(b), we will not pay for a loss caused by a flood that is a continuation of a flood that existed prior to coverage becoming effective. In all other circumstances, we will not pay for a loss caused by a flood that is a continuation of a flood that existed on or before the day you submitted the application for coverage under this policy and the full amount due. We will determine the date of application using 44 CFR 61.11(f).

C. We do not insure for loss to property caused directly by earth movement even if the earth movement is caused by flood. Some examples of earth movement that we do not cover are:

1. Earthquake;
2. Landslide;
3. Land subsidence;
4. Sinkholes;
5. Destabilization or movement of land that results from accumulation of water in subsurface land area; or
6. Gradual erosion.

We do, however, pay for losses from mudflow and land subsidence as a result of erosion that are specifically insured under our definition of flood (see II.B.1.c and II.B.2).

D. We do not insure for direct physical loss caused directly or indirectly by any of the following:

1. The pressure or weight of ice;
2. Freezing or thawing;
3. Rain, snow, sleet, hail, or water spray;
4. Water, moisture, mildew, or mold damage that results primarily from any condition:

a. Substantially confined to the dwelling; or

b. That is within your control, including but not limited to:

- (1) Design, structural, or mechanical defects;
- (2) Failure, stoppage, or breakage of water or sewer lines, drains, pumps, fixtures, or equipment; or
- (3) Failure to inspect and maintain the property after a flood recedes;

5. Water or water-borne material that:

- a. Backs up through sewers or drains;
- b. Discharges or overflows from a sump, sump pump, or related equipment; or
- c. Seeps or leaks on or through the insured property;

unless there is a flood in the area and the flood is the proximate cause of the sewer or drain backup, sump pump discharge or overflow, or the seepage of water;

6. The pressure or weight of water unless there is a flood in the area and the flood is the proximate cause of the damage from the pressure or weight of water;

7. Power, heating, or cooling failure unless the failure results from direct physical loss by or from flood to power, heating, or cooling equipment on the described location;

8. Theft, fire, explosion, wind, or wind-storm;

9. Anything you or any member of your household do or conspire to do to deliberately cause loss by flood; or

10. Alteration of the insured property that significantly increases the risk of flooding.

E. We do not insure for loss to any building or personal property located on land leased from the Federal Government, arising from or incident to the flooding of the land by the Federal Government, where the lease expressly holds the Federal Government harmless under flood insurance issued under any Federal Government program.

F. We do not pay for the testing for or monitoring of pollutants unless required by law or ordinance.

VI. DEDUCTIBLES

A. When a loss is insured under this policy, we will pay only that part of the loss that exceeds your deductible amount, subject to the limit of liability that applies. The deductible amount is shown on the Declarations Page.

However, when a building under construction, alteration, or repair does not have at least two rigid exterior walls and a fully secured roof at the time of loss, your deductible amount will be two times the deductible that would otherwise apply to a completed building.

B. In each loss from flood, separate deductibles apply to the building and personal property insured by this policy.

C. The deductible does NOT apply to:

- 1. III.C.2. Loss Avoidance Measures;
  - 2. III.C.3. Condominium Loss Assessments;
- or
- 3. III.D. Increased Cost of Compliance.

VII. GENERAL CONDITIONS

A. *Pair and Set Clause*

In case of loss to an article that is part of a pair or set, we will have the option of paying you:

- 1. An amount equal to the cost of replacing the lost, damaged, or destroyed article, minus its depreciation; or
- 2. The amount that represents the fair proportion of the total value of the pair or set that the lost, damaged, or destroyed article bears to the pair or set.

B. *Other Insurance*

1. If a loss insured by this policy is also insured by other insurance that includes flood coverage not issued under the Act, we will not pay more than the amount of insurance you are entitled to for lost, damaged, or destroyed property insured under this policy subject to the following:

- a. We will pay only the proportion of the loss that the amount of insurance that applies under this policy bears to the total amount of insurance covering the loss, unless VII.B.1.b or c immediately below applies.
- b. If the other policy has a provision stating that it is excess insurance, this policy will be primary.
- c. This policy will be primary (but subject to its own deductible) up to the deductible in the other flood policy (except another policy as described in VII.B.1.b above). When the other deductible amount is reached, this policy will participate in the same proportion that the amount of insurance under this pol-

icy bears to the total amount of both policies, for the remainder of the loss.

2. If there is other insurance issued under the Act in the name of your condominium association covering the same property insured by this policy, then this policy will be in excess over the other insurance, except where a condominium loss assessment to the unit owner results from a loss sustained by the condominium association that was not reimbursed under a flood insurance policy written in the name of the association under the Act because the building was not, at the time of loss, insured for an amount equal to the lesser of:

- a. 80 percent or more of its full replacement cost; or
- b. The maximum amount of insurance permitted under the Act.

The combined coverage payment under the other NFIP insurance and this policy cannot exceed the maximum coverage available under the Act, of \$250,000 per single unit.

C. *Amendments, Waivers, Assignment*

This policy cannot be changed, nor can any of its provisions be waived, without the express written consent of the Federal Insurance Administrator. No action we take under the terms of this policy constitutes a waiver of any of our rights. You may assign this policy in writing when you transfer title of your property to someone else except under these conditions:

- a. When this policy insures only personal property; or
- b. When this policy insures a building under construction.

D. *Insufficient Premium or Rating Information*

1. **Applicability.** The following provisions apply to all instances where the premium paid on this policy is insufficient or where the rating information is insufficient, such as where an Elevation Certificate is not provided.

2. **Reforming the Policy with Reduced Coverage.** Except as otherwise provided in VII.D.1, if the premium we received from you was not sufficient to buy the kinds and amounts of coverage you requested, we will provide only the kinds and amounts of coverage that can be purchased for the premium payment we received.

a. For the purpose of determining whether your premium payment is sufficient to buy the kinds and amounts of coverage you requested, we will first deduct the costs of all applicable fees and surcharges.

b. If the amount paid, after deducting the costs of all applicable fees and surcharges, is not sufficient to buy any amount of coverage, your payment will be refunded. Unless the policy is reformed to increase the coverage amount to the amount originally requested pursuant to VII.D.3, this policy will

be cancelled, and no claims will be paid under this policy.

c. Coverage limits on the reformed policy will be based upon the amount of premium submitted per type of coverage, but will not exceed the amount originally requested.

3. Discovery of Insufficient Premium or Rating Information. If we discover that your premium payment was not sufficient to buy the requested amount of coverage, the policy will be reformed as described in VII.D.2. You have the option of increasing the amount of coverage resulting from this reformation to the amount you requested as follows:

a. Insufficient Premium. If we discover that your premium payment was not sufficient to buy the requested amount of coverage, we will send you, and any mortgagee or trustee known to us, a bill for the required additional premium for the current policy term (or that portion of the current policy term following any endorsement changing the amount of coverage). If it is discovered that the initial amount charged to you for any fees or surcharges is incorrect, the difference will be added or deducted, as applicable, to the total amount in this bill.

(1) If you or the mortgagee or trustee pays the additional premium amount due within 30 days from the date of our bill, we will reform the policy to increase the amount of coverage to the originally requested amount, effective to the beginning of the current policy term (or subsequent date of any endorsement changing the amount of coverage).

(2) If you or the mortgagee or trustee do not pay the additional amount due within 30 days of the date of our bill, any flood insurance claim will be settled based on the reduced amount of coverage.

(3) As applicable, you have the option of paying all or part of the amount due out of a claim payment based on the originally requested amount of coverage.

b. Insufficient Rating Information. If we determine that the rating information we have is insufficient and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information within 60 days of our request.

(1) If we receive the information within 60 days of our request, we will determine the amount of additional premium for the current policy term, and follow the procedure in VII.D.3.a above.

(2) If we do not receive the information within 60 days of our request, no claims will be paid until the requested information is provided. Coverage will be limited to the amount of coverage that can be purchased for the payments we received, as determined when the requested information is provided.

4. Coverage Increases. If we do not receive the amounts requested in VII.D.3.a or the additional information requested in VII.D.3.b

by the date it is due, the amount of coverage under this policy can only be increased by endorsement subject to the appropriate waiting period. However, no coverage increases will be allowed until you have provided the information requested in VII.D.3.b.

5. Falsifying Information. However, if we find that you or your agent intentionally did not tell us, or falsified any important fact or circumstance or did anything fraudulent relating to this insurance, the provisions of VIII.A apply.

#### *E. Policy Renewal*

1. This policy will expire at 12:01 a.m. on the last day of the policy term.

2. We must receive the payment of the appropriate renewal premium within 30 days of the expiration date.

3. If we find, however, that we did not place your renewal notice into the U.S. Postal Service, or if we did mail it, we made a mistake, *e.g.*, we used an incorrect, incomplete, or illegible address, which delayed its delivery to you before the due date for the renewal premium, then we will follow these procedures:

a. If you or your agent notified us, not later than one year after the date on which the payment of the renewal premium was due, of non-receipt of a renewal notice before the due date for the renewal premium, and we determine that the circumstances in the preceding paragraph apply, we will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.

b. If we do not receive the premium requested in the second bill by the revised due date, then we will not renew the policy. In that case, the policy will remain an expired policy as of the expiration date shown on the Declarations Page.

4. In connection with the renewal of this policy, we may ask you during the policy term to recertify, on a Recertification Questionnaire we will provide to you, the rating information used to rate your most recent application for or renewal of insurance.

#### *F. Conditions Suspending or Restricting Insurance*

We are not liable for loss that occurs while there is a hazard that is increased by any means within your control or knowledge.

#### *G. Requirements in Case of Loss*

In case of a flood loss to insured property, you must:

1. Give prompt written notice to us.
2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it.

3. Prepare an inventory of damaged property showing the quantity, description, actual cash value, and amount of loss. Attach all bills, receipts, and related documents.

4. Within 60 days after the loss, send us a proof of loss, which is your statement of the amount you are claiming under the policy signed and sworn to by you, and which furnishes us with the following information:

- a. The date and time of loss;
- b. A brief explanation of how the loss happened;
- c. Your interest (for example, "owner") and the interest, if any, of others in the damaged property;
- d. Details of any other insurance that may cover the loss;
- e. Changes in title or occupancy of the insured property during the term of the policy;
- f. Specifications of damaged buildings and detailed repair estimates;
- g. Names of mortgagees or anyone else having a lien, charge, or claim against the insured property;
- h. Details about who occupied any insured building at the time of loss and for what purpose; and
- i. The inventory of damaged personal property described in G.3 above.

5. In completing the proof of loss, you must use your own judgment concerning the amount of loss and justify that amount.

6. You must cooperate with the adjuster or representative in the investigation of the claim.

7. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help you complete it.

8. We have not authorized the adjuster to approve or disapprove claims or to tell you whether we will approve your claim.

9. At our option, we may accept the adjuster's report of the loss instead of your proof of loss. The adjuster's report will include information about your loss and the damages you sustained. You must sign the adjuster's report. At our option, we may require you to swear to the report.

*H. Our Options After a Loss*

Options we may, in our sole discretion, exercise after loss include the following:

- 1. At such reasonable times and places that we may designate, you must:
  - a. Show us or our representative the damaged property;
  - b. Submit to examination under oath, while not in the presence of another insured, and sign the same; and
  - c. Permit us to examine and make extracts and copies of:

(1) Any policies of property insurance insuring you against loss and the deed establishing your ownership of the insured real property;

(2) Condominium association documents including the Declarations of the condominium, its Articles of Association or Incorporation, Bylaws, rules and regulations, and other relevant documents if you are a unit owner in a condominium building; and

(3) All books of accounts, bills, invoices and other vouchers, or certified copies pertaining to the damaged property if the originals are lost.

2. We may request, in writing, that you furnish us with a complete inventory of the lost, damaged or destroyed property, including:

- a. Quantities and costs;
- b. Actual cash values or replacement cost (whichever is appropriate);
- c. Amounts of loss claimed;
- d. Any written plans and specifications for repair of the damaged property that you can reasonably make available to us; and
- e. Evidence that prior flood damage has been repaired.

3. If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may:

- a. Repair, rebuild, or replace any part of the lost, damaged, or destroyed property with material or property of like kind and quality or its functional equivalent; and
- b. Take all or any part of the damaged property at the value that we agree upon or its appraised value.

*I. No Benefit to Bailee*

No person or organization, other than you, having custody of insured property will benefit from this insurance.

*J. Loss Payment*

1. We will adjust all losses with you. We will pay you unless some other person or entity is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss (or within 90 days after the insurance adjuster files the adjuster's report signed and sworn to by you in lieu of a proof of loss) and:

- a. We reach an agreement with you;
  - b. There is an entry of a final judgment; or
  - c. There is a filing of an appraisal award with us, as provided in VII.M.
2. If we reject your proof of loss in whole or in part you may:
- a. Accept our denial of your claim;
  - b. Exercise your rights under this policy; or
  - c. File an amended proof of loss as long as it is filed within 60 days of the date of the loss.

*K. Abandonment*

You may not abandon to us damaged or undamaged property insured under this policy.

*L. Salvage*

We may permit you to keep damaged property insured under this policy after a loss, and we will reduce the amount of the loss proceeds payable to you under the policy by the value of the salvage.

*M. Appraisal*

If you and we fail to agree on the actual cash value or, if applicable, replacement cost of your damaged property to settle upon the amount of loss, then either may demand an appraisal of the loss. In this event, you and we will each choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the insured property is located. The appraisers will separately state the actual cash value, the replacement cost, and the amount of loss to each item. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of actual cash value and loss, or if it applies, the replacement cost and loss.

Each party will:

1. Pay its own appraiser; and
2. Bear the other expenses of the appraisal and umpire equally.

*N. Mortgage Clause*

1. The word “mortgagee” includes trustee.
2. Any loss payable under Coverage A—Building Property will be paid to any mortgagee of whom we have actual notice, as well as any other mortgagee or loss payee determined to exist at the time of loss, and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.
3. If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:
  - a. Notifies us of any change in the ownership or occupancy, or substantial change in risk of which the mortgagee is aware;
  - b. Pays any premium due under this policy on demand if you have neglected to pay the premium; and
  - c. Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so.
4. All of the terms of this policy apply to the mortgagee.

5. The mortgagee has the right to receive loss payment even if the mortgagee has started foreclosure or similar action on the building.

6. If we decide to cancel or not renew this policy, it will continue in effect for the benefit of the mortgagee only for 30 days after we notify the mortgagee of the cancellation or non-renewal.

7. If we pay the mortgagee for any loss and deny payment to you, we are subrogated to all the rights of the mortgagee granted under the mortgage on the property. Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee’s claim.

*O. Suit Against Us*

You may not sue us to recover money under this policy unless you have complied with all the requirements of the policy. If you do sue, you must start the suit within one year after the date of the written denial of all or part of the claim, and you must file the suit in the United States District Court of the district in which the insured property was located at the time of loss. This requirement applies to any claim that you may have under this policy and to any dispute that you may have arising out of the handling of any claim under the policy.

*P. Subrogation*

Whenever we make a payment for a loss under this policy, we are subrogated to your right to recover for that loss from any other person. That means that your right to recover for a loss that was partly or totally caused by someone else is automatically transferred to us, to the extent that we have paid you for the loss. We may require you to acknowledge this transfer in writing. After the loss, you may not give up our right to recover this money or do anything that would prevent us from recovering it. If you make any claim against any person who caused your loss and recover any money, you must pay us back first before you may keep any of that money.

*Q. Continuous Lake Flooding*

1. If an insured building has been flooded by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in an insured loss to the insured building equal to or greater than the building policy limits plus the deductible or the maximum payable under the policy for any one building loss, we will pay you the lesser of these two amounts without waiting for the further damage to occur if you sign a release agreeing:
  - a. To make no further claim under this policy;
  - b. Not to seek renewal of this policy;

c. Not to apply for any flood insurance under the Act for property at the described location;

d. Not to seek a premium refund for current or prior terms.

If the policy term ends before the insured building has been flooded continuously for 90 days, the provisions of this paragraph Q.1 will apply when the insured building suffers a covered loss before the policy term ends.

2. If your insured building is subject to continuous lake flooding from a closed basin lake, you may elect to file a claim under either paragraph Q.1 above or Q.2 (A "closed basin lake" is a natural lake from which water leaves primarily through evaporation and whose surface area now exceeds or has exceeded one square mile at any time in the recorded past. Most of the nation's closed basin lakes are in the western half of the United States where annual evaporation exceeds annual precipitation and where lake levels and surface areas are subject to considerable fluctuation due to wide variations in the climate. These lakes may overtop their basins on rare occasions.) Under this paragraph Q.2, we will pay your claim as if the building is a total loss even though it has not been continuously inundated for 90 days, subject to the following conditions:

a. Lake floodwaters must damage or imminently threaten to damage your building.

b. Before approval of your claim, you must:

(1) Agree to a claim payment that reflects your buying back the salvage on a negotiated basis; and

(2) Grant the conservation easement described in FEMA's "Policy Guidance for Closed Basin Lakes" to be recorded in the office of the local recorder of deeds. FEMA, in consultation with the community in which the property is located, will identify on a map an area or areas of special consideration (ASC) in which there is a potential for flood damage from continuous lake flooding. FEMA will give the community the agreed-upon map showing the ASC. This easement will only apply to that portion of the property in the ASC. It will allow certain agricultural and recreational uses of the land. The only structures it will allow on any portion of the property within the ASC are certain simple agricultural and recreational structures. If any of these allowable structures are insurable buildings under the NFIP and are insured under the NFIP, they will not be eligible for the benefits of this paragraph Q.2. If a U.S. Army Corps of Engineers certified flood control project or otherwise certified flood control project later protects the property, FEMA will, upon request, amend the ASC to remove areas protected by those projects. The restrictions of the easement will then no longer apply to any portion of the property removed from the ASC; and

(3) Comply with paragraphs Q.1.a through Q.1.d above.

c. Within 90 days of approval of your claim, you must move your building to a new location outside the ASC. FEMA will give you an additional 30 days to move if you show there is sufficient reason to extend the time.

d. Before the final payment of your claim, you must acquire an elevation certificate and a floodplain development permit from the local floodplain administrator for the new location of your building.

e. Before the approval of your claim, the community having jurisdiction over your building must:

(1) Adopt a permanent land use ordinance, or a temporary moratorium for a period not to exceed 6 months to be followed immediately by a permanent land use ordinance that is consistent with the provisions specified in the easement required in paragraph Q.2.b above;

(2) Agree to declare and report any violations of this ordinance to FEMA so that under Section 1316 of the National Flood Insurance Act of 1968, as amended, flood insurance to the building can be denied; and

(3) Agree to maintain as deed-restricted, for purposes compatible with open space or agricultural or recreational use only, any affected property the community acquires an interest in. These deed restrictions must be consistent with the provisions of paragraph Q.2.b above, except that, even if a certified project protects the property, the land use restrictions continue to apply if the property was acquired under the Hazard Mitigation Grant Program or the Flood Mitigation Assistance Program. If a non-profit land trust organization receives the property as a donation, that organization must maintain the property as deed-restricted, consistent with the provisions of paragraph Q.2.b above.

f. Before the approval of your claim, the affected State must take all action set forth in FEMA's "Policy Guidance for Closed Basin Lakes."

g. You must have NFIP flood insurance coverage continuously in effect from a date established by FEMA until you file a claim under paragraph Q.2. If a subsequent owner buys NFIP insurance that goes into effect within 60 days of the date of transfer of title, any gap in coverage during that 60-day period will not be a violation of this continuous coverage requirement. For the purpose of honoring a claim under this paragraph Q.2, we will not consider to be in effect any increased coverage that became effective after the date established by FEMA. The exception to this is any in-creased coverage in the amount suggested by your insurer as an inflation adjustment.

h. This paragraph Q.2 will be in effect for a community when the FEMA Regional Administrator for the affected region provides to the community, in writing, the following:



- (1) Confirmation that the community and the State are in compliance with the conditions in paragraphs Q.2.e and Q.2.f above; and
- (2) The date by which you must have flood insurance in effect.

#### R. Loss Settlement

##### 1. Introduction

This policy provides three methods of settling losses: Replacement Cost, Special Loss Settlement, and Actual Cash Value. Each method is used for a different type of property, as explained in paragraphs a–c below.

a. Replacement Cost Loss Settlement, described in R.2 below, applies to a single-family dwelling provided:

- (1) It is your principal residence; and
- (2) At the time of loss, the amount of insurance in this policy that applies to the dwelling is 80 percent or more of its full replacement cost immediately before the loss, or is the maximum amount of insurance available under the NFIP.

b. Special Loss Settlement, described in R.3 below, applies to a single-family dwelling that is a manufactured or mobile home or a travel trailer.

c. Actual Cash Value Loss Settlement applies to a single-family dwelling not subject to replacement cost or special loss settlement, and to the property listed in R.4 below.

##### 2. Replacement Cost Loss Settlement

The following loss settlement conditions apply to a single-family dwelling described in R.1.a above:

a. We will pay to repair or replace the damaged dwelling after application of the deductible and without deduction for depreciation, but not more than the least of the following amounts:

- (1) The building limit of liability shown on your Declarations Page;
- (2) The replacement cost of that part of the dwelling damaged, with materials of like kind and quality and for like use; or
- (3) The necessary amount actually spent to repair or replace the damaged part of the dwelling for like use.

b. If the dwelling is rebuilt at a new location, the cost described above is limited to the cost that would have been incurred if the dwelling had been rebuilt at its former location.

c. When the full cost of repair or replacement is more than \$1,000, or more than 5 percent of the whole amount of insurance that applies to the dwelling, we will not be liable for any loss under R.2.a above or R.4.a.2 below unless and until actual repair or replacement is completed.

d. You may disregard the replacement cost conditions above and make claim under this policy for loss to dwellings on an actual cash value basis. You may then make claim for

any additional liability according to R.2.a, b, and c above, provided you notify us of your intent to do so within 180 days after the date of loss.

e. If the community in which your dwelling is located has been converted from the Emergency Program to the Regular Program during the current policy term, then we will consider the maximum amount of available NFIP insurance to be the amount that was available at the beginning of the current policy term.

##### 3. Special Loss Settlement

a. The following loss settlement conditions apply to a single-family dwelling that:

- (1) is a manufactured or mobile home or a travel trailer, as defined in II.C.6.b and c;
- (2) is at least 16 feet wide when fully assembled and has an area of at least 600 square feet within its perimeter walls when fully assembled; and
- (3) is your principal residence as specified in R.1.a.1 above.

b. If such a dwelling is totally destroyed or damaged to such an extent that, in our judgment, it is not economically feasible to repair, at least to its pre-damage condition, we will, at our discretion pay the least of the following amounts:

- (1) The lesser of the replacement cost of the dwelling or 1.5 times the actual cash value; or
- (2) The building limit of liability shown on your Declarations Page.

c. If such a dwelling is partially damaged and, in our judgment, it is economically feasible to repair it to its pre-damage condition, we will settle the loss according to the Replacement Cost conditions in R.2 above.

##### 4. Actual Cash Value Loss Settlement

The types of property noted below are subject to actual cash value (or in the case of R.4.a.2., below, proportional) loss settlement.

a. A dwelling, at the time of loss, when the amount of insurance on the dwelling is both less than 80 percent of its full replacement cost immediately before the loss and less than the maximum amount of insurance available under the NFIP. In that case, we will pay the greater of the following amounts, but not more than the amount of insurance that applies to that dwelling:

- (1) The actual cash value, as defined in II.C.2, of the damaged part of the dwelling; or

(2) A proportion of the cost to repair or replace the damaged part of the dwelling, without deduction for physical depreciation and after application of the deductible.

This proportion is determined as follows: If 80 percent of the full replacement cost of the dwelling is less than the maximum amount of insurance available under the NFIP, then the proportion is determined by dividing the

actual amount of insurance on the dwelling by the amount of insurance that represents 80 percent of its full replacement cost. But if 80 percent of the full replacement cost of the dwelling is greater than the maximum amount of insurance available under the NFIP, then the proportion is determined by dividing the actual amount of insurance on the dwelling by the maximum amount of insurance available under the NFIP.

- b. A two-, three-, or four-family dwelling.
- c. A unit that is not used exclusively for single-family dwelling purposes.
- d. Detached garages.
- e. Personal property.
- f. Appliances, carpets, and carpet pads.
- g. Outdoor awnings, outdoor antennas or aerials of any type, and other outdoor equipment.
- h. Any property insured under this policy that is abandoned after a loss and remains as debris anywhere on the described location.
- i. A dwelling that is not your principal residence.

5. Amount of Insurance Required

To determine the amount of insurance required for a dwelling immediately before the loss, we do not include the value of:

- a. Footings, foundations, piers, or any other structures or devices that are below the undersurface of the lowest basement floor and support all or part of the dwelling;
- b. Those supports listed in R.5.a above, that are below the surface of the ground inside the foundation walls if there is no basement; and
- c. Excavations and underground flues, pipes, wiring, and drains.

*Note:* The Coverage D—Increased Cost of Compliance limit of liability is not included in the determination of the amount of insurance required.

VIII. POLICY NULLIFICATION, CANCELLATION, AND NON-RENEWAL

*A. Policy Nullification for Fraud, Misrepresentation, or Making False Statements*

1. With respect to all insureds under this policy, this policy is void and has no legal force and effect if at any time, before or after a loss, you or any other insured or your agent have, with respect to this policy or any other NFIP insurance:

- a. Concealed or misrepresented any material fact or circumstance;
  - b. Engaged in fraudulent conduct; or
  - c. Made false statements.
2. Policies voided under A.1 cannot be renewed or replaced by a new NFIP policy.
3. Policies are void as of the date the acts described in A.1 above were committed.
4. Fines, civil penalties, and imprisonment under applicable Federal laws may also apply to the acts of fraud or concealment described above.

*B. Policy Nullification for Reasons Other Than Fraud*

1. This policy is void from its inception, and has no legal force or effect, if:

- a. The property listed on the application is located in a community that was not participating in the NFIP on this policy's inception date and did not join or reenter the program during the policy term and before the loss occurred;
- b. The property listed on the application is otherwise not eligible for coverage under the NFIP at the time of the initial application;
- c. You never had an insurable interest in the property listed on the application;
- d. You provided an agent with an application and payment, but the payment did not clear; or
- e. We receive notice from you, prior to the policy effective date, that you have determined not to take the policy and you are not subject to a requirement to obtain and maintain flood insurance pursuant to any statute, regulation, or contract.

2. In such cases, you will be entitled to a full refund of all premium, fees, and surcharges received. However, if a claim was paid for a policy that is void, the claim payment must be returned to FEMA or offset from the premiums to be refunded before the refund will be processed.

*C. Cancellation of the Policy by You*

1. You may cancel this policy in accordance with the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

2. If you cancel this policy, you may be entitled to a full or partial refund of premium, surcharges, or fees under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

*D. Cancellation of the Policy by Us*

1. Cancellation for Underpayment of Amounts Owed on Policy. This policy will be cancelled, pursuant to VII.D.2, if it is determined that the premium amount you paid is not sufficient to buy any amount of coverage, and you do not pay the additional amount of premium owed to increase the coverage to the originally requested amount within the required time period.

2. Cancellation Due to Lack of an Insurable Interest.

a. If you no longer have an insurable interest in the insured property, we will cancel this policy. You will cease to have an insurable interest if:

- (1) For building coverage, the building was sold, destroyed, or removed.
- (2) For contents coverage, the contents were sold or transferred ownership, or the contents were completely removed from the described location.

b. If your policy is cancelled for this reason, you may be entitled to a partial refund of premium under the applicable rules and regulations of the NFIP.

3. Cancellation of Duplicate Policies

a. Except as allowed under Article I.G, your property may not be insured by more than one NFIP policy, and payment for damages to your property will only be made under one policy.

b. Except as allowed under Article I.G, if the property is insured by more than one NFIP policy, we will cancel all but one of the policies. The policy, or policies, will be selected for cancellation in accordance with 44 CFR 62.5 and the applicable rules and guidance of the NFIP.

c. If this policy is cancelled pursuant to VIII.D.3.b, you may be entitled to a full or partial refund of premium, surcharges, or fees under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

4. Cancellation Due to Physical Alteration of Property

a. If the insured building has been physically altered in such a manner that it is no longer eligible for flood insurance coverage, we will cancel this policy.

b. If your policy is cancelled for this reason, you may be entitled to a partial refund of premium under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

E. Non-Renewal of the Policy by Us

Your policy will not be renewed if:

1. The community where your insured property is located is suspended or stops participating in the NFIP;

2. Your building is otherwise ineligible for flood insurance under the Act;

3. You have failed to provide the information we requested for the purpose of rating the policy within the required deadline.

IX. LIBERALIZATION CLAUSE

If we make a change that broadens your coverage under this edition of our policy, but does not require any additional premium, then that change will automatically apply to your insurance as of the date we implement the change, provided that this implementation date falls within 60 days before or during the policy term stated on the Declarations Page.

X. WHAT LAW GOVERNS

This policy and all disputes arising from the insurer’s policy issuance, policy administration, or the handling of any claim under the policy are governed exclusively by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, et seq.), and Federal common law.

In Witness Whereof, we have signed this policy below and hereby enter into this Insurance Agreement.

Federal Insurance and Mitigation Administration

[85 FR 43959, July 20, 2020; 86 FR 10029, Feb. 18, 2021; 86 FR 31177, June 11, 2021; 86 FR 48511, Aug. 31, 2021]

APPENDIX A(2) TO PART 61

FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE AND MITIGATION ADMINISTRATION

Standard Flood Insurance Policy

General Property Form

Please read the policy carefully. The flood insurance provided is subject to limitations, restrictions, and exclusions.

I. AGREEMENT

A. Coverage Under This Policy

1. Except as provided in I.A.2, this policy provides coverage for multifamily buildings (residential buildings designed for use by 5 or more families that are not condominium buildings), non-residential buildings, and their contents.

2. There is no coverage for a residential condominium building in a regular program community, except for personal property coverage for a unit in a condominium building.

B. The Federal Emergency Management Agency (FEMA) provides flood insurance under the terms of the National Flood Insurance Act of 1968 and its amendments, and Title 44 of the Code of Federal Regulations.

C. We will pay you for direct physical loss by or from flood to your insured property if you:

1. Have paid the full amount due (including applicable premiums, surcharges, and fees);

2. Comply with all terms and conditions of this policy; and

3. Have furnished accurate information and statements.

D. We have the right to review the information you give us at any time and revise your policy based on our review.

E. This policy insures only one building. If you own more than one building, coverage will apply to the single building specifically described in the Flood Insurance Application.

F. Multiple policies with building coverage cannot be issued to insure a single building to one insured or to different insureds, even if issued through different NFIP insurers. Payment for damages may only be made under a single policy for building damages under Coverage A—Building Property.

II. DEFINITIONS

A. In this policy, “you” and “your” refer to the named insured(s) shown on the Declarations Page of this policy. Insured(s) also includes: Any mortgagee and loss payee named in the Application and Declarations Page, as well as any other mortgagee or loss payee determined to exist at the time of loss, in the order of precedence. “We,” “us,” and “our” refer to the insurer.

Some definitions are complex because they are provided as they appear in the law or regulations, or result from court cases.

B. *Flood*, as used in this flood insurance policy, means:

1. A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties (one of which is your property) from:

- a. Overflow of inland or tidal waters;
- b. Unusual and rapid accumulation or runoff of surface waters from any source;
- c. Mudflow.

2. Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined in B.1.a above.

C. The following are the other key definitions we use in this policy:

1. *Act*. The National Flood Insurance Act of 1968 and any amendments to it.

2. *Actual Cash Value*. The cost to replace an insured item of property at the time of loss, less the value of its physical depreciation.

3. *Application*. The statement made and signed by you or your agent in applying for this policy. The application gives information we use to determine the eligibility of the risk, the kind of policy to be issued, and the correct premium payment. The application is part of this flood insurance policy.

4. *Base Flood*. A flood having a one percent chance of being equaled or exceeded in any given year.

5. *Basement*. Any area of a building, including any sunken room or sunken portion of a room, having its floor below ground level on all sides.

6. *Building*

a. A structure with two or more outside rigid walls and a fully secured roof that is affixed to a permanent site;

b. A manufactured home, also known as a mobile home, is a structure built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation; or

c. A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community’s floodplain management and building ordinances or laws.

*Building* does not mean a gas or liquid storage tank, shipping container, or a recreational vehicle, park trailer, or other similar vehicle, except as described in C.6.c above.

7. *Cancellation*. The ending of the insurance coverage provided by this policy before the expiration date.

8. *Condominium*. That form of ownership of one or more buildings in which each unit owner has an undivided interest in common elements.

9. *Condominium Association*. The entity made up of the unit owners responsible for the maintenance and operation of:

a. Common elements owned in undivided shares by unit owners; and

b. Other buildings in which the unit owners have use rights where membership in the entity is a required condition of unit ownership.

10. *Condominium Building*. A type of building for which the form of ownership is one in which each unit owner has an undivided interest in common elements of the building.

11. *Declarations Page*. A computer-generated summary of information you provided in your application for insurance. The Declarations Page also describes the term of the policy, limits of coverage, and displays the premium and our name. The Declarations Page is a part of this flood insurance policy.

12. *Deductible*. The fixed amount of an insured loss that is your responsibility and that is incurred by you before any amounts are paid for the insured loss under this policy.

13. *Described Location*. The location where the insured building(s) or personal property are found. The described location is shown on the Declarations Page.

14. *Direct Physical Loss By or From Flood*. Loss or damage to insured property, directly caused by a flood. There must be evidence of physical changes to the property.

15. *Elevated Building*. A building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

16. *Emergency Program*. The initial phase of a community’s participation in the National Flood Insurance Program. During this phase, only limited amounts of insurance are available under the Act and the regulations prescribed pursuant to the Act.

17. *Federal Policy Fee*. A flat rate charge you must pay on each new or renewal policy to defray certain administrative expenses incurred in carrying out the National Flood Insurance Program.

18. *Improvements*. Fixtures, alterations, installations, or additions comprising a part of the building.

19. *Mudflow*. A river of liquid and flowing mud on the surface of normally dry land areas, as when earth is carried by a current

of water. Other earth movements, such as landslide, slope failure, or a saturated soil mass moving by liquidity down a slope, are not mudflows.

20. *National Flood Insurance Program (NFIP)*. The program of flood insurance coverage and floodplain management administered under the Act and applicable Federal regulations in Title 44 of the Code of Federal Regulations, Subchapter B.

21. *Policy*. The entire written contract between you and us. It includes:

- a. This printed form;
- b. The application and Declarations Page;
- c. Any endorsement(s) that may be issued; and
- d. Any renewal certificate indicating that coverage has been instituted for a new policy and new policy term. Only one building, which you specifically described in the application, may be insured under this policy.

22. *Pollutants*. Substances that include, but are not limited to, any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. "Waste" includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.

23. *Post-FIRM Building*. A building for which construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of an initial Flood Insurance Rate Map (FIRM), whichever is later.

24. *Probation Surcharge*. A flat charge you must pay on each new or renewal policy issued covering property in a community the NFIP has placed on probation under the provisions of 44 CFR 59.24.

25. *Regular Program*. The final phase of a community's participation in the National Flood Insurance Program. In this phase, a Flood Insurance Rate Map is in effect and full limits of coverage are available under the Act and the regulations prescribed pursuant to the Act.

26. *Residential Condominium Building*. A condominium building, containing one or more family units and in which at least 75 percent of the floor area is residential.

27. *Special Flood Hazard Area (SFHA)*. An area having special flood or mudflow, and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1-A30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1-A30, V1-V30, VE, or V.

28. *Stock* means merchandise held in storage or for sale, raw materials, and in-process or finished goods, including supplies used in their packing or shipping. Stock does not include any property not insured under Section IV. Property Not Insured, except the following:

- a. Parts and equipment for self-propelled vehicles;

- b. Furnishings and equipment for watercraft;

- c. Spas and hot-tubs, including their equipment; and

- d. Swimming pool equipment.

29. *Unit*. A single-family residential or non-residential space you own in a condominium building.

30. *Valued Policy*. A policy in which the insured and the insurer agree on the value of the property insured, that value being payable in the event of a total loss. The Standard Flood Insurance Policy is not a valued policy.

### III. PROPERTY INSURED

#### A. Coverage A—Building Property

We insure against direct physical loss by or from flood to:

1. The building described on the Declarations Page at the described location. If the building is a condominium building and the named insured is the condominium association, Coverage A includes all units within the building and the improvements within the units, provided the units are owned in common by all unit owners.

2. Building property located at another location for a period of 45 days at another location, as set forth in III.C.2.b, Property Removed to Safety.

3. Additions and extensions attached to and in contact with the building by means of a rigid exterior wall, a solid load-bearing interior wall, a stairway, an elevated walkway, or a roof. At your option, additions and extensions connected by any of these methods may be separately insured. Additions and extensions attached to and in contact with the building by means of a common interior wall that is not a solid load-bearing wall are always considered part of the building and cannot be separately insured.

4. The following fixtures, machinery, and equipment, which are insured under Coverage A only:

- a. Awnings and canopies;
- b. Blinds;
- c. Carpet permanently installed over unfinished flooring;
- d. Central air conditioners;
- e. Elevator equipment;
- f. Fire extinguishing apparatus;
- g. Fire sprinkler systems;
- h. Walk-in freezers;
- i. Furnaces;
- j. Light fixtures;
- k. Outdoor antennas and aerials attached to buildings;
  1. Permanently installed cupboards, bookcases, paneling, and wallpaper;
  - m. Pumps and machinery for operating pumps;
  - n. Ventilating equipment;
  - o. Wall mirrors, permanently installed; and

p. In the units within the building, installed:

- (1) Built-in dishwashers;
- (2) Built-in microwave ovens;
- (3) Garbage disposal units;
- (4) Hot water heaters, including solar water heaters;
- (5) Kitchen cabinets;
- (6) Plumbing fixtures;
- (7) Radiators;
- (8) Ranges;
- (9) Refrigerators; and
- (10) Stoves.

5. Materials and supplies to be used for construction, alteration, or repair of the insured building while the materials and supplies are stored in a fully enclosed building at the described location or on an adjacent property.

6. A building under construction, alteration, or repair at the described location.

a. If the structure is not yet walled or roofed as described in the definition for building (see II.C.6.a) then coverage applies:

- (1) Only while such work is in progress; or
- (2) If such work is halted, only for a period of up to 90 continuous days thereafter.

b. However, coverage does not apply until the building is walled and roofed if the lowest floor, including the basement floor, of a non-elevated building or the lowest elevated floor of an elevated building is:

- (1) Below the base flood elevation in Zones AH, AE, A1-A30, AR, AR/AE, AR/AH, AR/A1-A30, AR/A, AR/AO; or
- (2) Below the base flood elevation adjusted to include the effect of wave action in Zones VE or V1-V30.

The lowest floor level is based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1-V30 or the top of the floor in Zones AH, AE, A1-A30, AR, AR/AE, AR/AH, AR/A1-A30, AR/A, and AR/AO.

7. A manufactured home or a travel trailer, as described in the II.C.6. If the manufactured home or travel trailer is in a special flood hazard area, it must be anchored in the following manner at the time of the loss:

a. By over-the-top or frame ties to ground anchors; or

b. In accordance with the manufacturer's specifications; or

c. In compliance with the community's floodplain management requirements unless it has been continuously insured by the NFIP at the same described location since September 30, 1982.

8. Items of property below the lowest elevated floor of an elevated post-FIRM building located in zones A1-A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1-A30, V1-V30, or VE, or in a basement regardless of the zone. Coverage is limited to the following:

a. Any of the following items, if installed in their functioning locations and, if nec-

essary for operation, connected to a power source:

- (1) Central air conditioners;
- (2) Cisterns and the water in them;
- (3) Drywall for walls and ceilings in a basement and the cost of labor to nail it, unfinished and unfloats and not taped, to the framing;
- (4) Electrical junction and circuit breaker boxes;
- (5) Electrical outlets and switches;
- (6) Elevators, dumbwaiters, and related equipment, except for related equipment installed below the base flood elevation after September 30, 1987;
- (7) Fuel tanks and the fuel in them;
- (8) Furnaces and hot water heaters;
- (9) Heat pumps;
- (10) Nonflammable insulation in a basement;
- (11) Pumps and tanks used in solar energy systems;
- (12) Stairways and staircases attached to the building, not separated from it by elevated walkways;
- (13) Sump pumps;
- (14) Water softeners and the chemicals in them, water filters, and faucets installed as an integral part of the plumbing system;
- (15) Well water tanks and pumps;
- (16) Required utility connections for any item in this list; and
- (17) Footings, foundations, posts, pilings, piers, or other foundation walls and anchorage systems required to support a building.

b. Clean-up.

*B. Coverage B—Personal Property*

1. If you have purchased personal property coverage, we insure, subject to B.2-4 below, against direct physical loss by or from flood to personal property inside the fully enclosed insured building:

a. Owned solely by you, or in the case of a condominium, owned solely by the condominium association and used exclusively in the conduct of the business affairs of the condominium association; or

b. Owned in common by the unit owners of the condominium association.

2. We also insure such personal property for 45 days while stored at a temporary location, as set forth in III.C.2.b, Property Removed to Safety.

3. When this policy insures personal property, coverage will be either for household personal property or other than household personal property, while within the insured building, but not both.

a. If this policy insures household personal property, it will insure household personal property usual to a living quarters, that:

- (1) Belongs to you, or a member of your household, or at your option:
  - (a) Your domestic worker;
  - (b) Your guest; or
- (2) You may be legally liable for.

b. If this policy insures other than household personal property, it will insure your:

- (1) Furniture and fixtures;
- (2) Machinery and equipment;
- (3) Stock; and
- (4) Other personal property owned by you and used in your business, subject to IV, Property Not Insured.

4. Coverage for personal property includes the following property, subject to B.1.a and B.1.b above, which is insured under Coverage B, only:

- a. Air conditioning units, portable or window type;
- b. Carpets, not permanently installed, over unfinished flooring;
- c. Carpets over finished flooring;
- d. Clothes washers and dryers;
- e. “Cook-out” grills;
- f. Food freezers, other than walk-in, and food in any freezer;
- g. Outdoor equipment and furniture stored inside the insured building;
- h. Ovens and the like; and
- i. Portable microwave ovens and portable dishwashers.

5. Coverage for items of property below the lowest elevated floor of an elevated post-FIRM building located in Zones A1–A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–V30, or VE, or in a basement regardless of the zone, is limited to the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

- a. Air conditioning units, portable or window type;
- b. Clothes washers and dryers; and
- c. Food freezers, other than walk-in, and food in any freezer.

6. Special Limits. We will pay no more than \$2,500 for any loss to one or more of the following kinds of personal property:

- a. Artwork, photographs, collectibles, or memorabilia, including but not limited to, porcelain or other figures, and sports cards.
- b. Rare books or autographed items.
- c. Jewelry, watches, precious and semi-precious stones, or articles of gold, silver, or platinum.
- d. Furs or any article containing fur that represents its principal value.

7. We will pay only for the functional value of antiques.

8. If you are a tenant, you may apply up to 10 percent of the Coverage B limit to improvements:

- a. Made a part of the building you occupy; and
- b. You acquired, or made at your expense, even though you cannot legally remove.

This coverage does not increase the amount of insurance that applies to insured personal property.

9. If you are a condominium unit owner, you may apply up to 10 percent of the Coverage B limit to cover loss to interior:

- a. walls,
- b. floors, and
- c. ceilings,

that are not insured under a policy issued to the condominium association insuring the condominium building.

This coverage does not increase the amount of insurance that applies to insured personal property.

10. If you are a tenant, personal property must be inside the fully enclosed building.

#### C. Coverage C—Other Coverages

##### 1. Debris Removal

a. We will pay the expense to remove non-owned debris that is on or in insured property and debris of insured property anywhere.

b. If you or a member of your household perform the removal work, the value of your work will be based on the Federal minimum wage.

c. This coverage does not increase the Coverage A or Coverage B limit of liability.

##### 2. Loss Avoidance Measures

###### a. Sandbags, Supplies, and Labor

(1) We will pay up to \$1,000 for costs you incur to protect the insured building from a flood or imminent danger of flood, for the following:

(a) Your reasonable expenses to buy:

- (i) Sandbags, including sand to fill them;
- (ii) Fill for temporary levees;
- (iii) Pumps; and
- (iv) Plastic sheeting and lumber used in connection with these items.

(b) The value of work, at the Federal minimum wage, that you perform.

(2) This coverage for Sandbags, Supplies, and Labor only applies if damage to insured property by or from flood is imminent and the threat of flood damage is apparent enough to lead a person of common prudence to anticipate flood damage. One of the following must also occur:

(a) A general and temporary condition of flooding in the area near the described location must occur, even if the flood does not reach the building; or

(b) A legally authorized official must issue an evacuation order or other civil order for the community in which the building is located calling for measures to preserve life and property from the peril of flood.

This coverage does not increase the Coverage A or Coverage B limit of liability.

###### b. Property Removed to Safety

(1) We will pay up to \$1,000 for the reasonable expenses you incur to move insured property to a place other than the described location that contains the property in order to protect it from flood or the imminent danger of flood. Reasonable expenses include the value of work, at the Federal minimum

wage, you or a member of your household perform.

(2) If you move insured property to a location other than the described location that contains the property in order to protect it from flood or the imminent danger of flood, we will cover such property while at that location for a period of 45 consecutive days from the date you begin to move it there. The personal property that is moved must be placed in a fully enclosed building or otherwise reasonably protected from the elements.

(3) Any property removed, including a moveable home described in II.6, must be placed above ground level or outside of the special flood hazard area.

(4) This coverage does not increase the Coverage A or Coverage B limit of liability.

3. Pollution Damage

We will pay for damage caused by pollutants to insured property if the discharge, seepage, migration, release, or escape of the pollutants is caused by or results from flood. The most we will pay under this coverage is \$10,000. This coverage does not increase the Coverage A or Coverage B limits of liability. Any payment under this provision when combined with all other payments for the same loss cannot exceed the replacement cost or actual cash value, as appropriate, of the insured property. This coverage does not include the testing for or monitoring of pollutants unless required by law or ordinance.

*D. Coverage D—Increased Cost of Compliance*

1. General

This policy pays you to comply with a State or local floodplain management law or ordinance affecting repair or reconstruction of a building suffering flood damage. Compliance activities eligible for payment are: elevation, floodproofing, relocation, or demolition (or any combination of these activities) of your building. Eligible floodproofing activities are limited to:

- a. Non-residential buildings.
- b. Residential buildings with basements that satisfy FEMA’s standards published in the Code of Federal Regulations [44 CFR 60.6(b) or (c)].

2. Limits of Liability

We will pay you up to \$30,000 under this Coverage D (Increased Cost of Compliance), which only applies to policies with building coverage (Coverage A). Our payment of claims under Coverage D is in addition to the amount of coverage which you selected on the application and which appears on the Declarations Page. However, the maximum you can collect under this policy for both Coverage A (Building Property) and Coverage D (Increased Cost of Compliance) can-

not exceed the maximum permitted under the Act. We do NOT charge a separate deductible for a claim under Coverage D.

3. Eligibility

a. A building insured under Coverage A (Building Property) sustaining a loss caused by a flood as defined by this policy must:

- (1) Be a “repetitive loss building.” A repetitive loss building is one that meets the following conditions:
  - (a) The building is insured by a contract of flood insurance issued under the NFIP.
  - (b) The building has suffered flood damage on two occasions during a 10-year period which ends on the date of the second loss.
  - (c) The cost to repair the flood damage, on average, equaled or exceeded 25 percent of the market value of the building at the time of each flood loss.
  - (d) In addition to the current claim, the NFIP must have paid the previous qualifying claim, and the State or community must have a cumulative, substantial damage provision or repetitive loss provision in its floodplain management law or ordinance being enforced against the building; or
- (2) Be a building that has had flood damage in which the cost to repair equals or exceeds 50 percent of the market value of the building at the time of the flood. The State or community must have a substantial damage provision in its floodplain management law or ordinance being enforced against the building.

b. This Coverage D pays you to comply with State or local floodplain management laws or ordinances that meet the minimum standards of the National Flood Insurance Program found in the Code of Federal Regulations at 44 CFR 60.3. We pay for compliance activities that exceed those standards under these conditions:

- (1) 3.a.1 above.
- (2) Elevation or floodproofing in any risk zone to preliminary or advisory base flood elevations provided by FEMA which the State or local government has adopted and is enforcing for flood-damaged buildings in such areas. (This includes compliance activities in B, C, X, or D zones which are being changed to zones with base flood elevations. This also includes compliance activities in zones where base flood elevations are being increased, and a flood-damaged building must comply with the higher advisory base flood elevation.) Increased Cost of Compliance coverage does not apply to situations in B, C, X, or D zones where the community has derived its own elevations and is enforcing elevation or floodproofing requirements for flood-damaged buildings to elevations derived solely by the community.
- (3) Elevation or floodproofing above the base flood elevation to meet State or local



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“free-board” requirements, *i.e.*, that a building must be elevated above the base flood elevation.

c. Under the minimum NFIP criteria at 44 CFR 60.3(b)(4), States and communities must require the elevation or floodproofing of buildings in unnumbered A zones to the base flood elevation where elevation data is obtained from a Federal, State, or other source. Such compliance activities are also eligible for Coverage D.

d. This coverage will pay for the incremental cost, after demolition or relocation, of elevating or floodproofing a building during its rebuilding at the same or another site to meet State or local floodplain management laws or ordinances, subject to the exclusion at III.D.5.g.

e. This coverage will pay to bring a flood-damaged building into compliance with State or local floodplain management laws or ordinances even if the building had received a variance before the present loss from the applicable floodplain management requirements.

**4. Conditions**

a. When a building insured under Coverage A—Building Property sustains a loss caused by a flood, our payment for the loss under this Coverage D will be for the increased cost to elevate, floodproof, relocate, or demolish (or any combination of these activities) caused by the enforcement of current State or local floodplain management ordinances or laws. Our payment for eligible demolition activities will be for the cost to demolish and clear the site of the building debris or a portion thereof caused by the enforcement of current State or local floodplain management ordinances or laws. Eligible activities for the cost of clearing the site will include those necessary to discontinue utility service to the site and ensure proper abandonment of on-site utilities.

b. When the building is repaired or rebuilt, it must be intended for the same occupancy as the present building unless otherwise required by current floodplain management ordinances or laws.

**5. Exclusions**

Under this Coverage D (Increased Cost of Compliance), we will not pay for:

a. The cost to comply with any floodplain management law or ordinance in communities participating in the Emergency Program.

b. The cost associated with enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

c. The loss in value to any insured building due to the requirements of any ordinance or law.

d. The loss in residual value of the undamaged portion of a building demolished as a consequence of enforcement of any State or local floodplain management law or ordinance.

e. Any Increased Cost of Compliance under this Coverage D:

(1) Until the building is elevated, floodproofed, demolished, or relocated on the same or to another premises; and

(2) Unless the building is elevated, floodproofed, demolished, or relocated as soon as reasonably possible after the loss, not to exceed two years.

f. Any code upgrade requirements, *e.g.*, plumbing or electrical wiring, not specifically related to the State or local floodplain management law or ordinance.

g. Any compliance activities needed to bring additions or improvements made after the loss occurred into compliance with State or local floodplain management laws or ordinances.

h. Loss due to any ordinance or law that you were required to comply with before the current loss.

i. Any rebuilding activity to standards that do not meet the NFIP’s minimum requirements. This includes any situation where the insured has received from the State or community a variance in connection with the current flood loss to rebuild the property to an elevation below the base flood elevation.

j. Increased Cost of Compliance for a garage or carport.

k. Any building insured under an NFIP Group Flood Insurance Policy.

l. Assessments made by a condominium association on individual condominium unit owners to pay increased costs of repairing commonly owned buildings after a flood in compliance with State or local floodplain management ordinances or laws.

**6. Other Provisions**

All other conditions and provisions of the policy apply.

**IV. PROPERTY NOT INSURED**

We do not insure any of the following property:

1. Personal property not inside the fully enclosed building.

2. A building, and personal property in it, located entirely in, on, or over water or seaward of mean high tide if it was constructed or substantially improved after September 30, 1982.

3. Open structures, including a building used as a boathouse or any structure or building into which boats are floated, and

personal property located in, on, or over water.

4. Recreational vehicles other than travel trailers described in the II.C.6.c, whether affixed to a permanent foundation or on wheels.

5. Self-propelled vehicles or machines, including their parts and equipment. However, we do cover self-propelled vehicles or machines not licensed for use on public roads and are:

a. Used mainly to service the described location; or

b. Designed and used to assist handicapped persons, while the vehicles or machines are inside a building at the described location.

6. Land, land values, lawns, trees, shrubs, plants, growing crops, or animals.

7. Accounts, bills, coins, currency, deeds, evidences of debt, medals, money, scrip, stored value cards, postage stamps, securities, bullion, manuscripts, or other valuable papers.

8. Underground structures and equipment, including wells, septic tanks, and septic systems.

9. Those portions of walks, walkways, decks, driveways, patios, and other surfaces, all whether protected by a roof or not, located outside the perimeter, exterior walls of the insured building.

10. Containers, including related equipment, such as, but not limited to, tanks containing gases or liquids.

11. Buildings or units and all their contents if more than 49 percent of the actual cash value of the building is below ground, unless the lowest level is at or above the base flood elevation and is below ground by reason of earth having been used as insulation material in conjunction with energy efficient building techniques.

12. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks.

13. Aircraft or watercraft, or their furnishings and equipment.

14. Hot tubs and spas that are not bathroom fixtures, and swimming pools, and their equipment, such as, but not limited to, heaters, filters, pumps, and pipes, wherever located.

15. Property not eligible for flood insurance pursuant to the provisions of the Coastal Barrier Resources Act and the Coastal Barrier Improvement Act and amendments to these Acts.

16. Personal property owned by or in the care, custody or control of a unit owner, except for property of the type and under the circumstances set forth under III. Coverage B—Personal Property of this policy.

17. A residential condominium building located in a Regular Program community.

V. EXCLUSIONS

A. We only pay for “direct physical loss by or from flood,” which means that we do not pay you for:

1. Loss of revenue or profits;
2. Loss of access to the insured property or described location;
3. Loss of use of the insured property or described location;
4. Loss from interruption of business or production;
5. Any additional living expenses incurred while the insured building is being repaired or is unable to be occupied for any reason;
6. The cost of complying with any ordinance or law requiring or regulating the construction, demolition, remodeling, renovation, or repair of property, including removal of any resulting debris. This exclusion does not apply to any eligible activities we describe in Coverage D—Increased Cost of Compliance; or
7. Any other economic loss you suffer.

B. *Flood in Progress.* If this policy became effective as of the time of a loan closing, as provided by 44 CFR 61.11(b), we will not pay for a loss caused by a flood that is a continuation of a flood that existed prior to coverage becoming effective. In all other circumstances, we will not pay for a loss caused by a flood that is a continuation of a flood that existed on or before the day you submitted the application for coverage under this policy and the correct premium. We will determine the date of application using 44 CFR 611.11(f).

C. We do not insure for loss to property caused directly by earth movement even if the earth movement is caused by flood. Some examples of earth movement that we do not cover are:

1. Earthquake;
2. Landslide;
3. Land subsidence;
4. Sinkholes;
5. Destabilization or movement of land that results from accumulation of water in subsurface land areas; or
6. Gradual erosion.

We do, however, pay for losses from mudflow and land subsidence as a result of erosion that are specifically insured under our definition of flood (see II.B.1.c and II.B.2).

D. We do not insure for direct physical loss caused directly or indirectly by:

1. The pressure or weight of ice;
2. Freezing or thawing;
3. Rain, snow, sleet, hail, or water spray;
4. Water, moisture, mildew, or mold damage that results primarily from any condition:
  - a. Substantially confined to the insured building; or
  - b. That is within your control including, but not limited to:
    - (1) Design, structural, or mechanical defects;

(2) Failures, stoppages, or breakage of water or sewer lines, drains, pumps, fixtures, or equipment; or

(3) Failure to inspect and maintain the property after a flood recedes;

5. Water or water-borne material that:

a. Backs up through sewers or drains;  
 b. Discharges or overflows from a sump, sump pump, or related equipment; or  
 c. Seeps or leaks on or through the insured property;

unless there is a flood in the area and the flood is the proximate cause of the sewer or drain backup, sump pump discharge or overflow, or the seepage of water;

6. The pressure or weight of water unless there is a flood in the area and the flood is the proximate cause of the damage from the pressure or weight of water;

7. Power, heating, or cooling failure unless the failure results from direct physical loss by or from flood to power, heating, or cooling equipment on the described location;

8. Theft, fire, explosion, wind, or wind-storm;

9. Anything you or any member of your household do or conspires to do to deliberately cause loss by flood; or

10. Alteration of the insured property that significantly increases the risk of flooding.

E. We do not insure for loss to any building or personal property located on land leased from the Federal Government, arising from or incident to the flooding of the land by the Federal Government, where the lease expressly holds the Federal Government harmless under flood insurance issued under any Federal Government program.

#### VI. DEDUCTIBLES

A. When a loss is insured under this policy, we will pay only that part of the loss that exceeds your deductible amount, subject to the limit of liability that applies. The deductible amount is shown on the Declarations Page.

However, when a building under construction, alteration, or repair does not have at least two rigid exterior walls and a fully secured roof at the time of loss, your deductible amount will be two times the deductible that would otherwise apply to a completed building.

B. In each loss from flood, separate deductibles apply to the building and personal property insured by this policy.

C. The deductible does NOT apply to:

1. III.C.2. Loss Avoidance Measures; or
2. III.D. Increased Cost of Compliance.

#### VII. GENERAL CONDITIONS

##### A. Pair and Set Clause

In case of loss to an article that is part of a pair or set, we will have the option of paying you:

1. An amount equal to the cost of replacing the lost, damaged, or destroyed article, minus its depreciation; or

2. The amount that represents the fair proportion of the total value of the pair or set that the lost, damaged, or destroyed article bears to the pair or set.

##### B. Other Insurance

1. If a loss insured by this policy is also insured by other insurance that includes flood coverage not issued under the Act, we will not pay more than the amount of insurance that you are entitled to for lost, damaged, or destroyed property insured under this policy subject to the following:

a. We will pay only the proportion of the loss that the amount of insurance that applies under this policy bears to the total amount of insurance covering the loss, unless VII.B.1.b or c below applies.

b. If the other policy has a provision stating that it is excess insurance, this policy will be primary.

c. This policy will be primary (but subject to its own deductible) up to the deductible in the other flood policy (except another policy as described in VII.B.1.b above). When the other deductible amount is reached, this policy will participate in the same proportion that the amount of insurance under this policy bears to the total amount of both policies, for the remainder of the loss.

2. Where this policy insures a condominium association and there is a National Flood Insurance Program flood insurance policy in the name of a unit owner that insures the same loss as this policy, then this policy will be primary.

##### C. Amendments, Waivers, Assignment

This policy cannot be changed, nor can any of its provisions be waived, without the express written consent of the Federal Insurance Administrator. No action that we take under the terms of this policy can constitute a waiver of any of our rights. You may assign this policy in writing when you transfer title of your property to someone else except under these conditions:

1. When this policy insures only personal property; or

2. When this policy insures a building under construction.

##### D. Insufficient Premium or Rating Information

1. Applicability. The following provisions apply to all instances where the premium paid on this policy is insufficient or where the rating information is insufficient, such as where an Elevation Certificate is not provided.

2. Reforming the Policy with Reduced Coverage. Except as otherwise provided in VII.D.1 and VII.D.4, if the premium we received from you was not sufficient to buy the

kinds and amounts of coverage you requested, we will provide only the kinds and amounts of coverage that can be purchased for the premium payment we received.

a. For the purpose of determining whether your premium payment is sufficient to buy the kinds and amounts of coverage you requested, we will first deduct the costs of all applicable fees and surcharges.

b. If the amount paid, after deducting the costs of all applicable fees and surcharges, is not sufficient to buy any amount of coverage, your payment will be refunded. Unless the policy is reformed to increase the coverage amount to the amount originally requested pursuant to VII.D.3, this policy will be cancelled, and no claims will be paid under this policy.

c. Coverage limits on the reformed policy will be based upon the amount of premium submitted per type of coverage, but will not exceed the amount originally requested.

3. Discovery of Insufficient Premium or Rating Information. If we discover that your premium payment was not sufficient to buy the requested amount of coverage, the policy will be reformed as described in VII.D.2. You have the option of increasing the amount of coverage resulting from this reformation to the amount you requested as follows:

a. Insufficient Premium. If we discover that your premium payment was not sufficient to buy the requested amount of coverage, we will send you, and any mortgagee or trustee known to us, a bill for the required additional premium for the current policy term (or that portion of the current policy term following any endorsement changing the amount of coverage). If it is discovered that the initial amount charged to you for any fees or surcharges is incorrect, the difference will be added or deducted, as applicable, to the total amount in this bill.

(1) If you or the mortgagee or trustee pay the additional amount due within 30 days from the date of our bill, we will reform the policy to increase the amount of coverage to the originally requested amount, effective to the beginning of the current policy term (or subsequent date of any endorsement changing the amount of coverage).

(2) If you or the mortgagee or trustee do not pay the additional amount due within 30 days of the date of our bill, any flood insurance claim will be settled based on the reduced amount of coverage.

(3) As applicable, you have the option of paying all or part of the amount due out of a claim payment based on the originally requested amount of coverage.

b. Insufficient Rating Information. If we determine that the rating information we have is insufficient and prevents us from calculating the additional premium, we will ask you to send the required information. You

must submit the information within 60 days of our request.

(1) If we receive the information within 60 days of our request, we will determine the amount of additional premium for the current policy term and follow the procedure in VII.D.3.a above.

(2) If we do not receive the information within 60 days of our request, no claims will be paid until the requested information is provided. Coverage will be limited to the amount of coverage that can be purchased for the payments we received, as determined when the requested information is provided.

4. Coverage Increases. If we do not receive the amounts requested in VII.D.3.a or the additional information requested in VII.D.3.b by the date it is due, the amount of coverage under this policy can only be increased by endorsement subject to the appropriate waiting period. However, no coverage increases will be allowed until you have provided the information requested in VII.D.3.b is provided.

5. Falsifying Information. However, if we find that you or your agent intentionally did not tell us, or falsified, any important fact or circumstance or did anything fraudulent relating to this insurance, the provisions of VIII.A apply.

*E. Policy Renewal*

1. This policy will expire at 12:01 a.m. on the last day of the policy term.

2. We must receive the payment of the appropriate renewal premium within 30 days of the expiration date.

3. If we find, however, that we did not place your renewal notice into the U.S. Postal Service, or if we did mail it, we made a mistake, *e.g.*, we used an incorrect, incomplete, or illegible address, which delayed its delivery to you before the due date for the renewal premium, then we will follow these procedures:

a. If you or your agent notified us, not later than one year after the date on which the payment of the renewal premium was due, of non-receipt of a renewal notice before the due date for the renewal premium, and we determine that the circumstances in the preceding paragraph apply, we will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.

b. If we do not receive the premium requested in the second bill by the revised due date, then we will not renew the policy. In that case, the policy will remain as an expired policy as of the expiration date shown on the Declarations Page.

4. In connection with the renewal of this policy, we may ask you during the policy term to recertify, on a Recertification Questionnaire that we will provide to you, the rating information used to rate your most

recent application for or renewal of insurance.

*F. Conditions Suspending or Restricting Insurance*

We are not liable for loss that occurs while there is a hazard that is increased by any means within your control or knowledge.

*G. Requirements in Case of Loss*

In case of a flood loss to insured property, you must:

1. Give prompt written notice to us.
2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it.
3. Prepare an inventory of damaged property showing the quantity, description, actual cash value, and amount of loss. Attach all bills, receipts, and related documents.
4. Within 60 days after the loss, send us a proof of loss, which is your statement of the amount you are claiming under the policy signed and sworn to by you, and which furnishes us with the following information:
  - a. The date and time of loss;
  - b. A brief explanation of how the loss happened;
  - c. Your interest (for example, “owner”) and the interest, if any, of others in the damaged property;
  - d. Details of any other insurance that may cover the loss;
  - e. Changes in title or occupancy of the insured property during the term of the policy;
  - f. Specifications of damaged buildings and detailed repair estimates;
  - g. Names of mortgagees or anyone else having a lien, charge, or claim against the insured property;
  - h. Details about who occupied any insured building at the time of loss and for what purpose; and
  - i. The inventory of damaged personal property described in G.3 above.
5. In completing the proof of loss, you must use your own judgment concerning the amount of loss and justify that amount.
6. You must cooperate with the adjuster or representative in the investigation of the claim.
7. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help you complete it.
8. We have not authorized the adjuster to approve or disapprove claims or to tell you whether we will approve your claim.
9. At our option, we may accept the adjuster’s report of the loss instead of your proof of loss. The adjuster’s report will include infor-

mation about your loss and the damages you sustained. You must sign the adjuster’s report. At our option, we may require you to swear to the report.

*H. Our Options After a Loss*

Options we may, in our sole discretion, exercise after loss include the following:

1. At such reasonable times and places that we may designate, you must:
  - a. Show us or our representative the damaged property;
  - b. Submit to examination under oath, while not in the presence of another insured, and sign the same; and
  - c. Permit us to examine and make extracts and copies of:
    - (1) Any policies of property insurance insuring you against loss and the deed establishing your ownership of the insured real property;
    - (2) Condominium association documents including the Declarations of the condominium, its Articles of Association or Incorporation, Bylaws, rules and regulations, and other relevant documents if you are a unit owner in a condominium building; and
    - (3) All books of accounts, bills, invoices and other vouchers, or certified copies pertaining to the damaged property if the originals are lost.
2. We may request, in writing, that you furnish us with a complete inventory of the lost, damaged or destroyed property, including:
  - a. Quantities and costs;
  - b. Actual cash values or replacement cost (whichever is appropriate);
  - c. Amounts of loss claimed;
  - d. Any written plans and specifications for repair of the damaged property that you can reasonably make available to us; and
  - e. Evidence that prior flood damage has been repaired.
3. If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may:
  - a. Repair, rebuild, or replace any part of the lost, damaged, or destroyed property with material or property of like kind and quality or its functional equivalent; and
  - b. Take all or any part of the damaged property at the value that we agree upon or its appraised value.

*I. No Benefit to Bailee*

No person or organization, other than you, having custody of insured property will benefit from this insurance.

*J. Loss Payment*

1. We will adjust all losses with you. We will pay you unless some other person or entity is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss (or

within 90 days after the insurance adjuster files the adjuster's report signed and sworn to by you in lieu of a proof of loss) and:

- a. We reach an agreement with you;
  - b. There is an entry of a final judgment; or
  - c. There is a filing of an appraisal award with us, as provided in VII.M.
2. If we reject your proof of loss in whole or in part you may:
- a. Accept our denial of your claim;
  - b. Exercise your rights under this policy; or
  - c. File an amended proof of loss as long as it is filed within 60 days of the date of the loss.

*K. Abandonment*

You may not abandon damaged or undamaged insured property to us.

*L. Salvage*

We may permit you to keep damaged insured property after a loss, and we will reduce the amount of the loss proceeds payable to you under the policy by the value of the salvage.

*M. Appraisal*

If you and we fail to agree on the actual cash value of the damaged property so as to determine the amount of loss, either may demand an appraisal of the loss. In this event, you and we will each choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the insured property is located. The appraisers will separately state the actual cash value and the amount of loss to each item. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of actual cash value and loss.

Each party will:

- 1. Pay its own appraiser; and
- 2. Bear the other expenses of the appraisal and umpire equally.

*N. Mortgage Clause*

- 1. The word "mortgagee" includes trustee.
- 2. Any loss payable under Coverage A—Building Property will be paid to any mortgagee of whom we have actual notice, as well as any other mortgagee or loss payee determined to exist at the time of loss, and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.

3. If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

- a. Notifies us of any change in the ownership or occupancy, or substantial change in risk of which the mortgagee is aware;
  - b. Pays any premium due under this policy on demand if you have neglected to pay the premium; and
  - c. Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so.
4. All terms of this policy apply to the mortgagee.

5. The mortgagee has the right to receive loss payment even if the mortgagee has started foreclosure or similar action on the building.

6. If we decide to cancel or not renew this policy, it will continue in effect for the benefit of the mortgagee only for 30 days after we notify the mortgagee of the cancellation or non-renewal.

7. If we pay the mortgagee for any loss and deny payment to you, we are subrogated to all the rights of the mortgagee granted under the mortgage on the property. Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

*O. Suit Against Us*

You may not sue us to recover money under this policy unless you have complied with all the requirements of the policy. If you do sue, you must start the suit within one year of the date of the written denial of all or part of the claim, and you must file the suit in the United States District Court of the district in which the insured property was located at the time of loss. This requirement applies to any claim that you may have under this policy and to any dispute that you may have arising out of the handling of any claim under the policy.

*P. Subrogation*

Whenever we make a payment for a loss under this policy, we are subrogated to your right to recover for that loss from any other person. That means that your right to recover for a loss that was partly or totally caused by someone else is automatically transferred to us, to the extent that we have paid you for the loss. We may require you to acknowledge this transfer in writing. After the loss, you may not give up our right to recover this money or do anything that would prevent us from recovering it. If you make any claim against any person who caused your loss and recover any money, you must pay us back first before you may keep any of that money.

*Q. Continuous Lake Flood*

1. If an insured building has been flooded by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in an insured loss to the insured building equal to or greater than the building policy limits plus the deductible or the maximum payable under the policy for any one building loss, we will pay you the lesser of these two amounts without waiting for the further damage to occur if you sign a release agreeing:

- a. To make no further claim under this policy;
- b. Not to seek renewal of this policy;
- c. Not to apply for any flood insurance under the Act for property at the described location;
- d. Not to seek a premium refund for current or prior terms.

If the policy term ends before the insured building has been flooded continuously for 90 days, the provisions of this paragraph Q.1 will apply when the insured building suffers a covered loss before the policy term ends.

2. If your insured building is subject to continuous lake flooding from a closed basin lake, you may elect to file a claim under either paragraph Q.1 above or Q.2 (A “closed basin lake” is a natural lake from which water leaves primarily through evaporation and whose surface area now exceeds or has exceeded one square mile at any time in the recorded past. Most of the nation’s closed basin lakes are in the western half of the United States where annual evaporation exceeds annual precipitation and where lake levels and surface areas are subject to considerable fluctuation due to wide variations in the climate. These lakes may overtop their basins on rare occasions.) Under this paragraph Q.2, we will pay your claim as if the building is a total loss even though it has not been continuously inundated for 90 days, subject to the following conditions:

a. Lake floodwaters must damage or imminently threaten to damage your building.

b. Before approval of your claim, you must:

(1) Agree to a claim payment that reflects your buying back the salvage on a negotiated basis; and

(2) Grant the conservation easement described in FEMA’s “Policy Guidance for Closed Basin Lakes” to be recorded in the office of the local recorder of deeds. FEMA, in consultation with the community in which the property is located, will identify on a map an area or areas of special consideration (ASC) in which there is a potential for flood damage from continuous lake flooding. FEMA will give the community the agreed-upon map showing the ASC. This easement will only apply to that portion of the property in the ASC. It will allow certain agricultural and recreational uses of the land.

The only structures it will allow on any portion of the property within the ASC are certain simple agricultural and recreational structures. If any of these allowable structures are insurable buildings under the NFIP and are insured under the NFIP, they will not be eligible for the benefits of this paragraph Q.2. If a U.S. Army Corps of Engineers certified flood control project or otherwise certified flood control project later protects the property, FEMA will, upon request, amend the ASC to remove areas protected by those projects. The restrictions of the easement will then no longer apply to any portion of the property removed from the ASC; and

(3) Comply with paragraphs Q.1.a through Q.1.d above.

c. Within 90 days of approval of your claim, you must move your building to a new location outside the ASC. FEMA will give you an additional 30 days to move if you show there is sufficient reason to extend the time.

d. Before the final payment of your claim, you must acquire an elevation certificate and a floodplain development permit from the local floodplain administrator for the new location of your building.

e. Before the approval of your claim, the community having jurisdiction over your building must:

(1) Adopt a permanent land use ordinance, or a temporary moratorium for a period not to exceed 6 months to be followed immediately by a permanent land use ordinance that is consistent with the provisions specified in the easement required in paragraph Q.2.b above;

(2) Agree to declare and report any violations of this ordinance to FEMA so that under Section 1316 of the National Flood Insurance Act of 1968, as amended, flood insurance to the building can be denied; and

(3) Agree to maintain as deed-restricted, for purposes compatible with open space or agricultural or recreational use only, any affected property the community acquires an interest in. These deed restrictions must be consistent with the provisions of paragraph Q.2.b above, except that, even if a certified project protects the property, the land use restrictions continue to apply if the property was acquired under the Hazard Mitigation Grant Program or the Flood Mitigation Assistance Program. If a non-profit land trust organization receives the property as a donation, that organization must maintain the property as deed-restricted, consistent with the provisions of paragraph Q.2.b. above.

f. Before the approval of your claim, the affected State must take all action set forth in FEMA’s “Policy Guidance for Closed Basin Lakes.”

g. You must have NFIP flood insurance coverage continuously in effect from a date established by FEMA until you file a claim under paragraph Q.2. If a subsequent owner

buys NFIP insurance that goes into effect within 60 days of the date of transfer of title, any gap in coverage during that 60-day period will not be a violation of this continuous coverage requirement. For the purpose of honoring a claim under this paragraph Q.2, we will not consider to be in effect any increased coverage that became effective after the date established by FEMA. The exception to this is any increased coverage in the amount suggested by your insurer as an inflation adjustment.

h. This paragraph Q.2 will be in effect for a community when the FEMA Regional Administrator for the affected region provides to the community, in writing, the following:

- (1) Confirmation that the community and the State are in compliance with the conditions in paragraphs Q.2.e and Q.2.f above; and
- (2) The date by which you must have flood insurance in effect.

*R. Loss Settlement*

We will pay the least of the following amounts after application of the deductible:

- 1. The applicable amount of insurance under this policy;
- 2. The actual cash value; or
- 3. The amount it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss.

VIII. POLICY NULLIFICATION, CANCELLATION, AND NON-RENEWAL

*A. Policy Nullification for Fraud, Misrepresentation, or Making False Statements*

1. With respect to all insureds under this policy, this policy is void and has no legal force and effect if at any time, before or after a loss, you or any other insured or your agent have, with respect to this policy or any other NFIP insurance:

- a. Concealed or misrepresented any material fact or circumstance;
  - b. Engaged in fraudulent conduct; or
  - c. Made false statements.
2. Policies voided under A.1 cannot be renewed or replaced by a new NFIP policy.
3. Policies are void as of the date the acts described in A.1 above were committed.
4. Fines, civil penalties, and imprisonment under applicable Federal laws may also apply to the acts of fraud or concealment described above.

*B. Policy Nullification for Reasons Other Than Fraud*

1. This policy is void from its inception, and has no legal force or effect, if:
- a. The property listed on the application is located in a community that was not participating in the NFIP on this policy's inception date and did not join or reenter the program

during the policy term and before the loss occurred;

b. The property listed on the application is otherwise not eligible for coverage under the NFIP at the time of the initial application;

c. You never had an insurable interest in the property listed on the application;

d. You provided an agent with an application and payment, but the payment did not clear; or

e. We receive notice from you, prior to the policy effective date, that you have determined not to take the policy and you are not subject to a requirement to obtain and maintain flood insurance pursuant to any statute, regulation, or contract.

2. In such cases, you will be entitled to a full refund of all premium, fees, and surcharges received. However, if a claim was paid for a policy that is void, the claim payment must be returned to FEMA or offset from the premiums to be refunded before the refund will be processed.

*C. Cancellation of the Policy by You*

1. You may cancel this policy in accordance with the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

2. If you cancel this policy, you may be entitled to a full or partial refund of premium, surcharges, or fees under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

*D. Cancellation of the Policy by Us*

1. Cancellation for Underpayment of Amounts Owed on Policy. This policy will be cancelled, pursuant to VII.D.2, if it is determined that the premium amount you paid is not sufficient to buy any amount of coverage, and you do not pay the additional amount of premium owed to increase the coverage to the originally requested amount within the required time period.

2. Cancellation Due to Lack of an Insurable Interest.

a. If you no longer have an insurable interest in the insured property, we will cancel this policy. You will cease to have an insurable interest if:

- (1) For building coverage, the building was sold, destroyed, or removed.
- (2) For contents coverage, the contents were sold or transferred ownership, or the contents were completely removed from the described location.

b. If your policy is cancelled for this reason, you may be entitled to a partial refund of premium under the applicable rules and regulations of the NFIP.

3. Cancellation of Duplicate Policies.

a. Your property may not be insured by more than one NFIP policy, and payment for damages to your property will only be made under one policy.



b. If the property is insured by more than one NFIP policy, we will cancel all but one of the policies. The policy, or policies, will be selected for cancellation in accordance with 44 CFR 62.5 and the applicable rules and guidance of the NFIP.

c. If this policy is cancelled pursuant to VIII.D.3.b, you may be entitled to a full or partial refund of premium, surcharges, or fees under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

4. Cancellation Due to Physical Alteration of Property

a. If the insured building has been physically altered in such a manner that it is no longer eligible for flood insurance coverage, we will cancel this policy.

b. If your policy is cancelled for this reason, you may be entitled to a partial refund of premium under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

E. Non-Renewal of the Policy by Us

Your policy will not be renewed if:

- 1. The community where your insured property is located is suspended or stops participating in the NFIP;
2. Your building is otherwise ineligible for flood insurance under the Act;
3. You have failed to provide the information we requested for the purpose of rating the policy within the required deadline.

IX. LIBERALIZATION CLAUSE

If we make a change that broadens your coverage under this edition of our policy, but does not require any additional premium, then that change will automatically apply to your insurance as of the date we implement the change, provided that this implementation date falls within 60 days before or during the policy term stated on the Declarations Page.

X. WHAT LAW GOVERNS

This policy and all disputes arising from the insurer's policy issuance, policy administration, or the handling of any claim under the policy are governed exclusively by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, et seq.), and Federal common law.

In Witness Whereof, we have signed this policy below and hereby enter into this Insurance Agreement.

Federal Insurance and Mitigation Administration

[85 FR 43968, July 20, 2020; 86 FR 10029, Feb. 18, 2021; 86 FR 31178, June 11, 2021; 86 FR 47395, Aug. 25, 2021; 86 FR 48511, Aug. 31, 2021]

APPENDIX A(3) TO PART 61

FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE AND MITIGATION ADMINISTRATION

Standard Flood Insurance Policy

Residential Condominium Building Association Policy

Please read the policy carefully. The flood insurance provided is subject to limitations, restrictions, and exclusions.

I. AGREEMENT

A. This policy insures only a residential condominium building in a regular program community. If the community reverts to emergency program status during the policy term and remains as an emergency program community at time of renewal, this policy cannot be renewed.

B. The Federal Emergency Management Agency (FEMA) provides flood insurance under the terms of the National Flood Insurance Act of 1968 and its amendments, and Title 44 of the Code of Federal Regulations.

C. We will pay you for direct physical loss by or from flood to your insured property if you:

- 1. Have paid the full amount due (including applicable premiums, surcharges, and fees);
2. Comply with all terms and conditions of this policy; and
3. Have furnished accurate information and statements.

D. We have the right to review the information you give us at any time and revise your policy based on our review.

E. This policy insures only one building. If you own more than one building, coverage will apply to the single building specifically described in the Flood Insurance Application.

F. Subject to the exception in Section I.G below, multiple policies with building coverage cannot be issued to insure a single building to one insured or to different insureds, even if issued through different NFIP insurers. Payment for damages may only be made under a single policy for building damages under Coverage A—Building Property.

G. A Dwelling Form policy with building coverage may be issued to a unit owner in a condominium building that is also insured under a Residential Condominium Building Association Policy (RCBAP). However, no more than \$250,000 may be paid in combined benefits for a single unit under the Dwelling Form and the RCBAP. We will only pay for damage once. Items of damage paid for under a RCBAP cannot also be claimed under the Dwelling Form policy.

II. DEFINITIONS

A. In this policy, “you” and “your” refer to the named insured(s) shown on the Declarations Page of this policy. The named insured must also include the building owner if building coverage is purchased. Insured(s) includes: Any mortgagee and loss payee named in the Application and Declarations Page, as well as any other mortgagee or loss payee determined to have an existing interest at the time of loss, in the order of precedence. “We,” “us,” and “our” refer to the insurer.

Some definitions are complex because they are provided as they appear in the law or regulations, or result from court cases.

B. *Flood*, as used in this flood insurance policy, means:

1. A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties (one of which is your property) from:

- a. Overflow of inland or tidal waters;
- b. Unusual and rapid accumulation or runoff of surface waters from any source;
- c. Mudflow.

2. Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels which result in a flood as defined in B.1.a above.

C. The following are the other key definitions we use in this policy:

1. *Act*. The National Flood Insurance Act of 1968 and any amendments to it.

2. *Actual Cash Value*. The cost to replace an insured item of property at the time of loss, less the value of its physical depreciation.

3. *Application*. The statement made and signed by you or your agent in applying for this policy. The application gives information we use to determine the eligibility of the risk, the kind of policy to be issued, and the correct premium payment. The application is part of this flood insurance policy.

4. *Base Flood*. A flood having a one percent chance of being equaled or exceeded in any given year.

5. *Basement*. Any area of a building, including any sunken room or sunken portion of a room, having its floor below ground level on all sides.

6. *Building*

a. A structure with two or more outside rigid walls and a fully secured roof that is affixed to a permanent site;

b. A manufactured home, also known as a mobile home, is a structure built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation; or

c. A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the commu-

nity’s floodplain management and building ordinances or laws.

*Building* does not mean a gas or liquid storage tank, shipping container, or a recreational vehicle, park trailer, or other similar vehicle, except as described in C.6.c above.

7. *Cancellation*. The ending of the insurance coverage provided by this policy before the expiration date.

8. *Condominium*. That form of ownership of one or more buildings in which each unit owner has an undivided interest in common elements.

9. *Condominium Association*. The entity made up of the unit owners responsible for the maintenance and operation of:

a. Common elements owned in undivided shares by unit owners; and

b. Other buildings in which the unit owners have use rights; where membership in the entity is a required condition of ownership.

10. *Condominium Building*. A type of building for which the form of ownership is one in which each unit owner has an undivided interest in common elements of the building.

11. *Declarations Page*. A computer-generated summary of information you provided in your application for insurance. The Declarations Page also describes the term of the policy, limits of coverage, and displays the premium and our name. The Declarations Page is a part of this flood insurance policy.

12. *Deductible*. The fixed amount of an insured loss that is your responsibility and that is incurred by you before any amounts are paid for the insured loss under this policy.

13. *Described Location*. The location where the insured building or personal property are found. The described location is shown on the Declarations Page.

14. *Direct Physical Loss By or From Flood*. Loss or damage to insured property, directly caused by a flood. There must be evidence of physical changes to the property.

15. *Elevated Building*. A building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

16. *Emergency Program*. The initial phase of a community’s participation in the National Flood Insurance Program. During this phase, only limited amounts of insurance are available under the Act and the regulations prescribed pursuant to the Act.

17. *Federal Policy Fee*. A flat rate charge you must pay on each new or renewal policy to defray certain administrative expenses incurred in carrying out the National Flood Insurance Program.

18. *Improvements*. Fixtures, alterations, installations, or additions comprising a part of the residential condominium building, including improvements in the units.

19. *Mudflow*. A river of liquid and flowing mud on the surface of normally dry land areas, as when earth is carried by a current of water. Other earth movements, such as landslide, slope failure, or a saturated soil mass moving by liquidity down a slope, are not mudflows.

20. *National Flood Insurance Program (NFIP)*. The program of flood insurance coverage and floodplain management administered under the Act and applicable Federal regulations in Title 44 of the Code of Federal Regulations, Subchapter B.

21. *Policy*. The entire written contract between you and us. It includes:

- a. This printed form;
- b. The application and Declarations Page;
- c. Any endorsement(s) that may be issued; and
- d. Any renewal certificate indicating that coverage has been instituted for a new policy and new policy term. Only one building, which you specifically described in the application, may be insured under this policy.

22. *Pollutants*. Substances that include, but are not limited to, any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. "Waste" includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.

23. *Post-FIRM Building*. A building for which construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of an initial Flood Insurance Rate Map (FIRM), whichever is later.

24. *Probation Surcharge*. A flat charge you must pay on each new or renewal policy issued covering property in a community the NFIP has placed on probation under the provisions of 44 CFR 59.24.

25. *Regular Program*. The final phase of a community's participation in the National Flood Insurance Program. In this phase, a Flood Insurance Rate Map is in effect and full limits of coverage are available under the Act and the regulations prescribed pursuant to the Act.

26. *Residential Condominium Building*. A building, condominium, containing one or more family units and in which at least 75 percent of the floor area is residential.

27. *Special Flood Hazard Area (SFHA)*. An area having special flood or mudflow, and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1–A30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1–A30, V1–V30, VE, or V.

28. *Unit*. A single-family residential space in a residential condominium building.

29. *Valued Policy*. A policy in which the insured and the insurer agree on the value of the property insured, that value being payable in the event of a total loss. The Stand-

ard Flood Insurance Policy is not a valued policy.

### III. PROPERTY INSURED

#### A. Coverage A—Building Property

We insure against direct physical loss by or from flood to:

1. The residential condominium building described on the Declarations Page at the described location, including all units within the building and the improvements within the units.

2. We also insure such building property for a period of 45 days at another location, as set forth in III.C.2.b, Property Removed to Safety.

3. Additions and extensions attached to and in contact with the building by means of a rigid exterior wall, a solid load-bearing interior wall, a stairway, an elevated walkway, or a roof. At your option, additions and extensions connected by any of these methods may be separately insured. Additions and extensions attached to and in contact with the building by means of a common interior wall that is not a solid load-bearing wall are always considered part of the building and cannot be separately insured.

4. The following fixtures, machinery and equipment, including its units, which are insured under Coverage A only:

- a. Awnings and canopies;
- b. Blinds;
- c. Carpet permanently installed over unfinished flooring;
- d. Central air conditioners;
- e. Elevator equipment;
- f. Fire extinguishing apparatus;
- g. Fire sprinkler systems;
- h. Walk-in freezers;
- i. Furnaces;
- j. Light fixtures;
- k. Outdoor antennas and aerials fastened to buildings;
- l. Permanently installed cupboards, bookcases, paneling, and wallpaper;
- m. Pumps and machinery for operating pumps;
- n. Ventilating equipment;
- o. Wall mirrors, permanently installed; and
- p. In the units within the building, installed:
  - (1) Built-in dishwashers;
  - (2) Built-in microwave ovens;
  - (3) Garbage disposal units;
  - (4) Hot water heaters, including solar water heaters;
  - (5) Kitchen cabinets;
  - (6) Plumbing fixtures;
  - (7) Radiators;
  - (8) Ranges;
  - (9) Refrigerators; and
  - (10) Stoves.

5. Materials and supplies to be used for construction, alteration or repair of the insured building while the materials and supplies are stored in a fully enclosed building at the described location or on an adjacent property.

6. A building under construction, alteration, or repair at the described location.

a. If the structure is not yet walled or roofed as described in the definition for building (see II.C.6.a) then coverage applies:

- (1) Only while such work is in progress; or
- (2) If such work is halted, only for a period of up to 90 continuous days thereafter.

b. However, coverage does not apply until the building is walled and roofed if the lowest floor, including the basement floor, of a non-elevated building or the lowest elevated floor of an elevated building is:

- (1) Below the base flood elevation in Zones AH, AE, A1-30, AR, AR/AE, AR/AH, AR/A1-30, AR/A, AR/AO; or
- (2) Below the base flood elevation adjusted to include the effect of wave action in Zones VE or V1-30.

The lowest floor level is based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1-V30 or top of the floor in Zones AH, AE, A1-A30, AR, AR/AE, AR/AH, AR/A1-A30, AR/A, and AR/AO.

7. A manufactured home or a travel trailer, as described in the II.C.6. If the manufactured home is in a special flood hazard area, it must be anchored in the following manner at the time of the loss:

- a. By over-the-top or frame ties to ground anchors; or
- b. In accordance with the manufacturer's specifications; or
- c. In compliance with the community's floodplain management requirements unless it has been continuously insured by the NFIP at the same described location since September 30, 1982.

8. Items of property below the lowest elevated floor of an elevated post-FIRM building located in zones A1-A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1-A30, V1-V30, or VE, or in a basement regardless of the zone. Coverage is limited to the following:

- a. Any of the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:
  - (1) Central air conditioners;
  - (2) Cisterns and the water in them;
  - (3) Drywall for walls and ceilings in a basement and the cost of labor to nail it, unfinished and unfloated and not taped, to the framing;
  - (4) Electrical junction and circuit breaker boxes;
  - (5) Electrical outlets and switches;
  - (6) Elevators, dumbwaiters, and related equipment, except for related equipment in-

stalled below the base flood elevation after September 30, 1987;

- (7) Fuel tanks and the fuel in them;
  - (8) Furnaces and hot water heaters;
  - (9) Heat pumps;
  - (10) Nonflammable insulation in a basement;
  - (11) Pumps and tanks used in solar energy systems;
  - (12) Stairways and staircases attached to the building, not separated from it by elevated walkways;
  - (13) Sump pumps;
  - (14) Water softeners and the chemicals in them, water filters, and faucets installed as an integral part of the plumbing system;
  - (15) Well water tanks and pumps;
  - (16) Required utility connections for any item in this list; and
  - (17) Footings, foundations, posts, pilings, piers, or other foundation walls and anchorage systems required to support a building.
- b. Clean-up.

*B. Coverage B—Personal Property*

1. If you have purchased personal property coverage, we insure, subject to B.2 and B.3 below, against direct physical loss by or from flood to personal property that is inside the fully enclosed insured building and is:

- a. Owned by the unit owners of the condominium association in common, meaning property in which each unit owner has an undivided ownership interest; or
- b. Owned solely by the condominium association and used exclusively in the conduct of the business affairs of the condominium association.

2. We also insure such personal property for 45 days while stored at a temporary location, as set forth in III.C.2.b, Property Removed to Safety.

3. Coverage for personal property includes the following property, subject to B.1. above, which is insured under Coverage B only:

- a. Air conditioning units, portable or window type;
- b. Carpets, not permanently installed, over unfinished flooring;
- c. Carpets over finished flooring;
- d. Clothes washers and dryers;
- e. "Cook-out" grills;
- f. Food freezers, other than walk-in, and food in any freezer;
- g. Outdoor equipment and furniture stored inside the insured building;
- h. Ovens and the like; and
- i. Portable microwave ovens and portable dishwashers.

4. Coverage for items of property in a building enclosure below the lowest elevated floor of an elevated post-FIRM building located in zones A1-A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1-A30, V1-V30, or VE, or in a basement regardless of the zone, is limited to the following items, if installed in

their functioning locations and, if necessary for operation, connected to a power source:

- a. Air conditioning units, portable or window type;
- b. Clothes washers and dryers; and
- c. Food freezers, other than walk-in, and food in any freezer.

5. Special Limits. We will pay no more than \$2,500 for any one loss to one or more of the following kinds of personal property:

- a. Artwork, photographs, collectibles, or memorabilia, including but not limited to, porcelain or other figures, and sports cards.
  - b. Rare books or autographed items.
  - c. Jewelry, watches, precious and semi-precious stones, or articles of gold, silver, or platinum.
  - d. Furs or any article containing fur which represents its principal value.
6. We will pay only for the functional value of antiques.

#### C. Coverage C—Other Coverages

##### 1. Debris Removal

a. We will pay the expense to remove non-owned debris that is on or in insured property and debris of insured property anywhere.

b. If you or a member of your household perform the removal work, the value of your work will be based on the Federal minimum wage.

c. This coverage does not increase the Coverage A or Coverage B limit of liability.

##### 2. Loss Avoidance Measures

###### a. Sandbags, Supplies, and Labor

(1) We will pay up to \$1,000 for costs you incur to protect the insured building from a flood or imminent danger of flood, for the following:

- (a) Your reasonable expenses to buy:
  - (i) Sandbags, including sand to fill them;
  - (ii) Fill for temporary levees;
  - (iii) Pumps; and
  - (iv) Plastic sheeting and lumber used in connection with these items.
- (b) The value of work, at the Federal minimum wage, that you perform.

(2) This coverage for Sandbags, Supplies, and Labor only applies if damage to insured property by or from flood is imminent and the threat of flood damage is apparent enough to lead a person of common prudence to anticipate flood damage. One of the following must also occur:

- (a) A general and temporary condition of flooding in the area near the described location must occur, even if the flood does not reach the building; or
- (b) A legally authorized official must issue an evacuation order or other civil order for the community in which the building is located calling for measures to preserve life and property from the peril of flood.

This coverage does not increase the Coverage A or Coverage B limit of liability.

###### b. Property Removed to Safety

(1) We will pay up to \$1,000 for the reasonable expenses you incur to move insured property to a place other than the described location that contains the property in order to protect it from flood or the imminent danger of flood. Reasonable expenses include the value of work, at the Federal minimum wage, you or a member of your household perform.

(2) If you move insured property to a location other than the described location that contains the property in order to protect it from flood or the imminent danger of flood, we will cover such property while at that location for a period of 45 consecutive days from the date you begin to move it there.

(3) The personal property that is moved must be placed in a fully enclosed building or otherwise reasonably protected from the elements. Any property removed, including a moveable home described in II.6.b and c, must be placed above ground level or outside of the special flood hazard area.

(4) This coverage does not increase the Coverage A or Coverage B limit of liability.

#### D. Coverage D—Increased Cost of Compliance

##### 1. General

This policy pays you to comply with a State or local floodplain management law or ordinance affecting repair or reconstruction of a building suffering flood damage. Compliance activities eligible for payment are: elevation, floodproofing, relocation, or demolition (or any combination of these activities) of your building. Eligible floodproofing activities are limited to:

- a. Non-residential buildings.
- b. Residential buildings with basements that satisfy FEMA's standards published in the Code of Federal Regulations [44 CFR 60.6 (b) or (c)].

##### 2. Limit of Liability

We will pay you up to \$30,000 under this Coverage D (Increased Cost of Compliance), which only applies to policies with building coverage (Coverage A). Our payment of claims under Coverage D is in addition to the amount of coverage which you selected on the application and which appears on the Declarations Page. But, the maximum you can collect under this policy for both Coverage A—Building Property and Coverage D—Increased Cost of Compliance cannot exceed the maximum permitted under the Act. We do not charge a separate deductible for a claim under Coverage D.

3. Eligibility

a. A building insured under Coverage A (Building Property) sustaining a loss caused by a flood as defined by this policy must:

(1) Be a "repetitive loss building." A repetitive loss building is one that meets the following conditions:

(a) The building is insured by a contract of flood insurance issued under the NFIP.

(b) The building has suffered flood damage on two occasions during a 10-year period which ends on the date of the second loss.

(c) The cost to repair the flood damage, on average, equaled or exceeded 25 percent of the market value of the building at the time of each flood loss.

(d) In addition to the current claim, the NFIP must have paid the previous qualifying claim, and the State or community must have a cumulative, substantial damage provision or repetitive loss provision in its floodplain management law or ordinance being enforced against the building; or

(2) Be a building that has had flood damage in which the cost to repair equals or exceeds 50 percent of the market value of the building at the time of the flood. The State or community must have a substantial damage provision in its floodplain management law or ordinance being enforced against the building.

b. This Coverage D pays you to comply with State or local floodplain management laws or ordinances that meet the minimum standards of the National Flood Insurance Program found in the Code of Federal Regulations at 44 CFR 60.3. We pay for compliance activities that exceed those standards under these conditions:

(1) 3.a.1 above.

(2) Elevation or floodproofing in any risk zone to preliminary or advisory base flood elevations provided by FEMA which the State or local government has adopted and is enforcing for flood-damaged buildings in such areas. (This includes compliance activities in B, C, X, or D zones which are being changed to zones with base flood elevations. This also includes compliance activities in zones where base flood elevations are being increased, and a flood-damaged building must comply with the higher advisory base flood elevation.) Increased Cost of Compliance coverage does not apply to situations in B, C, X, or D zones where the community has derived its own elevations and is enforcing elevation or floodproofing requirements for flood-damaged buildings to elevations derived solely by the community.

(3) Elevation or floodproofing above the base flood elevation to meet State or local "freeboard" requirements, *i.e.*, that a building must be elevated above the base flood elevation.

c. Under the minimum NFIP criteria at 44 CFR 60.3(b)(4), States and communities must

require the elevation or floodproofing of buildings in unnumbered A zones to the base flood elevation where elevation data is obtained from a Federal, State, or other source. Such compliance activities are also eligible for Coverage D.

d. Coverage D will pay for the incremental cost, after demolition or relocation, of elevating or floodproofing a building during its rebuilding at the same or another site to meet State or local floodplain management laws or ordinances, subject to Exclusion D.5.g below relating to improvements.

e. Coverage D will pay to bring a flood-damaged building into compliance with State or local floodplain management laws or ordinances even if the building had received a variance before the present loss from the applicable floodplain management requirements.

4. Conditions

a. When a building insured under Coverage A—Building Property sustains a loss caused by a flood, our payment for the loss under this Coverage D will be for the increased cost to elevate, floodproof, relocate, or demolish (or any combination of these activities) caused by the enforcement of current State or local floodplain management ordinances or laws. Our payment for eligible demolition activities will be for the cost to demolish and clear the site of the building debris or a portion thereof caused by the enforcement of current State or local floodplain management ordinances or laws. Eligible activities for the cost of clearing the site will include those necessary to discontinue utility service to the site and ensure proper abandonment of on-site utilities.

b. When the building is repaired or rebuilt, it must be intended for the same occupancy as the present building unless otherwise required by current floodplain management ordinances or laws.

5. Exclusions

Under this Coverage D (Increased Cost of Compliance) we will not pay for:

a. The cost to comply with any floodplain management law or ordinance in communities participating in the Emergency Program.

b. The cost associated with enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

c. The loss in value to any insured building due to the requirements of any ordinance or law.

d. The loss in residual value of the undamaged portion of a building demolished as a consequence of enforcement of any

State or local floodplain management law or ordinance.

e. Any Increased Cost of Compliance under this Coverage D:

(1) Until the building is elevated, floodproofed, demolished, or relocated on the same or to another premises; and

(2) Unless the building is elevated, floodproofed, demolished, or relocated as soon as reasonably possible after the loss, not to exceed two years.

f. Any code upgrade requirements, *e.g.*, plumbing or electrical wiring, not specifically related to the State or local floodplain management law or ordinance.

g. Any compliance activities needed to bring additions or improvements made after the loss occurred into compliance with State or local floodplain management laws or ordinances.

h. Loss due to any ordinance or law that you were required to comply with before the current loss.

i. Any rebuilding activity to standards that do not meet the NFIP's minimum requirements. This includes any situation where the insured has received from the State or community a variance in connection with the current flood loss to rebuild the property to an elevation below the base flood elevation.

j. Increased Cost of Compliance for a garage or carport.

k. Any building insured under an NFIP Group Flood Insurance Policy.

l. Assessments made by a condominium association on individual condominium unit owners to pay increased costs of repairing commonly owned buildings after a flood in compliance with State or local floodplain management ordinances or laws.

#### 6. Other Provisions

a. Increased Cost of Compliance coverage will not be included in the calculation to determine whether coverage meets the coinsurance requirement for replacement cost coverage under Art. VIII.R. ("Loss Settlement").

b. All other conditions and provisions of this policy apply.

#### IV. PROPERTY NOT INSURED

We do not insure any of the following:

1. Personal property not inside a building.
2. A building, and personal property in it, located entirely in, on, or over water or seaward of mean high tide if it was constructed or substantially improved after September 30, 1982.
3. Open structures, including a building used as a boathouse or any structure or building into which boats are floated, and personal property located in, on, or over water.

4. Recreational vehicles other than travel trailers described in the Definitions section (see II.C.6.c) whether affixed to a permanent foundation or on wheels.

5. Self-propelled vehicles or machines, including their parts and equipment. However, we do cover self-propelled vehicles or machines not licensed for use on public roads that are:

a. Used mainly to service the described location; or

b. Designed and used to assist handicapped persons, while the vehicles or machines are inside a building at the described location.

6. Land, land values, lawns, trees, shrubs, plants, growing crops, or animals.

7. Accounts, bills, coins, currency, deeds, evidences of debt, medals, money, scrip, stored value cards, postage stamps, securities, bullion, manuscripts, or other valuable papers.

8. Underground structures and equipment, including wells, septic tanks, and septic systems.

9. Those portions of walks, walkways, decks, driveways, patios, and other surfaces, all whether protected by a roof or not, located outside the perimeter, exterior walls of the insured building.

10. Containers, including related equipment, such as, but not limited to, tanks containing gases or liquids.

11. Buildings and all their contents if more than 49 percent of the actual cash value of the building is below ground, unless the lowest level is at or above the base flood elevation and is below ground by reason of earth having been used as insulation material in conjunction with energy efficient building techniques.

12. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks.

13. Aircraft or watercraft, or their furnishings and equipment.

14. Hot tubs and spas that are not bathroom fixtures, and swimming pools, and their equipment such as, but not limited to, heaters, filters, pumps, and pipes, wherever located.

15. Property not eligible for flood insurance pursuant to the provisions of the Coastal Barrier Resources Act and the Coastal Barrier Improvements Act of 1990 and amendments to these Acts.

16. Personal property used in connection with any incidental commercial occupancy or use of the building.

#### V. EXCLUSIONS

A. We only pay for "direct physical loss by or from flood," which means that we do not pay you for:

1. Loss of revenue or profits;
2. Loss of access to the insured property or described location;
3. Loss of use of the insured property or described location;

4. Loss from interruption of business or production;

5. Any additional living expenses incurred while the insured building is being repaired or is unable to be occupied for any reason;

6. The cost of complying with any ordinance or law requiring or regulating the construction, demolition, remodeling, renovation, or repair of property, including removal of any resulting debris. This exclusion does not apply to any eligible activities we describe in Coverage D—Increased Cost of Compliance; or

7. Any other economic loss you suffer.

B. *Flood in Progress.* If this policy became effective as of the time of a loan closing, as provided by 44 CFR 61.11(b), we will not pay for a loss caused by a flood that is a continuation of a flood that existed prior to coverage becoming effective. In all other circumstances, we will not pay for a loss caused by a flood that is a continuation of a flood that existed on or before the day you submitted the application for coverage under this policy and the correct premium. We will determine the date of application using 44 CFR 611.11(f).

C. We do not insure for loss to property caused directly by earth movement even if the earth movement is caused by flood. Some examples of earth movement that we do not cover are:

1. Earthquake;
2. Landslide;
3. Land subsidence;
4. Sinkholes;
5. Destabilization or movement of land that results from accumulation of water in subsurface land areas; or
6. Gradual erosion.

We do, however, pay for losses from mudflow and land subsidence as a result of erosion that are specifically covered under our definition of flood (see II.B.1.c and II.B.2).

D. We do not insure for direct physical loss caused directly or indirectly by:

1. The pressure or weight of ice;
2. Freezing or thawing;
3. Rain, snow, sleet, hail, or water spray;
4. Water, moisture, mildew, or mold damage that results primarily from any condition:
  - a. Substantially confined to the insured building; or
  - b. That is within your control including, but not limited to:
    - (1) Design, structural, or mechanical defects;
    - (2) Failures, stoppages, or breakage of water or sewer lines, drains, pumps, fixtures, or equipment; or
    - (3) Failure to inspect and maintain the property after a flood recedes;
5. Water or water-borne material that:
  - a. Backs up through sewers or drains;
  - b. Discharges or overflows from a sump, sump pump, or related equipment; or

c. Seeps or leaks on or through the insured property; unless there is a flood in the area and the flood is the proximate cause of the sewer or drain backup, sump pump discharge or overflow, or the seepage of water;

6. The pressure or weight of water unless there is a flood in the area and the flood is the proximate cause of the damage from the pressure or weight of water;

7. Power, heating, or cooling failure unless the failure results from direct physical loss by or from flood to power, heating, or cooling equipment on the described location;

8. Theft, fire, explosion, wind, or wind-storm;

9. Anything you or your agents do or conspire to do to cause loss by flood deliberately; or

10. Alteration of the insured property that significantly increases the risk of flooding.

E. We do not insure for loss to any building or personal property located on land leased from the Federal Government, arising from or incident to the flooding of the land by the Federal Government, where the lease expressly holds the Federal Government harmless under flood insurance issued under any Federal Government program.

F. We do not pay for the testing for or monitoring of pollutants unless required by law or ordinance.

VI. DEDUCTIBLES

A. When a loss is insured under this policy, we will pay only that part of the loss that exceeds your deductible amount, subject to the limit of liability that applies. The deductible amount is shown on the Declarations Page.

However, when a building under construction, alteration, or repair does not have at least two rigid exterior walls and a fully secured roof at the time of loss, your deductible amount will be two times the deductible that would otherwise apply to a completed building.

B. In each loss from flood, separate deductibles apply to the building and personal property insured by this policy.

C. No deductible applies to:

1. III.C.2. Loss Avoidance Measures; or
2. III.D. Increased Cost of Compliance.

VII. COINSURANCE

A. This Coinsurance Section applies only to coverage on the building.

B. We will impose a penalty on loss payment unless the amount of insurance applicable to the damaged building is:

1. At least 80 percent of its replacement cost; or
2. The maximum amount of insurance available for that building under the NFIP, whichever is less.

C. If the actual amount of insurance on the building is less than the required amount in



accordance with the terms of VII.B above, then loss payment is determined as follows (subject to all other relevant conditions in this policy, including those pertaining to valuation, adjustment, settlement, and payment of loss):

1. Divide the actual amount of insurance carried on the building by the required amount of insurance.

2. Multiply the amount of loss, before application of the deductible, by the figure determined in C.1 above.

3. Subtract the deductible from the figure determined in C.2 above.

We will pay the amount determined in C.3 above, or the amount of insurance carried, whichever is less. The amount of insurance carried, if in excess of the applicable maximum amount of insurance available under the NFIP, is reduced accordingly.

#### Examples

##### Example #1 (Inadequate Insurance)

Replacement value of the building—\$250,000  
 Required amount of insurance—\$200,000  
 (80 percent of replacement value of \$250,000)  
 Actual amount of insurance carried—\$180,000  
 Amount of the loss—\$150,000  
 Deductible—\$500  
 Step 1:  $180,000/200,000 = .90$   
 (90 percent of what should be carried.)  
 Step 2:  $150,000 \times .90 = 135,000$   
 Step 3:  $135,000 - 500 = 134,500$

We will pay no more than \$134,500. The remaining \$15,500 is not covered due to the coinsurance penalty (\$15,000) and application of the deductible (\$500).

##### Example #2 (Adequate Insurance)

Replacement value of the building—\$500,000  
 Required amount of insurance—\$400,000  
 (80 percent of replacement value of \$500,000)  
 Actual amount of insurance carried—\$400,000  
 Amount of the loss—\$200,000  
 Deductible—\$500

In this example there is no coinsurance penalty, because the actual amount of insurance carried meets the required amount. We will pay no more than \$199,500 (\$200,000 amount of loss minus the \$500 deductible).

D. In calculating the full replacement cost of a building:

1. The replacement cost value of any insured building property will be included;

2. The replacement cost value of any building property not insured under this policy will not be included; and

3. Only the replacement cost value of improvements installed by the condominium association will be included.

### VIII. GENERAL CONDITIONS

#### A. Pair and Set Clause

In case of loss to an article that is part of a pair or set, we will have the option of paying you:

1. An amount equal to the cost of replacing the lost, damaged, or destroyed article, minus its depreciation; or

2. The amount that represents the fair proportion of the total value of the pair or set that the lost, damaged, or destroyed article bears to the pair or set.

#### B. Other Insurance

1. If a loss insured by this policy is also insured by other insurance that includes flood coverage not issued under the Act, we will not pay more than the amount of insurance that you are entitled to for lost, damaged, or destroyed property insured under this policy subject to the following:

a. We will pay only the proportion of the loss that the amount of insurance that applies under this policy bears to the total amount of insurance covering the loss, unless VIII.B.1.b or c immediately below applies.

b. If the other policy has a provision stating that it is excess insurance, this policy will be primary.

c. This policy will be primary (but subject to its own deductible) up to the deductible in the other flood policy (except another policy as described in VIII.B.1.b. above). When the other deductible amount is reached, this policy will participate in the same proportion that the amount of insurance under this policy bears to the total amount of both policies, for the remainder of the loss.

2. If there is a National Flood Insurance Program flood insurance policy in the name of a unit owner that covers the same loss as this policy, then this policy will be primary.

#### C. Amendments, Waivers, Assignment

This policy cannot be changed, nor can any of its provisions be waived, without the express written consent of the Federal Insurance Administrator. No action we take under the terms of this policy constitutes a waiver of any of our rights. You may assign this policy in writing when you transfer title of your property to someone else except under these conditions:

1. When this policy insures only personal property; or

2. When this policy insures a building under construction.

#### D. Insufficient Premium or Rating Information

1. Applicability. The following provisions apply to all instances where the premium paid on this policy is insufficient or where the rating information is insufficient, such as where an Elevation Certificate is not provided.

2. Reforming the Policy with Reduced Coverage. Except as otherwise provided in VIII.D.1 and VIII.D.4, if the premium we received from you was not sufficient to buy the

kinds and amounts of coverage you requested, we will provide only the kinds and amounts of coverage that can be purchased for the premium payment we received.

a. For the purpose of determining whether your premium payment is sufficient to buy the kinds and amounts of coverage you requested, we will first deduct the costs of all applicable fees and surcharges.

b. If the amount paid, after deducting the costs of all applicable fees and surcharges, is not sufficient to buy any amount of coverage, your payment will be refunded. Unless the policy is reformed to increase the coverage amount to the amount originally requested pursuant to VIII.E.3, this policy will be cancelled, and no claims will be paid under this policy.

c. Coverage limits on the reformed policy will be based upon the amount of premium submitted per type of coverage, but will not exceed the amount originally requested.

3. Discovery of Insufficient Premium or Rating Information. If we discover that your premium payment was not sufficient to buy the requested amount of coverage, the policy will be reformed as described in VIII.D.2. You have the option of increasing the amount of coverage resulting from this reformation to the amount you requested as follows:

a. Insufficient Premium. If we discover that your premium payment was not sufficient to buy the requested amount of coverage, we will send you, and any mortgagee or trustee known to us, a bill for the required additional premium for the current policy term (or that portion of the current policy term following any endorsement changing the amount of coverage). If it is discovered that the initial amount charged to you for any fees or surcharges is incorrect, the difference will be added or deducted, as applicable, to the total amount in this bill.

(1) If you or the mortgagee or trustee pay the additional amount due within 30 days from the date of our bill, we will reform the policy to increase the amount of coverage to the originally requested amount, effective to the beginning of the current policy term (or subsequent date of any endorsement changing the amount of coverage).

(2) If you or the mortgagee or trustee do not pay the additional amount due within 30 days of the date of our bill, any flood insurance claim will be settled based on the reduced amount of coverage.

(3) As applicable, you have the option of paying all or part of the amount due out of a claim payment based on the originally requested amount of coverage.

b. Insufficient Rating Information. If we determine that the rating information we have is insufficient and prevents us from calculating the additional premium, we will ask you to send the required information. You

must submit the information within 60 days of our request.

(1) If we receive the information within 60 days of our request, we will determine the amount of additional premium for the current policy term and follow the procedure in VIII.D.3.a above.

(2) If we do not receive the information within 60 days of our request, no claims will be paid until the requested information is provided. Coverage will be limited to the amount of coverage that can be purchased for the payments we received, as determined when the requested information is provided.

4. Coverage Increases. If we do not receive the amount requested in VIII.D.3.a or VIII.D.4.a, or the additional information requested in VIII.D.3.b or VIII.D.4.b by the date it is due, the amount of coverage under this policy can only be increased by endorsement subject to the appropriate waiting period. However, no coverage increases will be allowed until you have provided the information requested in VIII.D.3.b or VIII.D.4.b.

5. Falsifying Information. However, if we find that you or your agent intentionally did not tell us, or falsified, any important fact or circumstance or did anything fraudulent relating to this insurance, the provisions of IX.A apply.

*E. Policy Renewal*

1. This policy will expire at 12:01 a.m. on the last day of the policy term.

2. We must receive the payment of the appropriate renewal premium within 30 days of the expiration date.

3. If we find, however, that we did not place your renewal notice into the U.S. Postal Service, or if we did mail it, we made a mistake, *e.g.*, we used an incorrect, incomplete, or illegible address, which delayed its delivery to you before the due date for the renewal premium, then we will follow these procedures:

a. If you or your agent notified us, not later than one year after the date on which the payment of the renewal premium was due, of non-receipt of a renewal notice before the due date for the renewal premium, and we determine that the circumstances in the preceding paragraph apply, we will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.

b. If we do not receive the premium requested in the second bill by the revised due date, then we will not renew the policy. In that case, the policy will remain as an expired policy as of the expiration date shown on the Declarations Page.

c. In connection with the renewal of this policy, we may ask you during the policy term to recertify, on a Recertification Questionnaire that we will provide you, the rating information used to rate your most recent application for or renewal of insurance.

*F. Conditions Suspending or Restricting Insurance*

We are not liable for loss that occurs while there is a hazard that is increased by any means within your control or knowledge.

*G. Requirements in Case of Loss*

In case of a flood loss to insured property, you must:

1. Give prompt written notice to us.
2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it.
3. Prepare an inventory of damaged property showing the quantity, description, actual cash value, and amount of loss. Attach all bills, receipts, and related documents.
4. Within 60 days after the loss, send us a proof of loss, which is your statement of the amount you are claiming under the policy signed and sworn to by you, and which furnishes us with the following information:
  - a. The date and time of loss;
  - b. A brief explanation of how the loss happened;
  - c. Your interest (for example, “owner”) and the interest, if any, of others in the damaged property;
  - d. Details of any other insurance that may cover the loss;
  - e. Changes in title or occupancy of the insured property during the term of the policy;
  - f. Specifications of damaged buildings and detailed repair estimates;
  - g. Names of mortgagees or anyone else having a lien, charge, or claim against the insured property;
  - h. Details about who occupied any insured building at the time of loss and for what purpose; and
  - i. The inventory of damaged personal property described in G.3 above.
5. In completing the proof of loss, you must use your own judgment concerning the amount of loss and justify that amount.
6. You must cooperate with the adjuster or representative in the investigation of the claim.
7. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help you complete it.
8. We have not authorized the adjuster to approve or disapprove claims or to tell you whether we will approve your claim.
9. At our option, we may accept the adjuster’s report of the loss instead of your proof of loss. The adjuster’s report will include information about your loss and the damages you sustained. You must sign the adjuster’s re-

port. At our option, we may require you to swear to the report.

*H. Our Options After a Loss*

Options we may, in our sole discretion, exercise after loss include the following:

1. At such reasonable times and places that we may designate, you must:
  - a. Show us or our representative the damaged property;
  - b. Submit to examination under oath, while not in the presence of another insured, and sign the same; and
  - c. Permit us to examine and make extracts and copies of:
    - (1) Any policies of property insurance insuring you against loss and the deed establishing your ownership of the insured real property;
    - (2) Condominium association documents including the Declarations of the condominium, its Articles of Association or Incorporation, Bylaws, and rules and regulations; and
    - (3) All books of accounts, bills, invoices and other vouchers, or certified copies pertaining to the damaged property if the originals are lost.
2. We may request, in writing, that you furnish us with a complete inventory of the lost, damaged, or destroyed property, including:
  - a. Quantities and costs;
  - b. Actual cash values or replacement cost (whichever is appropriate);
  - c. Amounts of loss claimed;
  - d. Any written plans and specifications for repair of the damaged property that you can reasonably make available to us; and
  - e. Evidence that prior flood damage has been repaired.
3. If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may:
  - a. Repair, rebuild, or replace any part of the lost, damaged, or destroyed property with material or property of like kind and quality or its functional equivalent; and
  - b. Take all or any part of the damaged property at the value that we agree upon or its appraised value.

*I. No Benefit to Bailee*

No person or organization, other than you, having custody of insured property will benefit from this insurance.

*J. Loss Payment*

1. We will adjust all losses with you. We will pay you unless some other person or entity is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss (or within 90 days after the insurance adjuster files the adjuster’s report signed and sworn to by you in lieu of a proof of loss) and:

- a. We reach an agreement with you;
- b. There is an entry of a final judgment; or
- c. There is a filing of an appraisal award with us, as provided in VIII.M.

2. If we reject your proof of loss in whole or in part you may:

- a. Accept our denial of your claim;
- b. Exercise your rights under this policy; or

c. File an amended proof of loss as long as it is filed within 60 days of the date of the loss.

*K. Abandonment*

You may not abandon damaged or undamaged insured property to us.

*L. Salvage*

We may permit you to keep damaged insured property after a loss, and we will reduce the amount of the loss proceeds payable to you under the policy by the value of the salvage.

*M. Appraisal*

If you and we fail to agree on the actual cash value or, if applicable, replacement cost of the damaged property so as to determine the amount of loss, then either may demand an appraisal of the loss. In this event, you and we will each choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the insured property is located. The appraisers will separately state the actual cash value, the replacement cost, and the amount of loss to each item. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of actual cash value and loss, or if it applies, the replacement cost and loss.

Each party will:

- 1. Pay its own appraiser; and
- 2. Bear the other expenses of the appraisal and umpire equally.

*N. Mortgage Clause*

- 1. The word "mortgagee" includes trustee.
- 2. Any loss payable under Coverage A—Building Property will be paid to any mortgagee of whom we have actual notice, as well as any other mortgagee or loss payee determined to exist at the time of loss, and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.

3. If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

- a. Notifies us of any change in the ownership or occupancy, or substantial change in risk of which the mortgagee is aware;
- b. Pays any premium due under this policy on demand if you have neglected to pay the premium; and
- c. Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so.

4. All terms of this policy apply to the mortgagee.

5. The mortgagee has the right to receive loss payment even if the mortgagee has started foreclosure or similar action on the building.

6. If we decide to cancel or not renew this policy, it will continue in effect for the benefit of the mortgagee only for 30 days after we notify the mortgagee of the cancellation or non-renewal.

7. If we pay the mortgagee for any loss and deny payment to you, we are subrogated to all the rights of the mortgagee granted under the mortgage on the property. Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

*O. Suit Against Us*

You may not sue us to recover money under this policy unless you have complied with all the requirements of the policy. If you do sue, you must start the suit within one year of the date of the written denial of all or part of the claim, and you must file the suit in the United States District Court of the district in which the insured property was located at the time of loss. This requirement applies to any claim that you may have under this policy and to any dispute that you may have arising out of the handling of any claim under the policy.

*P. Subrogation*

Whenever we make a payment for a loss under this policy, we are subrogated to your right to recover for that loss from any other person. That means that your right to recover for a loss that was partly or totally caused by someone else is automatically transferred to us, to the extent that we have paid you for the loss. We may require you to acknowledge this transfer in writing. After the loss, you may not give up our right to recover this money or do anything that would prevent us from recovering it. If you make any claim against any person who caused your loss and recover any money, you must pay us back first before you may keep any of that money.

*Q. Continuous Lake Flood*

1. If an insured building has been flooded by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in an insured loss to the insured building equal to or greater than the building policy limits plus the deductible or the maximum payable under the policy for any one building loss, we will pay you the lesser of these two amounts without waiting for the further damage to occur if you sign a release agreeing:

- a. To make no further claim under this policy;
- b. Not to seek renewal of this policy;
- c. Not to apply for any flood insurance under the Act for property at the described location;
- d. Not to seek a premium refund for current or prior terms.

If the policy term ends before the insured building has been flooded continuously for 90 days, the provisions of this paragraph Q.1 will apply when the insured building suffers a covered loss before the policy term ends.

2. If your insured building is subject to continuous lake flooding from a closed basin lake, you may elect to file a claim under either paragraph Q.1 above or this paragraph Q.2 (A “closed basin lake” is a natural lake from which water leaves primarily through evaporation and whose surface area now exceeds or has exceeded one square mile at any time in the recorded past. Most of the nation’s closed basin lakes are in the western half of the United States where annual evaporation exceeds annual precipitation and where lake levels and surface areas are subject to considerable fluctuation due to wide variations in the climate. These lakes may overtop their basins on rare occasions.) Under this paragraph Q.2, we will pay your claim as if the building is a total loss even though it has not been continuously inundated for 90 days, subject to the following conditions:

- a. Lake floodwaters must damage or imminently threaten to damage your building.
- b. Before approval of your claim, you must:
  - (1) Agree to a claim payment that reflects your buying back the salvage on a negotiated basis; and
  - (2) Grant the conservation easement contained in FEMA’s “Policy Guidance for Closed Basin Lakes,” to be recorded in the office of the local recorder of deeds. FEMA, in consultation with the community in which the property is located, will identify on a map an area or areas of special consideration (ASC) in which there is a potential for flood damage from continuous lake flooding. FEMA will give the community the agreed-upon map showing the ASC. This easement will only apply to that portion of the property in the ASC. It will allow certain

agricultural and recreational uses of the land. The only structures that it will allow on any portion of the property within the ASC are certain simple agricultural and recreational structures. If any of these allowable structures are insurable buildings under the NFIP and are insured under the NFIP, they will not be eligible for the benefits of this paragraph Q.2. If a U.S. Army Corps of Engineers certified flood control project or otherwise certified flood control project later protects the property, FEMA will, upon request, amend the ASC to remove areas protected by those projects. The restrictions of the easement will then no longer apply to any portion of the property removed from the ASC; and

(3) Comply with paragraphs Q.1.a through Q.1.d above.

c. Within 90 days of approval of your claim, you must move your building to a new location outside the ASC. FEMA will give you an additional 30 days to move if you show there is sufficient reason to extend the time.

d. Before the final payment of your claim, you must acquire an elevation certificate and a floodplain development permit from the local floodplain administrator for the new location of your building.

e. Before the approval of your claim, the community having jurisdiction over your building must:

(1) Adopt a permanent land use ordinance, or a temporary moratorium for a period not to exceed 6 months to be followed immediately by a permanent land use ordinance, that is consistent with the provisions specified in the easement required in paragraph Q.2.b above;

(2) Agree to declare and report any violations of this ordinance to FEMA so that under Section 1316 of the National Flood Insurance Act of 1968, as amended, flood insurance to the building can be denied; and

(3) Agree to maintain as deed-restricted, for purposes compatible with open space or agricultural or recreational use only, any affected property the community acquires an interest in. These deed restrictions must be consistent with the provisions of paragraph Q.2.b above, except that even if a certified project protects the property, the land use restrictions continue to apply if the property was acquired under the Hazard Mitigation Grant Program or the Flood Mitigation Assistance Program. If a non-profit land trust organization receives the property as a donation, that organization must maintain the property as deed-restricted, consistent with the provisions of paragraph Q.2.b above.

f. Before the approval of your claim, the affected State must take all action set forth in FEMA’s “Policy Guidance for Closed Basin Lakes.”

g. You must have NFIP flood insurance coverage continuously in effect from a date established by FEMA until you file a claim

under this paragraph Q.2. If a subsequent owner buys NFIP insurance that goes into effect within 60 days of the date of transfer of title, any gap in coverage during that 60-day period will not be a violation of this continuous coverage requirement. For the purpose of honoring a claim under this paragraph Q.2, we will not consider to be in effect any increased coverage that became effective after the date established by FEMA. The exception to this is any increased coverage in the amount suggested by your insurer as an inflation adjustment.

h. This paragraph Q.2 will be in effect for a community when the FEMA Regional Administrator for the affected region provides to the community, in writing, the following:

- (1) Confirmation that the community and the State are in compliance with the conditions in paragraphs Q2.e and Q.2.f above; and
- (2) The date by which you must have flood insurance in effect.

*R. Loss Settlement*

1. Introduction

This policy provides three methods of settling losses: Replacement Cost, Special Loss Settlement, and Actual Cash Value. Each method is used for a different type of property, as explained in a-c below.

a. Replacement Cost Loss Settlement, described in R.2 below applies to buildings other than manufactured homes or travel trailers.

b. Special Loss Settlement, described in R.3 below applies to a residential condominium building that is a travel trailer or a manufactured home.

c. Actual Cash Value Loss Settlement applies to all other property insured under this policy, as outlined in R.4. below.

2. Replacement Cost Loss Settlement

a. We will pay to repair or replace a damaged or destroyed building, after application of the deductible and without deduction for depreciation, but not more than the least of the following amounts:

- (1) The amount of insurance in this policy that applies to the building;
- (2) The replacement cost of that part of the building damaged, with materials of like kind and quality, and for like occupancy and use; or
- (3) The necessary amount actually spent to repair or replace the damaged part of the building for like occupancy and use.

b. We will not be liable for any loss on a Replacement Cost Coverage basis unless and until actual repair or replacement of the damaged building or parts thereof, is completed.

c. If a building is rebuilt at a location other than the described location, we will pay no more than it would have cost to repair or rebuild at the described location, sub-

ject to all other terms of Replacement Cost Loss Settlement.

3. Special Loss Settlement

a. The following loss settlement conditions apply to a residential condominium building that is:

- (1) A manufactured home or travel trailer, as defined in II.C.6.b and c; and
- (2) at least 16 feet wide when fully assembled and has at least 600 square feet within its perimeter walls when fully assembled.

b. If such a building is totally destroyed or damaged to such an extent that, in our judgment, it is not economically feasible to repair, at least to its pre-damaged condition, we will, at our discretion, pay the least of the following amounts:

- (1) The lesser of the replacement cost of the manufactured home or travel trailer or 1.5 times the actual cash value; or
- (2) The building limit of liability shown on your Declarations Page.

c. If such a manufactured home or travel trailer is partially damaged and, in our judgment, it is economically feasible to repair it to its pre-damaged condition, we will settle the loss according to the Replacement Cost Loss Settlement conditions in R.2 above.

4. Actual Cash Value Loss Settlement

a. The types of property noted below are subject to actual cash value loss settlement:

- (1) Personal property;
- (2) Insured property abandoned after a loss and that remains as debris at the described location;
- (3) Outside antennas and aerials, awnings, and other outdoor equipment;
- (4) Carpeting and pads;
- (5) Appliances; and
- (6) A manufactured home or mobile home or a travel trailer as defined in II.C.6.b or c that does not meet the conditions for special loss settlement in R.3 above.

b. We will pay the least of the following amounts:

- (1) The applicable amount of insurance under this policy;
- (2) The actual cash value, as defined in II.C.2; or
- (3) The amount it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss.

IX. POLICY NULLIFICATION, CANCELLATION, AND NON-RENEWAL

*A. Policy Nullification for Fraud, Misrepresentation, or Making False Statements*

1. With respect to all insureds under this policy, this policy is void and has no legal force and effect if at any time, before or after a loss, you or any other insured or your

agent have, with respect to this policy or any other NFIP insurance:

- a. Concealed or misrepresented any material fact or circumstance;
  - b. Engaged in fraudulent conduct; or
  - c. Made false statements.
2. Policies voided under A.1 cannot be renewed or replaced by a new NFIP policy.
  3. Policies are void as of the date the acts described in A.1.above were committed.
  4. Fines, civil penalties, and imprisonment under applicable Federal laws may also apply to the acts of fraud or concealment described above.

*B. Policy Nullification for Reasons Other Than Fraud*

1. This policy is void from its inception, and has no legal force or effect, if:

- a. The property listed on the application is located in a community that was not participating in the NFIP on this policy's inception date and did not join or reenter the program during the policy term and before the loss occurred;
- b. The property listed on the application is otherwise not eligible for coverage under the NFIP at the time of the initial application;
- c. You never had an insurable interest in the property listed on the application;
- d. You provided an agent with an application and payment, but the payment did not clear; or
- e. We receive notice from you, prior to the policy effective date, that you have determined not to take the policy and you are not subject to a requirement to obtain and maintain flood insurance pursuant to any statute, regulation, or contract.

2. In such cases, you will be entitled to a full refund of all premium, fees, and surcharges received. However, if a claim was paid for a policy that is void, the claim payment must be returned to FEMA or offset from the premiums to be refunded before the refund will be processed.

*C. Cancellation of the Policy by You*

1. You may cancel this policy in accordance with the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

2. If you cancel this policy, you may be entitled to a full or partial refund of premium, surcharges, or fees under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

*D. Cancellation of the Policy by Us*

1. Cancellation for Underpayment of Amounts Owed on This Policy. This policy will be cancelled, pursuant to VIII.D.2, if it is determined that the premium amount you paid is not sufficient to buy any amount of coverage, and you do not pay the additional amount of premium owed to increase the

coverage to the originally requested amount within the required time period.

2. Cancellation Due to Lack of an Insurable Interest.

a. If you no longer have an insurable interest in the insured property, we will cancel this policy. You will cease to have an insurable interest if:

(1) For building coverage, the building was sold, destroyed, or removed.

(2) For contents coverage, the contents were sold or transferred ownership, or the contents were completely removed from the described location.

b. If your policy is cancelled for this reason, you may be entitled to a partial refund of premium under the applicable rules and regulations of the NFIP.

3. Cancellation of Duplicate Policies.

a. Except as allowed under Article I.F, your property may not be insured by more than one NFIP policy, and payment for damages to your property will only be made under one policy.

b. Except as allowed under Article I.G, if the property is insured by more than one NFIP policy, we will cancel all but one of the policies. The policy, or policies, will be selected for cancellation in accordance with 44 CFR 62.5 and the applicable rules and guidance of the NFIP.

c. If this policy is cancelled pursuant to IX.D.3.b, you may be entitled to a full or partial refund of premium, surcharges, or fees under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

4. Cancellation Due to Physical Alteration of Property.

a. If the insured building has been physically altered in such a manner that it is no longer eligible for flood insurance coverage, we will cancel this policy.

b. If your policy is cancelled for this reason, you may be entitled to a partial refund of premium under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

*E. Non-Renewal of the Policy by Us*

Your policy will not be renewed if:

1. The community where your insured property is located is suspended or stops participating in the NFIP;

2. Your building is otherwise ineligible for flood insurance under the Act;

3. You have failed to provide the information we requested for the purpose of rating the policy within the required deadline.

**X. LIBERALIZATION CLAUSE**

If we make a change that broadens your coverage under this edition of our policy, but does not require any additional premium, then that change will automatically apply to your insurance as of the date we implement

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the change, provided that this implementation date falls within 60 days before or during the policy term stated on the Declarations Page.

### XI. WHAT LAW GOVERNS

This policy and all disputes arising from the insurer's policy issuance, policy administration, or the handling of any claim under the policy are governed exclusively by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*), and Federal common law.

*In Witness Whereof*, we have signed this policy below and hereby enter into this Insurance Agreement.

Federal Insurance and Mitigation Administration

[85 FR 43976, July 20, 2020; 86 FR 10029, Feb. 18, 2021; 86 FR 31178, June 11, 2021; 86 FR 48511, Aug. 31, 2021]

## PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

### Subpart A—Issuance of Policies

Sec.

- 62.1 Purpose of part.
- 62.2 Definitions.
- 62.3 Servicing agent.
- 62.4 Limitations on sale of policies.
- 62.5 Nullifications, cancellations, and premium refunds.
- 62.6 Brokers and agents writing NFIP policies through the NFIP direct servicing agent.

### Subpart B—Claims Adjustment, Claims Appeals, and Judicial Review

- 62.20 Claims appeals.
- 62.21 Claims adjustment.
- 62.22 Judicial review.

### Subpart C—Write-Your-Own (WYO) Companies

- 62.23 WYO Companies authorized.
- 62.24 WYO participation criteria.

AUTHORITY: 42 U.S.C. 4001 *et seq.*; 6 U.S.C. 101 *et seq.*

SOURCE: 43 FR 2573, Jan. 17, 1978, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

### Subpart A—Issuance of Policies

#### § 62.1 Purpose of part.

The purpose of this part is to set forth the manner in which flood insurance under the Program is made avail-

able to the general public in those communities designated as eligible for the sale of insurance under part 64 of this subchapter, and to prescribe the general method by which the Federal Insurance Administrator exercises his/her responsibility regarding the manner in which claims for losses are paid.

#### § 62.2 Definitions.

The definitions set forth in part 59 of this subchapter are applicable to this part.

#### § 62.3 Servicing agent.

(a) Pursuant to sections 1345 and 1346 of the Act, the Federal Insurance Administrator may enter into an agreement with a servicing agent to authorize it to assist in issuing flood insurance policies under the Program in communities designated by the Federal Insurance Administrator and to accept responsibility for delivery of policies and payment of claims for losses as prescribed by and at the discretion of the Federal Insurance Administrator.

(b) The servicing agent will arrange for the issuance of flood insurance to any person qualifying for such coverage under parts 61 and 64 of this subchapter who submits an application to the servicing agent in accordance with the terms and conditions of the contract between the Agency and the servicing agent.

[85 FR 43985, July 20, 2020]

#### § 62.4 Limitations on sale of policies.

(a) The servicing agent shall be deemed to have agreed, as a condition of its contract that it shall not offer flood insurance under any authority or auspices in any amount within the maximum limits of coverage specified in § 61.6 of this subchapter, in any area the Federal Insurance Administrator designates in part 64 of this subchapter as eligible for the sale of flood insurance under the Program, other than in accordance with this part, and the Standard Flood Insurance Policy.

(b) The agreement and all activities thereunder are subject to title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and to the applicable Federal regulations and requirements issued from time to time pursuant thereto. No



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person shall be excluded from participation in, denied the benefits of, or subjected to discrimination under the Program, on the ground of race, color, sex, creed or national origin. Any complaint or information concerning the existence of any such unlawful discrimination in any matter within the purview of this part should be referred to the Federal Insurance Administrator.

[43 FR 2573, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44544, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

### § 62.5 Nullifications, cancellations, and premium refunds.

(a) *Nullification*—(1) *Property ineligible at time of application.* FEMA will void a policy for a property that was not eligible for coverage at the time of the initial application from the commencement of the policy. FEMA must pay the policyholder a refund of all premium, fees, and surcharges paid from the date of commencement of the policy, but no more than 5 years prior to the date of receipt of verifiable evidence that the property was ineligible for coverage at the time of the initial application. If FEMA paid a claim for an ineligible property, the policyholder must return the claim payment to FEMA, or offset the payment from the premiums to be refunded, before FEMA will process the refund.

(2) *Property later becomes ineligible.* FEMA may not renew a policy for a property that was eligible for coverage at the time of the initial application, but later became ineligible for coverage. In such instances, FEMA must nullify the policy from the first renewal date after the property became ineligible. FEMA must refund all premium, fees, and surcharges paid from the first renewal date after the property became ineligible, but no more than 5 years prior to the date of receipt of verifiable evidence that the property was eligible for coverage at the time of the initial application, but later became ineligible for coverage. If FEMA paid a claim for a property after it became ineligible for coverage, the policyholder must return the claim payment to FEMA or FEMA must offset the amount of claim payment from the

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premiums to be refunded before FEMA may process the refund.

(3) *Nullification prior to policy effective date.* If FEMA nullifies a policy prior to the policy effective date, that policy will be void from the commencement of the nullified policy term. In such case, FEMA will refund all premium, fees, and surcharges paid for the current policy term only. If FEMA paid a claim for a policy that was improperly issued, the policyholder must return the claim payment to FEMA or FEMA must offset the amount of claim payment from the premiums to be refunded before the NFIP may process the refund.

(b) *Cancellation due to lack of an insurable interest.* If the policyholder had an insurable interest, but no longer has an insurable interest, in the insured property, FEMA must cancel the policy on the insured property. If FEMA cancels a policy for this reason, FEMA must refund the policyholder a pro rata share of the premium from the date the policyholder lost an insurable interest in the property, but no more than 5 years prior to the date of the cancellation request. FEMA must pay the policyholder a refund of all fees or surcharges for any full policy term during which the policyholder had no insurable interest in the insured property, but no more than 5 years prior to the date of the cancellation request. A policyholder ceases to have an insurable interest if:

(1) For building coverage, the building was sold, destroyed, or removed.

(2) For contents coverage, the contents were sold or transferred, or the contents were completely removed from the described location.

(c) *No insurance coverage requirement.* A policyholder may cancel a policy if the policyholder was subject to a requirement by a lender, loss payee, or other Federal agency to obtain and maintain flood insurance pursuant to statute, regulation, or contract, but there is no longer such a requirement. The policyholder will receive a refund of a pro rata share of the premium for the current policy term only, calculated from the date of the cancellation request, but will not receive a refund of any fees or surcharges.

(d) *Establishment of a common expiration date.* A policyholder may purchase a new policy and cancel an existing policy in order to establish a common expiration date between flood insurance coverage and other coverage. The policyholder will receive a refund of a pro rata share of the premium calculated from the effective date of the new policy to the end date of the previous policy. The policyholder will not receive a refund of any fees or surcharges. In order to rewrite and cancel the policy, the following conditions must apply:

(1) The new policy must be written with the same company for the same or higher amount of coverage. If the policy is written for a higher amount or different type of coverage, the waiting period in §61.11 will apply.

(2) The other insurance coverage for which the common expiration date is being established must be for coverage on the same building that is insured by the flood policy being cancelled and rewritten.

(3) The coverage for the new policy must be effective prior to cancelling the existing policy.

(e) *Cancellation or nullification of duplicate NFIP policies—(1) Generally.* (i) Except as described in 44 CFR 62.5(e)(2), if an insured property is insured by more than one NFIP policy not in accordance with applicable regulations and the Standard Flood Insurance Policy, FEMA must nullify the policy with the later effective date. The policy with the earlier effective date will continue. The policyholder will receive a pro rata refund of all premium for the nullified policy from the effective date of the nullified policy, but no more than 5 years prior to the date of receipt of verifiable evidence that the insured property is insured by more than one NFIP policy. The policyholder will receive a refund of all fees or surcharges for any full policy term during which the policyholder was insured by more than one policy, but no more than 5 years prior to the date of receipt of verifiable evidence that the insured property is insured by more than one NFIP policy.

(ii) If both policies have the same policy effective date, the policyholder may choose which policy will remain in

effect, and the policyholder will receive a refund of all premium, fees, and surcharges for the cancelled policy from the effective date of the cancelled policy, but no more than 5 years prior to the date of receipt of verifiable evidence that the insured property is insured by more than one NFIP policy.

(2) *Exceptions.* In the following cases, the policyholder may maintain the policy with the later policy effective date while cancelling the policy with the earlier policy effective date:

(i) The policy with the earlier effective date has expired for more than 30 days. In such cases, the policyholder will receive a refund of a pro rata share of the premium, calculated from the effective date of the policy with the later effective date to the end date of the policy with the earlier effective date, but no more than 5 years prior to the date of cancellation. The policyholder will also receive a refund of all fees and surcharges for any full policy terms during which the insured property is insured by both policies, but no more than 5 years prior to the date of the cancellation request.

(ii) The policy with the earlier policy effective date is a Group Flood Insurance Policy. In such cases, there will be no refund of any premium, fees, or surcharges.

(iii) The policy with the earlier effective date is cancelled to establish a common policy expiration date pursuant to paragraph (d) of this section. In such cases, refunds will be provided in accordance with paragraph (d) of this section.

(iv) The policy with the earlier effective date was force placed pursuant to 42 U.S.C. 4012a using the NFIP's Mortgage Portfolio Protection Program. In such cases, the policyholder will receive a refund of the pro rata share of the premium calculated from the policy effective date of the new policy to the expiration date of the cancelled policy. There will be no refund of any fees or surcharges.

(v) The policy with the earlier effective date is a Dwelling Form policy with building coverage on a condominium unit that is also insured by a Residential Condominium Building Association Policy (RCBAP) that is

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issued at the statutory maximum coverage limit for buildings. In such cases, the policyholder will receive a refund of a pro rata share of the premium for the building coverage issued under the Dwelling Form policy, as calculated from the effective date of the RCBAP policy to the end date of the Dwelling Form policy. The policyholder will also receive a refund of all fees and surcharges for any full policy terms during which the condominium unit is insured by both a Dwelling Form policy and an RCBAP in which the coverage equals the statutory maximum coverage limits for buildings, but no more than 5 years prior to the date of the cancellation request.

(f) *Other cancellations and nullifications.* Except as indicated below, FEMA will not refund premiums, assessments, fees, or surcharges if FEMA cancels a policy for any of the following reasons:

(1) *Fraud.* FEMA will cancel a policy for fraud committed by the policyholder or the agent. FEMA may cancel a policy for misrepresentation of a material fact by the policyholder or agent. Such cancellations will take effect as of the date of the fraudulent act or material misrepresentation of fact.

(2) *Administrative cancellation.* FEMA may cancel and rewrite a policy to correct an administrative error, such as when the policy is written with the wrong policy effective date. In such cases, FEMA will apply any premium, assessments, fees, or surcharges to the new policy. FEMA will refund any excess premium, fees, surcharges, or assessments paid.

(3) *Nullification for properties ineligible due to physical alteration of property.* A policy insuring a building or its contents, or both, may be cancelled if the building has been physically altered in such a manner that the building and its contents are no longer eligible for flood insurance coverage. The policyholder will receive a refund of a pro rata share of the premium for the current policy term only, but the policyholder will not receive a refund of any fees or surcharges.

[85 FR 43985, July 20, 2020]

§ 62.6 Brokers and agents writing NFIP policies through the NFIP Direct Servicing Agent.

(a) A broker or agent selling policies of flood insurance placed with the NFIP at the offices of its servicing agent must be duly licensed by the state insurance regulatory authority in the state in which the property is located.

(b) The earned commission which will be paid to any property or casualty insurance agent or broker, with respect to each policy or renewal the agent duly procures on behalf of the insured, in connection with policies of flood insurance placed with the NFIP at the offices of its servicing agent, but not with respect to policies of flood insurance issued pursuant to subpart C of this part, will not be less than \$10 and is computed as follows:

(1) In the case of a new or renewal policy, the following commissions shall apply based on the total premiums paid for the policy term:

Table with 2 columns: Premium amount, Commissions (percent). Rows: First \$2,000 of Premium (15%), Excess of \$2,000 (5%).

(2) In the case of mid-term increases in amounts of insurance added by endorsements, the following commissions shall apply based on the total premiums paid for the increased amounts of insurance:

Table with 2 columns: Premium amount, Commissions (percent). Rows: First \$2,000 of Premium (15%), Excess of \$2,000 (5%).

(c) Any refunds of premiums authorized under this subchapter shall not affect a previously earned commission; and no agent shall be required to return that earned commission, unless the refund is made to establish a common policy term anniversary date with other insurance providing coverage against loss by other perils in which case a return of commission will be required by the agent on a pro rata basis. In such cases, the policy shall be immediately rewritten for a new term with the same amount(s) of coverage and with premium calculated at the then

current rate and, as to return premium, returned, pro rata, to the insured based on the former policy's premium rate.

[46 FR 13515, Feb. 23, 1981, as amended at 53 FR 15221, Apr. 28, 1988; 57 FR 19541, May 7, 1992; 86 FR 10029, Feb. 18, 2021]

**Subpart B—Claims Adjustment, Claims Appeals, and Judicial Review**

**§ 62.20 Claims appeals.**

(a) *Definitions.*

*Appeal decision* means the disposition of the appeal by the Federal Insurance Administrator.

*Decision* means the insurer's final claim determination, which is the insurer's written denial, in whole or in part, of the insured's claim.

(b) *Appeal.* A National Flood Insurance Program (NFIP) policyholder, whether insured by a participating Write-Your-Own (WYO) Company or directly by the Federal Emergency Management Agency (FEMA), may appeal a *decision*, including a determination of any insurance agent, adjuster, insurance company, or any FEMA employee or contractor with respect to a claim, proof of loss, and loss estimate. In order to file an appeal, the insured must comply with all requirements set out in the Standard Flood Insurance Policy (SFIP). This appeals process is available after the issuance of the insurer's final claim determination, which is the insurer's written denial, in whole or in part, of the insured's claim. Once the final claim determination is issued, an insured may appeal any action taken by the insurer, FEMA employee, FEMA contractor, insurance adjuster, or insurance agent.

(c) *Limitations on Appeals.* The appeals process is intended to resolve claim issues and is not intended to grant coverage or limits that are not provided by the SFIP. Filing an appeal does not waive any of the requirements for perfecting a claim under the SFIP or extend any of the time limitations set forth in the SFIP.

(1) Disputes that are or have been subject to appraisal as provided for in the SFIP cannot be appealed under this section.

(2) When a policyholder files an appeal on any issue, that issue is no longer subject to resolution by appraisal or other pre-litigation remedies.

(d) *Litigation preclusion.* An insured who files suit against an insurer on the flood insurance claim issue is prohibited from filing an appeal under this section. All appeals submitted for decision but not yet resolved shall be terminated upon notice of the commencement of litigation regarding the claim.

(e) *Procedures.* To pursue an appeal under this section a policyholder must:

(1) Submit a written appeal to FEMA within 60 days from the date of the decision.

(2) Provide a copy of the insurer's written denial, in whole or in part, of the claim;

(3) Identify relevant policy and claim information and state the basis for the appeal; and

(4) Submit relevant documentation to support the appeal. The policyholder should submit only the documentation that pertains to his or her claim. The following are examples of the kinds of documentation which FEMA will require to adjudicate the appeal: A copy of the proof of loss submitted to the insurer as required in the policy; room by room itemized estimates from the adjuster (includes contractors' estimates), detailing unit cost and quantities for the items needing repair or replacement; replacement cost proofs of loss; Preliminary Report; Final Report; detailed damaged personal property inventories that include the approximate age of the items; completed Mobile Home Worksheet; Mobile Home Title, including Salvage Titles; real estate appraisals that exclude land values; advance payment information; clear photographs (exterior and interior) confirming damage resulted from direct physical loss by or from flood; proof of prior repair; evidence of insurance and policy information, *i.e.* declarations page; Elevation Certificate, if the risk is an elevated building; the community's determination made concerning substantial damage; information regarding substantial improvement; zone determinations; pre-loss and post-loss inventories; financial

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statements; tax records, lease agreements, sales contracts, settlement papers, deed, *etc.*; emergency (911) address change information; salvage information (proceeds and sales); condominium association by-laws; proof of other insurance, including homeowners or wind policies and any claim information submitted to the other companies; Waiver, Letter of Map Revision (LOMR) or Letter of Map Amendment (LOMA) information; paid receipts and invoices including cancelled checks that support an insured's out-of-pocket expenses pertaining to the claim; underwriting decisions; architectural plans and drawings; death certificates; a copy of the will; divorce decree, power of attorney; current lienholder information; current loss payee information; paid receipts and invoices documenting damaged stock; detailed engineering reports specifically addressing flood-related damage and pre-existing damage; engineering surveys; market values; documentation of Flood Insurance Rate Maps (FIRM) dates; documentation reflecting date(s) of construction and substantial improvement; loan documents including closings; evidence of insurability as a Residential Condominium Association; Franchise Agreements; letters of representation, *i.e.* attorneys and public adjusters; any assignment of interest in a claim; and, any other pertinent information which FEMA may request in processing a claim.

(f) *Appeal resolution.* (1) FEMA will acknowledge, in writing, receipt of a policyholder's appeal and include in the acknowledgement contact information for a FEMA point of contact who can advise the policyholder as to the status of his or her claim.

(2) The *Federal Insurance Administrator* will review the appeal documents and may notify the policyholder in writing of the need for additional information. A request for the additional information will include the date by which the information must be provided, and shall in no case be less than 14 calendar days. Failure to provide the requested information in full, or to request an extension by the due date, may result in a dismissal of the appeal. A re-inspection of the policyholder's property may be conducted at the dis-

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cretion of the *Federal Insurance Administrator* to gather more information. The *Federal Insurance Administrator* will ensure that all information necessary to rule on the appeal has been provided prior to making an *appeal decision*.

(3) The *Federal Insurance Administrator* will review the appeal documents, including any reinspection report, if appropriate. The *Federal Insurance Administrator* will provide specific information on what grounds the claim was denied initially. The *Federal Insurance Administrator* will provide an *appeal decision* in writing to the policyholder and insurer within 90 days from the date that all information has been submitted by the policyholder and include specific information for the resolution of the appeal. No further administrative review will be provided to the insured.

(4) A policyholder who does not agree with FEMA's appeal decision should refer to the SFIP, for options for further action (*see* Part 61, App. A(1) VII.R., Part 61, App. A(2) VII.R., and Part 61, App. A(3) VIII.R.). The one-year period to file suit commences with the written denial from the insurer and is not extended by the appeals process.

[71 FR 30298, May 26, 2006, as amended at 71 FR 60438, Oct. 13, 2006; 74 FR 56123, Oct. 30, 2009; 81 FR 20258, Apr. 7, 2016]

### § 62.21 Claims adjustment.

(a) In accordance with the Agreement, the servicing agent shall arrange for the prompt adjustment and settlement and payment of all claims arising from policies of insurance issued under the program. Investigation of such claims may be made through the facilities of its subcontractors or insurance adjustment organizations, to the extent required and appropriate for the expeditious processing of such claims.

(b) All adjustment of losses and settlements of claims shall be made in accordance with the terms and conditions of the policy and parts 61 and 62 of this subchapter.

### § 62.22 Judicial review.

(a) Upon the disallowance by the *Federal Insurance and Mitigation Administration*, a participating Write-Your-Own Company, or the servicing agent

of any claim on grounds other than failure to file a proof of loss, or upon the refusal of the claimant to accept the amount allowed upon any claim after appraisal pursuant to policy provisions, the claimant within one year after the date of mailing by the Federal Insurance and Mitigation Administration, the participating Write-Your-Own Company, or the servicing agent of the notice of disallowance or partial disallowance of the claim may, pursuant to 42 U.S.C. 4072, institute an action on such claim against the insurer only in the U.S. District Court for the district in which the insured property or the major portion thereof shall have been situated, without regard to the amount in controversy.

(b) Service of process for all judicial proceedings where a claimant is suing the Administrator of FEMA pursuant to 42 U.S.C. 4071 shall be made upon the appropriate United States Attorney, the Attorney General of the United States, and the Federal Insurance Administrator of the Federal Emergency Management Agency.

[43 FR 2573, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, as amended at 47 FR 43061 Sept. 30, 1982; 49 FR 33879, Aug. 27, 1984; 69 FR 45610, July 30, 2004; 85 FR 43986, July 20, 2020]

**Subpart C—Write-Your-Own (WYO) Companies**

**§ 62.23 WYO Companies authorized.**

(a) Pursuant to section 1345 of the Act, the Federal Insurance Administrator may enter into arrangements with individual private sector property insurance companies or other insurers, such as public entity risk sharing organizations. Under these arrangements, such companies or other insurers may offer flood insurance coverage under the program to eligible applicants. Such WYO companies may offer flood coverage to policyholders insured by them under their own property business lines of insurance, pursuant to their customary business practices, including their usual arrangements with agents and producers. WYO companies may sell flood insurance coverage in any State in which the WYO company is authorized to engage in the business of property insurance. Other WYO in-

surers may offer flood insurance coverage to their pool members insured by them under their own property business lines of coverage, pursuant to their customary business practices. These other WYO insurers may provide flood coverage in any State that has authorized the other insurer to provide property coverage to its members. Arrangements entered into by WYO companies or other insurers under this subpart must be in the form and substance of the standard arrangement, titled “Financial Assistance/Subsidy Arrangement.” Each year, at least six months before the effective date of the “Financial Assistance/Subsidy Arrangement,” FEMA must publish in the FEDERAL REGISTER and make available to the WYO companies the terms for subscription or re-subscription to the “Financial Assistance/Subsidy Arrangement.”

(b) Any duly authorized insurer so engaged in the Program shall be a WYO Company. (The term “WYO Company” shall include the following kinds of insurers: Public entity risk-sharing organizations, an association of local governments, a State association of political subdivisions, a State-sponsored municipal league, and other intergovernmental risk-sharing pool for covering public entity structures.)

(c) A WYO Company is authorized to arrange for the issuance of flood insurance in any amount within the maximum limits of coverage specified in § 61.6 of this subchapter, as Insurer, to any person qualifying for such coverage under parts 61 and 64 of this subchapter who submits an application to the WYO Company; coverage shall be issued under the Standard Flood Insurance Policy.

(d) A WYO Company issuing flood insurance coverage shall arrange for the adjustment, settlement, payment and defense of all claims arising from policies of flood insurance it issues under the Program, based upon the terms and conditions of the Standard Flood Insurance Policy.

(e) In carrying out its functions under this subpart, a WYO Company shall use its own customary standards, staff and independent contractor resources, as it would in the ordinary and necessary conduct of its own business

affairs, subject to the Act and regulations prescribed by the Federal Insurance Administrator under the Act.

(f) To facilitate the marketing of flood insurance coverage under the Program to policyholders of WYO Companies, the Federal Insurance Administrator will enter into arrangements with such companies whereby the Federal Government will be a guarantor in which the primary relationship between the WYO Company and the Federal Government will be one of a fiduciary nature, i.e., to assure that any taxpayer funds are accounted for and appropriately expended. In furtherance of this end, the Federal Insurance Administrator has established “A Plan to Maintain Financial Control for Business Written Under the Write Your Own Program.”

(g) A WYO Company shall act as a fiscal agent of the Federal Government, but not as its general agent. WYO Companies are solely responsible for their obligations to their insured under any flood insurance policies issued under agreements entered into with the Federal Insurance Administrator, such that the Federal Government is not a proper party defendant in any lawsuit arising out of such policies.

(h) To facilitate the underwriting of flood insurance coverage by WYO Companies, the following procedures will be used by WYO Companies:

(1) To expedite business growth, the WYO Company will encourage its present property insurance policyholders to purchase flood insurance through the NFIP WYO Program.

(2) To conform its underwriting practices to the underwriting rules and rates in effect as to the NFIP, the WYO Company will establish procedures to carry out the NFIP rating system and provide its policyholders with the same coverage as is afforded under the NFIP.

(3) The WYO Company may follow its customary billing practices to meet the Federal rules on the presentment of premium and net premium deposits to a Letter of Credit bank account authorized by the Federal Insurance Administrator and reduction of coverage when an underpayment is discovered.

(4) The WYO Company is expected to meet the recording and reporting re-

quirements of the WYO Transaction Record Reporting and Processing Plan. Transactions reported by the WYO Company under the WYO Transaction Record Reporting and Processing Plan will be analyzed by the NFIP Bureau & Statistical Agent. A monthly report will be submitted to the WYO Company and the FIA. The analysis will cover the timeliness of WYO Company submissions, the disposition of transactions that have not passed systems edits and the reconciliation of the totals generated from transaction reports with those submitted on the WYO Company’s reconciliation reports.

(5) If a WYO Company rejects an application from an agent or a producer, the agent or producer shall be notified so that the business can be placed through the NFIP Servicing Agent, or another WYO Company.

(6) Flood insurance coverage will be issued by the WYO Company on a separate policy form and will not be added, by endorsement, to the Company’s other property insurance forms.

(7) Premium payment plans can be offered by the WYO Company so long as the net premium depository requirements specified under the NFIP/WYO Program accounting procedures are met. A cancellation by the WYO Company for non-payment of premium will not produce a pro rata return of the net premium deposit to the WYO Company.

(8) NFIP business will not be assumed by the WYO Companies at any time other than at renewal time, at which time the insurance producer may submit the business to the WYO Company as new business. However, it is permissible to cancel and rewrite flood policies to obtain concurrent expiration dates with other policies covering the property.

(i) To facilitate the adjustment of flood insurance claims by WYO Companies, the following procedures will be used by WYO Companies.

(1) WYO companies will adjust claims in accordance with general company standards, guided by NFIP Claims manuals. The Arrangement provides that claim adjustments shall be binding upon the FIA.

(2) The WYO Company may use its staff adjusters, independent adjusters,

or both. It is important that the Company's Claims Department verifies the correctness of the coverage interpretations and reasonableness of the payments recommended by the adjusters.

(3) An established loss adjustment Fee Schedule is part of the Arrangement and cannot be changed during an Arrangement year. This is the expense allowance to cover costs of independent or WYO Company adjusters.

(4) The normal catastrophe claims procedure currently operated by a WYO Company should be implemented in the event of a claim catastrophe situation. Flood claims will be handled along with other catastrophe claims.

(5) It will be the WYO Company's responsibility to try to detect fraud (as it does in the case of property insurance) and coordinate its findings with FIA.

(6) Pursuant to the Arrangement, the responsibility for defending claims will be upon the Write Your Own Company and defense costs will be part of the unallocated or allocated claim expense allowance, depending on whether a staff counsel or an outside attorney handles the defense of the matter. Claims in litigation will be reported by WYO Companies to FIA upon joinder of issue and FIA may inquire and be advised of the disposition of such litigation.

(7) The claim reserving procedures of the individual WYO Company can be used.

(8) Regarding the handling of subrogation, if a WYO Company prefers to forego pursuit of subrogation recovery, it may do so by referring the matter, with a complete copy of the claim file, to FIA. Subrogation initiatives may be truncated at any time before suit is commenced (after commencing an action, special arrangement must be made). FIA, after consultation with FEMA's Office of the Chief Counsel (OCC), will forward the cause of action to OCC or to the NFIP Bureau and Statistical Agent for prosecution. Any funds received will be deposited, less expenses, in the National Flood Insurance Fund.

(9) Special allocated loss adjustment expenses will include such items as: nonstaff attorney fees, engineering fees and special investigation fees over and above normal adjustment practices.

(10) The customary content of claim files will include coverage verification, normal adjuster investigations, including statements where necessary, police reports, building reports and investigations, damage verification and other documentation relevant to the adjustment of claims under the NFIP's and the WYO Company's traditional claim adjustment practices and procedures. The WYO Company's claim examiners and managers will supervise the adjustment of flood insurance claims by staff and independent claims adjusters.

(11) The WYO Company will extend reasonable cooperation to FEMA's Office of the Chief Counsel on matters pertaining to litigation and subrogation, under paragraph (i)(8) of this section.

(j) To facilitate establishment of financial controls under the WYO Program, the WYO Company will:

(1) Have a biennial audit of the flood insurance financial statements conducted by an independent Certified Public Accountant (CPA) firm at the Company's expense to ensure that the financial data reported to us accurately represents the flood insurance activities of the Company. The CPA firm must conduct its audits in accordance with the generally accepted auditing standards (GAAS) and Government Auditing Standards issued by the Comptroller General of the United States (commonly known as "yellow book" requirements). The Company must file with us (the Federal Insurance Administration) a report of the CPA firm's detailed biennial audit, and, after our review of the audit report, we will convey our determination to the Standards Committee.

(2) Participate in a WYO Company/FIA Operation review. We will conduct a review of the WYO Company's flood insurance claims, underwriting, customer service, marketing, and litigation activities at least once every three (3) years. As part of these reviews, we will reconcile specific files with a listing of transactions submitted by the Company under the Transaction Record Reporting and Processing (TRPP) Plan (Part 5). We will file a report of the Operation Review with the Standards Committee.



(3) Meet the recording and reporting requirements of the WYO Transaction Record Reporting and Processing Plan and the WYO Accounting Procedures Manual. Transactions reported to the National Flood Insurance Program's (NFIP's) Bureau and Statistical Agent by the WYO Company under the WYO Transaction Record Reporting and Processing Plan and the WYO Accounting Procedures Manual will be analyzed by the Bureau and Statistical Agent and a monthly report will be submitted to the WYO Company and the FIA. The analysis will cover the timeliness of the WYO Company submissions, the disposition of transactions which do not pass systems edits and the reconciliation of the totals generated from transaction reports with those submitted on WYO Company reconciliation reports.

(4) Cooperate with FEMA's Chief Financial Officer on Letter of Credit matters.

(5) Cooperate with FIA in the implementation of a claims reinspection program.

(6) Cooperate with FIA in the verification of risk rating information.

(7) Cooperate with DHS's Office of the Inspector General on matters pertaining to fraud.

(k) To facilitate the operation of the WYO Program and in order that a WYO Company can use its own customary standards, staff and independent contractor resources, as it would in the ordinary and necessary conduct of its own business affairs, subject to the Act, the Federal Insurance Administrator, for good cause shown, may grant exceptions to and waivers of the regulations contained in this title relative to the administration of the NFIP.

(1)(1) WYO Companies may, on a voluntary basis, elect to participate in the Mortgage Portfolio Protection Program (MPPP), under which they can offer, as a last resort, flood insurance at special high rates, sufficient to recover the full cost of this program in recognition of the uncertainty as to the degree of risk a given building presents due to the limited underwriting data required, to properties in a lending institution's mortgage portfolio to achieve compliance with the flood in-

surance purchase requirements of the Flood Disaster Protection Act of 1973. Flood insurance policies under the MPPP may only be issued for those properties that:

(i) Are determined to be located within special flood hazard areas of communities that are participating in the NFIP, and

(ii) Are not covered by a flood insurance policy even after a required series of notices have been given to the property owner (mortgagor) by the lending institution of the requirement of obtaining and maintaining such coverage, but the mortgagor has failed to respond.

(2) WYO Companies participating in the MPPP must provide a detailed implementation package to any lending institution that, on a voluntary basis, chooses to participate in the MPPP to ensure the lending institution has full knowledge of the criteria in that program and must obtain a signed receipt for that package from the lending institution. Participating WYO companies must also maintain evidence of compliance with paragraph (1)(3) of this section for review during the audits and reviews required by the WYO Financial Control Plan.

(3) The mortgagor must be protected against the lending institution's arbitrary placing of flood insurance for which the mortgagor will be billed by being sent three notification letters as described in paragraphs (1)(4) through (6) of this section.

(4) The initial notification letter must:

(i) State the requirements of the Flood Disaster Protection Act of 1973, as amended;

(ii) Announce the determination that the mortgagor's property is in an identified special flood hazard area as delineated on the appropriate FEMA map, necessitating flood insurance coverage for the duration of the loan;

(iii) Describe the procedure to follow should the mortgagor wish to challenge the determination;

(iv) Request evidence of a valid flood insurance policy or, if there is none, encourage the mortgagor to obtain a Standard Flood Insurance Policy (SFIP) promptly from a local insurance agent (or WYO Company);

(v) Advise that the premium for a MPPP policy is significantly higher than a conventional SFIP policy and advise as to the option for obtaining less costly flood insurance; and

(vi) Advise that a MPPP policy will be purchased by the lender if evidence of flood insurance coverage is not received by a date certain.

(5) The second notification letter must remind the mortgagor of the previous notice and provide essentially the same information.

(6) The final notification letter must:

(i) Enclose a copy of the flood insurance policy purchased under the MPPP on the mortgagor's (insured's) behalf, together with the Declarations Page,

(ii) Advise that the policy was purchased because of the failure to respond to the previous notices, and

(iii) Remind the insured that similar coverage may be available at significantly lower cost and advise that the policy can be cancelled at any time during the policy year and a pro rata refund provided for the unearned portion of the premium in the event the insured purchases another policy that is acceptable to satisfy the requirements of the 1973 Act.

[61 FR 51219, Oct. 1, 1996, as amended at 64 FR 56176, Oct. 18, 1999; 67 FR 13549, Mar. 22, 2002; 69 FR 45610, July 30, 2004; 74 FR 15341, Apr. 3, 2009; 81 FR 84490, Nov. 23, 2016]

**§ 62.24 WYO participation criteria.**

New companies or organizations eligible for the pilot project we describe in paragraph (b) of this section that seek to participate in the WYO program, as well as former WYO companies seeking to return to the WYO program, must meet standards for financial capability and stability for statistical and financial reporting and for commitment to program objectives.

(a) To demonstrate the ability to meet the financial requirements, a private insurance company wishing to enter or reenter the WYO program must:

(1) Be a licensed property insurance company;

(2) Have a five (5) year history of writing property insurance;

(3) Disclose any legal proceedings, suspensions, judgments, settlements, or agreements reached with any State

insurance department, State attorney general, State corporation commission, or the Federal Government during the immediately prior five (5) years regarding the company's business practices;

(4) Submit its most recent National Association of Insurance Commissioners (NAIC) annual statement;

(5) Submit information, as data become available, to indicate that the company meets or exceeds NAIC standards for risk-based capital and surplus; and

(6) Submit its last State or regional audit, which should contain no material negative findings.

(b) To demonstrate the ability to meet the financial requirements, a public entity risk-sharing organization, an association of local governments, a State association of political subdivisions, a State-sponsored municipal league, and any other intergovernmental risk-sharing pool for covering public entity structures, wishing to enter the WYO program, which will end September 30, 2004, must:

(1) Have authority by a State to provide property coverage to its members;

(2) Have a five (5) year history of writing property coverage;

(3) Disclose any legal proceedings, suspensions, judgments, settlements, or agreements reached with any State insurance department, State attorney general, State corporation commission, or the Federal Government during the immediately prior five (5) years regarding the other insurer's business practices; and

(4) Submit its most recent two annual audits from an independent accounting firm performed in compliance with generally accepted accounting principles that show no material negative findings; and submit, as data become available, information to indicate that the other insurer meets or exceeds standards comparable to those of the NAIC for risk-based capital and surplus.

(c) An applicant for entry or reentry in the WYO program must also pass a test to determine the applicant's ability to process flood insurance and meet the Transaction Record Reporting and Processing (TRRP) Plan requirements of the WYO Financial Control Plan. Unless the test requirement is waived,

e.g., where an already qualified performer will fulfill the applicant's reporting requirements, the applicant must prepare and submit test output monthly tape(s) and monthly financial statements and reconciliations for processing by the NFIP Bureau and Statistical Agent contractor. For test purposes, no error tolerance will be allowed. If the applicant fails the initial test, a second test will be run, which the applicant must pass to participate in the Program.

(d) To satisfy the requirement for commitment to Program goals, including marketing of flood insurance policies, the applicant will submit information concerning its plans for the WYO Program including plans for the training and support of producers and staff, marketing plans and sales targets, and claims handling and disaster response plans. Applicants must also identify those aspects of their planned flood insurance operations to be performed by another organization, managing agent, another WYO Company, a WYO vendor, a service bureau or related organization. Applicants will also name, in addition to a Principal Coordinator, a corporate officer point of contact—an individual, e.g., at the level of Senior Executive Vice President, who reports directly to the Chief Executive Officer or the Chief Operating Officer. Each applicant shall furnish the latest available information regarding the number of its fire, allied lines, farm-owners multiple peril, homeowners multiple peril, and commercial multiple peril policies or coverage documents in force, by line.

[67 FR 13550, Mar. 22, 2002, as amended at 86 FR 67659, Nov. 29, 2021]

## PART 63—IMPLEMENTATION OF SECTION 1306(c) OF THE NATIONAL FLOOD INSURANCE ACT OF 1968

### Subpart A—General

Sec.

- 63.1 Purpose of part.
- 63.2 Condemnation in lieu of certification.
- 63.3 Requirement to be covered by a contract for flood insurance by June 1, 1988.
- 63.4 Property not covered.
- 63.5 Coverage for contents removal.
- 63.6 Reimbursable relocation costs.

- 63.7 Amount of coverage and deductible on effective date of condemnation or certification.
- 63.8 Limitation on amount of benefits.
- 63.9 Sale while claim pending.
- 63.10 Demolition or relocation contractor to be joint payee.
- 63.11 Requirement for a commitment before October 1, 1989.
- 63.12 Setback and community flood plain management requirements.

### Subpart B—State Certification of Structures Subject to Imminent Collapse

- 63.13 Purpose of subpart.
- 63.14 Criteria for State qualification to perform imminent collapse certifications.
- 63.15 State application for eligibility to certify structures subject to imminent collapse.
- 63.16 Review of State application by the Federal Insurance Administrator.
- 63.17 Procedures and data requirements for imminent collapse certifications by States.
- 63.18 Review of State certification by the Federal Insurance Administrator.

AUTHORITY: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

SOURCE: 53 FR 36975, Sept. 23, 1988, unless otherwise noted.

### Subpart A—General

#### § 63.1 Purpose of part.

The purpose of this part is to implement section 1306(c) of the National Flood Insurance Act of 1968, as amended (the Act). Section 544 of the Housing and Community Development Act of 1987 (Pub. L. 100-242) amended the Act by adding subsection (c) to section 1306 of the Act. Under this amendment, effective February 5, 1988, section 1306(c) of the Act provides for benefit payments under the Standard Flood Insurance Policy (SFIP) for demolition or relocation of a structure insured under the Act that is located along the shore of a lake or other body of water and that is certified by an appropriate State or local land use authority to be subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels. This part establishes criteria by which States can obtain the approval of the Federal Insurance Administrator to make these certifications and sets

forth the procedures and data requirements to be used by those States in making these certifications. This part also contains provisions regarding other aspects of section 1306(c) of the Act. For example, there are provisions regarding section 1306(c)(6)(B) of the Act (which provides for condemnation in lieu of certification), including clarification as to the form of condemnation issued under a State or local law that is required.

**§ 63.2 Condemnation in lieu of certification.**

(a) The condemnation required by section 1306(c)(6)(B) of the Act in lieu of certification need not be grounded in a finding that the structure is subject to imminent collapse or subsidence as a result of erosion, but may be issued for other reasons deemed sufficient by the State or local authority.

(b) The condemnation may be in the form of a court order or other instrument authorized by State or local law, e.g., a notification to the property owner of an unsafe condition, or unsanitary condition, or other deficiency at the property address, coupled with a statement that the property owner must vacate the property if the condition giving rise to the condemnation notice is not cured by repair, removal, or demolition of the building by a date certain.

(c) In addition to a condemnation in accordance with paragraphs (a) and (b) of this section, a structure must be found by the Federal Insurance Administrator to be subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels to be eligible for benefits under section 1306(c) of the Act.

**§ 63.3 Requirement to be covered by a contract for flood insurance by June 1, 1988.**

The requirement in section 1306(c)(4)(C)(i) of the Act that a structure be “covered by a contract for flood insurance under this title—(i) on or before June 1, 1988” was met if presentation of the appropriate premium and a properly completed flood insurance application form was made to the Na-

tional Flood Insurance Program or a Write Your Own (WYO) Company on or before June 1, 1988.

**§ 63.4 Property not covered.**

Benefits under section 1306(c) of the Act do not include compensation for items excluded under the provisions of the Standard Flood Insurance Policy (SFIP).

**§ 63.5 Coverage for contents removal.**

Whenever a structure is subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels and otherwise meets the requirements of section 1306(c) of the Act so that benefits are payable under those provisions, the coverage in the definition of “Direct Physical Loss by or from Flood” in the SFIP for the expense of removing contents, up to the minimum deductible of \$500.00, to protect and preserve them from flood or from the imminent danger of flood, applies if contents coverage is in effect.

**§ 63.6 Reimbursable relocation costs.**

In addition to the coverage described in § 63.5 of this part, relocation costs for which benefits are payable under section 1306(c) of the Act include the costs of:

- (a) Removing the structure from the site,
- (b) Site cleanup,
- (c) Debris removal,
- (d) Moving the structure to a new site, and
- (e) At the new site, a new foundation and related grading, including elevating the structure as required by local flood plain management ordinances, and sewer, septic, electric, gas, telephone, and water connections at the building.

**§ 63.7 Amount of coverage and deductible on effective date of condemnation or certification.**

The amount of building coverage and the deductible applicable to a claim for benefits under section 1306(c) of the Act are what was in effect on the date of

## § 63.8

condemnation or the date of application for certification.

[53 FR 36975, Sept. 23, 1988, as amended at 53 FR 44193, Nov. 2, 1988]

### § 63.8 Limitation on amount of benefits.

(a) In section 1306(c)(3)(C) of the Act, the phrase *under the flood insurance contract issued pursuant to this title* means the value of the structure under section 1306(c)(3)(C) of the Act is limited to the amount of building coverage provided by the insured's policy.

(b) Where the amount payable under section 1306(c)(1)(A)(ii) of the Act for the cost of demolition, together with the amount payable under section 1306(c)(1)(A) of the Act for the value of the structure under the demolition option, exceeds the amount of building coverage provided by the insured's policy, such amounts will be paid beyond the amount of that building coverage, even if this payment exceeds the limits of coverage otherwise authorized by section 1306(a) of the Act for the particular class of property.

### § 63.9 Sale while claim pending.

If a claimant sells a structure prior to its demolition or relocation, no benefits are payable to that claimant under section 1306(c) of the Act, and any payments which may have been made under those provisions shall be reimbursed to the insurer making them.

### § 63.10 Demolition or relocation contractor to be joint payee.

If a demolition or relocation contractor is used, the instrument of payment for benefits under section 1306(c) of the Act for the fee of that contractor, shall include that contractor as a joint payee, unless that contractor has already been paid when the instrument of payment is issued.

### § 63.11 Requirement for a commitment before October 1, 1989.

The requirement in section 1306(c)(7) of the Act that a commitment be made on or before September 30, 1989 as a necessary condition to making any payments after September 30, 1989, is met if before October 1, 1989,

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(a) There is either a condemnation in accordance with § 63.2 of this part or a certification in accordance with subpart B of this part, and

(b) A policyholder's notice of claim for benefits under section 1306(c) of the Act is received by the insurer.

### § 63.12 Setback and community flood plain management requirements.

(a) Where benefits have been paid under section 1306(c) of the Act, the setback requirements in section 1306(c)(5) of the Act, which if not met result in a prohibition against subsequently providing flood insurance or assistance under the Disaster Relief Act of 1974, shall apply:

(1) To the structure involved wherever it is located, and

(2) To any other structure subsequently constructed on or moved to the parcel of land on which the structure involved was located when the claim under section 1306(c) of the Act arose.

(b) In addition, any structures relocated under section 1306 of the Act must comply with the flood plain management criteria set forth in § 60.3 of this chapter.

## Subpart B—State Certification of Structures Subject to Imminent Collapse

### § 63.13 Purpose of subpart.

The purpose of this subpart is to establish criteria under the provisions of section 1306(c) of the National Flood Insurance Act of 1968, as amended, by which States can obtain approval from the Federal Insurance Administrator to certify that structures are subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels. The subpart also sets forth the procedures and data requirements to be utilized by those States in certifying structures as subject to imminent collapse. The State certification procedure represents an option to the use of the procedure whereby a structure is condemned by a State or local authority as a prerequisite to consideration for imminent collapse insurance benefits.

**Fed. Emergency Mgmt. Agency, DHS**

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**§ 63.14 Criteria for State qualification to perform imminent collapse certifications.**

In order to qualify under this subpart, the State must be administering a coastal zone management program which includes the following components, as a minimum:

(a) A state-wide requirement that prohibits new construction and the relocation of structures seaward of an adopted erosion setback. Such setback must be based in whole or in part on some multiple of the local mean annual erosion (recession) rate; and

(b) An established, complete and functional data base of mean annual erosion rates for all reaches of coastal shorelines subject to erosion in the State, which is used as the basis to enforce these setback requirements.

**§ 63.15 State application for eligibility to certify structures subject to imminent collapse.**

(a) Application pursuant to this part shall be made by the Governor or other duly authorized official of the State.

(b) The application must be submitted to the Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472.

(c) Documents to be included in the application are as follows:

(1) Copies of all applicable State statutes and regulations verifying the existence of a coastal zone management program including setback requirements for new and relocated construction which are based in whole or in part on mean annual erosion rates established for the State's shorelines.

(2) A copy of the State's mean annual erosion rate data base, if not already provided, showing such rates for all reaches of coastal shorelines subject to erosion within the State.

(3) The title, address and phone number of a contact person within the State agency having authority for administering the coastal zone management program.

(4) A statement that adequate resources are available to carry out the certification services, and that certifications will be performed in accordance with the procedures described in § 63.17.

**§ 63.16 Review of State application by the Federal Insurance Administrator.**

(a) The Federal Insurance Administrator may return the application for eligibility upon finding it incomplete or upon finding that additional information is required in order to make a determination as to the adequacy of the coastal zone management program and erosion rate data base.

(b) Upon determining that the State's program and/or data base does not meet the criteria set forth in § 63.14, the Federal Insurance Administrator shall in writing reject the application for eligibility and indicate in what respects the State program and/or data base fails to comply with the criteria.

(c) Upon determining that the State program and data base meets the criteria set forth in § 63.14, the Federal Insurance Administrator shall approve the State as eligible to certify structures subject to imminent collapse. Such approval, however, is in all cases provisional. The Federal Insurance Administrator shall review the State program and data base for continued compliance with the criteria set forth in this part and may request updated documentation for the purpose of such review. If the program and/or data base is found to be inadequate and is not corrected within ninety days from the date that such inadequacies were identified, the Federal Insurance Administrator may revoke his approval.

**§ 63.17 Procedures and data requirements for imminent collapse certifications by States.**

Any State that has been determined to be eligible by the Federal Insurance Administrator may certify that a coastal structure is subject to imminent collapse. Such certification requires that the State collect scientific or technical information relative to the structure and its site and provide such information to the insured to be filed with a claim for insurance benefits under Section 1306 of the National Flood Insurance Act of 1968, as amended. The information which is provided to the insured shall include, but is not limited to, the following:

(a) Certification from the State agency that the structure is subject to imminent collapse. The certification shall cite the property address, legal description (e.g., lot, block), the date of application for certification, and the date of and basis for the certification, and

(b) Supporting scientific and technical data to substantiate the certification consisting of the following:

(1) Photographs of the structure in relation to the obvious peril. All photographs should be labeled with the location, direction, date and time from which they were taken. The collection of photographs should adequately display the following:

(i) Any evidence of existing damage. The damage can include loss or erosion of soil near or around the foundation, or structural damage to the foundation components.

(ii) Structure and waterbody. These photographs shall show both the structure and the waterbody that presents the peril. If the structure is on a high bluff or dune and not accessible from the water side, the top edge of the bluff or dune will be sufficient. These will usually be taken from one or both sides of the structure.

(iii) Physical reference features used in the measurements discussed below. The reference feature shall be in or near the area affected by normal tides, when applicable. If a reference is not clearly distinguishable on the photograph, it should be annotated to identify the feature. If possible, all reference features described below should be photographed showing their relationship to the site of the threatened structure.

(2) Identification and selection of reference features. The following reference features are presented according to priority. If the first feature is not present, the next feature shall be located and photographed, and so forth.

(i) Top edge of bluff (cliff top).

(ii) Top edge of escarpment on an eroding dune (i.e., a nearly vertical erosional cut at the seaward face of the dune). The normal high tide should be near the toe of the dune and there should be indications that the dune is actively eroding.

(iii) The normal high tide limit may be indicated by one of the following:

(A) Vegetation line (the seaward most edge of permanent vegetation).

(B) Beach scarp (erosion line on beach, usually a sharp, nearly vertical drop of 0.5 to 3.0 feet at the upper limit of high tide).

(C) Debris line deposited by the normal high tide, not by a recent storm.

(D) Upper limit of wet sand.

(3) Distance measurements from the threatened structure to the nearest points on the reference features. These measurements should be taken from all photographed reference features to the closest point on the supporting foundation. For purposes of making this measurement, decks, stairs, and other exterior attachments that do not contribute to the structural support of the building are not considered part of the structure. The measurements shall be taken horizontally with a tape and recorded to the nearest foot. The date and time of the measurement shall be noted. The location of the measurements (i.e., reference feature and closest structural member) shall be identified on the appropriate photograph or sketch of the site. If some or all of the reference features coincide, this shall also be noted and identified on the photographs. Reference features landward of the structure need not be measured, but shall be noted on the photographs.

(4) A determination of the average annual erosion rate at the site and a copy of the pertinent section of the reference document used to obtain the annual erosion rate at the site.

(5) Copy of the effective Flood Insurance Rate Map panel annotated with the location of the threatened structure.

(6) In the event that a structure is not situated within a “zone of imminent collapse” using the criteria and procedures in paragraphs (b) (1) through (5) of this section, then the State may submit other scientific and technical data, in addition to the information described in paragraphs (b) (1) through (5) of this section, that would reveal unusual erosive or stability conditions at the site. Such data must include engineering analyses or reports performed on the structure or site which evaluates local rates of erosion, or the condition or stability of the

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structure's foundation including supporting soil.

(c) In the case of structures planned to be relocated, a certification as to whether the proposed relocation site is outside the 30-year setback for 1-4 family residential structures, or outside the 60-year setback for all other structures, must also be submitted by the State.

[53 FR 36975, Sept. 23, 1988, as amended at 53 FR 44193, Nov. 2, 1988]

**§ 63.18 Review of State certification by the Federal Insurance Administrator.**

The Federal Insurance Administrator, after a claim has been filed by the property owner, will review the certification and data prepared by the State. Upon completion of the review, the State will be notified that:

(a) The structure has been determined to be subject to imminent collapse, or

(b) The structure has not been determined to be subject to imminent collapse and the basis for such determination, or

(c) Additional data are needed to verify that the procedures and criteria for imminent collapse certification have been met.

**PART 64—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE**

Sec.

64.1 Purpose of part.

64.2 Definitions.

64.3 Flood Insurance Maps.

64.4 Effect on community eligibility resulting from boundary changes, governmental reorganization, etc.

64.5 Relationship of rates to zone designations.

64.6 List of eligible communities.

AUTHORITY: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

**§ 64.1 Purpose of part.**

(a) 42 U.S.C. 4012(c), 4022 and 4102 require that flood insurance in the maximum limits of coverage under the regular program shall be offered in communities only after the Federal Insurance Administrator has: (1) Identified the areas of special flood, mudslide

(i.e., mudflow) or flood-related erosion hazards within the community; and/or (2) completed a risk study for the applicant community. The priorities for conducting such risk studies are set forth in §§ 59.23 and 60.25 of this subchapter. The purpose of this part is to define the types of zones which the Agency will use for identifying the hazard areas on maps.

(b) 42 U.S.C. 4056 authorizes an emergency implementation of the National Flood Insurance Program whereby the Federal Insurance Administrator may make subsidized coverage available to eligible communities prior to the completion of detailed risk studies for such areas. This part also describes procedures under the emergency program and lists communities which become eligible under the NFIP.

[48 FR 28278, June 21, 1983, as amended at 49 FR 4751, Feb. 8, 1984; 49 FR 33879, Aug. 27, 1984]

**§ 64.2 Definitions.**

The definitions set forth in part 59 of this subchapter are applicable to this part.

[41 FR 46986, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979]

**§ 64.3 Flood Insurance Maps.**

(a) The following maps may be prepared by the Federal Insurance Administrator for use in connection with the sale of flood insurance:

(1) Flood Insurance Rate Map: This map is prepared after the flood hazard study for the community has been completed and the risk premium rates have been established. The FIRM indicates the risk premium rate zones applicable in the community and when those rates are effective. The FIRM also may indicate, at the request of the community, zones to identify areas of future-conditions flood hazards. The symbols used to designate the risk premium rate zones and future-conditions zones are as follows:

| Zone symbol |  |
|-------------|--|
| A .....     | Area of special flood hazard without water surface elevations determined |
| A1-30, AE   | Area of special flood hazard with water surface elevations determined    |



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| Zone symbol |  |
|-------------|--|
| A0 .....    | Area of special flood hazards having shallow water depths and/or unpredictable flow paths between (1) and (3) ft   |
| A99 .....   | Area of special flood hazard where enough progress has been made on a protective system, such as dikes, dams, and levees, to consider it complete for insurance rating purposes                                  |
| AH .....    | Areas of special flood hazards having shallow water depths and/or unpredictable flow paths between (1) and (3) feet, and with water surface elevations determined  |
| AR .....    | Area of special flood hazard that results from the decertification of a previously accredited flood protection system that is determined to be in the process of being restored to provide base flood protection |
| V .....     | Area of special flood hazards without water surface elevations determined, and with velocity, that is inundated by tidal floods (coastal high hazard area)   |
| V1–30, VE   | Area of special flood hazards, with water surface elevations determined and with velocity, that is inundated by tidal floods (coastal high hazard area)  |
| VO .....    | Area of special flood hazards having shallow water depths and/or unpredictable flow paths between (1) and (3) ft. and with velocity  |
| B, X .....  | Areas of moderate flood hazards or areas of future-conditions flood hazard.  |
| C, X .....  | Area of minimal hazards  |
| D .....     | Area of undetermined but possible, flood hazards   |
| M .....     | Area of special mudslide (i.e., mudflow) hazards   |
| N .....     | Area of moderate mudslide (i.e., mudflow) hazards  |
| P .....     | Area of undetermined, but possible, mudslide hazards   |
| E .....     | Area of special flood-related erosion hazards.   |

Areas identified as subject to more than one hazard (flood, mudslide (i.e., mudflow), flood-related erosion) or potential hazard (i.e., future-conditions flooding) will be designated on the FIRM by use of the proper zone symbols in combination.

(2) Flood Hazard Boundary Map (FHBM). This map is issued by the Administrator delineating Zones A, M, and E within a community.

(b) Notice of the issuance of new or revised FHBMs or FIRMs is given in Part 65 of this subchapter. The mandatory purchase of insurance is required within designated Zones A, A1–30, AE, A99, AO, AH, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, V1–30, VE, V, VO, M, and E.

(c) The FHBM or FIRM shall be maintained for public inspection at the following locations:

(1) The information office of the State agency or agencies designated by statute or the respective Governors to

cooperate with the Federal Insurance Administrator in implementing the Program whenever a community becomes eligible for Program participation and the sale of insurance pursuant to this section or is identified as flood prone.

(2) One or more official locations within the community in which flood insurance is offered.

(3) [Reserved]

(4) The official record copy of each official map shall be maintained in FEMA files in Washington, DC.

[41 FR 46986, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 46 FR 1274, Jan. 6, 1981; 48 FR 28278, June 21, 1983; 48 FR 44544 and 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 50 FR 36028, Sept. 4, 1985; 59 FR 53599, Oct. 25, 1994; 62 FR 55716, Oct. 27, 1997; 66 FR 59170, Nov. 27, 2001]

**§ 64.4 Effect on community eligibility resulting from boundary changes, governmental reorganization, etc.**

(a) When a community not participating in the Program acquires by means of annexation, incorporation, or otherwise, an area within another community participating in the Program, no new flood insurance shall be made available as of the effective date of annexation until the newly acquiring community participates in the Program. Until the effective date of participation, existing flood insurance policies remain in effect until the policy's date of expiration, but shall not be renewed.

(b) When a community participating in the Program acquires by means of annexation, incorporation, or otherwise, another area which was previously located in a community either participating or not participating in the Program, the community shall have six months from the date of acquisition to formally amend its flood plain management regulations in order to include all flood-prone areas within the newly acquired area. The amended regulations shall satisfy the applicable requirements in § 60.3 of this subchapter based on the data previously provided by the Administrator. In the event that the newly acquired area was previously located in a community participating in the Program, the provisions of this section shall only apply if the community, upon acquisition, and

pending formal adoption of the amendment to its flood plain management regulations, certifies in writing over the signature of a community official that within the newly acquired area the flood plain management requirements previously applicable in the area remain in force. In the event that the newly-acquired area was previously located in a community not participating in the Program, the provisions of the section shall only apply if the community, upon acquisition, and pending formal adoption of the amendments to its flood plain management regulations, certifies in writing over the signature of a community official that it shall enforce within the newly-acquired area the requirements of §60.3(b) of this subchapter. During the six month period, existing flood insurance policies shall remain in effect until their date of expiration may be renewed, and new policies may be issued. Failure to satisfy the applicable requirements in §60.3 shall result in the community's suspension from Program participation pursuant to §59.24 of this subchapter.

(c) When an area previously a part of a community participating in the Program becomes autonomous or becomes a portion of a newly autonomous community resulting from boundary changes, governmental reorganization, changes in state statutes or constitution, or otherwise, such new community shall be given six months from the date of its independence, to adopt flood plain management regulations within the special hazard areas subject to its jurisdiction and to submit its application for participation as a separate community in order to retain eligibility for the sale of flood insurance. The regulations adopted by such new community shall satisfy the applicable requirements in §60.3 of this subchapter based on the data previously provided by the Federal Insurance Administrator. The provisions of this section shall only apply where the new community upon the date of its independence certifies in writing over the signature of a community official that, pending formal adoption of flood plain management regulations, the flood plain management requirements previously applicable in that area remain

in effect. During the six month period, existing flood insurance policies shall remain in effect until their dates of expiration may be renewed, and new policies may be issued. Failure to satisfy the applicable requirements in §60.3 of this subchapter shall result in the community's suspension from Program participation pursuant to §59.24 of this subchapter.

(d) Where any community or any area within a community had in effect a FHBM or FIRM, but all or a portion of that community has been acquired by another community, or becomes autonomous, that map shall remain in effect until it is superseded by the Federal Insurance Administrator, whether by republication as part of the map of the acquiring community, or otherwise.

(e) When a community described in paragraph (a), (b), (c), or (d) of this section has flood elevations in effect, no new appeal period under parts 66, 67, and 68 of this subchapter will begin except as new scientific and technical data are available.

[41 FR 46986, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

**§ 64.5 Relationship of rates to zone designations.**

(a) In order to expedite a community's qualification for flood insurance under the emergency program, the Administrator may authorize the sale of such insurance without designating any Zones A, M, or E within a community, provided the community has previously adopted flood plain management regulations meeting the requirements of §60.3(a), §60.4(a) or §60.5(a) of this subchapter. When the Administrator has obtained sufficient technical information to delineate Zones A, M, or E, he/she shall delineate the tentative boundaries on a FHBM.

(b) Upon the effective date of the FIRM, flood insurance will continue to be available throughout the entire community at chargeable rates (i.e., subsidized) for first layer coverage of existing structures, but will be only available at risk premium rates for all new construction and substantial improvements. Upon the effective date of

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a FIRM, second layer coverage is available only at risk premium rates for all structures.

(c) Detailed insurance information may be obtained from the servicing companies. See part 62 of this subchapter.

[41 FR 46986, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

### § 64.6 List of eligible communities.

FEMA will maintain a list of communities eligible for the sale of flood insurance pursuant to the National Flood Insurance Program (42 U.S.C. 4001-4128). This list will be published and maintained on the internet or through another comparable method.

[85 FR 68790, Oct. 30, 2020]

## PART 65—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

Sec.

- 65.1 Purpose of part.
- 65.2 Definitions.
- 65.3 Requirement to submit new technical data.
- 65.4 Right to submit new technical data.
- 65.5 Revision to special hazard area boundaries with no change to base flood elevation determinations.
- 65.6 Revision of base flood elevation determinations.
- 65.7 Floodway revisions.
- 65.8 Review of proposed projects.
- 65.9 Review and response by the Administrator.
- 65.10 Mapping of areas protected by levee systems.
- 65.11 Evaluation of sand dunes in mapping coastal flood hazard areas.
- 65.12 Revision of flood insurance rate maps to reflect base flood elevations caused by proposed encroachments.
- 65.13 Mapping and map revisions for areas subject to alluvial fan flooding.
- 65.14 Remapping of areas for which local flood protection systems no longer provide base flood protection.
- 65.15 List of communities submitting new technical data.
- 65.16 Standard Flood Hazard Determination Form and Instructions.
- 65.17 Review of determinations.

AUTHORITY: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

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### § 65.1 Purpose of part.

42 U.S.C. 4104 authorizes the Administrator to identify and publish information with respect to all areas within the United States having special flood, mudslide (i.e., mudflow) and flood-related erosion hazards. The purpose of this part is to outline the steps a community needs to take in order to assist the Agency's effort in providing up-to-date identification and publication, in the form of the maps described in part 64, on special flood, mudslide (i.e., mudflow) and flood-related erosion hazards.

[48 FR 28278, June 21, 1983]

### § 65.2 Definitions.

(a) Except as otherwise provided in this part, the definitions set forth in part 59 of this subchapter are applicable to this part.

(b) For the purpose of this part, a certification by a registered professional engineer or other party does not constitute a warranty or guarantee of performance, expressed or implied. Certification of data is a statement that the data is accurate to the best of the certifier's knowledge. Certification of analyses is a statement that the analyses have been performed correctly and in accordance with sound engineering practices. Certification of structural works is a statement that the works are designed in accordance with sound engineering practices to provide protection from the base flood. Certification of "as built" conditions is a statement that the structure(s) has been built according to the plans being certified, is in place, and is fully functioning.

(c) For the purposes of this part, "reasonably safe from flooding" means base flood waters will not inundate the land or damage structures to be removed from the SFHA and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

[51 FR 30313, Aug. 25, 1986, as amended at 66 FR 22442, May 4, 2001]

### § 65.3 Requirement to submit new technical data.

A community's base flood elevations may increase or decrease resulting

from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, a community shall notify the Administrator of the changes by submitting technical or scientific data in accordance with this part. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and flood plain management requirements will be based upon current data.

[51 FR 30313, Aug. 25, 1986]

**§ 65.4 Right to submit new technical data.**

(a) A community has a right to request changes to any of the information shown on an effective map that does not impact flood plain or floodway delineations or base flood elevations, such as community boundary changes, labeling, or planimetric details. Such a submission shall include appropriate supporting documentation in accordance with this part and may be submitted at any time.

(b) All requests for changes to effective maps, other than those initiated by FEMA, must be made in writing by the Chief Executive Officer of the community (CEO) or an official designated by the CEO. Should the CEO refuse to submit such a request on behalf of another party, FEMA will agree to review it only if written evidence is provided indicating the CEO or designee has been requested to do so.

(c) Requests for changes to effective Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs) are subject to the cost recovery procedures described in 44 CFR part 72. As indicated in part 72, revisions requested to correct mapping errors or errors in the Flood Insurance Study analysis are not to be subject to the cost-recovery procedures.

[51 FR 30313, Aug. 25, 1986, as amended at 57 FR 29038, June 30, 1992; 61 FR 46331, Aug. 30, 1996; 62 FR 5736, Feb. 6, 1997]

EDITORIAL NOTE: For references to FR pages showing lists of eligible communities, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

**§ 65.5 Revision to special hazard area boundaries with no change to base flood elevation determinations.**

(a) *Data requirements for topographic changes.* In many areas of special flood hazard (excluding V zones and floodways) it may be feasible to elevate areas with engineered earthen fill above the base flood elevation. Scientific and technical information to support a request to gain exclusion from an area of special flood hazard of a structure or parcel of land that has been elevated by the placement of engineered earthen fill will include the following:

(1) A copy of the recorded deed indicating the legal description of the property and the official recordation information (deed book volume and page number) and bearing the seal of the appropriate recordation official (*e.g.*, County Clerk or Recorder of Deeds).

(2) If the property is recorded on a plat map, a copy of the recorded plat indicating both the location of the property and the official recordation information (plat book volume and page number) and bearing the seal of the appropriate recordation official. If the property is not recorded on a plat map, FEMA requires copies of the tax map or other suitable maps to help in locating the property accurately.

(3) A topographic map or other information indicating existing ground elevations and the date of fill. FEMA's determination to exclude a legally defined parcel of land or a structure from the area of special flood hazard will be based upon a comparison of the base flood elevations to the lowest ground elevation of the parcel or the lowest adjacent grade to the structure. If the lowest ground elevation of the entire legally defined parcel of land or the lowest adjacent grade to the structure are at or above the elevations of the base flood, FEMA will exclude the parcel and/or structure from the area of special flood hazard.

(4) Written assurance by the participating community that they have complied with the appropriate minimum floodplain management requirements under § 60.3. This includes the requirements that:

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(i) Existing residential structures built in the SFHA have their lowest floor elevated to or above the base flood;

(ii) The participating community has determined that the land and any existing or proposed structures to be removed from the SFHA are “reasonably safe from flooding”, and that they have on file, available upon request by FEMA, all supporting analyses and documentation used to make that determination;

(iii) The participating community has issued permits for all existing and proposed construction or other development; and

(iv) All necessary permits have been received from those governmental agencies where approval is required by Federal, State, or local law.

(5) If the community cannot assure that it has complied with the appropriate minimum floodplain management requirements under § 60.3, of this chapter, the map revision request will be deferred until the community remedies all violations to the maximum extent possible through coordination with FEMA. Once the remedies are in place, and the community assures that the land and structures are “reasonably safe from flooding,” we will process a revision to the SFHA using the criteria set forth in § 65.5(a). The community must maintain on file, and make available upon request by FEMA, all supporting analyses and documentation used in determining that the land or structures are “reasonably safe from flooding.”

(6) Data to substantiate the base flood elevation. If we complete a Flood Insurance Study (FIS), we will use those data to substantiate the base flood elevation. Otherwise, the community may submit data provided by an authoritative source, such as the U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resources Conservation Service, State and local water resource departments, or technical data prepared and certified by a registered professional engineer. If base flood elevations have not previously been established, we may also request hydrologic and hydraulic calculations.

(7) A revision of floodplain delineations based on fill must demonstrate that any such fill does not result in a floodway encroachment.

(b) *New topographic data.* A community may also follow the procedures described in paragraphs (a)(1) through (6) of this section to request a map revision when no physical changes have occurred in the area of special hazard, when no fill has been placed, and when the natural ground elevations are at or above the elevations of the base flood, where new topographic maps are more detailed or more accurate than the current map.

(c) *Certification requirements.* A registered professional engineer or licensed land surveyor must certify the items required in paragraphs (a)(3) and (6) and (b) of this section. Such certifications are subject to the provisions under § 65.2.

(d) *Submission procedures.* Submit all requests to the appropriate address serving the community’s geographic area or to the FEMA Headquarters Office in Washington, DC.

[66 FR 22442, May 4, 2001]

### § 65.6 Revision of base flood elevation determinations.

(a) *General conditions and data requirements.* (1) The supporting data must include all the information FEMA needs to review and evaluate the request. This may involve the requestor’s performing new hydrologic and hydraulic analysis and delineation of new flood plain boundaries and floodways, as necessary.

(2) To avoid discontinuities between the revised and unrevised flood data, the necessary hydrologic and hydraulic analyses submitted by the map revision requestor must be extensive enough to ensure that a logical transition can be shown between the revised flood elevations, flood plain boundaries, and floodways and those developed previously for areas not affected by the revision. Unless it is demonstrated that it would not be appropriate, the revised and unrevised base flood elevations must match within one-half foot where such transitions occur.

(3) Revisions cannot be made based on the effects of proposed projects or

future conditions. Section 65.8 of this subchapter contains provisions for obtaining conditional approval of proposed projects that may effect map changes when they are completed.

(4) The datum and date of releveling of benchmarks, if any, to which the elevations are referenced must be indicated.

(5) Maps will not be revised when discharges change as a result of the use of an alternative methodology or data for computing flood discharges unless the change is statistically significant as measured by a confidence limits analysis of the new discharge estimates.

(6) Any computer program used to perform hydrologic or hydraulic analyses in support of a flood insurance map revision must meet all of the following criteria:

(i) It must have been reviewed and accepted by a governmental agency responsible for the implementation of programs for flood control and/or the regulation of flood plain lands. For computer programs adopted by non-Federal agencies, certification by a responsible agency official must be provided which states that the program has been reviewed, tested, and accepted by that agency for purposes of design of flood control structures or flood plain land use regulation.

(ii) It must be well-documented including source codes and user's manuals.

(iii) It must be available to FEMA and all present and future parties impacted by flood insurance mapping developed or amended through the use of the program. For programs not generally available from a Federal agency, the source code and user's manuals must be sent to FEMA free of charge, with fully-documented permission from the owner that FEMA may release the code and user's manuals to such impacted parties.

(7) A revised hydrologic analysis for flooding sources with established base flood elevations must include evaluation of the same recurrence interval(s) studied in the effective FIS, such as the 10-, 50-, 100-, and 500-year flood discharges.

(8) A revised hydraulic analysis for a flooding source with established base flood elevations must include evaluation

of the same recurrence interval(s) studied in the effective FIS, such as the 10-, 50-, 100-, and 500-year flood elevations, and of the floodway. Unless the basis of the request is the use of an alternative hydraulic methodology or the requestor can demonstrate that the data of the original hydraulic computer model is unavailable or its use is inappropriate, the analysis shall be made using the same hydraulic computer model used to develop the base flood elevations shown on the effective Flood Insurance Rate Map and updated to show present conditions in the flood plain. Copies of the input and output data from the original and revised hydraulic analyses shall be submitted.

(9) A hydrologic or hydraulic analysis for a flooding source without established base flood elevations may be performed for only the 100-year flood.

(10) A revision of flood plain delineations based on topographic changes must demonstrate that any topographic changes have not resulted in a floodway encroachment.

(11) Delineations of flood plain boundaries for a flooding source with established base flood elevations must provide both the 100- and 500-year flood plain boundaries. For flooding sources without established base flood elevations, only 100-year flood plain boundaries need be submitted. These boundaries should be shown on a topographic map of suitable scale and contour interval.

(12) If a community or other party seeks recognition from FEMA, on its FHBM or FIRM, that an altered or relocated portion of a watercourse provides protection from, or mitigates potential hazards of, the base flood, the Federal Insurance Administrator may request specific documentation from the community certifying that, and describing how, the provisions of §60.3(b)(7) of this subchapter will be met for the particular watercourse involved. This documentation, which may be in the form of a written statement from the Community Chief Executive Officer, an ordinance, or other legislative action, shall describe the nature of the maintenance activities to be performed, the frequency with which they will be performed, and the title of the local community official who will

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be responsible for assuring that the maintenance activities are accomplished.

(13) Notwithstanding any other provisions of § 65.6, a community may submit, in lieu of the documentation specified in § 65.6(a)(12), certification by a registered professional engineer that the project has been designed to retain its flood carrying capacity without periodic maintenance.

(14) The participating community must provide written assurance that they have complied with the appropriate minimum floodplain management requirements under § 60.3 of this chapter. This includes the requirements that:

(i) Existing residential structures built in the SFHA have their lowest floor elevated to or above the base flood;

(ii) The participating community has determined that the land and any existing or proposed structures to be removed from the SFHA are “reasonably safe from flooding,” and that they have on file, available upon request by FEMA, all supporting analyses and documentation used to make that determination;

(iii) The participating community has issued permits for all existing and proposed construction or other development; and

(iv) All necessary permits have been received from those governmental agencies where approval is required by Federal, State, or local law.

(15) If the community cannot assure that it has complied with the appropriate minimum floodplain management requirements under § 60.3, of this chapter the map revision request will be deferred until the community remedies all violations to the maximum extent possible through coordination with FEMA. Once the remedies are in place, and the community assures that the land and structures are “reasonably safe from flooding,” we will process a revision to the SFHA using the criteria set forth under § 65.6. The community must maintain on file, and make available upon request by FEMA, all supporting analyses and documentation used in determining that the land or structures are “reasonably safe from flooding.”

(b) *Data requirements for correcting map errors.* To correct errors in the original flood analysis, technical data submissions shall include the following:

(1) Data identifying mathematical errors.

(2) Data identifying measurement errors and providing correct measurements.

(c) *Data requirements for changed physical conditions.* Revisions based on the effects of physical changes that have occurred in the flood plain shall include:

(1) *Changes affecting hydrologic conditions.* The following data must be submitted:

(i) General description of the changes (e.g., dam, diversion channel, or detention basin).

(ii) Construction plans for as-built conditions, if applicable.

(iii) New hydrologic analysis accounting for the effects of the changes.

(iv) New hydraulic analysis and profiles using the new flood discharge values resulting from the hydrologic analysis.

(v) Revised delineations of the flood plain boundaries and floodway.

(2) *Changes affecting hydraulic conditions.* The following data shall be submitted:

(i) General description of the changes (e.g., channelization or new bridge, culvert, or levee).

(ii) Construction plans for as-built conditions.

(iii) New hydraulic analysis and flood elevation profiles accounting for the effects of the changes and using the original flood discharge values upon which the original map is based.

(iv) Revised delineations of the flood plain boundaries and floodway.

(3) *Changes involving topographic conditions.* The following data shall be submitted:

(i) General description of the changes (e.g., grading or filling).

(ii) New topographic information, such as spot elevations, cross sections grading plans, or contour maps.

(iii) Revised delineations of the flood plain boundaries and, if necessary, floodway.

(d) *Data requirements for incorporating improved data.* Requests for revisions

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based on the use of improved hydrologic, hydraulic, or topographic data shall include the following data:

(1) Data that are believed to be better than those used in the original analysis (such as additional years of stream gage data).

(2) Documentation of the source of the data.

(3) Explanation as to why the use of the new data will improve the results of the original analysis.

(4) Revised hydrologic analysis where hydrologic data are being incorporated.

(5) Revised hydraulic analysis and flood elevation profiles where new hydrologic or hydraulic data are being incorporated.

(6) Revised delineations of the flood plain boundaries and floodway where new hydrologic, hydraulic, or topographic data are being incorporated.

(e) *Data requirements for incorporating improved methods.* Requests for revisions based on the use of improved hydrologic or hydraulic methodology shall include the following data:

(1) New hydrologic analysis when an alternative hydrologic methodology is being proposed.

(2) New hydraulic analysis and flood elevation profiles when an alternative hydrologic or hydraulic methodology is being proposed.

(3) Explanation as to why the alternative methodologies are superior to the original methodologies.

(4) Revised delineations of the flood plain boundaries and floodway based on the new analysis(es).

(f) *Certification requirements.* All analysis and data submitted by the requester shall be certified by a registered professional engineer or licensed land surveyor, as appropriate, subject to the definition of "certification" given at §65.2 of this subchapter.

(g) *Submission procedures.* All requests shall be submitted to the FEMA Regional Office servicing the community's geographic area or to the FEMA Headquarters Office in Washington, DC, and shall be accompanied by the

appropriate payment, in accordance with 44 CFR part 72.

[51 FR 30314, Aug. 25, 1986, as amended at 53 FR 16279, May 6, 1988; 54 FR 33550, Aug. 15, 1989; 61 FR 46331, Aug. 30, 1996; 62 FR 5736, Feb. 6, 1997; 66 FR 22442, May 4, 2001]

### § 65.7 Floodway revisions.

(a) *General.* Floodway data is developed as part of FEMA Flood Insurance Studies and is utilized by communities to select and adopt floodways as part of the flood plain management program required by §60.3 of this subchapter. When it has been determined by a community that no practicable alternatives exist to revising the boundaries of its previously adopted floodway, the procedures below shall be followed.

(b) *Data requirements when base flood elevation changes are requested.* When a floodway revision is requested in association with a change to base flood elevations, the data requirements of §65.6 shall also be applicable. In addition, the following documentation shall be submitted:

(1) Copy of a public notice distributed by the community stating the community's intent to revise the floodway or a statement by the community that it has notified all affected property owners and affected adjacent jurisdictions.

(2) Copy of a letter notifying the appropriate State agency of the floodway revision when the State has jurisdiction over the floodway or its adoption by communities participating in the NFIP.

(3) Documentation of the approval of the revised floodway by the appropriate State agency (for communities where the State has jurisdiction over the floodway or its adoption by communities participating in the NFIP).

(4) Engineering analysis for the revised floodway, as described below:

(i) The floodway analysis must be performed using the hydraulic computer model used to determine the proposed base flood elevations.

(ii) The floodway limits must be set so that neither the effective base flood elevations nor the proposed base flood elevations if less than the effective base flood elevations, are increased by more than the amount specified under



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§ 60.3 (d)(2). Copies of the input and output data from the original and modified computer models must be submitted.

(5) Delineation of the revised floodway on the same topographic map used for the delineation of the revised flood boundaries.

(c) *Data requirements for changes not associated with base flood elevation changes.* The following data shall be submitted:

(1) Items described in paragraphs (b) (1) through (3) of this section must be submitted.

(2) Engineering analysis for the revised floodway, as described below:

(i) The original hydraulic computer model used to develop the established base flood elevations must be modified to include all encroachments that have occurred in the flood plain since the existing floodway was developed. If the original hydraulic computer model is not available, an alternate hydraulic computer model may be used provided the alternate model has been calibrated so as to reproduce the original water surface profile of the original hydraulic computer model. The alternate model must be then modified to include all encroachments that have occurred since the existing floodway was developed.

(ii) The floodway analysis must be performed with the modified computer model using the desired floodway limits.

(iii) The floodway limits must be set so that combined effects of the past encroachments and the new floodway limits do not increase the effective base flood elevations by more than the amount specified in § 60.3(d)(2). Copies of the input and output data from the original and modified computer models must be submitted.

(3) Delineation of the revised floodway on a copy of the effective NFIP map and a suitable topographic map.

(d) *Certification requirements.* All analyses submitted shall be certified by a registered professional engineer. All topographic data shall be certified by a registered professional engineer or licensed land surveyor. Certifications are subject to the definition given at § 65.2 of this subchapter.

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(e) *Submission procedures.* All requests that involve changes to floodways shall be submitted to the appropriate FEMA Regional Office servicing the community's geographic area.

[51 FR 30315, Aug. 25, 1986]

### § 65.8 Review of proposed projects.

A community, or an individual through the community, may request FEMA's comments on whether a proposed project, if built as proposed, would justify a map revision. FEMA's comments will be issued in the form of a letter, termed a Conditional Letter of Map Revision, in accordance with 44 CFR part 72. The data required to support such requests are the same as those required for final revisions under §§ 65.5, 65.6, and 65.7, except as-built certification is not required. All such requests shall be submitted to the FEMA Headquarters Office in Washington, DC, and shall be accompanied by the appropriate payment, in accordance with 44 CFR part 72.

[62 FR 5736, Feb. 6, 1997]

### § 65.9 Review and response by the Administrator.

If any questions or problems arise during review, FEMA will consult the Chief Executive Officer of the community (CEO), the community official designated by the CEO, and/or the requester for resolution. Upon receipt of a revision request, the Federal Insurance Administrator shall mail an acknowledgment of receipt of such request to the CEO. Within 90 days of receiving the request with all necessary information, the Federal Insurance Administrator shall notify the CEO of one or more of the following:

(a) The effective map(s) shall not be modified;

(b) The base flood elevations on the effective FIRM shall be modified and new base flood elevations shall be established under the provisions of part 67 of this subchapter;

(c) The changes requested are approved and the map(s) amended by Letter of Map Revision (LOMR);

(d) The changes requested are approved and a revised map(s) will be printed and distributed;

(e) The changes requested are not of such a significant nature as to warrant a reissuance or revision of the flood insurance study or maps and will be deferred until such time as a significant change occurs;

(f) An additional 90 days is required to evaluate the scientific or technical data submitted; or

(g) Additional data are required to support the revision request.

(h) The required payment has not been submitted in accordance with 44 CFR part 72, no review will be conducted and no determination will be issued until payment is received.

[51 FR 30315, Aug. 25, 1986; 61 FR 46331, Aug. 30, 1996, as amended at 62 FR 5736, Feb. 6, 1997]

**§ 65.10 Mapping of areas protected by levee systems.**

(a) *General.* For purposes of the NFIP, FEMA will only recognize in its flood hazard and risk mapping effort those levee systems that meet, and continue to meet, minimum design, operation, and maintenance standards that are consistent with the level of protection sought through the comprehensive flood plain management criteria established by § 60.3 of this subchapter. Accordingly, this section describes the types of information FEMA needs to recognize, on NFIP maps, that a levee system provides protection from the base flood. This information must be supplied to FEMA by the community or other party seeking recognition of such a levee system at the time a flood risk study or restudy is conducted, when a map revision under the provisions of part 65 of this subchapter is sought based on a levee system, and upon request by the Federal Insurance Administrator during the review of previously recognized structures. The FEMA review will be for the sole purpose of establishing appropriate risk zone determinations for NFIP maps and shall not constitute a determination by FEMA as to how a structure or system will perform in a flood event.

(b) *Design criteria.* For levees to be recognized by FEMA, evidence that adequate design and operation and maintenance systems are in place to provide reasonable assurance that protection from the base flood exists must

be provided. The following requirements must be met:

(1) *Freeboard.* (i) Riverine levees must provide a minimum freeboard of three feet above the water-surface level of the base flood. An additional one foot above the minimum is required within 100 feet in either side of structures (such as bridges) riverward of the levee or wherever the flow is constricted. An additional one-half foot above the minimum at the upstream end of the levee, tapering to not less than the minimum at the downstream end of the levee, is also required.

(ii) Occasionally, exceptions to the minimum riverine freeboard requirement described in paragraph (b)(1)(i) of this section, may be approved. Appropriate engineering analyses demonstrating adequate protection with a lesser freeboard must be submitted to support a request for such an exception. The material presented must evaluate the uncertainty in the estimated base flood elevation profile and include, but not necessarily be limited to an assessment of statistical confidence limits of the 100-year discharge; changes in stage-discharge relationships; and the sources, potential, and magnitude of debris, sediment, and ice accumulation. It must be also shown that the levee will remain structurally stable during the base flood when such additional loading considerations are imposed. Under no circumstances will freeboard of less than two feet be accepted.

(iii) For coastal levees, the freeboard must be established at one foot above the height of the one percent wave or the maximum wave runup (whichever is greater) associated with the 100-year stillwater surge elevation at the site.

(iv) Occasionally, exceptions to the minimum coastal levee freeboard requirement described in paragraph (b)(1)(iii) of this section, may be approved. Appropriate engineering analyses demonstrating adequate protection with a lesser freeboard must be submitted to support a request for such an exception. The material presented must evaluate the uncertainty in the estimated base flood loading conditions. Particular emphasis must be placed on the effects of wave attack and overtopping on the stability of the

levee. Under no circumstances, however, will a freeboard of less than two feet above the 100-year stillwater surge elevation be accepted.

(2) *Closures.* All openings must be provided with closure devices that are structural parts of the system during operation and design according to sound engineering practice.

(3) *Embankment protection.* Engineering analyses must be submitted that demonstrate that no appreciable erosion of the levee embankment can be expected during the base flood, as a result of either currents or waves, and that anticipated erosion will not result in failure of the levee embankment or foundation directly or indirectly through reduction of the seepage path and subsequent instability. The factors to be addressed in such analyses include, but are not limited to: Expected flow velocities (especially in constricted areas); expected wind and wave action; ice loading; impact of debris; slope protection techniques; duration of flooding at various stages and velocities; embankment and foundation materials; levee alignment, bends, and transitions; and levee side slopes.

(4) *Embankment and foundation stability.* Engineering analyses that evaluate levee embankment stability must be submitted. The analyses provided shall evaluate expected seepage during loading conditions associated with the base flood and shall demonstrate that seepage into or through the levee foundation and embankment will not jeopardize embankment or foundation stability. An alternative analysis demonstrating that the levee is designed and constructed for stability against loading conditions for Case IV as defined in the U.S. Army Corps of Engineers (COE) manual, “Design and Construction of Levees” (EM 1110–2–1913, Chapter 6, Section II), may be used. The factors that shall be addressed in the analyses include: Depth of flooding, duration of flooding, embankment geometry and length of seepage path at critical locations, embankment and foundation materials, embankment compaction, penetrations, other design factors affecting seepage (such as drainage layers), and other design factors affecting embankment and foundation stability (such as berms).

(5) *Settlement.* Engineering analyses must be submitted that assess the potential and magnitude of future losses of freeboard as a result of levee settlement and demonstrate that freeboard will be maintained within the minimum standards set forth in paragraph (b)(1) of this section. This analysis must address embankment loads, compressibility of embankment soils, compressibility of foundation soils, age of the levee system, and construction compaction methods. In addition, detailed settlement analysis using procedures such as those described in the COE manual, “Soil Mechanics Design—Settlement Analysis” (EM 1100–2–1904) must be submitted.

(6) *Interior drainage.* An analysis must be submitted that identifies the source(s) of such flooding, the extent of the flooded area, and, if the average depth is greater than one foot, the water-surface elevation(s) of the base flood. This analysis must be based on the joint probability of interior and exterior flooding and the capacity of facilities (such as drainage lines and pumps) for evacuating interior floodwaters.

(7) *Other design criteria.* In unique situations, such as those where the levee system has relatively high vulnerability, FEMA may require that other design criteria and analyses be submitted to show that the levees provide adequate protection. In such situations, sound engineering practice will be the standard on which FEMA will base its determinations. FEMA will also provide the rationale for requiring this additional information.

(c) *Operation plans and criteria.* For a levee system to be recognized, the operational criteria must be as described below. All closure devices or mechanical systems for internal drainage, whether manual or automatic, must be operated in accordance with an officially adopted operation manual, a copy of which must be provided to FEMA by the operator when levee or drainage system recognition is being sought or when the manual for a previously recognized system is revised in any manner. All operations must be under the jurisdiction of a Federal or State agency, an agency created by

Federal or State law, or an agency of a community participating in the NFIP.

(1) *Closures.* Operation plans for closures must include the following:

(i) Documentation of the flood warning system, under the jurisdiction of Federal, State, or community officials, that will be used to trigger emergency operation activities and demonstration that sufficient flood warning time exists for the completed operation of all closure structures, including necessary sealing, before floodwaters reach the base of the closure.

(ii) A formal plan of operation including specific actions and assignments of responsibility by individual name or title.

(iii) Provisions for periodic operation, at not less than one-year intervals, of the closure structure for testing and training purposes.

(2) *Interior drainage systems.* Interior drainage systems associated with levee systems usually include storage areas, gravity outlets, pumping stations, or a combination thereof. These drainage systems will be recognized by FEMA on NFIP maps for flood protection purposes only if the following minimum criteria are included in the operation plan:

(i) Documentation of the flood warning system, under the jurisdiction of Federal, State, or community officials, that will be used to trigger emergency operation activities and demonstration that sufficient flood warning time exists to permit activation of mechanized portions of the drainage system.

(ii) A formal plan of operation including specific actions and assignments of responsibility by individual name or title.

(iii) Provision for manual backup for the activation of automatic systems.

(iv) Provisions for periodic inspection of interior drainage systems and periodic operation of any mechanized portions for testing and training purposes. No more than one year shall elapse between either the inspections or the operations.

(3) *Other operation plans and criteria.* Other operating plans and criteria may be required by FEMA to ensure that adequate protection is provided in specific situations. In such cases, sound emergency management practice will

be the standard upon which FEMA determinations will be based.

(d) *Maintenance plans and criteria.* For levee systems to be recognized as providing protection from the base flood, the maintenance criteria must be as described herein. Levee systems must be maintained in accordance with an officially adopted maintenance plan, and a copy of this plan must be provided to FEMA by the owner of the levee system when recognition is being sought or when the plan for a previously recognized system is revised in any manner. All maintenance activities must be under the jurisdiction of a Federal or State agency, an agency created by Federal or State law, or an agency of a community participating in the NFIP that must assume ultimate responsibility for maintenance. This plan must document the formal procedure that ensures that the stability, height, and overall integrity of the levee and its associated structures and systems are maintained. At a minimum, maintenance plans shall specify the maintenance activities to be performed, the frequency of their performance, and the person by name or title responsible for their performance.

(e) *Certification requirements.* Data submitted to support that a given levee system complies with the structural requirements set forth in paragraphs (b)(1) through (7) of this section must be certified by a registered professional engineer. Also, certified as-built plans of the levee must be submitted. Certifications are subject to the definition given at §65.2 of this subchapter. In lieu of these structural requirements, a Federal agency with responsibility for levee design may certify that the levee has been adequately designed and constructed to provide protection against the base flood.

[51 FR 30316, Aug. 25, 1986]

**§ 65.11 Evaluation of sand dunes in mapping coastal flood hazard areas.**

(a) *General conditions.* For purposes of the NFIP, FEMA will consider storm-induced dune erosion potential in its determination of coastal flood hazards and risk mapping efforts. The criterion to be used in the evaluation of dune erosion will apply to primary frontal dunes as defined in §59.1, but does not

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apply to artificially designed and constructed dunes that are not well-established with long-standing vegetative cover, such as the placement of sand materials in a dune-like formation.

(b) *Evaluation criterion.* Primary frontal dunes will not be considered as effective barriers to base flood storm surges and associated wave action where the cross-sectional area of the primary frontal dune, as measured perpendicular to the shoreline and above the 100-year stillwater flood elevation and seaward of the dune crest, is equal to, or less than, 540 square feet.

(c) *Exceptions.* Exceptions to the evaluation criterion may be granted where it can be demonstrated through authoritative historical documentation that the primary frontal dunes at a specific site withstood previous base flood storm surges and associated wave action.

[53 FR 16279, May 6, 1988]

### **§ 65.12 Revision of flood insurance rate maps to reflect base flood elevations caused by proposed encroachments.**

(a) When a community proposes to permit encroachments upon the flood plain when a regulatory floodway has not been adopted or to permit encroachments upon an adopted regulatory floodway which will cause base flood elevation increases in excess of those permitted under paragraphs (c)(10) or (d)(3) of § 60.3 of this subchapter, the community shall apply to the Federal Insurance Administrator for conditional approval of such action prior to permitting the encroachments to occur and shall submit the following as part of its application:

(1) A request for conditional approval of map change and the appropriate initial fee as specified by § 72.3 of this subchapter or a request for exemption from fees as specified by § 72.5 of this subchapter, whichever is appropriate;

(2) An evaluation of alternatives which would not result in a base flood elevation increase above that permitted under paragraphs (c)(10) or (d)(3) of § 60.3 of this subchapter demonstrating why these alternatives are not feasible;

(3) Documentation of individual legal notice to all impacted property owners

within and outside of the community, explaining the impact of the proposed action on their property.

(4) Concurrence of the Chief Executive Officer of any other communities impacted by the proposed actions;

(5) Certification that no structures are located in areas which would be impacted by the increased base flood elevation;

(6) A request for revision of base flood elevation determination according to the provisions of § 65.6 of this part;

(7) A request for floodway revision in accordance with the provisions of § 65.7 of this part;

(b) Upon receipt of the Federal Insurance Administrator's conditional approval of map change and prior to approving the proposed encroachments, a community shall provide evidence to the Federal Insurance Administrator of the adoption of flood plain management ordinances incorporating the increased base flood elevations and/or revised floodway reflecting the post-project condition.

(c) Upon completion of the proposed encroachments, a community shall provide as-built certifications in accordance with the provisions of § 65.3 of this part. The Federal Insurance Administrator will initiate a final map revision upon receipt of such certifications in accordance with part 67 of this subchapter.

[53 FR 16279, May 6, 1988]

### **§ 65.13 Mapping and map revisions for areas subject to alluvial fan flooding.**

This section describes the procedures to be followed and the types of information FEMA needs to recognize on a NFIP map that a structural flood control measure provides protection from the base flood in an area subject to alluvial fan flooding. This information must be supplied to FEMA by the community or other party seeking recognition of such a flood control measure at the time a flood risk study or restudy is conducted, when a map revision under the provisions of part 65 of this subchapter is sought, and upon request by the Federal Insurance Administrator during the review of previously recognized flood control measures. The

FEMA review will be for the sole purpose of establishing appropriate risk zone determinations for NFIP maps and shall not constitute a determination by FEMA as to how the flood control measure will perform in a flood event.

(a) The applicable provisions of §§ 65.2, 65.3, 65.4, 65.6, 65.8 and 65.10 shall also apply to FIRM revisions involving alluvial fan flooding.

(b) The provisions of § 65.5 regarding map revisions based on fill and the provisions of part 70 of this chapter shall not apply to FIRM revisions involving alluvial fan flooding. In general, elevations of a parcel of land or a structure by fill or other means, will not serve as a basis for removing areas subject to alluvial fan flooding from an area of special food hazards.

(c) FEMA will credit on NFIP maps only major structural flood control measures whose design and construction are supported by sound engineering analyses which demonstrate that the measures will effectively eliminate alluvial fan flood hazards from the area protected by such measures. The provided analyses must include, but are not necessarily limited to, the following:

(1) Engineering analyses that quantify the discharges and volumes of water, debris, and sediment movement associated with the flood that has a one-percent probability of being exceeded in any year at the apex under current watershed conditions and under potential adverse conditions (e.g., deforestation of the watershed by fire). The potential for debris flow and sediment movement must be assessed using an engineering method acceptable to FEMA. The assessment should consider the characteristics and availability of sediment in the drainage basin above the apex and on the alluvial fan.

(2) Engineering analyses showing that the measures will accommodate the estimated peak discharges and volumes of water, debris, and sediment, as determined in accordance with paragraph (c)(1) of this section, and will withstand the associated hydrodynamic and hydrostatic forces.

(3) Engineering analyses showing that the measures have been designed

to withstand the potential erosion and scour associated with estimated discharges.

(4) Engineering analyses or evidence showing that the measures will provide protection from hazards associated with the possible relocation of flow paths from other parts of the fan.

(5) Engineering analyses that assess the effect of the project on flood hazards, including depth and velocity of floodwaters and scour and sediment deposition, on other areas of the fan.

(6) Engineering analyses demonstrating that flooding from sources other than the fan apex, including local runoff, is either insignificant or has been accounted for in the design.

(d) *Coordination.* FEMA will recognize measures that are adequately designed and constructed, provided that: evidence is submitted to show that the impact of the measures on flood hazards in all areas of the fan (including those not protected by the flood control measures), and the design and maintenance requirements of the measures, were reviewed and approved by the impacted communities, and also by State and local agencies that have jurisdiction over flood control activities.

(e) *Operation and maintenance plans and criteria.* The requirements for operation and maintenance of flood control measures on areas subject to alluvial fan flooding shall be those specified under § 65.10, paragraphs (c) and (d), when applicable.

(f) *Certification requirements.* Data submitted to support that a given flood control measure complies with the requirements set forth in paragraphs (c) (1) through (6) of this section must be certified by a registered professional engineer. Also, certified as-built plans of the flood control measures must be submitted. Certifications are subject to the definition given at § 65.2.

[54 FR 33551, Aug. 15, 1989, as amended at 74 FR 15342, Apr. 3, 2009]

**§ 65.14 Remapping of areas for which local flood protection systems no longer provide base flood protection.**

(a) *General.* (1) This section describes the procedures to follow and the types

of information FEMA requires to designate flood control restoration zones. A community may be eligible to apply for this zone designation if the Federal Insurance Administrator determines that it is engaged in the process of restoring a flood protection system that was:

- (i) Constructed using Federal funds;
- (ii) Recognized as providing base flood protection on the community's effective FIRM; and
- (iii) Decertified by a Federal agency responsible for flood protection design or construction.

(2) Where the Federal Insurance Administrator determines that a community is in the process of restoring its flood protection system to provide base flood protection, a FIRM will be prepared that designates the temporary flood hazard areas as a flood control restoration zone (Zone AR). Existing special flood hazard areas shown on the community's effective FIRM that are further inundated by Zone AR flooding shall be designated as a "dual" flood insurance rate zone, Zone AR/AE or AR/AH with Zone AR base flood elevations, and AE or AH with base flood elevations and Zone AR/AO with Zone AR base flood elevations and Zone AO with flood depths, or Zone AR/A with Zone AR base flood elevations and Zone A without base flood elevations.

(b) *Limitations.* A community may have a flood control restoration zone designation only once while restoring a flood protection system. This limitation does not preclude future flood control restoration zone designations should a fully restored, certified, and accredited system become decertified for a second or subsequent time.

(1) A community that receives Federal funds for the purpose of designing or constructing, or both, the restoration project must complete restoration or meet the requirements of 44 CFR 61.12 within a specified period, not to exceed a maximum of 10 years from the date of submittal of the community's application for designation of a flood control restoration zone.

(2) A community that does not receive Federal funds for the purpose of constructing the restoration project must complete restoration within a specified period, not to exceed a maximum

of 5 years from the date of submittal of the community's application for designation of a flood control restoration zone. Such a community is not eligible for the provisions of § 61.12. The designated restoration period may not be extended beyond the maximum allowable under this limitation.

(c) *Exclusions.* The provisions of these regulations do not apply in a coastal high hazard area as defined in 44 CFR 59.1, including areas that would be subject to coastal high hazards as a result of the decertification of a flood protection system shown on the community's effective FIRM as providing base flood protection.

(d) *Effective date for risk premium rates.* The effective date for any risk premium rates established for Zone AR shall be the effective date of the revised FIRM showing Zone AR designations.

(e) *Application and submittal requirements for designation of a flood control restoration zone.* A community must submit a written request to the Federal Insurance Administrator, signed by the community's Chief Executive Officer, for a flood plain designation as a flood control restoration zone. The request must include a legislative action by the community requesting the designation. The Federal Insurance Administrator will not initiate any action to designate flood control restoration zones without receipt of the formal request from the community that complies with all requirements of this section. The Federal Insurance Administrator reserves the right to request additional information from the community to support or further document the community's formal request for designation of a flood control restoration zone, if deemed necessary.

(1) At a minimum, the request from a community that receives Federal funds for the purpose of designing, constructing, or both, the restoration project must include:

(i) A statement whether, to the best of the knowledge of the community's Chief Executive Officer, the flood protection system is currently the subject matter of litigation before any Federal, State or local court or administrative agency, and if so, the purpose of that litigation;

(ii) A statement whether the community has previously requested a determination with respect to the same subject matter from the Federal Insurance Administrator, and if so, a statement that details the disposition of such previous request;

(iii) A statement from the community and certification by a Federal agency responsible for flood protection design or construction that the existing flood control system shown on the effective FIRM was originally built using Federal funds, that it no longer provides base flood protection, but that it continues to provide protection from the flood having at least a 3-percent chance of occurrence during any given year;

(iv) An official map of the community or legal description, with supporting documentation, that the community will adopt as part of its flood plain management measures, which designates developed areas as defined in §59.1 and as further defined in §60.3(f).

(v) A restoration plan to return the system to a level of base flood protection. At a minimum, this plan must:

(A) List all important project elements, such as acquisition of permits, approvals, and contracts and construction schedules of planned features;

(B) Identify anticipated start and completion dates for each element, as well as significant milestones and dates;

(C) Identify the date on which “as built” drawings and certification for the completed restoration project will be submitted. This date must provide for a restoration period not to exceed the maximum allowable restoration period for the flood protection system, or;

(D) Identify the date on which the community will submit a request for a finding of adequate progress that meets all requirements of §61.12. This date may not exceed the maximum allowable restoration period for the flood protection system;

(vi) A statement identifying the local project sponsor responsible for restoration of the flood protection system;

(vii) A copy of a study, performed by a Federal agency responsible for flood protection design or construction in

consultation with the local project sponsor, which demonstrates a Federal interest in restoration of the system and which deems that the flood protection system is restorable to a level of base flood protection.

(viii) A joint statement from the Federal agency responsible for flood protection design or construction involved in restoration of the flood protection system and the local project sponsor certifying that the design and construction of the flood control system involves Federal funds, and that the restoration of the flood protection system will provide base flood protection;

(2) At a minimum, the request from a community that receives no Federal funds for the purpose of constructing the restoration project must:

(i) Meet the requirements of §65.14(e)(1)(i) through (iv);

(ii) Include a restoration plan to return the system to a level of base flood protection. At a minimum, this plan must:

(A) List all important project elements, such as acquisition of permits, approvals, and contracts and construction schedules of planned features;

(B) Identify anticipated start and completion dates for each element, as well as significant milestones and dates; and

(C) Identify the date on which “as built” drawings and certification for the completed restoration project will be submitted. This date must provide for a restoration period not to exceed the maximum allowable restoration period for the flood protection system;

(iii) Include a statement identifying the local agency responsible for restoration of the flood protection system;

(iv) Include a copy of a study, certified by registered Professional Engineer, that demonstrates that the flood protection system is restorable to provide protection from the base flood;

(v) Include a statement from the local agency responsible for restoration of the flood protection system certifying that the restored flood protection system will meet the applicable requirements of Part 65; and



(vi) Include a statement from the local agency responsible for restoration of the flood protection system that identifies the source of funds for the purpose of constructing the restoration project and a percentage of the total funds contributed by each source. The statement must demonstrate, at a minimum, that 100 percent of the total financial project cost of the completed flood protection system has been appropriated.

(f) *Review and response by the Federal Insurance Administrator.* The review and response by the Federal Insurance Administrator shall be in accordance with procedures specified in § 65.9.

(g) *Requirements for maintaining designation of a flood control restoration zone.* During the restoration period, the community and the cost-sharing Federal agency, if any, must certify annually to the FEMA Regional Office having jurisdiction that the restoration will be completed in accordance with the restoration plan within the time period specified by the plan. In addition, the community and the cost-sharing Federal agency, if any, will update the restoration plan and will identify any permitting or construction problems that will delay the project completion from the restoration plan previously submitted to the Federal Insurance Administrator. The FEMA Regional Office having jurisdiction will make an annual assessment and recommendation to the Federal Insurance Administrator as to the viability of the restoration plan and will conduct periodic on-site inspections of the flood protection system under restoration.

(h) *Procedures for removing flood control restoration zone designation due to adequate progress or complete restoration of the flood protection system.* At any time during the restoration period:

(1) A community that receives Federal funds for the purpose of designing, constructing, or both, the restoration project shall provide written evidence of certification from a Federal agency having flood protection design or construction responsibility that the necessary improvements have been completed and that the system has been restored to provide protection from the base flood, or submit a request for a finding of adequate progress that meets

all requirements of § 61.12. If the Administrator determines that adequate progress has been made, FEMA will revise the zone designation from a flood control restoration zone designation to Zone A99.

(2) After the improvements have been completed, certified by a Federal agency as providing base flood protection, and reviewed by FEMA, FEMA will revise the FIRM to reflect the completed flood control system.

(3) A community that receives no Federal funds for the purpose of constructing the restoration project must provide written evidence that the restored flood protection system meets the requirements of part 65. A community that receives no Federal funds for the purpose of constructing the restoration project is not eligible for a finding of adequate progress under § 61.12.

(4) After the improvements have been completed and reviewed by FEMA, FEMA will revise the FIRM to reflect the completed flood protection system.

(i) *Procedures for removing flood control restoration zone designation due to non-compliance with the restoration schedule or as a result of a finding that satisfactory progress is not being made to complete the restoration.* At any time during the restoration period, should the Federal Insurance Administrator determine that the restoration will not be completed in accordance with the time frame specified in the restoration plan, or that satisfactory progress is not being made to restore the flood protection system to provide complete flood protection in accordance with the restoration plan, the Federal Insurance Administrator shall notify the community and the responsible Federal agency, in writing, of the determination, the reasons for that determination, and that the FIRM will be revised to remove the flood control restoration zone designation. Within thirty (30) days of such notice, the community may submit written information that provides assurance that the restoration will be completed in accordance with the time frame specified in the restoration plan, or that satisfactory progress is being made to restore complete protection in accordance with the restoration plan, or that, with reasonable certainty, the

restoration will be completed within the maximum allowable restoration period. On the basis of this information the Federal Insurance Administrator may suspend the decision to revise the FIRM to remove the flood control restoration zone designation. If the community does not submit any information, or if, based on a review of the information submitted, there is sufficient cause to find that the restoration will not be completed as provided for in the restoration plan, the Federal Insurance Administrator shall revise the FIRM, in accordance with 44 CFR Part 67, and shall remove the flood control restoration zone designations and shall redesignate those areas as Zone A1-30, AE, AH, AO, or A.

[62 FR 55717, Oct. 27, 1997]

**§ 65.15 List of communities submitting new technical data.**

This section provides a cumulative list of communities where modifications of the base flood elevation determinations have been made because of submission of new scientific or technical data. Due to the need for expediting the modifications, the revised map is already in effect and the appeal period commences on or about the effective date of the modified map. An interim rule, followed by a final rule, will list the revised map effective date, local repository and the name and address of the Chief Executive Officer of the community. The map(s) is (are) effective for both flood plain management and insurance purposes.

[51 FR 30317, Aug. 25, 1986. Redesignated at 53 FR 16279, May 6, 1988, and further redesignated at 54 FR 33551, Aug. 15, 1989. Redesignated at 59 FR 53599, Oct. 25, 1994]

EDITORIAL NOTE: For references to FR pages showing lists of eligible communities, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

**§ 65.16 Standard Flood Hazard Determination Form and Instructions.**

(a) Section 528 of the National Flood Insurance Reform Act of 1994 (42 U.S.C. 1365(a)) directs FEMA to develop a standard form for determining, in the case of a loan secured by improved real estate or a mobile home, whether the building or mobile home is located in

an area identified by the Director as an area having special flood hazards and in which flood insurance under this title is available. The purpose of the form is to determine whether a building or mobile home is located within an identified Special Flood Hazard Area (SFHA), whether flood insurance is required, and whether federal flood insurance is available. Use of this form will ensure that required flood insurance coverage is purchased for structures located in an SFHA, and will assist federal entities for lending regulation in assuring compliance with these purchase requirements.

(b) The form is available by written request to Federal Emergency Management Agency, PO Box 2012, Jessup, MD 20794; ask for the Standard Flood Hazard Determination form. It is also available by fax-on-demand; call (202) 646-3362, form #23103. Finally, the form is available through the Internet at <http://www.fema.gov/nfip/mpurfi.htm>.

[63 FR 27857, May 21, 1998]

**§ 65.17 Review of determinations.**

This section describes the procedures that shall be followed and the types of information required by FEMA to review a determination of whether a building or manufactured home is located within an identified Special Flood Hazard Area (SFHA).

(a) *General conditions.* The borrower and lender of a loan secured by improved real estate or a manufactured home may jointly request that FEMA review a determination that the building or manufactured home is located in an identified SFHA. Such a request must be submitted within 45 days of the lender's notification to the borrower that the building or manufactured home is in the SFHA and that flood insurance is required. Such a request must be submitted jointly by the lender and the borrower and shall include the required fee and technical information related to the building or manufactured home. Elevation data will not be considered under the procedures described in this section.

(b) *Data and other requirements.* Items required for FEMA's review of a determination shall include the following:

(1) Payment of the required fee by check or money order, in U.S. funds,

payable to the National Flood Insurance Program;

(2) A request for FEMA's review of the determination, signed by both the borrower and the lender;

(3) A copy of the lender's notification to the borrower that the building or manufactured home is in an SFHA and that flood insurance is required (the request for review of the determination must be postmarked within 45 days of borrower notification);

(4) A completed Standard Flood Hazard Determination Form for the building or manufactured home, together with a legible hard copy of all technical data used in making the determination; and

(5) A copy of the effective NFIP map (Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM)) panel for the community in which the building or manufactured home is located, with the building or manufactured home location indicated. Portions of the map panel may be submitted but shall include the area of the building or manufactured home in question together with the map panel title block, including effective date, bar scale, and north arrow.

(c) *Review and response by FEMA.* Within 45 days after receipt of a request to review a determination, FEMA will notify the applicants in writing of one of the following:

(1) Request submitted more than 45 days after borrower notification; no review will be performed and all materials are being returned;

(2) Insufficient information was received to review the determination; therefore, the determination stands until a complete submittal is received; or

(3) The results of FEMA's review of the determination, which shall include the following:

(i) The name of the NFIP community in which the building or manufactured home is located;

(ii) The property address or other identification of the building or manufactured home to which the determination applies;

(iii) The NFIP map panel number and effective date upon which the determination is based;

(iv) A statement indicating whether the building or manufactured home is within the Special Flood Hazard Area;

(v) The time frame during which the determination is effective.

[60 FR 62218, Dec. 5, 1995]

## PART 66—CONSULTATION WITH LOCAL OFFICIALS

Sec.

66.1 Purpose of part.

66.2 Definitions.

66.3 Establishment of community case file and flood elevation study docket.

66.4 Appointment of consultation coordination officer.

66.5 Responsibilities for consultation and coordination.

AUTHORITY: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

### § 66.1 Purpose of part.

(a) The purpose of this part is to comply with section 206 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4107) by establishing procedures for flood elevation determinations of Zones A1–30, AE, AH, AO and V1–30, and VE within the community so that adequate consultation with the community officials shall be assured.

(b) The procedures in this part shall apply when base flood elevations are to be determined or modified.

(c) The Federal Insurance Administrator or his delegate shall:

(1) Specifically request that the community submit pertinent data concerning flood hazards, flooding experience, plans to avoid potential hazards, estimate of historical and prospective economic impact on the community, and such other appropriate data (particularly if such data will necessitate a modification of a base flood elevation).

(2) Notify local officials of the progress of surveys, studies, investigations, and of prospective findings, along with data and methods employed in reaching such conclusions; and

(3) Encourage local dissemination of surveys, studies, and investigations so that interested persons will have an opportunity to bring relevant data to the attention of the community and to the Federal Insurance Administrator.

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(4) Carry out the responsibilities for consultation and coordination set forth in § 66.5 of this part.

[41 FR 46988, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 47 FR 771, Jan. 7, 1982; 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 50 FR 36028, Sept. 4, 1985]

### § 66.2 Definitions.

The definitions set forth in part 59 of this subchapter are applicable to this part.

[41 FR 46988, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979]

### § 66.3 Establishment of community case file and flood elevation study docket.

(a) A file shall be established for each community at the time initial consideration is given to studying that community in order to establish whether or not it contains flood-prone areas. Thereafter, the file shall include copies of all correspondence with officials in that community. As the community is tentatively identified, provided with base flood elevations, or suspended and reinstated, documentation of such actions by the Federal Insurance Administrator shall be placed in the community file. Even if a map is administratively rescinded or withdrawn after notice under part 65 of this subchapter or the community successfully rebuts its flood-prone designation, the file will be maintained indefinitely.

(b) A portion of the community file shall be designated a flood elevation study consultation docket and shall be established for each community at the time the contract is awarded for a flood elevation study. The docket shall include copies of (1) all correspondence between the Federal Insurance Administrator and the community concerning the study, reports of any meetings among the Agency representatives, property owners of the community, the state coordinating agency, study contractors or other interested persons, (2) relevant publications, (3) a copy of the completed flood elevation study, and (4) a copy of the Federal Insurance Administrator's final determination.

(c) A flood elevation determination docket shall be established and main-

tained in accordance with part 67 of this subchapter.

[41 FR 46988, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44544 and 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

### § 66.4 Appointment of consultation coordination officer.

The Federal Insurance Administrator may appoint an employee of the Federal Emergency Management Agency, or other designated Federal employee, as the Consultation Coordination Officer, for each community when an analysis is undertaken to establish or to modify flood elevations pursuant to a new study or a restudy. When a CCO is appointed by the Federal Insurance Administrator, the responsibilities for consultation and coordination as set forth in § 66.5 shall be carried out by the CCO. The Federal Insurance Administrator shall advise the community and the state coordinating agency, in writing, of this appointment.

[47 FR 771, Jan. 7, 1982, as amended at 49 FR 4751, Feb. 8, 1984]

### § 66.5 Responsibilities for consultation and coordination.

(a) Contact shall be made with appropriate officials of a community in which a proposed investigation is undertaken, and with the state coordinating agency.

(b) Local dissemination of the intent and nature of the investigation shall be encouraged so that interested parties will have an opportunity to bring relevant data to the attention of the community and to the Federal Insurance Administrator.

(c) Submission of information from the community concerning the study shall be encouraged.

(d) Appropriate officials of the community shall be fully informed of (1) The responsibilities placed on them by the Program, (2) the administrative procedures followed by the Federal Emergency Management Agency, (3) the community's role in establishing elevations, and (4) the responsibilities of the community if it participates or continues to participate in the Program.

(e) Before the commencement of an initial Flood Insurance Study, the CCO

or other FEMA representative, together with a representative of the organization undertaking the study, shall meet with officials of the community. The state coordinating agency shall be notified of this meeting and may attend. At this meeting, the local officials shall be informed of (1) The date when the study will commence, (2) the nature and purpose of the study, (3) areas involved, (4) the manner in which the study shall be undertaken, (5) the general principles to be applied, and (6) the intended use of the data obtained. The community shall be informed in writing if any of the six preceding items are or will be changed after this initial meeting and during the course of the ongoing study.

(f) The community shall be informed in writing of any intended modification to the community's final flood elevation determinations or the development of new elevations in additional areas of the community as a result of a new study or restudy. Such information to the community will include the data set forth in paragraph (e) of this section. At the discretion of the Regional Administrator in each FEMA Regional Office, a meeting may be held to accomplish this requirement.

[47 FR 771, Jan. 7, 1982, as amended at 49 FR 4751, Feb. 8, 1984]

## PART 67—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Sec.

- 67.1 Purpose of part.
- 67.2 Definitions.
- 67.3 Establishment and maintenance of a flood elevation determination docket (FEDD).
- 67.4 Proposed flood elevation determination.
- 67.5 Right of appeal.
- 67.6 Basis of appeal.
- 67.7 Collection of appeal data.
- 67.8 Appeal procedure.
- 67.9 Final determination in the absence of an appeal by the community.
- 67.10 Rates during pendency of final determination.
- 67.11 Notice of final determination.
- 67.12 Appeal to District Court.

AUTHORITY: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978

Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

SOURCE: 41 FR 46989, Oct. 26, 1976, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

### § 67.1 Purpose of part.

The purpose of this part is to establish procedures implementing the provisions of section 110 of Flood Disaster Protection Act of 1973.

### § 67.2 Definitions.

The definitions set forth in part 59 of this subchapter are applicable to this part.

### § 67.3 Establishment and maintenance of a flood elevation determination docket (FEDD).

The Federal Insurance Administrator shall establish a docket of all matters pertaining to flood elevation determinations. The docket files shall contain the following information:

- (a) The name of the community subject to the flood elevation determination;
- (b) A copy of the notice of the proposed flood elevation determination to the Chief Executive Officer (CEO) of the Community;
- (c) A copy of the notice of the proposed flood elevation determination published in a prominent local newspaper of the community;
- (d) A copy of the notice of the proposed flood elevation determination published in the FEDERAL REGISTER;
- (e) Copies of all appeals by private persons received by the Federal Insurance Administrator from the CEO;
- (f) Copies of all comments received by the Federal Insurance Administrator on the notice of the proposed flood elevation determination published in the FEDERAL REGISTER.
- (g) A copy of the community's appeal or a copy of its decision not to appeal the proposed flood elevation determination;
- (h) A copy of the flood insurance study for the community;
- (i) A copy of the FIRM for the community;
- (j) Copies of all materials maintained in the flood elevation study consultation docket; and

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(k) A copy of the final determination with supporting documents.

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

### § 67.4 Proposed flood elevation determination.

The Federal Insurance Administrator shall propose flood elevation determinations in the following manner:

(a) Publication of the proposed flood elevation determination for comment in the FEDERAL REGISTER;

(b) Notification by certified mail, return receipt requested, of the proposed flood elevation determination to the CEO; and

(c) Publication of the proposed flood elevation determination in a prominent local newspaper at least twice during the ten day period immediately following the notification of the CEO.

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

EDITORIAL NOTE: For references to FR pages showing lists of flood elevation determinations, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

### § 67.5 Right of appeal.

(a) Any owner or lessee of real property, within a community where a proposed flood elevation determination has been made pursuant to section 1363 of the National Flood Insurance Act of 1968, as amended, who believes his property rights to be adversely affected by the Federal Insurance Administrator's proposed determination, may file a written appeal of such determination with the CEO, or such agency as he shall publicly designate, within ninety days of the second newspaper publication of the Federal Insurance Administrator's proposed determination.

(b) [Reserved]

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

### § 67.6 Basis of appeal.

(a) The sole basis of appeal under this part shall be the possession of knowledge or information indicating that the elevations proposed by FEMA are sci-

entifically or technically incorrect. Because scientific and technical correctness is often a matter of degree rather than absolute (except where mathematical or measurement error or changed physical conditions can be demonstrated), appellants are required to demonstrate that alternative methods or applications result in more correct estimates of base flood elevations, thus demonstrating that FEMA's estimates are incorrect.

(b) *Data requirements.* (1) If an appellant believes the proposed base flood elevations are technically incorrect due to a mathematical or measurement error or changed physical conditions, then the specific source of the error must be identified. Supporting data must be furnished to FEMA including certifications by a registered professional engineer or licensed land surveyor, of the new data necessary for FEMA to conduct a reanalysis.

(2) If an appellant believes that the proposed base flood elevations are technically incorrect due to error in application of hydrologic, hydraulic or other methods or use of inferior data in applying such methods, the appeal must demonstrate technical incorrectness by:

(i) Identifying the purported error in the application or the inferior data.

(ii) Supporting why the application is incorrect or data is inferior.

(iii) Providing an application of the same basic methods utilized by FEMA but with the changes itemized.

(iv) Providing background technical support for the changes indicating why the appellant's application should be accepted as more correct.

(v) Providing certification of correctness of any alternate data utilized or measurements made (such as topographic information) by a registered professional engineer or licensed land surveyor, and

(vi) Providing documentation of all locations where the appellant's base flood elevations are different from FEMA's.

(3) If any appellant believes the proposed base flood elevations are scientifically incorrect, the appeal must demonstrate scientific incorrectness by:

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(i) Identifying the methods, or assumptions purported to be scientifically incorrect.

(ii) Supporting why the methods, or assumptions are scientifically incorrect.

(iii) Providing an alternative analysis utilizing methods, or assumptions purported to be correct.

(iv) Providing technical support indicating why the appellant's methods should be accepted as more correct and

(v) Providing documentation of all locations where the appellant's base flood elevations are different from FEMA's.

[48 FR 31644, July 1, 1983]

### § 67.7 Collection of appeal data.

(a) Appeals by private persons to the CEO shall be submitted within ninety (90) days following the second newspaper publication of the Federal Insurance Administrator's proposed flood elevation determination to the CEO or to such agency as he may publicly designate and shall set forth scientific or technical data that tend to negate or contradict the Federal Insurance Administrator's findings.

(b) Copies of all individual appeals received by the CEO shall be forwarded, as soon as they are received, to the Federal Insurance Administrator for information and placement in the Flood Elevation Determination Docket.

(c) The CEO shall review and consolidate all appeals by private persons and issue a written opinion stating whether the evidence presented is sufficient to justify an appeal on behalf of such persons by the community in its own name.

(d) The decision issued by the CEO on the basis of his review, on whether an appeal by the community in its own name shall be made, shall be filed with the Federal Insurance Administrator not later than ninety days after the date of the second newspaper publication of the Federal Insurance Administrator's proposed flood elevation determination and shall be placed in the FEDD.

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

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### § 67.8 Appeal procedure.

(a) If a community appeals the proposed flood elevation determination, the Federal Insurance Administrator shall review and take fully into account any technical or scientific data submitted by the community that tend to negate or contradict the information upon which his/her proposed determination is based.

(b) The Federal Insurance Administrator shall resolve such appeal by consultation with officials of the local government, or by administrative hearings under the procedures set forth in part 68 of this subchapter, or by submission of the conflicting data to an independent scientific body or appropriate Federal agency for advice.

(c) The final determination by the Federal Insurance Administrator where an appeal is filed shall be made within a reasonable time.

(d) Nothing in this section shall be considered to compromise an appellant's rights granted under § 67.12.

(e) The Federal Insurance Administrator shall make available for public inspection the reports and other information used in making the final determination. This material shall be admissible in a court of law in the event the community seeks judicial review in accordance with § 67.12.

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

### § 67.9 Final determination in the absence of an appeal by the community.

(a) If the Federal Insurance Administrator does not receive an appeal from the community within the ninety days provided, he shall consolidate and review on their own merits the individual appeals which, in accordance with § 67.7 are filed within the community and forwarded by the CEO.

(b) The final determination shall be made pursuant to the procedures in § 67.8 and, modifications shall be made of his proposed determination as may be appropriate, taking into account the written opinion, if any, issued by the

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community in not supporting such appeals.

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

### § 67.10 Rates during pendency of final determination.

(a) Until such time as a final determination is made and proper notice is given, no person within a participating community shall be denied the right to purchase flood insurance at the subsidized rate.

(b) After the final determination and upon the effective date of a FIRM, risk premium rates will be charged for new construction and substantial improvements. The effective date of a FIRM shall begin not later than six months after the final flood elevation determination.

### § 67.11 Notice of final determination.

The Federal Insurance Administrator's notice of the final flood elevation determination for a community shall be in written form and published in the FEDERAL REGISTER, and copies shall be sent to the CEO, all individual appellants and the State Coordinating Agency.

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

EDITORIAL NOTE: For the list of communities issued under this section, and not carried in the CFR, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

### § 67.12 Appeal to District Court.

(a) An appellant aggrieved by the final determination of the Federal Insurance Administrator may appeal such determination only to the United States District Court for the District within which the community is located within sixty days after receipt of notice of determination.

(b) During the pendency of any such litigation, all final determinations of the Federal Insurance Administrator shall be effective for the purposes of this title unless stayed by the court for good cause shown.

(c) The scope of review of the appellate court shall be in accordance with

the provisions of 5 U.S.C. 706, as modified by 42 U.S.C. 4104(b).

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44544 and 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 49 FR 33879, Aug. 27, 1984]

## PART 68—ADMINISTRATIVE HEARING PROCEDURES

Sec.

- 68.1 Purpose of part.
- 68.2 Definitions.
- 68.3 Right to administrative hearings.
- 68.4 Hearing board.
- 68.5 Establishment of a docket.
- 68.6 Time and place of hearing.
- 68.7 Conduct of hearings.
- 68.8 Scope of review.
- 68.9 Admissible evidence.
- 68.10 Burden of proof.
- 68.11 Determination.
- 68.12 Relief.

AUTHORITY: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

SOURCE: 47 FR 23449, May 28, 1982, unless otherwise noted.

### § 68.1 Purpose of part.

The purpose of this part is to establish procedures for appeals of the Federal Insurance Administrator's base flood elevation determinations, whether proposed pursuant to section 1363(e) of the Act (42 U.S.C. 4104) or modified because of changed conditions or newly acquired scientific and technical information.

[47 FR 23449, May 29, 1982, as amended at 49 FR 33879, Aug. 27, 1984]

### § 68.2 Definitions.

The definitions set forth in part 59 of this subchapter are applicable to this part.

[47 FR 23449, May 29, 1982, as amended at 49 FR 33879, Aug. 27, 1984]

### § 68.3 Right to administrative hearings.

If a community appeals the Federal Insurance Administrator's flood elevation determination established pursuant to § 67.8 of this subchapter, and the Federal Insurance Administrator has determined that such appeal cannot be resolved by consultation with



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officials of the community or by submitting the conflicting data to an independent scientific body or appropriate Federal agency for advice, the Federal Insurance Administrator shall hold an administrative hearing to resolve the appeal.

[47 FR 23449, May 29, 1982, as amended at 49 FR 33879, Aug. 27, 1984]

#### § 68.4 Hearing board.

(a) Each hearing shall be conducted by a three member hearing board (hereinafter "board"). The board shall consist of a hearing officer (hereinafter "Judge") appointed by the Administrator based upon a recommendation by the Office of Personnel Management and two members selected by the Judge who are qualified in the technical field of flood elevation determinations. The Judge shall consult with anyone he deems appropriate to determine the technical qualifications of individuals being considered for appointment to the board. The board members shall not be FEMA employees.

(b) The Judge shall be responsible for conducting the hearing, and shall make all procedural rulings during the course of the hearing. Any formal orders and the final decision on the merits of the hearing shall be made by a majority of the board. A dissenting member may submit a separate opinion for the record.

(c) A technically qualified alternate will be appointed by the Judge as a member of the board when a technically qualified appointed member becomes unavailable. The Administrator will appoint an alternate Judge if the appointed Judge becomes unavailable.

#### § 68.5 Establishment of a docket.

The Chief Counsel shall establish a docket for appeals referred to him/her by the Federal Insurance Administrator for administrative hearings. This docket shall include, for each appeal, copies of all materials contained in the flood elevation determination docket (FEDD) file on the matter, copies of all correspondence in connection with the appeal, all motions, orders, statements, and other legal documents,

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a transcript of the hearing, and the board's final determination.

[47 FR 23449, May 29, 1982, as amended at 49 FR 33879, Aug. 27, 1984]

#### § 68.6 Time and place of hearing.

(a) The time and place of each hearing shall be designated by the Judge for that hearing. The Federal Insurance Administrator and the Chief Counsel shall be promptly advised of such designations.

(b) The board's notice of the time and place of hearing shall be sent by the Flood Insurance Docket Clerk by registered or certified mail, return receipt requested, to all appellants. Such notice shall include a statement indicating the nature of the proceedings and their purpose and all appellants' entitlement to counsel. Notice of the hearing shall be sent no later than 30 days before the date of hearing unless such period is waived by all appellants.

[47 FR 23449, May 29, 1982, as amended at 49 FR 33879, Aug. 27, 1984]

#### § 68.7 Conduct of hearings.

(a) The Judge shall be responsible for the fair and expeditious conduct of proceedings.

(b) The Federal Insurance Administrator shall be represented by the Chief Counsel or his/her designee.

(c) One administrative hearing shall be held for any one community unless the Federal Insurance Administrator for good cause shown grants a separate hearing or hearings.

(d) The Chief Executive Officer (CEO) of the community or his/her designee shall represent all appellants from that community; *Provided*, That any appellant may petition the board to allow such appellant to make an appearance on his/her own behalf. Such a petition shall be granted only upon a showing of good cause.

(e) Hearings shall be open to the public.

(f) A verbatim transcript will be made of the hearing. An appellant may order copies of the transcribed verbatim record directly from the reporter and will be responsible for payments.

[47 FR 23449, May 29, 1982, as amended at 49 FR 33879, Aug. 27, 1984]

**§ 68.8 Scope of review.**

Review at administrative hearings shall be limited to: An examination of any information presented by each appellant within the 90 day appeal period indicating that elevations proposed by the Federal Insurance Administrator are scientifically or technically incorrect; the FIRM; the flood insurance study; its backup data and the references used in development of the flood insurance study; and responses by FEMA to the issues raised by the appellant(s).

[47 FR 23449, May 29, 1982, as amended at 49 FR 33879, Aug. 27, 1984]

**§ 68.9 Admissible evidence.**

(a) Legal rules of evidence shall not be in effect at administrative hearings. However, *only* evidence relevant to issues within the scope of review under § 68.8 shall be admissible.

(b) Documentary and oral evidence shall be admissible.

(c) Admissibility of non-expert testimony shall be within the discretion of the board.

(d) All testimony shall be under oath.

(e) *Res judicata*/collateral estoppel. Where there has been a previous determination, decision or finding of fact by the Director, one of his delegees, an administrative law judge, hearing officer, or hearing board regarding the base flood elevations of any other community, such determination, decision, or finding of fact shall not be binding on the board and may only be admissible into evidence if relevant.

**§ 68.10 Burden of proof.**

The burden shall be on appellant(s) to prove that the flood elevation determination is not scientifically or technically correct.

**§ 68.11 Determination.**

The board shall render its written decision within 45 days after the conclusion of the hearing. The entire record of the hearing including the board's decision will be sent to the Administrator for review and approval. The Administrator shall make the final base flood elevation determination by accepting in whole or in part or by rejecting the board's decision.

**§ 68.12 Relief.**

The final determination may be appealed by the appellant(s) to the United States district court as provided in section 1363(f) of the Act (42 U.S.C. 4104).

**PART 69 [RESERVED]**

**PART 70—PROCEDURE FOR MAP CORRECTION**

MAPPING DEFICIENCIES UNRELATED TO COMMUNITY-WIDE ELEVATION DETERMINATIONS

Sec.

- 70.1 Purpose of part.
- 70.2 Definitions.
- 70.3 Right to submit technical information.
- 70.4 Review by the Administrator.
- 70.5 Letter of Map Amendment.
- 70.6 Distribution of Letter of Map Amendment.
- 70.7 Notice of Letter of Map Amendment.
- 70.8 Premium refund after Letter of Map Amendment.
- 70.9 Review of proposed projects.

AUTHORITY: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

MAPPING DEFICIENCIES UNRELATED TO COMMUNITY-WIDE ELEVATION DETERMINATIONS

**§ 70.1 Purpose of part.**

The purpose of this part is to provide an administrative procedure whereby the Federal Insurance Administrator will review the scientific or technical submissions of an owner or lessee of property who believes his property has been inadvertently included in designated A, AO, A1-30, AE, AH, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE, and V Zones, as a result of the transposition of the curvilinear line to either street or to other readily identifiable features. The necessity for this part is due in part to the technical difficulty of accurately delineating the curvilinear line on either an FHBM or FIRM. These procedures shall not apply when there has been any alteration of topography since the effective date of the first

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NFIP map (i.e., FHBM or FIRM) showing the property within an area of special flood hazard. Appeals in such circumstances are subject to the provisions of part 65 of this subchapter.

[62 FR 55718, Oct. 27, 1997]

### § 70.2 Definitions.

The definitions set forth in part 59 of this subchapter are applicable to this part.

[41 FR 46991, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979]

### § 70.3 Right to submit technical information.

(a) Any owner or lessee of property (applicant) who believes his property has been inadvertently included in a designated A, AO, A1-30, AE, AH, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE, and V Zones on a FHBM or a FIRM, may submit scientific or technical information to the Federal Insurance Administrator for the Federal Insurance Administrator's review.

(b) Scientific and technical information for the purpose of this part may include, but is not limited to the following:

(1) An actual copy of the recorded plat map bearing the seal of the appropriate recordation official (e.g. County Clerk, or Recorder of Deeds) indicating the official recordation and proper citation (Deed or Plat Book Volume and Page Numbers), or an equivalent identification where annotation of the deed or plat book is not the practice.

(2) A topographical map showing (i) ground elevation contours in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (ii) the total area of the property in question, (iii) the location of the structure or structures located on the property in question, (iv) the elevation of the lowest adjacent grade to a structure or structures and (v) an indication of the curvilinear line which represents the area subject to inundation by a base flood. The curvilinear line should be based upon information provided by any appropriate authoritative source, such as a Federal Agency, the appropriate state agency (e.g. Department of Water Resources), a County Water Control

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District, a County or City Engineer, a Federal Emergency Management Agency Flood Insurance Study, or a determination by a Registered Professional Engineer;

(3) A copy of the FHBM or FIRM indicating the location of the property in question;

(4) A certification by a Registered Professional Engineer or Licensed Land Surveyor that the lowest grade adjacent to the structure is above the base flood elevation.

[41 FR 46991, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44544 and 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 50 FR 36028, Sept. 4, 1985; 51 FR 30317, Aug. 25, 1986; 53 FR 16280, May 6, 1988; 59 FR 53601, Oct. 25, 1994; 62 FR 55719, Oct. 27, 1997]

### § 70.4 Review by the Administrator.

The Administrator, after reviewing the scientific or technical information submitted under the provisions of § 70.3, shall notify the applicant in writing of his/her determination within 60 days after we receive the applicant's scientific or technical information that we have compared either the ground elevations of an entire legally defined parcel of land or the elevation of the lowest adjacent grade to a structure with the elevation of the base flood and that:

(a) The property is within a designated A, AO, A1-30, AE, AH, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE, or V Zone, and will state the basis of such determination; or

(b) The property should not be within a designated A, AO, A1-30, AE, AH, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE, or V Zone and that we will modify the FHBM or FIRM accordingly; or

(c) The property is not within a designated A, AO, A1-30, AE, AH, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE, or V Zone as shown on the FHBM or FIRM and no modification of the FHBM or FIRM is necessary; or

(d) We need an additional 60 days to make a determination.

[66 FR 33900, June 26, 2001]

**§ 70.5 Letter of Map Amendment.**

Upon determining from available scientific or technical information that a FHBM or a FIRM requires modification under the provisions of § 70.4(b), the Administrator shall issue a Letter of Map Amendment which shall state:

- (a) The name of the Community to which the map to be amended was issued;
- (b) The number of the map;
- (c) The identification of the property to be excluded from a designated A, AO, A1-30, AE, AH, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE, or V Zone.

[41 FR 46991, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 50 FR 36028, Sept. 4, 1985; 59 FR 53601, Oct. 25, 1994; 62 FR 55719, Oct. 27, 1997]

**§ 70.6 Distribution of Letter of Map Amendment.**

- (a) A copy of the Letter of Map Amendment shall be sent to the applicant who submitted scientific or technical data to the Federal Insurance Administrator.
- (b) A copy of the Letter of Map Amendment shall be sent to the local map repository with instructions that it be attached to the map which the Letter of Map Amendment is amending.
- (c) A copy of the Letter of Map Amendment shall be sent to the map repository in the state with instructions that it be attached to the map which it is amending.
- (d) A copy of the Letter of Map Amendment will be sent to any community or governmental unit that requests such Letter of Map Amendment.
- (e) [Reserved]
- (f) A copy of the Letter of Map Amendment will be maintained by the Agency in its community case file.

[41 FR 46991, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44544 and 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

**§ 70.7 Notice of Letter of Map Amendment.**

- (a) The Federal Insurance Administrator, shall not publish a notice in the FEDERAL REGISTER that the FIRM for a particular community has been amend-

ed by letter determination pursuant to this part unless such amendment includes alteration or change of base flood elevations established pursuant to part 67. Where no change of base flood elevations has occurred, the Letter of Map Amendment provided under §§ 70.5 and 70.6 serves to inform the parties affected.

- (b) [Reserved]

EDITORIAL NOTE: For a list of communities issued under this section and not carried in the CFR see the List of CFR Sections Affected, which appears in the Finding Aids Section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

**§ 70.8 Premium refund after Letter of Map Amendment.**

A Standard Flood Insurance Policyholder whose property has become the subject of a Letter of Map Amendment under this part may cancel the policy within the current policy year and receive a premium refund under the conditions set forth in § 62.5 of this subchapter.

[41 FR 46991, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979]

**§ 70.9 Review of proposed projects.**

An individual who proposes to build one or more structures on a portion of property that may be included inadvertently in a Special Flood Hazard Area (SFHA) may request FEMA's comments on whether the proposed structure(s), if built as proposed, will be in the SFHA. FEMA's comments will be issued in the form of a letter, termed a Conditional Letter of Map Amendment. The data required to support such requests are the same as those required for final Letters of Map Amendment in accordance with § 70.3, except as-built certification is not required and the requests shall be accompanied by the appropriate payment, in accordance with 44 CFR part 72. All such requests for CLOMAs shall be submitted to the FEMA Regional Office servicing the community's geographic area or to the FEMA Headquarters Office in Washington, DC.

[62 FR 5736, Feb. 6, 1997]

## PART 71—IMPLEMENTATION OF COASTAL BARRIER LEGISLATION

### Sec.

- 71.1 Purpose of part.
- 71.2 Definitions.
- 71.3 Denial of flood insurance.
- 71.4 Documentation.
- 71.5 Violations.

AUTHORITY: 42 U.S.C. 4001, *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; 42 U.S.C. 4028; secs. 9 and 14, Pub. L. 101–591, 42 U.S.C. 4028(b).

SOURCE: 48 FR 37039, Aug. 16, 1983, unless otherwise noted.

### § 71.1 Purpose of part.

This part implements section 11 of the Coastal Barrier Resources Act (Pub. L. 97–348) and section 9 of the Coastal Barrier Improvement Act of 1990 (Pub. L. 101–591), as those Acts amend the National Flood Insurance Act of 1968 (42 U.S.C. 4001 *et seq.*).

[48 FR 37039, Aug. 16, 1983, as amended at 57 FR 22661, May 29, 1992]

### § 71.2 Definitions.

(a) Except as otherwise provided in this part, the definitions set forth in part 59 of this subchapter are applicable to this part.

(b) For the purpose of this part, a structure located in an area identified as being in the Coastal Barrier Resources System (CBRS) both as of October 18, 1982, and as of November 16, 1990, is “new construction” unless it meets the following criteria:

(1)(i) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to October 18, 1982; and

(ii) The start of construction (see part 59) took place prior to October 18, 1982; *or*

(2)(i) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to October 1, 1983; and

(ii) The structure constituted an insurable building, having walls and a roof permanently in place no later than October 1, 1983.

(c) For the purpose of this part, a structure located in an area newly identified as being in the CBRS as of November 16, 1990, is “new construc-

tion” unless it meets the following criteria:

(1) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to November 16, 1990; and

(2) The start of construction (see 44 CFR part 59) took place prior to November 16, 1990.

(d) For the purpose of this part, a structure located in an “otherwise protected area” is “new construction” unless it meets the following criteria:

(1)(i) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to November 16, 1990; and

(ii) The start of construction took place prior to November 16, 1990; *or*

(2)(i) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to November 16, 1991; and

(ii) The structure constituted an insurable building, having walls and a roof permanently in place, no later than November 16, 1991.

(e) For the purpose of this part, a structure located in an area identified as being in the CBRS both as of October 18, 1982, and as of November 16, 1990, is a “substantial improvement” if the substantial improvement (see 44 CFR part 59) of such structure took place on or after October 1, 1983.

(f) For the purpose of this part, a structure located in an area newly identified as being in the CBRS as of November 16, 1990, is a “substantial improvement” if the substantial improvement of such structure took place on or after November 16, 1990.

(g) For the purpose of this part, a structure located in an “otherwise protected area” is a “substantial improvement” if the substantial improvement of such structure took place after November 16, 1991.

(h) For the purpose of this part, a *policy of flood insurance* means a policy issued pursuant to the National Flood Insurance Act of 1968, as amended. This includes a policy issued directly by the Federal Government as well as by a private sector insurance company

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under the Write Your Own Program as authorized by 44 CFR part 62.

(i) For the purpose of this part, *new policy of flood insurance* means a policy of flood insurance other than one issued by an insurer (Write Your Own insurer or the Federal Government as the direct insurer) effective upon the expiration of a prior policy of flood insurance issued by the same insurer without any lapse in coverage between these two policies.

(j) For the purpose of this part, *new flood insurance coverage* means a new or renewed policy of flood insurance.

(k) For the purpose of this part, *otherwise protected area* means an undeveloped coastal barrier within the boundaries of an area established under Federal, State, or local law, or held by a qualified organization, primarily for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes and identified and depicted on the maps referred to in section 4(a) of the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990, as an area that is:

- (1) Not within the CBRS and
- (2) In an "otherwise protected area."

[48 FR 37039, Aug. 16, 1983, as amended at 49 FR 33879, Aug. 27, 1984; 57 FR 22661, May 29, 1992]

### § 71.3 Denial of flood insurance.

(a) No new flood insurance coverage may be provided on or after October 1, 1983, for any new construction or substantial improvement of a structure located in an area identified as being in the CBRS both as of October 18, 1982, and as of November 16, 1990.

(b) No new flood insurance coverage may be provided on or after November 16, 1990, for any new construction or substantial improvement of a structure located in any area newly identified as being in the CBRS as of November 16, 1990.

(c) No new flood insurance coverage may be provided after November 16, 1991, for any new construction or substantial improvement of a structure which is located in an "otherwise protected area."

(d) Notwithstanding paragraph (c) of this section, new flood insurance coverage may be provided for a structure

which is newly constructed or substantially improved in an "otherwise protected area" if the building is used in a manner consistent with the purpose for which the area is protected.

[57 FR 22662, May 29, 1992]

### § 71.4 Documentation.

(a) In order to obtain a new policy of flood insurance for a structure which is located in an area identified as being in the CBRS as of November 16, 1990, or in order to obtain a new policy of flood insurance after November 16, 1991, for a structure located in an "otherwise protected area," the owner of the structure must submit the documentation described in this section in order to show that such structure is eligible to receive flood insurance. However, if the new policy of flood insurance is being obtained from an insurer (Write Your Own or the Federal Government as direct insurer) that has previously obtained the documentation described in this section, the property owner need only submit a signed written certification that the structure has not been substantially improved since the date of the previous documentation.

(b) The documentation must be submitted along with the application for the flood insurance policy.

(c) For a structure located in an area identified as being in the CBRS both as of October 18, 1982, and as of November 16, 1990, where the start of construction of the structure took place prior to October 18, 1982, the documentation shall consist of:

(1) A legally valid building permit or its equivalent for the construction of the structure dated prior to October 18, 1982;

(i) If the community did not have a building permit system at the time the structure was built, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit;

(ii) If the building permit was lost or destroyed, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit. This statement must also include a certification that the official has inspected the structure and found no evidence that the structure was not in compliance with the

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building code at the time it was built; and

(2) A written statement signed by the community official responsible for building permits, attesting to the fact that he or she knows of his/her own knowledge or from official community records, that:

(i) The start of construction took place prior to October 18, 1982; and

(ii) The structure has not been substantially improved since September 30, 1983.

(d) For a structure located in an area identified as being in the CBRS both as of October 18, 1982, and as of November 16, 1990, where the start of construction of the structure took place on or after October 18, 1982, but the structure was completed (walls and roof permanently in place) prior to October 1, 1983, the documentation shall consist of:

(1) A legally valid building permit or its equivalent for the construction of the structure dated prior to October 1, 1983;

(i) If the community did not have a building permit system at the time the structure was built, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit;

(ii) If the building permit was lost or destroyed, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit. This statement must also include a certification that the official has inspected the structure and found no evidence that the structure was not in compliance with the building code at the time it was built; and

(2) A written statement signed by the community official responsible for building permits, attesting to the fact that he or she knows of his/her own knowledge or from official community records, that:

(i) The structure constituted an insurable building, having walls and a roof permanently in place no later than October 1, 1983; and

(ii) The structure has not been substantially improved since September 30, 1983; and

(3) A community issued final certificate of occupancy or other use permit or equivalent proof certifying the

building was completed (walled and roofed) by October 1, 1983.

(e) For a structure located in an area newly identified as being in the CBRS as of November 16, 1990, where the start of construction of the structure took place prior to November 16, 1990, the documentation shall consist of:

(1) A legally valid building permit or its equivalent for the construction of the structure, dated prior to November 16, 1990.

(i) If the community did not have a building permit system at the time the structure was built, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit;

(ii) If the building permit was lost or destroyed, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit. This statement must also include a certification that the official has inspected the structure and found no evidence that the structure was not in compliance with the building code at the time it was built; and

(2) A written statement signed by the community official responsible for building permits, attesting to the fact that he or she knows of his or her own knowledge or from official community records, that:

(i) The start of construction took place prior to November 16, 1990; and

(ii) The structure has not been substantially improved since November 15, 1990.

(f) For a structure located in an area identified as an “otherwise protected area” where the start of construction of the structure took place prior to November 16, 1990, the documentation shall consist of:

(1) A legally valid building permit or its equivalent for the construction of the structure, dated prior to November 16, 1990.

(i) If the community did not have a building permit system at the time the structure was built, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit;

(ii) If the building permit was lost or destroyed, a written statement to this

effect signed by the responsible community official will be accepted in lieu of the building permit. This statement must also include a certification that the official has inspected the structure and found no evidence that the structure was not in compliance with the building code at the time it was built; and

(2) A written statement signed by the community official responsible for building permits, attesting to the fact that he or she knows of his or her own knowledge or from official community records, that:

(i) The start of construction took place prior to November 16, 1990; and

(ii) The structure has not been substantially improved since November 16, 1991.

(g) For a structure located in an area identified as an "otherwise protected area" where the start of construction of the structure took place after November 15, 1990, but construction was completed with the walls and a roof permanently in place no later than November 16, 1991, the documentation shall consist of:

(1) A legally valid building permit or its equivalent for the construction of the structure, dated prior to November 16, 1991.

(i) If the community did not have a building permit system at the time the structure was built, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit;

(ii) If the building permit was lost or destroyed, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit. This statement must also include a certification that the official has inspected the structure and found no evidence that the structure was not in compliance with the building code at the time it was built; and

(2) A statement signed by the community official responsible for building permits, attesting to the fact that he or she knows of his or her own knowledge or from official community records that:

(i) The structure constituted an insurable building, having walls and a

roof permanently in place, no later than November 16, 1991; and

(ii) The structure has not been substantially improved since November 16, 1991; and

(3) A community issued final certificate of occupancy or other use permit or equivalent proof certifying that the building was completed (walled and roofed) by November 16, 1991.

(h) For a structure located in an area identified as an "otherwise protected area" for which the documentation requirements of neither paragraph (f) nor paragraph (g) of this section have been met, the documentation shall consist of a written statement from the governmental body or qualified organization overseeing the "otherwise protected area" certifying that the building is used in a manner consistent with the purpose for which the area is protected.

[48 FR 37039, Aug. 16, 1983, as amended at 57 FR 22662, May 29, 1992; 74 FR 15343, Apr. 3, 2009]

**§ 71.5 Violations.**

(a) Any flood insurance policy which has been issued where the terms of this section have not been complied with or is otherwise inconsistent with the provisions of this section, is void *ab initio* and without effect.

(b) Any false statements or false representations of any kind made in connection with the requirements of this part may be punishable by fine or imprisonment under 18 U.S. Code section 1001.

**PART 72—PROCEDURES AND FEES FOR PROCESSING MAP CHANGES**

Sec.

72.1 Purpose of part.

72.2 Definitions.

72.3 Fee schedule.

72.4 Submittal/payment procedures and FEMA response.

72.5 Exemptions.

72.6 Unfavorable response.

72.7 Resubmittals.

AUTHORITY: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.



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### § 72.1 Purpose of part.

This part provides administrative and cost-recovery procedures for the engineering review and administrative processing associated with FEMA's response to requests for Conditional Letters of Map Amendment (CLOMAs), Conditional Letters of Map Revision (CLOMRs), Conditional Letters of Map Revision Based on Fill (CLOMR-Fs), Letters of Map Revision Based on Fill (LOMR-Fs), Letters of Map Revision (LOMRs), and Physical Map Revisions (PMRs). Such requests are based on proposed or actual manmade alterations within the floodplain, such as the placement of fill; modification of a channel; construction or modification of a bridge, culvert, levee, or similar measure; or construction of single or multiple residential or commercial structures on single or multiple lots.

[62 FR 5736, Feb. 6, 1997]

### § 72.2 Definitions.

Except as otherwise provided in this part, the definitions in 44 CFR part 59 are applicable to this part. For the purposes of this part, the products are defined as follows:

*CLOMA.* A CLOMA is FEMA's comment on a proposed structure or group of structures that would, upon construction, be located on existing natural ground above the base (1-percent-annual-chance) flood elevation on a portion of a legally defined parcel of land that is partially inundated by the base flood.

*CLOMR.* A CLOMR is FEMA's comment on a proposed project that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations, or the Special Flood Hazard Area (SFHA).

*CLOMR-F.* A CLOMR-F is FEMA's comment on a proposed project that would, upon construction, result in a modification of the SFHA through the placement of fill outside the existing regulatory floodway.

*LOMR.* A LOMR is FEMA's modification to an effective Flood Insurance Rate Map (FIRM), or Flood Boundary and Floodway Map (FBFM), or both.

LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations, or the SFHA. The LOMR officially revises the FIRM or FBFM, and sometimes the Flood Insurance Study (FIS) report, and, when appropriate, includes a description of the modifications. The LOMR is generally accompanied by an annotated copy of the affected portions of the FIRM, FBFM, or FIS report.

*LOMR-F.* A LOMR-F is FEMA's modification of the SFHA shown on the FIRM based on the placement of fill outside the existing regulatory floodway.

*PMR.* A PMR is FEMA's physical revision and republication of an effective FIRM, FBFM, or FIS report. PMRs are generally based on physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations, or the SFHA.

[62 FR 5737, Feb. 6, 1997]

### § 72.3 Fee schedule.

(a) For requests for CLOMRs, LOMRs, and PMRs based on structural measures on alluvial fans, an initial fee of \$5,000, subject to the provisions of § 72.4, shall be paid to FEMA before FEMA begins its review of the request. The initial fee represents the minimum cost for reviewing these requests and is based on the prevailing private-sector labor rate. A revision to this initial fee, if necessary, will be published as a notice in the FEDERAL REGISTER.

(b) For requests for CLOMRs, LOMRs, and PMRs based on structural measures on alluvial fans, the total fee will be calculated based on the total hours by FEMA to review and process the request multiplied by an hourly rate based on the prevailing private-sector labor rate. The hourly rate is published as a notice in the FEDERAL REGISTER. A revision to the hourly rate, if necessary, shall be published as a notice in the FEDERAL REGISTER.

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(c) For conditional and final map revision requests for the following categories, flat user fees, subject to the provisions of §72.4, shall be paid to FEMA before FEMA begins its review of the request:

- (1) Requests for CLOMAs, CLOMR-Fs, and LOMR-Fs for single structures or single lots;
- (2) Requests for CLOMAs for multiple structures or multiple lots;
- (3) Requests for CLOMR-Fs and LOMR-Fs for multiple structures or multiple lots;
- (4) Requests LOMR-Fs for single structures or single lots based on as-built information for projects for which FEMA issued CLOMR-Fs previously;
- (5) Requests for LOMR-Fs for multiple structures or multiple lots based on as-built information for projects for which FEMA issued CLOMR-Fs previously;
- (6) Requests for LOMRs and PMRs based on projects involving bridges, culverts, or channels, or combinations thereof;
- (7) Requests for LOMRs and PMRs based on projects involving levees, berms, or other structural measures;
- (8) Requests for LOMRs and PMRs based on as-built information for projects for which FEMA issued CLOMRs previously, except those based on structural measures on alluvial fans;
- (9) Requests for LOMRs and PMRs based solely on more detailed data;
- (10) Requests for CLOMRs based on projects involving new hydrologic information, bridges, culverts, or channels, or combinations thereof; and
- (11) Requests for CLOMRs based on projects involving levees, berms, or other structural measures.

(d) If a request involves more than one of the categories listed above, the highest applicable flat user fee must be submitted.

(e) The flat user fees for conditional and final map amendments and map revisions are based on the actual costs for reviewing and processing the requests. The fees for requests for LOMR-Fs, LOMRs, and PMRs also include a fee of \$35 to cover FEMA's costs for physically revising affected FIRM and FBFM panels to reflect the map changes.

(f) Revisions to the fees, if necessary, shall be published as a notice in the FEDERAL REGISTER.

[62 FR 5737, Feb. 6, 1997]

**§ 72.4 Submittal/payment procedures and FEMA response.**

(a) The initial fee shall be submitted with a request for FEMA review and processing of CLOMRs, LOMRs, and PMRs based on structural measures on alluvial fans; the appropriate flat user fee shall be submitted with all other requests for FEMA review and processing.

(b) FEMA must receive initial or flat user fees before it will begin any review. The fee is non-refundable once FEMA begins its review.

(c) Following completion of FEMA's review for any CLOMR, LOMR, or PMR based on structural measures on alluvial fans, FEMA shall invoice the requester at the established hourly rate for any actual costs exceeding the initial fee incurred for review and processing. FEMA shall not issue a determination letter or revised map panel(s) until it receives the invoiced amount.

(d) For all map revision requests, FEMA shall bear the cost of reprinting and distributing the revised FIRM panel(s), FBFM panel(s), or combination.

(e) The entity that applies to FEMA through the local community for review is responsible for the cost of the review. The local community incurs no financial obligation under the reimbursement procedures of this part when another party sends the application to FEMA.

(f) Requesters shall submit payments by check or money order or by credit card. Checks or money orders, in U.S. funds, shall be made payable to the National Flood Insurance Program.

(g) For CLOMA, CLOMR-F, LOMA, and LOMR-F requests, FEMA shall:

(1) Notify the requester and community within 30 days as to the adequacy of the submittal, and

(2) Provide to the requester and the community, within 60 days of receipt of adequate information and fee, a determination letter or other written comment in response to the request.

(h) For CLOMR, LOMR, and PMR requests, FEMA shall:

## § 72.5

(1) Notify the requester and community within 60 days as to the adequacy of the submittal; and

(2) Provide to the requester and the community, within 90 days of receipt of adequate information and fee, a CLOMR, a LOMR, other written comment in response to the request, or preliminary copies of the revised FIRM panels, FBFM panels, and/or affected portions of the FIS report for review and comment.

[62 FR 5737, Feb. 6, 1997]

### § 72.5 Exemptions.

Requesters are exempt from submitting review and processing fees for:

(a) Requests for map changes based on mapping or study analysis errors;

(b) Requests for map changes based on the effects of natural changes within SFHAs;

(c) Requests for a Letter of Map Amendment (LOMA);

(d) Requests for map changes based on federally sponsored flood-control projects where 50 percent or more of the project's costs are federally funded;

(e) Requests for map changes based on detailed hydrologic and hydraulic studies conducted by Federal, State, or local agencies to replace approximate studies conducted by FEMA and shown on the effective FIRM; and

(f) Requests for map changes based on flood hazard information meant to improve upon that shown on the flood map or within the flood study will be exempt from review and processing fees. Improvements to flood maps or studies that partially or wholly incorporate man-made modifications within the special flood hazard area will not be exempt from review and processing fees.

[64 FR 51462, Sept. 23, 1999]

### § 72.6 Unfavorable response.

(a) Requests for CLOMAs, CLOMRs, or CLOMR-Fs may be denied or the determinations may contain specific comments, concerns, or conditions regarding proposed projects or designs and their impacts on flood hazards in a community. Requesters are not entitled to any refund of fees paid if the determinations contain such comments, concerns, or conditions, or if the re-

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quests are denied. Requesters are not entitled to any refund of fees paid if the requesters are unable to provide the appropriate scientific or technical documentation or to obtain required authorizations, permits, financing, etc., for which requesters seek the CLOMAs, CLOMRs, or CLOMR-Fs.

(b) Requests for LOMRs, LOMR-Fs, or PMRs may be denied or the revisions to the FIRM, FBFM, or both, may not be in the manner or to the extent desired by the requesters. Requesters are not entitled to any refund of fees paid if the revision requests are denied or if the LOMRs, LOMR-Fs, or PMRs do not revise the map specifically as requested.

[62 FR 5738, Feb. 6, 1997]

### § 72.7 Resubmittals.

(a) Resubmittals of CLOMA, CLOMR, CLOMR-F, LOMR, LOMR-F, or PMR requests more than 90 days after FEMA notification that the requests were denied or after FEMA ended its review because the requester provided insufficient information will be treated as original submissions and subject to all submittal/payment procedures described in § 72.4. The procedure in § 72.4 also applies to a resubmitted request (regardless of when submitted) if the project on which the request is based has been altered significantly in design or scope other than as necessary to respond to comments, concerns, or other findings made by FEMA regarding the original submission.

(b) When LOMR, LOMR-F, or PMR requests are made after FEMA issues CLOMRs or CLOMR-Fs, the procedures in § 72.4 and the appropriate fee apply, as referenced in § 72.3(c). When the as-built conditions differ from the proposed conditions on which FEMA issued the CLOMRs or CLOMR-Fs, the reduced fee for as-built requests will not apply.

[62 FR 5738, Feb. 6, 1997]

## PART 73—IMPLEMENTATION OF SECTION 1316 OF THE NATIONAL FLOOD INSURANCE ACT OF 1968

Sec.  
73.1 Purpose of part.

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## § 73.4

73.2 Definitions.

73.3 Denial of flood insurance coverage.

73.4 Restoration of flood insurance coverage.

AUTHORITY: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

SOURCE: 51 FR 30318, Aug. 25, 1986, unless otherwise noted.

### § 73.1 Purpose of part.

This part implements section 1316 of the National Flood Insurance Act of 1968.

### § 73.2 Definitions.

(a) Except as otherwise provided in this part, the definitions set forth in part 59 of this subchapter are applicable to this part.

(b) For the purpose of this part a *duly constituted State or local zoning authority or other authorized public body* means an official or body authorized under State or local law to declare a structure to be in violation of a law, regulation or ordinance.

(c) For the purpose of this part, *State or local laws, regulations or ordinances intended to discourage or restrict development or occupancy of flood-prone areas* are measures such as those defined as *Flood plain management regulations* in § 59.1 of this subchapter. Such measures are referred to in this part as State or local flood plain management regulations.

### § 73.3 Denial of flood insurance coverage.

(a) No new flood insurance shall be provided for any property which the Federal Insurance Administrator finds has been declared by a duly constituted State or local zoning authority or other authorized public body, to be in violation of State or local laws, regulations or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

(b) New and renewal flood insurance shall be denied to a structure upon a finding by the Federal Insurance Administrator of a valid declaration of a violation.

(c) States and communities shall determine whether to submit a declaration to the Federal Insurance Administrator for the denial of insurance.

(d) A valid declaration shall consist of:

(1) The name(s) of the property owner(s) and address or legal description of the property sufficient to confirm its identity and location;

(2) A clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation or ordinance;

(3) A clear statement that the public body making the declaration has authority to do so and a citation to that authority;

(4) Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and

(5) A clear statement that the declaration is being submitted pursuant to section 1316 of the National Flood Insurance Act of 1968, as amended.

### § 73.4 Restoration of flood insurance coverage.

(a) Insurance availability shall be restored to a property upon a finding by the Federal Insurance Administrator of a valid rescission of a declaration of a violation.

(b) A valid rescission shall be submitted to the Federal Insurance Administrator and shall consist of:

(1) The name of the property owner(s) and an address or legal description of the property sufficient to identify the property and to enable FEMA to identify the previous declaration;

(2) A clear and unequivocal statement by an authorized public body rescinding the declaration and giving the reason(s) for the rescission;

(3) A description of and supporting documentation for the measures taken in lieu of denial of insurance in order to bring the structure into compliance with the local flood plain management regulations; and

(4) A clear statement that the public body rescinding the declaration has the authority to do so and a citation to that authority.

## PART 74 [RESERVED]

**PART 75—EXEMPTION OF STATE-OWNED PROPERTIES UNDER SELF-INSURANCE PLAN**

**Subpart A—General**

Sec.

- 75.1 Purpose of part.  
75.2 Definitions.  
75.3 Burden of proof.

**Subpart B—Standards for Exemption**

- 75.10 Applicability.  
75.11 Standards.  
75.12 Application by a State for exemption.  
75.13 Review by the Federal Insurance Administrator.  
75.14 States exempt under this part.

**AUTHORITY:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**SOURCE:** 41 FR 46991, Oct. 26, 1976, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

**Subpart A—General**

**§ 75.1 Purpose of part.**

The purpose of this part is to establish standards with respect to the Federal Insurance Administrator's determinations that a State's plan of self-insurance is adequate and satisfactory for the purposes of exempting such State, under the provisions of section 102(c) of the Act, from the requirement of purchasing flood insurance coverage for State-owned structures and their contents in areas identified by the Federal Insurance Administrator as A, AO, AH, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1-30, VE, and E Zones, in which the sale of insurance has been made available, and to establish the procedures by which a State may request exemption under section 102(c).

[62 FR 55719, Oct. 27, 1997]

**§ 75.2 Definitions.**

The definitions set forth in part 59 of this subchapter are applicable to this part.

**§ 75.3 Burden of proof.**

In any application made by a State to the Administrator for certification of its self-insurance plan, the burden of

proof shall rest upon the State making application to establish that its policy of self-insurance is adequate and equals or exceeds the standards provided in this part.

**Subpart B—Standards for Exemption**

**§ 75.10 Applicability.**

A State shall be exempt from the requirement to purchase flood insurance in respect to State-owned structures and, where applicable, their contents located or to be located in areas identified by the Federal Insurance Administrator as A, AO, AH, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1-30, VE, and E Zones, and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, provided that the State has established a plan of self-insurance determined by the Federal Insurance Administrator to equal or exceed the standards set forth in this subpart.

[62 FR 55719, Oct. 27, 1997]

**§ 75.11 Standards.**

(a) In order to be exempt under this part, the State's self-insurance plan shall, as a minimum:

(1) Constitute a formal policy or plan of self-insurance created by statute or regulation authorized pursuant to statute.

(2) Specify that the hazards covered by the self-insurance plan expressly include the flood and flood-related hazards which are covered under the Standard Flood Insurance Policy.

(3) Provide coverage to state-owned structures and their contents equal to that which would otherwise be available under a Standard Flood Insurance Policy.

(4) Consist of a self-insurance fund, or a commercial policy of insurance or reinsurance, for which provision is made in statute or regulation and that is funded by periodic premiums or charges allocated for state-owned structures and their contents in areas identified by the Federal Insurance Administrator as A, AO, AH, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH,

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AR/A, A99, M, V, VO, V1-30, VE, and E Zones. The person or persons responsible for such self-insurance fund shall report on its status to the chief executive authority of the State, or to the legislature, or both, not less frequently than annually. The loss experience shall be shown for each calendar or fiscal year from inception to current date based upon loss and loss adjustment expense incurred during each separate calendar or fiscal year compared to the premiums or charges for each of the respective calendar or fiscal years. Such incurred losses shall be reported in aggregate by cause of loss under a loss coding system adequate, as a minimum, to identify and isolate loss caused by flood, mudslide (i.e., mud-flow) or flood-related erosion. The Federal Insurance Administrator may, subject to the requirements of paragraph (a)(5) of this section, accept and approve in lieu of, and as the reasonable equivalent of the self-insurance fund, an enforceable commitment of funds by the State, the enforceability of which shall be certified to by the State's Attorney General, or other principal legal officer. Such funds, or enforceable commitment of funds in amounts not less than the limits of coverage that would be applicable under Standard Flood Insurance Policies, shall be used by the State for the repair or restoration of State-owned structures and their contents damaged as a result of flood-related losses occurring in areas identified by the Federal Insurance Administrator as A, AO, AH, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1-30, VE, and E Zones.

(5) Provide for the maintaining and updating by a designated State official or agency not less frequently than annually of an inventory of all State-owned structures and their contents within A, AO, AH, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1-30, VE, and E zones. The inventory shall:

(i) Include the location of individual structures;

(ii) Include an estimate of the current replacement costs of such structures and their contents, or of their current economic value; and

(iii) Include an estimate of the anticipated annual loss due to flood damage.

(6) Provide the flood loss experience for State-owned structures and their contents based upon incurred losses for a period of not less than the 5 years immediately preceding application for exemption, and certify that such historical information shall be maintained and updated.

(7) Include, pursuant to § 60.12 of this subchapter, a certified copy of the flood plain management regulations setting forth standards for State-owned properties within A, AO, AH, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1-30, VE, and E Zones.

(b) The Federal Insurance Administrator shall determine the adequacy of the insurance provisions whether they be based on available funds, an enforceable commitment of funds, commercial insurance, or some combination thereof, but has discretion to waive specific requirements under this part.

[41 FR 46991, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44544, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 49 FR 5621, Feb. 14, 1984; 50 FR 36029, Sept. 4, 1985; 59 FR 53601, Oct. 25, 1994; 62 FR 55719, Oct. 27, 1997]

### § 75.12 Application by a State for exemption.

Application for exemption made pursuant to this part shall be made by the Governor or other duly authorized official of the State accompanied by sufficient supporting documentation which certifies that the plan of self-insurance upon which the application for exemption is based meets or exceeds the standards set forth in § 75.11.

### § 75.13 Review by the Federal Insurance Administrator.

(a) The Federal Insurance Administrator may return the application for exemption upon finding it incomplete or upon finding that additional information is required in order to make a determination as to the adequacy of the self-insurance plan.

## § 75.14

(b) Upon determining that the State's plan of self-insurance is inadequate, the Federal Insurance Administrator shall in writing reject the application for exemption and shall state in what respects the plan fails to comply with the standards set forth in § 75.11 of this subpart.

(c) Upon determining that the State's plan of self-insurance equals or exceeds the standards set forth in § 75.11 of this subpart, the Federal Insurance Administrator shall certify that the State is exempt from the requirement for the purchase of flood insurance for State-owned structures and their contents located or to be located in areas identified by the Federal Insurance Administrator as A, AO, AH, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1-30, VE, and E Zones. Such exemption, however, is in all cases provisional. The Federal Insurance Administrator shall review the plan for continued compliance with the criteria set forth in this part and may request updated documentation for the purpose of such review. If the plan is found to be inadequate and is not corrected within ninety days from the date that such inadequacies were identified, the Federal Insurance Administrator may revoke his certification.

(d) Documentation which cannot reasonably be provided at the time of application for exemption shall be submitted within six months of the application date. The Federal Insurance Administrator may revoke his certification for a State's failure to submit adequate documentation after the six month period.

[41 FR 46991, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44544, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 49 FR 5621, Feb. 14, 1984; 50 FR 36029, Sept. 4, 1985; 59 FR 53601, Oct. 25, 1994; 62 FR 55719, Oct. 27, 1997]

### § 75.14 States exempt under this part.

The following States have submitted applications and adequate supporting documentation and have been determined by the Federal Insurance Administrator to be exempt from the requirement of flood insurance on State-owned structures and their contents because they have in effect adequate State plans of self-insurance: Florida,

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Georgia, Iowa, Kentucky, Maine, New Jersey, New York, North Carolina, Oregon, Pennsylvania, South Carolina, Tennessee, and Vermont.

[48 FR 44544, Sept. 29, 1983, as amended at 57 FR 19542, May 7, 1992]

## PART 76 [RESERVED]

## PART 77—FLOOD MITIGATION GRANTS

Sec.

- 77.1 Purpose and applicability.
- 77.2 Definitions.
- 77.3 Responsibilities.
- 77.4 Availability of funding.
- 77.5 Application process.
- 77.6 Eligibility.
- 77.7 Allowable costs.
- 77.8 Grant administration.

AUTHORITY: 6 U.S.C. 101 *et seq.*; 42 U.S.C. 4001 *et seq.*; 42 U.S.C. 4104c, 4104d.

SOURCE: 86 FR 50667, Sept. 10, 2021, unless otherwise noted.

### § 77.1 Purpose and applicability.

(a) The purpose of this part is to prescribe actions, procedures, and requirements for administration of the Flood Mitigation Assistance (FMA) grant program made available under the National Flood Insurance Act of 1968, as amended, and the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4001 *et seq.* The purpose of the FMA program is to assist States, Indian Tribal governments, and communities for planning and carrying out mitigation activities designed to reduce the risk of flood damage to structures insured under the National Flood Insurance Program (NFIP).

(b) This part applies to the administration of funds under the FMA program for which the application period opens on or after October 12, 2021.

### § 77.2 Definitions.

(a) Except as otherwise provided in this part, the definitions set forth in § 59.1 of this subchapter are applicable to this part.

(b) *Applicant* means the entity, such as a State or Indian Tribal government, applying to FEMA for a Federal award under the FMA program. Once funds have been awarded, the applicant

becomes the recipient and may also be a pass-through entity.

(c) *Closeout* means the process by which FEMA or the pass-through entity determines that all applicable administrative actions and all required work of the Federal award have been completed and takes actions as described in 2 CFR 200.344, "Closeout."

(d) *Community* means:

(1) A political subdivision, including any Indian Tribe, authorized Tribal organization, Alaska Native village or authorized native organization, that has zoning and building code jurisdiction over a particular area having special flood hazards, and is participating in the NFIP; or

(2) A political subdivision of a State or other authority that is designated by political subdivisions, all of which meet the requirements of paragraph (d)(1) of this section, to administer grants for mitigation activities for such political subdivisions.

(e) *Federal award* means the Federal financial assistance a recipient or subrecipient receives directly from FEMA or indirectly from a pass-through entity. The terms "award" and "grant" may also be used to describe a Federal award under this part.

(f) *Indian Tribal government* means any Federally recognized governing body of an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian Tribe under the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 5131. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

(g) *Pass-through entity* means a recipient that provides a subaward to a subrecipient to carry out part of the FMA program.

(h) *Recipient* means the State or Indian Tribal government that receives a Federal award directly from FEMA. A recipient may also be a pass-through entity. The term recipient does not include subrecipients.

(i) *Repetitive loss structure* means a structure covered under an NFIP flood insurance policy that:

(1) Has incurred flood-related damage on 2 occasions, in which the cost of repair, on average, equaled or exceeded

25% of the value of the structure at the time of each such flood event; and

(2) At the time of the second incidence of flood related damage, the contract for flood insurance contains increased cost of compliance coverage.

(j) *Severe repetitive loss structure* means a structure that is covered under an NFIP flood insurance policy and has incurred flood-related damage:

(1) For which 4 or more separate claims payments have been made under flood insurance coverage under subchapter B of this chapter, with the amount of each claim (including building and contents payments) exceeding \$5,000, and with the cumulative amount of such claims payments exceeding \$20,000; or

(2) For which at least 2 separate flood insurance claims payments (building payments only) have been made, with cumulative amount of such claims exceeding the value of the insured structure.

(k) *State* means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(l) *Subaward* means an award provided by a pass-through entity to a subrecipient, for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

(m) *Subapplicant* means a State agency, community, or Indian Tribal government submitting a subapplication to the applicant for assistance under the FMA program. Upon grant award, the subapplicant is referred to as the subrecipient.

(n) *Subrecipient* means the State agency, community, or Indian Tribal government that receives a subaward from a pass-through entity for the subrecipient to carry out an activity under the FMA program.

(o) *Administrator* means the head of the Federal Emergency Management



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Agency, or his/her designated representative.

(p) *Regional Administrator* means the head of a Federal Emergency Management Agency regional office, or his/her designated representative.

#### § 77.3 Responsibilities.

(a) *Federal Emergency Management Agency (FEMA)*. Administer and provide oversight to all FEMA-related hazard mitigation programs and grants, including:

(1) Issue program implementation procedures, as necessary, which will include information on availability of funding;

(2) Award all grants to the recipient after evaluating subaward applications for eligibility and ensuring compliance with applicable Federal laws, giving priority to such properties, or to the subset of such properties, as the Administrator may determine are in the best interest of the NFIF;

(3) Provide technical assistance and training to State, local and Indian Tribal governments regarding the mitigation and grants management process;

(4) Review and approve State, Indian Tribal, and local mitigation plans in accordance with part 201 of this chapter;

(5) Comply with applicable Federal statutory, regulatory, and Executive Order requirements related to environmental and historic preservation compliance, including reviewing and supplementing, if necessary, the environmental analyses conducted by the State and subrecipient in accordance with applicable laws, regulations, and agency policy;

(6) Monitor implementation of awards through quarterly reports; and

(7) Review all closeout documentation for compliance and sending the recipient a request for additional supporting documentation, if needed.

(b) *Recipient*. The recipient must have working knowledge of NFIP goals, requirements, and processes and ensure that the program is coordinated with other mitigation activities. Recipients will:

(1) Have a FEMA approved Mitigation Plan in accordance with part 201 of this chapter;

(2) Provide technical assistance and training to communities on mitigation planning, mitigation project activities, developing subaward applications, and implementing approved subawards;

(3) Prioritize and recommend subaward applications to be approved by FEMA, based on the applicable mitigation plan(s), other evaluation criteria, and the eligibility criteria described in § 77.6;

(4) Award FEMA-approved subawards;

(5) Monitor and evaluate the progress of the mitigation activity in accordance with the approved original scope of work and budget through quarterly reports;

(6) Closeout the subaward in accordance with 2 CFR 200.344 and 200.345, and applicable FEMA guidance; and

(7) Comply with program requirements under this part, grant management requirements identified under 2 CFR parts 200 and 3002, the grant agreement articles, and other applicable Federal, State, Tribal and local laws and regulations.

(c) *Subrecipient*. The subrecipient (or subapplicant, as applicable) will:

(1) Complete and submit subaward applications to the recipient for FMA planning and project subawards;

(2) Implement all approved subawards;

(3) Monitor and evaluate the progress of the mitigation activity in accordance with the approved original scope of work and budget through quarterly reports;

(4) Comply with program requirements under this part, grant management requirements identified under 2 CFR parts 200 and 3002, the grant agreement articles, and other applicable Federal, State, Tribal and local laws and regulations; and

(5) Closeout the subaward in accordance with 2 CFR 200.344 and 200.345, and applicable FEMA guidance.

#### § 77.4 Availability of funding.

(a) *Allocation*. (1) For the amount made available for the FMA program, the Administrator will allocate the available funds based upon criteria established for each application period. The criteria may include the number of NFIP policies, severe repetitive loss

structures, repetitive loss structures, and any other factors the Administrator determines are in the best interests of the NFIP.

(2) The amount of FMA funds used may not exceed \$50,000 for any mitigation plan of a State or \$25,000 for any mitigation plan of a community.

(b) *Cost share.* All mitigation activities approved under the grant will be subject to the following cost share provisions:

(1) For each severe repetitive loss structure, FEMA may contribute either:

(i) Up to 100 percent of all eligible costs if the activities are technically feasible and cost effective; or

(ii) Up to the amount of the expected savings to the NFIP for acquisition or relocation activities;

(2) For repetitive loss structures, FEMA may contribute up to 90 percent of the eligible costs;

(3) For all other mitigation activities, FEMA may contribute up to 75 percent of all eligible costs.

(4) For projects that contain a combination of severe repetitive loss, repetitive loss, and/or other insured structures, the cost share will be calculated as appropriate for each type of structure submitted in the project sub-application.

(c) *Failure to make award within 5 years.* Any FMA application or sub-application that does not receive a Federal award within 5 years of the application/subapplication submission date is considered to be denied, and any funding amounts allocated for such applications/subapplications will be made available for other FMA awards and subawards.

**§ 77.5 Application process.**

(a) *Applicant.* (1) Applicants will be notified of the availability of funding for the FMA program pursuant to 2 CFR 200.203 and 200.204.

(2) The applicant is responsible for soliciting applications from eligible communities, or subapplicants, and for reviewing and prioritizing applications prior to forwarding them to FEMA for review and award.

(b) *Subapplicant.* Communities or other subapplicants who choose to apply must develop subapplications

within the timeframes and requirements established by FEMA and must submit subapplications to the applicant.

**§ 77.6 Eligibility.**

(a) *NFIP requirements.* (1) States, Indian Tribal governments, and communities must be participating in the NFIP and may not be suspended or withdrawn under the program.

(2) For projects that impact individual structures, for example, acquisitions and elevations, an NFIP policy for the structure must be in effect prior to the opening of the application period and be maintained for the life of the structure.

(b) *Plan requirement—(1) Applicants.* States must have a FEMA-approved mitigation plan meeting the requirements of § 201.4 of this chapter that provides for reduction of flood losses to structures for which NFIP coverage is available. Indian Tribal governments must have a FEMA-approved mitigation plan meeting the requirements of § 201.7 of this chapter that provides for reduction of flood losses to structures for which NFIP coverage is available. The FEMA-approved mitigation plan is required at the time of application and award.

(2) *Subapplicants.* To be eligible for FMA project grants, subapplicants must have an approved mitigation plan in accordance with part 201 of this chapter that provides for reduction of flood losses to structures for which NFIP coverage is available. The FEMA-approved mitigation plan is required at the time of application and award.

(c) *Eligible activities—(1) Planning.* FMA planning grants may be used to develop or update State, Indian Tribal and/or local mitigation plans that meet the planning criteria outlined in part 201 of this chapter and provide for reduction of flood losses to structures for which NFIP coverage is available.

(2) *Projects.* Projects funded under the FMA program are limited to activities that reduce flood damages to properties insured under the NFIP. Applications involving any activities for which implementation has already been initiated or completed are not eligible for

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funding, and will not be considered. Eligible activities are:

(i) Acquisition of real property from property owners, and demolition or relocation of buildings and/or structures to areas outside of the floodplain to convert the property to open space use in perpetuity, in accordance with part 80 of this subchapter;

(ii) Elevation of existing structures to at least base flood levels or higher, if required by FEMA or if required by any State or local ordinance, and in accordance with criteria established by the Administrator;

(iii) Floodproofing of existing non-residential structures in accordance with the requirements of the NFIP or higher standards if required by FEMA or if required by any State or local ordinance, and in accordance with criteria established by the Administrator;

(iv) Floodproofing of historic structures as defined in §59.1 of this subchapter;

(v) Demolition and rebuilding of properties to at least base flood levels or higher, if required by FEMA or if required by any State or local ordinance, and in accordance with criteria established by the Administrator;

(vi) Localized flood risk reduction projects that lessen the frequency or severity of flooding and decrease predicted flood damages, and that do not duplicate the flood prevention activities of other Federal agencies. Non-localized flood risk reduction projects such as dikes, levees, floodwalls, seawalls, groins, jetties, dams and large-scale waterway channelization projects are not eligible unless the Administrator specifically determines in approving a mitigation plan that such activities are the most cost-effective mitigation activities for the National Flood Mitigation Fund;

(vii) Elevation, relocation, or floodproofing of utilities; and

(viii) Other mitigation activities not described or identified in (c)(2)(i) through (vii) of this section that are described in the State, Tribal or local mitigation plan.

(3) *Technical assistance.* If a recipient applied for and was awarded at least \$1 million in the prior fiscal year, that recipient may be eligible to receive a

technical assistance grant for up to \$50,000.

(4) *Project scoping.* Activities that enable subapplicants to develop complete subapplications for eligible mitigation activities including but not limited to data development.

(d) *Minimum project criteria.* In addition to being an eligible project type, mitigation grant projects must also:

(1) Be in conformance with State, Tribal and/or local mitigation plans approved under part 201 of this chapter for the jurisdiction where the project is located;

(2) Be in conformance with applicable environmental and historic preservation laws, regulations, and agency policy, including parts 9 and 60 of this chapter, and other applicable Federal, State, Tribal, and local laws and regulations;

(3) Be technically feasible and cost-effective; or, eliminate future payments from the NFIP for severe repetitive loss structures through an acquisition or relocation activity;

(4) Solve a problem independently, or constitute a functional portion of a long-term solution where there is assurance that the project as a whole will be completed. This assurance will include documentation identifying the remaining funds necessary to complete the project, and the timeframe for completing the project;

(5) Consider long-term changes to the areas and entities it protects, and have manageable future maintenance and modification requirements. The sub-recipient is responsible for the continued maintenance needed to preserve the hazard mitigation benefits of these measures; and

(6) Not duplicate benefits available from another source for the same purpose or assistance that another Federal agency or program has more primary authority to provide.

§77.7 Allowable costs.

(a) *General.* General policies for allowable costs for implementing awards and subawards are addressed in 2 CFR 200.101, 200.102, 200.400–200.476.

(1) *Eligible management costs*—(i) *Recipient.* Recipients are eligible to receive management costs (direct and indirect administrative costs pursuant to

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2 CFR part 200 subpart E) consisting of a maximum of 10 percent of the planning and project activities awarded to the recipient, each fiscal year under FMA. These costs must be included in the application to FEMA.

(ii) *Subrecipient.* Subapplicants may include a maximum of 5 percent of the total funds requested for their subapplication for management costs to support the implementation of their planning or project activity. These costs must be included in the subapplication to the recipient.

(2) *Indirect costs.* Indirect costs of administering the FMA program are eligible as part of the 10 percent management costs for the recipient or the 5 percent management costs of the subrecipient, but in no case do they make the recipient eligible for additional management costs that exceed the caps identified in paragraph (a)(1) of this section. In addition, all costs must be in accordance with the provisions of 2 CFR parts 200 and 3002.

(b) *Pre-award costs.* FEMA may fund eligible pre-award costs related to developing the application or subapplication at its discretion and as funds are available. Recipients and subrecipients may be reimbursed for eligible pre-award costs for activities directly related to the development of the project or planning proposal. Costs associated with implementation of the activity but incurred prior to award are not eligible. Therefore, activities where implementation is initiated or completed prior to award are not eligible and will not be reimbursed.

(c) *Duplication of benefits.* Grant funds may not duplicate benefits received by or available to applicants, subapplicants and project participants from insurance, other assistance programs, legal awards, or any other source to address the same purpose. Such individual or entity must notify the recipient and FEMA of all benefits that it receives or anticipates from other sources for the same purpose. FEMA will reduce the subaward by the amounts available for the same purpose from another source.

(d) *Negligence or other tortious conduct.* FEMA grant funds are not available where an applicant, subapplicant, other project participant, or third party's

negligence or intentional actions contributed to the conditions to be mitigated. If the applicant, subapplicant, or project participant suspects negligence or other tortious conduct by a third party for causing such condition, they are responsible for taking all reasonable steps to recover all costs attributable to the tortious conduct of the third party. FEMA generally considers such amounts to be duplicated benefits available for the same purpose, and will treat them consistent with paragraph (c) of this section.

(e) *Legal obligations.* FEMA grant funds are not available to satisfy or reimburse for legal obligations, such as those imposed by a legal settlement, court order, or State law.

### § 77.8 Grant administration.

(a) *General.* Recipients must comply with the requirements contained in 2 CFR parts 200 and 3002 and FEMA award requirements, including submission of performance and financial status reports. Recipients must also ensure that subrecipients are aware of and comply with 2 CFR parts 200 and 3002.

(b) *Cost overruns.* (1) During the implementation of an approved grant, the recipient may find that actual costs are exceeding the approved award amount. While there is no guarantee of additional funding, FEMA will only consider requests made by the recipient to pay for such overruns if:

(i) Funds are available to meet the requested increase in funding; and

(ii) The amended grant award meets the eligibility requirements, including cost share requirements, identified in this section.

(2) Recipients may use cost underruns from ongoing subawards to offset overruns incurred by another subaward(s) awarded under the same award. All costs for which funding is requested must have been included in the original subapplication's cost estimate. In cases where an underrun is not available to cover an overrun, the Administrator may, with justification from the recipient and subrecipient, use other available FMA funds to cover the cost overrun.

(3) For all cost overruns that exceed the amount approved under the award,

and which require additional Federal funds, the recipient must submit a written request with a recommendation, including a justification for the additional funding to the Regional Administrator for a determination. If approved, the Regional Administrator will increase the award through an amendment to the original award document.

(c) *Recapture.* At the time of closeout, FEMA will recapture any funds provided to a State or a community under this part if the applicant has not provided the appropriate matching funds, the approved project has not been completed within the timeframes specified in the grant agreement, or the completed project does not meet the criteria specified in this part.

(d) *Remedies for noncompliance.* FEMA may terminate an award or take other remedies for noncompliance in accordance with 2 CFR 200.339 through 200.343.

(e) *Reconsideration.* FEMA will reconsider determinations of noncompliance, additional award conditions, or its decision to terminate a Federal award. Requests for reconsideration must be made in writing to FEMA within 60 calendar days after receipt of a notice of the action, and in accordance with submission procedures set out in guidance. FEMA will notify the requester of the disposition of the request for reconsideration. If the decision is to grant the request for reconsideration, FEMA will take appropriate implementing action.

## PARTS 78–79 [RESERVED]

### PART 80—PROPERTY ACQUISITION AND RELOCATION FOR OPEN SPACE

#### Subpart A—General

Sec.

- 80.1 Purpose and scope.
- 80.3 Definitions.
- 80.5 Roles and responsibilities.

#### Subpart B—Requirements Prior to Award

- 80.7 General.
- 80.9 Eligible and ineligible costs.
- 80.11 Project eligibility.
- 80.13 Application information.

#### Subpart C—Post-Award Requirements

- 80.15 General.
- 80.17 Project implementation.
- 80.19 Land use and oversight.

#### Subpart D—After the Grant Requirements

- 80.21 Closeout requirements.

**AUTHORITY:** Robert T. Stafford disaster relief and emergency assistance act, 42 U.S.C. 5121 through 5207; the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.*; Homeland Security Act of 2002, 6 U.S.C. 101.

**SOURCE:** 72 FR 61743, Oct. 31, 2007, unless otherwise noted.

### Subpart A—General

#### § 80.1 Purpose and scope.

This part provides guidance on the administration of FEMA mitigation assistance for projects to acquire property for open space purposes under all FEMA hazard mitigation assistance programs. It provides information on the eligibility and procedures for implementing projects for acquisition and relocation of at-risk properties from the hazard area to maintain the property for open space purposes. This part applies to property acquisition for open space project awards made under any FEMA hazard mitigation assistance program. This part supplements general program requirements of the funding grant program and must be read in conjunction with the relevant program regulations and guidance available at <http://www.fema.gov>. This part, with the exception of § 80.19 Land use and oversight, applies to projects for which the funding program application period opens or for which funding is made available pursuant to a major disaster declared on or after December 3, 2007. Prior to that date, applicable program regulations and guidance in effect for the funding program (available at <http://www.fema.gov>) shall apply. Section 80.19 Land use and oversight apply as of December 3, 2007 to all FEMA funded acquisitions for the purpose of open space.

#### § 80.3 Definitions.

(a) Except as noted in this part, the definitions applicable to the funding program apply to implementation of

this part. In addition, for purposes of this part:

(b) *Applicant* means a State or Indian Tribal government applying to FEMA for a Federal award that will be accountable for the use of funds. Once funds have been awarded, the applicant becomes the recipient and may also be a pass-through entity.

(c) *Federal award* means the Federal financial assistance that a recipient or subrecipient receives directly from FEMA or indirectly from a pass-through entity. The terms “award” and “grant” may also be used to describe a “Federal award” under this part.

(d) *Market Value* means the price that the seller is willing to accept and a buyer is willing to pay on the open market and in an arm’s length transaction.

(e) *National of the United States* means a person within the meaning of the term as defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22).

(f) *Pass-through entity* means a recipient that provides a subaward to a subrecipient.

(g) *Purchase offer* is the initial value assigned to the property, which is later adjusted by applicable additions and deductions, resulting in a final offer amount to a property owner.

(h) *Qualified alien* means a person within the meaning of the term as defined at 8 U.S.C. 1641.

(i) *Qualified conservation organization* means a qualified organization with a conservation purpose pursuant to 26 CFR 1.170A-14 and applicable implementing regulations, that is such an organization at the time it acquires the property interest and that was such an organization at the time of the major disaster declaration, or for at least 2 years prior to the opening of the grant application period.

(j) *Recipient* means the State or Tribal government that receives a Federal award directly from FEMA. A recipient may also be a pass-through entity. The term recipient does not include subrecipients.

(k) *Subapplicant* means the entity that submits an application for FEMA mitigation assistance to the State or Indian Tribal applicant/recipient. With respect to open space acquisition projects under the Hazard Mitigation

Grant Program (HMGP), this term has the same meaning as given to the term “applicant” in part 206, subpart N of this chapter. Upon grant award, the subapplicant is referred to as the subrecipient.

(l) *Subaward* means an award provided by a pass-through entity to a subrecipient, for the subrecipient to carry out part of a Federal award received by the pass-through entity.

(m) *Subrecipient* means the State agency, community or Indian Tribal government or other legal entity to which a subaward is awarded and which is accountable to the recipient for the use of the funds provided.

(n) *Administrator* means the head of the Federal Emergency Management Agency, or his/her designated representative.

(o) *Regional Administrator* means the head of a Federal Emergency Management Agency regional office, or his/her designated representative.

[86 FR 50670, Sept. 10, 2021]

**§ 80.5 Roles and responsibilities.**

The roles and responsibilities of FEMA, the State, the subapplicant/subrecipient, and participating property owners in the particular context of mitigation projects for the purpose of creating open space include the activities in this section. These are in addition to grants management roles and responsibilities identified in regulations and guidance of the program funding the project (available at <http://www.fema.gov>) and other responsibilities specified in this part.

(a) *Federal roles and responsibilities.* Oversee property acquisition activities undertaken under FEMA mitigation grant programs, including:

- (1) Providing technical assistance to the applicant/recipient to assist in implementing project activities in compliance with this part;
- (2) Reviewing applications for eligibility and compliance with this part;
- (3) Reviewing proposals for subsequent transfer of a property interest and approving appropriate transferees;
- (4) Making determinations on the compatibility of proposed uses with the open space purpose, in accordance with § 80.19;

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(5) Complying with applicable Federal statutory, regulatory, and Executive Order requirements related to environmental and historic preservation compliance, including reviewing and supplementing, if necessary, environmental analyses conducted by the State and subrecipient in accordance with applicable laws, regulations, and agency policy;

(6) Providing no Federal disaster assistance, flood insurance claims payments, or other FEMA assistance with respect to the property or any open-space related improvements, after the property interest transfers; and

(7) Enforcing the requirements of this part and the deed restrictions to ensure that the property remains in open space use in perpetuity.

(b) *State (applicant/recipient) roles and responsibilities.* Serve as the point of contact for all property acquisition activities by coordinating with the subapplicant/subrecipient and with FEMA to ensure that the project is implemented in compliance with this part, including:

(1) Providing technical assistance to the subapplicant/subrecipient to assist in implementing project activities in compliance with this part;

(2) Ensuring that applications are not framed in a manner that has the effect of circumventing any requirements of this part;

(3) Reviewing the application to ensure that the proposed activity complies with this part, including ensuring that the property acquisition activities remain voluntary in nature, and that the subrecipient and property owners are made aware of such;

(4) Submitting to FEMA subapplications for proposed projects in accordance with the respective program schedule and programmatic requirements, and including all the requisite information to enable FEMA to determine the eligibility, technical feasibility, cost effectiveness, and environmental and historic preservation compliance of the proposed projects;

(5) Reviewing proposals for subsequent transfer of property interest and obtaining FEMA approval of such transfers; and ensuring that all uses proposed for the property are compatible with open space project purposes;

(6) Making no application for, nor providing, Federal disaster assistance or other FEMA assistance for the property or any open-space related improvements, after the property interest transfers;

(7) Enforcing the terms of this part and the deed restrictions to ensure that the property remains in open space use in perpetuity; and

(8) Reporting on property compliance with the open space requirements after the grant is awarded.

(c) *Subapplicant/Subrecipient roles and responsibilities.* Coordinate with the applicant/recipient and with the property owners to ensure that the project is implemented in compliance with this part, including:

(1) Submitting all applications for proposed projects in accordance with the respective program schedule and programmatic requirements, and including all the requisite information to enable the applicant/recipient and FEMA to determine the eligibility, technical feasibility, cost effectiveness, and environmental and historic preservation compliance of the proposed projects;

(2) Ensuring that applications are not framed in a manner that has the effect of circumventing any requirements of this part;

(3) Coordinating with the property owners to ensure they understand the benefits and responsibilities of participating in the project, including that participation in the project is voluntary, and that the property owner(s) are made aware of such;

(4) Developing the application and implementing property acquisition activities in compliance with this part, and ensuring that all terms of the deed restrictions and grant award are enforced;

(5) Ensuring fair procedures and processes are in place to compensate property owners and tenants affected by the purchase of property; such as determining property values and/or the amount of the mitigation offer, and reviewing property owner disputes regarding such offers;

(6) Making no application for Federal disaster assistance, flood insurance, or other FEMA benefits for the property

or any open-space related improvements, after the property interest transfers;

(7) Taking and retaining full property interest, consistent with this part; or if transferring such interest, obtaining approval of the recipient and FEMA;

(8) Submitting to the recipient and FEMA proposed uses on the property for open space compatibility determinations; and

(9) Monitoring and reporting on property compliance after the grant is awarded.

(d) *Participating property owner roles and responsibilities.* Notify the subapplicant/subrecipient of its interest to participate, provide information to the subapplicant/subrecipient, and take all required actions necessary for the completion of the grant application and the implementation of property acquisition activities in accordance with this part.

[72 FR 61743, Oct. 31, 2007, as amended at 81 FR 56533, Aug. 22, 2016; 86 FR 50671, Sept. 10, 2021]

**Subpart B—Requirements Prior to Award**

**§ 80.7 General.**

A project involving property acquisition or the relocation of structures for open space is eligible for hazard mitigation assistance only if the subapplicant meets the pre-award requirements set forth in this subpart. A project may not be framed in a manner that has the effect of circumventing the requirements of this subpart.

**§ 80.9 Eligible and ineligible costs.**

(a) *Allowable costs.* Eligible project costs may include compensation for the value of structures, for their relocation or demolition, for associated land, and associated costs. For land that is already held by an eligible entity, compensation for the land is not an allowable cost, but compensation for development rights may be allowable.

(b) *Pre-award costs.* FEMA may fund eligible pre-award project costs at its discretion and as funds are available. Recipients and subrecipients may be reimbursed for eligible pre-award costs for activities directly related to the de-

velopment of the project proposal. These costs can only be incurred during the open application period of the respective grant program. Costs associated with implementation of the project but incurred prior to grant award are not eligible. Therefore, activities where implementation is initiated or completed prior to award are not eligible and will not be reimbursed.

(c) *Duplication of benefits.* Grant funds may not duplicate benefits received by or available to applicants, subapplicants and other project participants from insurance, other assistance programs, legal awards, or any other source to address the same purpose. Such individual or entity must notify the subapplicant and FEMA of all benefits that it receives, anticipates, or has available from other sources for the same purpose. FEMA will reduce the subaward by the amounts available for the same purpose from another source.

(d) *Negligence or other tortious conduct.* FEMA acquisition funds are not available where an applicant, subapplicant, other project participant, or third party's negligence or intentional actions contributed to the conditions to be mitigated. If the applicant, subapplicant, or project participant suspects negligence or other tortious conduct by a third party for causing such condition, they are responsible for taking all reasonable steps to recover all costs attributable to the tortious conduct of the third party. FEMA generally considers such amounts to be duplicated benefits available for the same purpose, and will treat them consistent with paragraph (c) of this section.

(e) FEMA mitigation grant funds are not available to satisfy or reimburse for legal obligations, such as those imposed by a legal settlement, court order, or State law.

[72 FR 61743, Oct. 31, 2007, as amended at 86 FR 50671, Sept. 10, 2021]

**§ 80.11 Project eligibility.**

(a) *Voluntary participation.* Eligible acquisition projects are those where the property owner participates voluntarily, and the recipient/subrecipient will not use its eminent domain authority to acquire the property for the open space purposes should negotiations fail.



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(b) *Acquisition of improved properties.* Eligible properties are those with at-risk structures on the property, including those that are damaged or destroyed due to an event. In some cases, undeveloped, at-risk land adjacent to an eligible property with existing structures may be eligible.

(c) *Subdivision restrictions.* The land may not be subdivided prior to acquisition except for portions outside the identified hazard area, such as the Special Flood Hazard Area or any risk zone identified by FEMA.

(d) *Subapplicant property interest.* To be eligible, the subapplicant must acquire or retain fee title (full property interest), except for encumbrances FEMA determines are compatible with open space uses, as part of the project implementation. A pass through of funds from an eligible entity to an ineligible entity must not occur.

(e) *Hazardous materials.* Eligible properties include only those that are not contaminated with hazardous materials, except for incidental demolition and household hazardous waste.

(f) *Open space restrictions.* Property acquired or from which a structure is removed must be dedicated to and maintained as open space in perpetuity consistent with this part.

[72 FR 61743, Oct. 31, 2007, as amended at 74 FR 47481, Sept. 16, 2009; 86 FR 50671, Sept. 10, 2021]

### § 80.13 Application information.

(a) An application for acquisition of property for the purpose of open space must include:

(1) A photograph that represents the appearance of each property site at the time of application;

(2) Assurances that the subapplicant will implement the project grant award in compliance with subparts C and D of this part;

(3) The deed restriction language, which must be consistent with the FEMA model deed restriction that the local government will record with the property deeds. Any variation from the model deed restriction language can only be made with prior approval from FEMA's Office of Chief Counsel;

(4) The documentation of voluntary interest signed by each property owner, which must include that the sub-

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applicant has informed them in writing that it will not use its eminent domain authority for the open space purpose; and

(5) Assurance that the subject property is not part of an intended, planned, or designated project area for which the land is to be acquired by a certain date, and that local and State governments have no intention to use the property for any public or private facility in the future inconsistent with this part;

(6) If the subapplicant is offering pre-event value: the property owner's certification that the property owner is a National of the United States or qualified alien; and

(7) Other information as determined by the Administrator.

(b) *Consultation regarding other ongoing Federal activities.* (1) The subapplicant must demonstrate that it has consulted with the United States Army Corps of Engineers (USACE) regarding the subject land's potential future use for the construction of a levee system. The subapplicant must also demonstrate that it has, and will, reject any future consideration of such use if it accepts FEMA assistance to convert the property to permanent open space.

(2) The subapplicant must demonstrate that it has coordinated with its State Department of Transportation to ensure that no future, planned modifications, improvements, or enhancements to Federal aid systems are under consideration that will affect the subject property.

(c) *Restriction on alternate properties.* Changes to the properties in an approved mitigation project will be considered by FEMA but not approved automatically. The subapplicant must identify the alternate properties in the project application and each alternate property must meet eligibility requirements in order to be considered.

[72 FR 61743, Oct. 31, 2007, as amended at 74 FR 47481, Sept. 16, 2009; 86 FR 50671, Sept. 10, 2021]

### Subpart C—Post-Award Requirements

#### § 80.15 General.

A project involving property acquisition or the relocation of structures for

open space must be implemented consistent with the requirements set forth in this subpart.

**§ 80.17 Project implementation.**

(a) *Hazardous materials.* The subrecipient must take steps to ensure it does not acquire or include in the project properties contaminated with hazardous materials by seeking information from property owners and from other sources on the use and presence of contaminants affecting the property from owners of properties that are or were industrial or commercial, or adjacent to such. A contaminated property must be certified clean prior to participation. This excludes permitted disposal of incidental demolition and household hazardous wastes. FEMA mitigation grant funds may not be used for clean up or remediation of contaminated properties.

(b) *Clear title.* The subrecipient will obtain a title insurance policy demonstrating that fee title conveys to the subrecipient for each property to ensure that it acquires only a property with clear title. The property interest generally must transfer by a general warranty deed. Any incompatible easements or other encumbrances to the property must be extinguished before acquisition.

(c) *Purchase offer and supplemental payments.* (1) The amount of purchase offer is the current market value of the property or the market value of the property immediately before the relevant event affecting the property ("pre-event").

(i) The relevant event for Robert T. Stafford Disaster Relief and Emergency Assistance Act assistance under HMGP is the major disaster under which funds are available; for assistance under the Pre-disaster Mitigation program (PDM) (42 U.S.C. 5133), it is the most recent major disaster. Where multiple disasters have affected the same property, the recipient and subrecipient will determine which is the relevant event.

(ii) The relevant event for assistance under the National Flood Insurance Act is the most recent event resulting in a National Flood Insurance Program (NFIP) claim of at least \$5,000.

(2) The recipient should coordinate with the subrecipient in their determination of whether the valuation should be based on pre-event or current market value. Generally, the same method to determine market value should be used for all participants in the project.

(3) A property owner who did not own the property at the time of the relevant event, or who is not a National of the United States or qualified alien, is not eligible for a purchase offer based on pre-event market value of the property. Subrecipients who offer pre-event market value to the property owner must have already obtained certification during the application process that the property owner is either a National of the United States or a qualified alien.

(4) Certain tenants who must relocate as a result of the project are entitled to relocation benefits under the Uniform Relocation Assistance and Real Property Acquisition Act (such as moving expenses, replacement housing rental payments, and relocation assistance advisory services) in accordance with 49 CFR part 24.

(5) If a purchase offer for a residential property is less than the cost of the homeowner-occupant to purchase a comparable replacement dwelling outside the hazard-prone area in the same community, subrecipients for mitigation grant programs may make such a payment available in accordance with criteria determined by the Administrator.

(6) The subrecipient must inform each property owner, in writing, of what it considers to be the market value of the property, the method of valuation and basis for the purchase offer, and the final offer amount. The offer will also clearly state that the property owner's participation in the project is voluntary.

(d) *Removal of existing buildings.* Existing incompatible facilities must be removed by demolition or by relocation outside of the hazard area within 90 days of settlement of the property transaction. The FEMA Regional Administrator may grant an exception to this deadline only for a particular property based upon written justification if extenuating circumstances

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exist, but will specify a final date for removal.

(e) *Deed restriction.* The subrecipient, upon settlement of the property transaction, must record with the deed of the subject property notice of applicable land use restrictions and related procedures described in this part, consistent with FEMA model deed restriction language.

[86 FR 50671, Sept. 10, 2021]

§ 80.19 Land use and oversight.

This section applies to acquisitions for open space projects to address flood hazards. If the Administrator determines to mitigate in other circumstances, he/she will adapt the provisions of this section as appropriate.

(a) *Open space requirements.* The property must be dedicated and maintained in perpetuity as open space for the conservation of natural floodplain functions.

(1) These uses may include: Parks for outdoor recreational activities; wetlands management; nature reserves; cultivation; grazing; camping (except where adequate warning time is not available to allow evacuation); unimproved, unpaved parking lots; buffer zones; and other uses FEMA determines compatible with this part.

(i) Allowable uses generally do not include: Walled buildings, levees, dikes, or floodwalls, paved roads, highways, bridges, cemeteries, landfills, storage of any hazardous or toxic materials, above or below ground pumping and switching stations, above or below ground storage tanks, paved parking, off-site fill or other uses that obstruct the natural and beneficial functions of the floodplain.

(ii) In the rare circumstances where the Administrator has determined competing Federal interests were unavoidable and has analyzed floodplain impacts for compliance with §60.3 of this subchapter or higher standards, the Administrator may find only USACE projects recognized by FEMA in 2000 and improvements to pre-existing Federal-aid transportation systems to be allowable uses.

(2) No new structures or improvements will be built on the property except as indicated below:

(i) A public facility that is open on all sides and functionally related to a designated open space or recreational use;

(ii) A public restroom; or

(iii) A structure that is compatible with open space and conserves the natural function of the floodplain, which the Administrator approves in writing before the construction of the structure begins.

(3) Any improvements on the property must be in accordance with proper floodplain management policies and practices. Structures built on the property according to paragraph (a)(2) of this section must be floodproofed or elevated to at least the base flood level plus 1 foot of freeboard, or greater, if required by FEMA, or if required by any State or local ordinance, and in accordance with criteria established by the Administrator.

(4) After the date of property settlement, no Federal entity or source may provide disaster assistance for any purpose with respect to the property, nor may any application for such assistance be made to any Federal entity or source.

(5) The property is not eligible for coverage under the NFIP for damage to structures on the property occurring after the date of the property settlement, except for pre-existing structures being relocated off the property as a result of the project.

(b) *Subsequent transfer.* After acquiring the property interest, the subrecipient, including successors in interest, will convey any interest in the property only if the Regional Administrator, through the State, gives prior written approval of the transferee in accordance with this paragraph.

(1) The request by the subrecipient, through the State, to the Regional Administrator must include a signed statement from the proposed transferee that it acknowledges and agrees to be bound by the terms of this section, and documentation of its status as a qualified conservation organization if applicable.

(2) The subrecipient may convey a property interest only to a public entity or to a qualified conservation organization. However, the subrecipient may convey an easement or lease to a

private individual or entity for purposes compatible with the uses described in paragraph (a) of this section, with the prior approval of the Regional Administrator, and so long as the conveyance does not include authority to control and enforce the terms and conditions of this section.

(3) If title to the property is transferred to a public entity other than one with a conservation mission, it must be conveyed subject to a conservation easement that must be recorded with the deed and must incorporate all terms and conditions set forth in this section, including the easement holder's responsibility to enforce the easement. This must be accomplished by one of the following means:

(i) The subrecipient will convey, in accordance with this paragraph (b), a conservation easement to an entity other than the title holder, which must be recorded with the deed, or

(ii) At the time of title transfer, the subrecipient will retain such conservation easement, and record it with the deed.

(4) Conveyance of any property interest must reference and incorporate the original deed restrictions providing notice of the conditions in this section and must incorporate a provision for the property interest to revert to the subrecipient or recipient in the event that the transferee ceases to exist or loses its eligible status under this section.

(c) *Inspection.* FEMA, its representatives and assigns, including the recipient will have the right to enter upon the property, at reasonable times and with reasonable notice, for the purpose of inspecting the property to ensure compliance with the terms of this part, the property conveyance and of the grant award.

(d) *Monitoring and reporting.* Every 3 years the subrecipient (in coordination with any current successor in interest) through the recipient, must submit to the FEMA Regional Administrator a report certifying that the subrecipient has inspected the property within the month preceding the report, and that the property continues to be maintained consistent with the provisions

of this part, the property conveyance and the grant award.

(e) *Enforcement.* The subrecipient, recipient, FEMA, and their respective representatives, successors and assigns, are responsible for taking measures to bring the property back into compliance if the property is not maintained according to the terms of this part, the conveyance, and the grant award. The relative rights and responsibilities of FEMA, the recipient, the subrecipient, and subsequent holders of the property interest at the time of enforcement, include the following:

(1) The recipient will notify the subrecipient and any current holder of the property interest in writing and advise them that they have 60 days to correct the violation. If the subrecipient or any current holder of the property interest fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the recipient will enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.

(2) FEMA, its representatives, and assignees may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to 1 or more of the following:

(i) Withholding FEMA mitigation awards or assistance from the State and subrecipient; and current holder of the property interest.

(ii) Requiring transfer of title. The subrecipient or the current holder of the property interest will bear the costs of bringing the property back into compliance with the terms of the grant; or

(iii) Bringing an action at law or in equity in a court of competent jurisdiction against any or all of the following parties: The recipient, the subrecipient, and their respective successors.

[73 FR 61743, Oct. 31, 2007, as amended at 86 FR 50672, Sept. 10, 2021]

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**Subpart D—After the Grant Requirements**

**§ 80.21 Closeout requirements.**

Upon closeout of the grant, the sub-recipient, through the recipient, must provide FEMA, with the following:

(a) A copy of the deed recorded for each property, demonstrating that each property approved in the original application was mitigated and that the deed restrictions recorded are consistent with the FEMA model deed restriction language to meet the requirements of this part;

(b) A photo of each property site after project completion;

(c) The latitude-longitude coordinates of each property site;

(d) Identification of each property as a repetitive loss structure, if applicable; and

(e) Other information as determined by the Administrator.

[73 FR 61743, Oct. 31, 2007, as amended at 86 FR 50672, Sept. 10, 2021]

**PARTS 81–149 [RESERVED]**

## SUBCHAPTER C—FIRE PREVENTION AND CONTROL

### PART 150—PUBLIC SAFETY AWARDS TO PUBLIC SAFETY OFFICERS

Sec.

- 150.1 Background and purpose.
- 150.2 Definitions.
- 150.3 Nomination process.
- 150.4 Nomination and selection criteria.
- 150.5 Joint Public Safety Awards Board.
- 150.6 Design and procurement of awards.
- 150.7 Selection process.
- 150.8 Presentation of awards.
- 150.9 Funding.
- 150.10 Date of submission of nominations.

AUTHORITY: Federal Fire Prevention and Control Act of 1974, sec. 15, 15 U.S.C. 2214; Reorg. Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329, and E.O. 12127, dated Mar. 31, 1979, 3 CFR, 1979 Comp., p. 376.

SOURCE: 49 FR 39845, Oct. 11, 1984, unless otherwise noted.

#### § 150.1 Background and purpose.

The regulations in this part are issued under the authority of the Federal Fire Prevention and Control Act of 1974 (the Act), 15 U.S.C. 2201 *et seq.* The Act establishes two classes of honorary awards for public safety officers and directs the issuance of the necessary joint regulations by the Administrator of the Federal Emergency Management Agency (FEMA) and the Attorney General. The functions of the Secretary of Commerce were transferred by Reorganization Plan No. 3 of 1978 to the Administrator, FEMA. Since initial passage of the Act, civil defense functions which then were delegated to the Secretary of Defense have been delegated to the Administrator, FEMA. Section 15 of the Act has been amended to delete the Secretary of Defense from participating in the granting of awards. See Public Law 98-241, 98 Stat. 95, 96 (1984). The Administrator, FEMA, and the Attorney General are issuing this regulation to implement the statutory provisions for FEMA and the Department of Justice.

#### § 150.2 Definitions.

*Civil defense officer* (or member of a recognized civil defense or emergency preparedness organization) means any individual who is assigned to and is

performing the assigned tasks of the unit or organization which has been given a mission under the direction or operational control of a Civil Defense or Emergency Preparedness Director/Coordinator in accordance with a Federal, State or local emergency plan and sanctioned by the government concerned. This also includes emergency management officers. This includes volunteers and paid employees for any governmental entity.

*Distinguished Public Safety Service Award* means the *Secretary's Award for Distinguished Public Safety Service*, presented by either the Attorney General or the Administrator of FEMA to public safety officers for distinguished service in the field of public safety.

*FEMA* means the Federal Emergency Management Agency.

*Firefighter* means a member, regardless of rank or duties, of any organization (including such Federal organizations) in any State consisting of personnel, apparatus, and equipment which has as its purpose protecting property and maintaining the safety and welfare of the public from the dangers of fire. This term includes volunteer or paid employees. The location of any such organization may include, but is not limited to, a Federal installation, a State, city, town, borough, parish, county, fire district, rural fire district or other special district.

*Joint Board* means the Joint Public Safety Awards Board established by the Administrator of the Federal Emergency Management Agency and the Attorney General to carry out the purposes of the Federal Fire Prevention and Control Act of 1974.

*Law enforcement officer* means a person involved in the control or reduction of crime and juvenile delinquency or enforcement of the criminal laws. This includes, but is not limited to, police, corrections, probation, parole, and court officers, and Federal civilian officers in such capacities.

*Nominating official* means the head of a Federal government department or agency, or his delegatee(s), the governor or other head of a State, or the chief executive or executives of any

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general governmental unit within any State.

*President's Award* means the President's Award for Outstanding Public Safety Service, presented by the President of the United States to public safety officers for extraordinary valor in the line of duty or for outstanding contributions to public safety.

*Public safety officer* means a person serving a public agency, with or without compensation, as a firefighter, a civil defense officer (or member of a recognized civil defense or emergency preparedness organization), or a law enforcement officer, including a corrections or court officer.

*State* means any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands and any other territory or possession of the United States.

§ 150.3 Nomination process.

(a) The Nominating Officials nominating Firefighters and Civil Defense Officers shall submit their nominations for the President's Award or Distinguished Public Safety Service Award to the Executive Secretary, Joint Public Safety Awards Board, National Emergency Training Center, Emmitsburg, MD 21727. Copies of all nominations shall also be forwarded, depending on the category of the nominee, as follows:

(1) *Firefighter*:

FEMA, Attention: Superintendent, National Fire Academy, Emmitsburg, MD 21727

(2) *Civil defense officer (or member of a recognized civil defense or emergency preparedness organization)*:

FEMA, Attention: Superintendent, Emergency Management Institute, Emmitsburg, MD 21727

(b) The Nominating Officials nominating law enforcement, corrections or court officers shall submit their nominations for the President's Award or Distinguished Public Safety Service Awards to: Assistant Attorney General for Administration, U.S. Department of Justice, Washington, DC 20530.

(c) All nominations shall be submitted in writing in accordance with

the requirements prescribed in this section and §150.4 at the earliest practicable date after the performance of the act or acts for which the nomination is made. Nominations for each year shall be made before November 15; any received thereafter will be considered as having been made for the following year. However, for the year 1983, nominations may be made by February 28, 1985.

(d) Nominations for the President's Award or the Distinguished Public Safety Service Award should include the name of the candidate, his/her position, title and address, and public agency served, the locale where the candidate performs his/her duties, the name, address and telephone number of the nominating official, a summary describing the outstanding contribution, distinguished service or extraordinary valor, and the dates relating thereto. The description should be sufficiently concise and specific to justify the request for recognition of the public safety officer through the presentation of either of the awards. Copies of any published factual accounts of the nominee's accomplishment should also be attached when available.

(e) An annual invitation shall be issued by the Joint Board for nominations for the President's Award and, on behalf of the Attorney General and the Administrator of FEMA, for the Distinguished Public Safety Service Award. The invitation shall be issued by letter or by notice in appropriate publications of interest to the public safety community. However, nominating officials need not wait for such invitation but may nominate at the most appropriate time in accordance with the other provisions of this part.

[49 FR 39845, Oct. 11, 1984, as amended at 50 FR 3350, Jan. 24, 1985; 74 FR 15344, Apr. 3, 2009]

§ 150.4 Nomination and selection criteria.

(a) Nominations for the President's Award or the Distinguished Public Safety Service Award shall be made on the basis of, and in conformity with, the following uniform criteria.

(1) *President's Award*. Documentation accompanying the nomination for this Award must indicate not only that the

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nominee unquestionably meets the standards established for the Distinguished Public Safety Service Award (see paragraph (a)(2) of this section), but also deserves greater public recognition because he/she has demonstrated unique qualities of courage, imagination or ability, which have resulted in outstanding contributions to the public safety.

(2) *Distinguished Public Safety Service Award.* Nomination for this award shall clearly show that the public safety officer's qualifying service or act is marked by courage, imagination or ability or has resulted in a significant contribution to the public safety accomplished through an originality of effort which far exceeds the expected quality of performance of the normal duties assigned to the nominee.

(b) A nomination shall specify whether it is being submitted for the President's Award or the Distinguished Public Safety Award.

[49 FR 39845, Oct. 11, 1984, as amended at 74 FR 15344, Apr. 3, 2009]

**§ 150.5 Joint Public Safety Awards Board.**

(a) A Joint Public Safety Awards Board (Joint Board) is hereby established to fulfill the responsibilities of the Administrator of FEMA and the Attorney General by administering the process of nomination for the President's Award and by participating in the selection process with the Executive Office of the President. The Joint Board shall consist of ten representatives who are Federal employees and are of appropriate rank (at or equivalent to grades GM-14 or above). Five persons shall be named by and represent the Administrator of FEMA, and five persons shall be named by and represent the Attorney General. The representatives serving on the Joint Board shall select one of their number to act as the chairperson.

(b) Representatives on the Joint Board shall serve in addition to their regular duties and without additional compensation. Consistent with the requirements of this part, the members of the Joint Board shall establish the procedures by which the selections for the President's Award shall be made to

assure the timely presentation of these awards.

(c) A National Emergency Training Center employee shall act as Executive Secretary of the Joint Board. The Executive Secretary shall perform such functions as are appropriate to the Board's responsibilities, including the receipt of all nominations and the communication of nomination information, for the purpose of receiving comments thereon, from members of the public safety community pursuant to § 150.5(e). The Executive Secretary shall be appointed by the Associate Director, Training and Fire Programs of FEMA.

(d) The Joint Board shall review the nominations for the President's Award and shall recommend to the Administrator, FEMA, and the Attorney General by February 1 of each year, those nominees determined by it to merit consideration for the President's Award together with reasons therefor. The Administrator and the Attorney General shall then recommend to the President those nominees determined by them to merit the President's Award, together with the reasons therefor. Recommendations for 1983 shall be submitted on or before March 29, 1985.

(e) The Joint Board may request that persons representing a cross-section of the national public safety community comment upon nominations made to the Board for the President's Award. Both the request for comments and the comments themselves shall be made in writing.

[49 FR 39845, Oct. 11, 1984, as amended at 50 FR 3350, Jan. 24, 1985]

**§ 150.6 Design and procurement of awards.**

(a) The Joint Board shall consult with the Department of the Treasury and the Executive Office of the President in regard to the design and procurement of the appropriate citations and medal for the President's Award in accordance with applicable laws and regulations.

(b) Insofar as practicable, the designs for Distinguished Public Safety Service Awards of FEMA and the Department of Justice shall be coordinate so as to avoid distinctly different recognition of the various public safety officers.



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**§ 150.7 Selection process.**

(a) *President's Award.* Nominations for the President's Award shall be reviewed, and winners selected by the President (or his designee) in accordance with the requirements of §150.3, the criteria in §150.4(a)(1), and the procedures of §150.5.

(b) *Distinguished Public Safety Service Award.* Upon receipt of nominations for this Award, the Administrator of FEMA or the Attorney General shall cause an evaluation and selection of the nominees to be made in accordance with the requirements of §150.3 and the criteria prescribed in §150.4(a)(2). In reviewing nominations, the Attorney General or the Administrator of FEMA may request that persons representing the relevant segment of the national public safety community comment upon the nomination and accompanying documentation. Both the request for comments and the comments themselves shall be made in writing.

(c) Individuals nominated for the President's Award who are considered not to meet the criteria for the Award by the Joint Board or who are not recommended to or selected by the President shall be automatically considered by the appropriate authority for nomination for the Distinguished Public Safety Service Award.

(d) Individuals nominated for the Distinguished Public Safety Service Award may be considered by the Joint Board for the President's Award if the Administrator of FEMA or the Attorney General determines that consideration for the President's Award is merited.

**§ 150.8 Presentation of awards.**

(a) Presentation of the President's Award shall be made at such time, place and circumstances as the Executive Office of the President directs. There shall not be more than twelve President's Awards given out during any calendar year.

(b) Presentation of the Distinguished Public Safety Service Award shall be made by the Attorney General or the Administrator of FEMA or a designee at such time, place and circumstances as the Administrator of FEMA or the Attorney General determines. There is

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no limit on the number of these awards made during any calendar year.

**§ 150.9 Funding.**

(a) *President's Award.* The costs involved in designing and striking the medal to be presented in conjunction with the President's Award shall be prorated among the agencies concerned. The cost of producing the medal and printing the certificate shall be borne by FEMA if the recipient is a firefighter or a civil defense officer. If the award recipient is a law enforcement officer, then such cost shall be borne by the Department of Justice.

(b) *Distinguished Public Safety Service Award.* All expenses in connection with this Award shall be borne by the appropriate Agency.

**§ 150.10 Date of submission of nominations.**

Nominations may only be submitted for acts, services, or contributions occurring within two years preceding the November 15 cut-off date described in §150.3(c) of this part. However, nominations submitted prior to the February 28, 1985 cut-off date may be made for acts, services or contributions occurring on or after October 29, 1972 (two years before the effective date of the Act).

[50 FR 3350, Jan. 24, 1985]

**PART 151—REIMBURSEMENT FOR COSTS OF FIREFIGHTING ON FEDERAL PROPERTY**

**Subpart A—Purpose, Scope, Definitions**

- Sec.
- 151.01 Purpose.
- 151.02 Scope.
- 151.03 Definitions.

**Subpart B—Submission, Determination, Appeal**

- 151.11 Submission of claims.
- 151.12 Determination of amount authorized for payment.
- 151.13 Reconsideration of amount authorized for payment.
- 151.14 Adjudication.

**Subpart C—Administration, Penalties**

- 151.21 [Reserved]
- 151.22 Audits.

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### 151.23 Penalties.

AUTHORITY: Secs. 11 and 21(b)(5), Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2210 and 2218(b)(5)); Reorganization Plan No. 3 of 1978 (3 CFR, 1978 Comp., p. 379) and E.O. 12127, dated Mar. 31, 1979 (3 CFR, 1979 Comp., p. 376).

SOURCE: 49 FR 5929, Feb. 16, 1984, unless otherwise noted.

### Subpart A—Purpose, Scope, Definitions

#### § 151.01 Purpose.

Section 11 of the Federal Fire Prevention and Control Act of 1974, provides that “each fire service that engages in the fighting of a fire on property which is under the jurisdiction of the United States may file a claim with the Administrator of the Federal Emergency Management Agency for the amount of direct expenses and direct losses incurred by such fire service as a result of fighting such fire.” This part, implements section 11 of the Act and governs the submission, determination, and appeal of claims under section 11.

#### § 151.02 Scope.

Fire services, in any State, may file claims for reimbursement under section 11 and this part for the direct expenses and losses which are additional firefighting costs over and above normal operating costs incurred while fighting a fire on property which is under the jurisdiction of the United States. Section 11 requires that certain payments be deducted from those costs and that the Treasury Department will ordinarily pay the amount resulting from the application of that formula. Where the United States has entered into a contract (which is not a mutual aid agreement, defined in §151.03) for the provision of fire protection, and it is the intent of the parties that reimbursement under section 11 is unavailable, this intent will normally govern. Where a mutual aid agreement is in effect between the claimant and an agency of the United States for the property upon which the fire occurred, reimbursement will be available in otherwise proper situations. However, any payments (including the value of services) rendered under the agreement

during the term of the agreement (or the Federal fiscal year in which the fire occurred, if no term is discernible) shall be deducted from the costs claimed, pursuant to §151.12.

#### § 151.03 Definitions.

(a) *The Act* means the Federal Fire Prevention and Control Act of 1974, 15 U.S.C. 2201 *et seq.*

(b) *Additional firefighting costs over and above normal operating costs* means reasonable and authorized (or ratified by a responsible Federal official) costs ordinarily associated with the function of firefighting as performed by a fire service. Such costs would normally arise out of response of personnel and apparatus to the site of the fire, search and rescue, exposure protection, fire containment, ventilation, salvage, extinguishment, overhaul, and preparation of the equipment for further use. This would also include costs associated with emergency medical services to the extent normally rendered by a fire service in connection with a fire. Not included are administrative expenses, costs of employee benefits, insurance, disability, death, litigation or health care, and the costs associated with processing claims under section 11 of the Act and this part.

(c) *Administrator* means the Administrator of the Federal Emergency Management Agency, or his/her designee.

(d) *Claimant* means a fire service as defined in paragraph (g) of this section.

(e) *Direct expenses and losses* means expenses and losses which would not have been incurred had not the fire in question taken place. This includes salaries for specially employed personnel, overtime pay, the cost of supplies expended, and the depreciated value of equipment destroyed or damaged. It does not include such costs as the ordinary wages of firefighters, overhead costs, or depreciation (if based on other than hours of use during fires). Expenses as defined herein would normally be incurred after the first call or alarm and would normally cease upon the first of the following: Return to station, report in-service and ready for further operations, or commence response to another incident.

(f) *Fire* means any instance of destructive or uncontrolled burning, including scorch burns and explosions of combustible dusts or solids, flammable liquids, and gases. The definition does not include the following except where they cause fire or occur as a consequence of fire: Lightning or electrical discharge, explosion of steam boilers, hot water tanks, or other pressure vessels, explosions of ammunition or other detonating materials, overheating, mechanical failures, or breakdown of electrical equipment in power transmission facilities, and accidents involving ships, aircraft, or other vehicles. Not included in this definition are any costs associated with false alarms, regardless of cause.

(g) *Fire service* means any organization in any State consisting of personnel, apparatus, and equipment which has as its purpose protecting property and maintaining the safety and welfare of the public from the dangers of fire, including a private fire-fighting brigade. The personnel of any such organization may be paid employees or unpaid volunteers or any combination thereof. The location of any such organization and its responsibility for extinguishment and suppression of fires may include, but need not be limited to, a State, city, town, borough, parish, county, fire district, fire protection district, rural fire district, or other special district.

(h) *Mutual aid agreement* means any reciprocal agreement whether written or oral between a Federal agency and the claimant fire service, or its parent jurisdiction, for the purpose of providing fire protection for the property of the United States upon which the fire which gave rise to the claim occurred and for other property for which the claimant normally provides fire protection. Such agreement must be primarily one of service rendered for service, or must be entered into under 42 U.S.C. 1856 through 1856d. Not included are all other agreements and contracts, particularly those in which the intent of the parties is that the United States pays for fire protection.

(i) *FEMA* means the Federal Emergency Management Agency.

(j) *Over and above normal operating expenses* means costs, losses and expenses

which are not ordinarily and necessarily associated with the maintenance, administration, and day-to-day operations of a fire service and which would not have been incurred absent the fire out of which the claim arises.

(k) *Payments to the fire service or its parent jurisdiction, including taxes or payments in lieu of taxes, the United States has made for the support of fire services on the property in question* means any Federal monies, or the value of services, including those made available through categorical or block grants, contracts, mutual aid agreements, taxes, and payments in lieu of taxes which the United States has paid to the fire service or its parent jurisdiction for fire protection and fire-fighting services. Such payments will be determined on the basis of the term of the arrangement, or if no such term is discernible, on the basis of the Federal fiscal year in which the fire occurred.

(l) *Property which is under the jurisdiction of the United States* means real property and Federal improvements thereon and appurtenances thereto in which the United States holds legal fee simple title. This excludes Federal leasehold interests. This likewise excludes Federal personal property on land in which the United States does not hold fee simple title.

(m) *State* means any State of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, The Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

[49 FR 5929, Feb. 16, 1984, as amended at 74 FR 15344, Apr. 3, 2009]

## Subpart B—Submission, Determination, Appeal

### § 151.11 Submission of claims.

Any fire service in any State which believes it has a claim(s) cognizable under section 11 shall submit its claim(s) in writing within 90 days of the occurrence of the fire(s) for which a claim(s) is made. If the fire is of such duration that the claimant desires to

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submit a claim before its conclusion, it may do so, but only for the eligible costs actually incurred to date. Additional claims may be filed for costs later incurred. Claims shall be submitted to the Administrator, FEMA, Washington, DC, 20472. Each claim shall include the following information:

(a) Name, address, jurisdiction and nature (volunteer, private, municipal, etc.) of claimant's fire service organization;

(b) Name, title, address and telephone number of individual authorized by the claimant fire service to make this claim in its behalf and his/her certification as to the accuracy of the information provided;

(c) Name and telephone number of Federal employee familiar with the facts of the event and the name and address of the Federal agency having jurisdiction over the property on which the fire occurred;

(d) Proof of authority to fight the fire (source of alarm, whether fire service was requested by responsible Federal official or whether such an official accepted the assistance when offered);

(e) Personnel and equipment committed to fighting of fire (type of equipment and number of items); and an itemized list of direct expenses (e.g., hours of equipment operation, fuel costs, consumables, overtime pay and wages for any specially hired personnel) and direct losses (e.g., damaged or destroyed equipment, to include purchase cost, estimate of the cost of repairs, statement of depreciated value immediately preceding and subsequent to the damage or destruction and the extent of insurance coverage) actually incurred in fighting the fire. A statement should be included explaining why each such expense or loss is considered by the claimant not be a normal operating cost, or to be in excess of normal operating costs;

(f) Copy of fire report which includes the location of the fire, a description of the property burned, the time of alarm, etc.;

(g) Such other information or documentation as the Administrator considers relevant to those considerations to be made in determining the amount

authorized for payment, as set forth in §151.12 of these regulations;

(h) Source and amount of any payments received or to be received for the fiscal year in which the fire occurred, including taxes or payments in lieu of taxes and including all monies received or receivable from the United States through any program or agreement including categorical or block grants, and contracts, by the claimant fire service or its parent jurisdiction for the support of fire services on the property on which the fire occurred. If this information is available when the claim is submitted, it should accompany the claim. If it is not, the information should be submitted as soon as practicable, but no later than 15 days after the end of the Federal fiscal year in which the fire occurred.

[49 FR 5929, Feb. 16, 1984, as amended at 74 FR 15344, Apr. 3, 2009]

**§ 151.12 Determination of amount authorized for payment.**

(a) The Administrator shall determine the amount to be paid on a claim (subject to payment by the Department of the Treasury). The amount to be paid is the total of eligible expenses, costs and losses under paragraph (a)(1) of this section which exceeds the amount of payments under paragraph (a)(2) of this section. The Administrator shall establish the reimbursable amount by determining:

(1) The extent to which the fire service incurred additional firefighting costs, over and above its normal operating costs, in connection with the fire which is the subject of the claim, i.e., the "amount of costs"; and

(2) What payments, if any, including taxes or payments in lieu of taxes, the fire service or its parent jurisdiction has received from the United States for the support of fire services on the property on which the fire occurred.

The reimbursable amount is the amount, if any, by which the amount of costs, determined under paragraph (a)(1) of this section exceeds the amount of payments determined under paragraph (a)(2) of this section. Where more than one claim is filed the aggregate reimbursable amount is the amount by which the total amount of costs, determined under paragraph

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(a)(1) of this section exceed the amount of Federal payments (in the case of a mutual aid agreement—its term or if none is determinable, the Federal fiscal year) determined under paragraph (a)(2) of this section.

(b) The Administrator will first determine the costs as contemplated in paragraph (a)(1) of this section. The Administrator will then notify the claimant as to that amount. The claimant must indicate within 30 days its acceptance or rejection of that amount.

(1) If the determination is accepted by the claimant, this will be the final and conclusive determination of the amount of costs by the claimant in conjunction with the fire for which the claims are submitted.

(2) If the claimant rejects this amount, it must notify the Administrator, within 30 days, of its reasons for its rejection. Upon receipt of notification of rejection, the Administrator shall reconsider his determination and notify the claimant of the results of the reconsideration. The amount determined on reconsideration will constitute the costs to be used by the Administrator in determining the reimbursable amount.

(c) Upon receipt of documentation from the claimant on the amount of payments the Federal Government has made for the support of fire services on the property in question, the Administrator will, following such verification or investigation as the Administrator may deem appropriate, calculate the full amount to be reimbursed under the section 11 formula as set forth in § 151.12(a). This calculation of the reimbursable amount is based upon the costs determined pursuant to § 151.12(b) and the documentation of Federal payments that the claimant submitted.

(d) The Administrator's determination of the reimbursable amount will be sent to the Secretary of the Treasury. The Secretary of the Treasury shall, upon receipt of the claim and determination made under § 151.12 (a), (b), and (c), determine the amount authorized for payment, which shall be the amount actually available for payment from any monies in the Treasury not otherwise appropriated but subject to reimbursement (from any appropriate

tions which may be available or which may be made available for the purpose) by the Federal department or agency under whose jurisdiction the fire occurred. This shall be a sum no greater, although it may be less, than the reimbursable amount determined by the Administrator, FEMA, with respect to the claim under § 151.12 (a), (b) and (c).

(e) Upon receipt of written notification from the claimant of its intention to accept the amount authorized as full settlement of the claim, accompanied by a properly executed document of release, the Administrator will forward the claim, a copy of the Administrator's determination and the claimant's document of release to the Secretary of the Treasury for payment of the claim in the amount authorized.

(f) Subject to the discovery of additional material evidence, the Administrator may reconsider any determination in this section, whether or not made as his final determination.

[49 FR 5929, Feb. 16, 1984, as amended at 49 FR 38119, Sept. 27, 1984]

#### § 151.13 Reconsideration of amount authorized for payment.

(a) If the claimant elects to protest the amount authorized for payment, after the applicable procedures of § 151.12 have been followed, it must within 30 days of receipt of notification of the amount authorized notify the Administrator in writing of its objections and set forth the reasons why the Administrator should reconsider the determination. The Administrator will upon notice of protest and receipt of additional evidence reconsider the determination of the amount of Federal payments under § 151.12(a)(2) but not the determination of the amount of costs under § 151.12(a)(1). The Administrator shall cause a reconsideration by the Secretary of the Treasury of the amount actually available and authorized for payment by the Treasury. The Administrator, upon receipt of the Secretary of the Treasury's reconsidered determination, will notify the claimant in writing of the amount authorized, upon reconsideration, for payment in full settlement of the claim.

(b) If the claimant elects to accept the amount authorized, upon reconsideration, for payment in full settlement

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of its claims, it must within 30 days (or a longer period of time acceptable to the Administrator) of its receipt of that determination notify the Administrator of its acceptance in writing accompanied by a properly executed document of release. Upon receipt of such notice and document of release, the Administrator will forward the claim, a copy of the Administrator's final determination, and the claimant's document of release to the Secretary of the Treasury for payment of the claim in the amount of final authorization.

a violation, the person is likewise subject to the civil penalties set out in 31 U.S.C. 3729 and 3730.

**PART 152—ASSISTANCE TO FIREFIGHTERS GRANT PROGRAM**

Sec.

- 152.1 Purpose and eligible uses of grant funds.
- 152.2 Definitions.
- 152.3 Availability of funds.
- 152.4 Roles and responsibilities.
- 152.5 Review process and evaluation criteria.
- 152.6 Application review and award process.
- 152.7 Grant payment, reporting and other requirements.
- 152.8 Application submission and deadline.
- 152.9 Reconsideration.

AUTHORITY: Federal Fire Protection and Control Act, 15 U.S.C. 2201 *et seq.*

SOURCE: 68 FR 12547, Mar. 14, 2003, unless otherwise noted.

**§ 151.14 Adjudication.**

If the claimant, after written notice by the Administrator of the amount authorized for payment in full settlement of the claim and after all applicable procedures of §§151.12 and 151.13 have been followed elects to dispute the amount authorized, it may then initiate action in the United States Claims Court, which shall have jurisdiction to adjudicate the claim and enter judgment in accordance with section 11(d) of the Act.

**§ 152.1 Purpose and eligible uses of grant funds.**

(a) This competitive grant program will provide funding directly to fire departments of a State for the purpose of enhancing departments abilities to protect the health and safety of the public, as well as that of firefighting personnel, facing fire and fire-related hazards. Eligible applicants can submit only one application per application period. Departments that submit multiple applications in one application period will have each of their applications deemed ineligible.

(b) Eligible applicants are fire departments or fire departments of a State which is defined as an agency or organization that has a "formally recognized arrangement" with a State, local or tribal authority (city, county, parish, fire district, township, town, or other non-Federal governing body) to provide fire suppression services within a fixed geographical area. A fire department can apply for assistance for its emergency medical services unit provided the unit falls organizationally under the auspices of the fire department. A municipality or fire district may submit an application on behalf of a fire department when the fire department lacks the legal status to do so, e.g., where the fire department falls

**Subpart C—Administration, Penalties**

**§ 151.21 [Reserved]**

**§ 151.22 Audits.**

At the discretion of the Administrator, all claims submitted under section 11 of the Act and all records of the claimant will be subject to audit by the Administrator or his/her designee. In addition, the Comptroller General of the United States or his/her designee shall have access to all books and records of all claimants making claims under section 11.

**§ 151.23 Penalties.**

Claimant's officials or others who provide information or documentation under this part are subject to, among other laws, the criminal penalties of Title 18 of the United States Code, sections 287 and 1001, which punish the submission of false, fictitious or fraudulent claims and the making of false, fictitious or fraudulent statements and which provide for a fine of not more than \$10,000 or imprisonment for not more than five years, or both. For such

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within the auspices of the municipality. When a municipality or fire district submits an application on behalf of a fire department, the fire department is precluded from submitting an additional application. Non-Federal airport and/or port authority fire departments are eligible, but only if they have a formally recognized arrangement with the local jurisdiction to provide fire suppression, on a first-due basis, outside the confines of the airport or port facilities. Airport or port authority fire departments whose sole responsibility is suppression of fires on the airport grounds or port facilities are not eligible for this grant program. Fire departments that are Federal or contracted by the Federal government and whose sole responsibility is suppression of fires on Federal installations are not eligible for this grant program. Fire stations that are not independent but are part of, or controlled by a larger fire department or agency, are typically not eligible. Fire departments that are for-profit departments (i.e., do not have specific non-profit status or are not municipally based) are not eligible to apply for assistance under this program. Also not eligible for this program are ambulance services, rescue squads, auxiliaries, dive teams, urban search and rescue teams, fire service organizations or associations, and State/local agencies such as a forest service, fire marshal, hospitals, and training offices.

(c) Congress included in the legislation a list of fourteen activities eligible for funding under this program. Those activities are as follows:

- (1) To hire additional firefighting personnel;
- (2) To train firefighting personnel in firefighting, emergency response (including response to a terrorism incident or use of a weapon of mass destruction), arson prevention and detection, or the handling of hazardous materials, or to train firefighting personnel to provide any of the training in this paragraph (c);
- (3) To fund the creation of rapid intervention teams to protect firefighting personnel at scenes of fires and other emergencies;
- (4) To certify fire inspectors;

(5) To establish wellness and fitness programs for firefighting personnel to ensure that the firefighting personnel can carry out their duties;

(6) To fund emergency medical services provided by fire departments;

(7) To acquire additional firefighting vehicles, including fire trucks;

(8) To acquire additional firefighting equipment, including equipment for communications, monitoring, and response to a terrorism incident or use of a weapon of mass destruction;

(9) To acquire personal protective equipment required for firefighting personnel by the Occupational Safety and Health Administration, and other personal protective equipment for firefighting personnel, including protective equipment to respond to a terrorism incident or the use of a weapon of mass destruction;

(10) To modify fire stations, fire training facilities, and other facilities to protect the health and safety of firefighting personnel;

(11) To enforce fire codes;

(12) To fund fire prevention programs;

(13) To educate the public about arson prevention and detection; and

(14) To provide incentives for the recruitment and retention of volunteer firefighting personnel for volunteer firefighting departments and other firefighting departments that utilize volunteers.

(d) The specific activities that will be eligible for funding will be announced in the Notice of Funding Availability (NOFA) that we will publish pursuant to the program's annual appropriation.

§ 152.2 Definitions.

*Active firefighter* is a member of a fire department or organization in good standing that is qualified to respond to and extinguish fires or perform other fire department emergency services and has actively participated in such activities during the past year.

*Bay* is the part or compartment of a building that provides parking for one or more pieces of firefighting apparatus.

*Career department* is a fire suppression agency or organization in which all active firefighters are considered full-time employees, are assigned regular

duty shifts, and receive financial compensation for their services rendered on behalf of the department. Departments with active firefighters that are paid stipends on a per-call basis are not career departments. See the definition of combination department in this section.

*Combination department* is a fire suppression agency or organization in which at least one active firefighter receives financial compensation for his/her services rendered on behalf of the department and at least one active firefighter does not receive financial compensation for his/her services rendered on behalf of the department other than life/health insurance, workmen's compensation insurance, length of service awards, pay per-call or per-hour, or similar token compensation.

*Construction* is the creation of a new structure or any modification of the footprint or profile of an existing structure. Changes or renovations to an existing structure that do not change the footprint or profile of the structure but exceed either \$10,000 or 50 percent of the value of the structure, are also considered construction for the purposes of this grant program. Changes that are less than \$10,000 and/or 50 percent of the value of the structure are considered renovations, for the purposes of this grant program.

*Direct delivery of training* is training conducted within a training organization's own jurisdiction using the organization's own resources (trainers, facilities, equipment, etc.).

*Fire boat* is a vessel designed primarily for firefighting operations, however, may also be capable of water rescue and hazardous materials spills mitigation, etc. These vessels may also have the capability to pump a large volume of water from a drafting operation.

*Fire department or fire department of a State* is an agency or organization that has a "formally recognized arrangement" with a State, local or tribal authority (city, county, parish, fire district, township, town, or other non-Federal governing body) to provide fire suppression services within a fixed geographical area. A fire department can apply for assistance for its emergency medical services unit provided the unit

falls organizationally under the auspices of the fire department. A municipality or fire district may submit an application on behalf of a fire department when the fire department lacks the legal status to do so, e.g., where the fire department falls within the auspices of the municipality. When a municipality or fire district submits an application on behalf of a fire department, the fire department is precluded from submitting an additional application. Non-Federal airport and/or port authority fire departments are eligible, but only if they have a formally recognized arrangement with the local jurisdiction to provide fire suppression services, on a first-due basis, outside the confines of the airport or port facilities. Airport or port authority fire departments whose sole responsibility is suppression of fires on the airport grounds or port facilities are not eligible for this grant program. Fire departments that are Federal or contracted by the Federal government and whose sole responsibility is suppression of fires on Federal installations are not eligible for this grant program. Fire departments or fire stations that are not independent but are part of, or controlled by a larger fire department or agency, are typically not eligible. Fire departments that are for-profit departments (*i.e.*, do not have specific non-profit status or are not municipally based) are not eligible to apply for assistance under this program. Also not eligible for this program are ambulance services, rescue squads, auxiliaries, dive teams, urban search and rescue teams, fire service organizations or associations, and State/local agencies such as a forest service, fire marshal, hospitals, and training offices.

*Firefighter.* See the definition of *Active firefighter* in this section.

*First-due response area* is a geographical area in proximity to a fire or rescue facility and normally served by the personnel and apparatus from that facility in the event of a fire or other emergency.

*Formally recognized arrangement* is an agreement between the fire department and a local jurisdiction such that the jurisdiction has publicly or otherwise



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formally deemed that the fire department has the first-due response responsibilities within a fixed geographical area of the jurisdiction. Often this agreement is recognized or reported to the appropriate State entity with cognizance over fire departments, such as registration with the State Fire Marshal's office, or the agreement is specifically contained in the fire department's or jurisdiction's charter.

Integrated communication systems and devices are equipment or systems for dispatch centers or communication infrastructure. Examples of these include 911 systems, computer-aided dispatch systems, global positioning systems, fixed repeaters, etc. Towers are an integral part of any communication system, but they are not eligible to be included in any award under this program.

*New mission* is a first-responder function that a department has never delivered in the past or that was once delivered but has since been abandoned by the department due to the lack of funding or community support. Examples include technical search and rescue, emergency medical services, hazardous materials response, etc. A new mission does not include services already provided from existing facilities. Opening additional stations to provide similar services would be considered an expansion of existing services.

*Population* means permanent residents in the first-due response area or jurisdiction served by the applicant. It would include students but does not include seasonal population or any population in area that the fire department responds to under mutual/automatic aid agreements.

*Prop* is something that can be held up in a classroom or moved from site to site in order to facilitate or enhance the training experience. A training tower (pre-fabricated or constructed) is not a prop.

*Renovation* is changes or alterations or modifications to an existing structure that do not exceed either \$10,000 and/or 50 percent of the market value of the structure and do not involve a change in the footprint or profile of the structure.

*Rural community* is a community that has low population density, zoned agri-

cultural or parkland, and whose fire department has a relatively low volume of fire calls.

*State* means any of the fifty States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

*Suburban community* is a community that has a medium density population with a portion of their jurisdiction being zoned for industrial and/or commercial uses, and whose fire department has a high call volume relative to a rural community.

*Supplies* means any expendable property that typically has a one-time use limit and an expectation of being replaced within one year.

*The United States Fire Administrator's (USFA) operational and performance objectives* are to reduce losses of life and reduce economic losses due to fire and related emergencies. Specific target groups are children under 14 years old, seniors over 65 years old, and firefighters.

*Urban community* is a community with a high density population with a major proportion of its jurisdiction zoned for commercial and/or industrial use and a significant call volume.

*Vehicle* is a mechanized device used for carrying passengers, goods, or equipment. Examples of vehicles include, but are not limited to: pumpers, brush trucks, tankers, tenders, attack pumpers, rescue (transport and non-transport), ambulances, foam units, quints, aerials, ladders, hazmat vehicles, squads, crash rescue (ARFF), boats, hovercraft, planes, and helicopters. Details concerning vehicle eligibility will be provided in the NOFA that will be published pursuant to this program's annual appropriation.

*Volunteer department* is a fire suppression agency or organization in which no active firefighters are considered full-time employees, and which no members receive financial compensation for their services rendered on behalf of the department other than life/health insurance, workers' compensation insurance, length of service awards, pay per-call or per-hour, or similar token compensation.

*Watercraft* is a small boat (less than 13 feet in length) or other watercraft

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designed and equipped for water and/or ice rescue, rather than basic fire-fighting operations. Generally, these vessels will be equipped with water rescue equipment, flotation devices, and other basic medical and rescue equipment and their primary function will be rescue activities.

### § 152.3 Availability of funds.

(a) Fire departments that have received funding under the Assistance to Firefighter Grant Program in previous years are eligible to apply for funding in the current year. However, due to our responsibilities under this program to assure adequate distribution of awards amongst certain types of departments (career, combination and volunteer) and certain types of communities (urban, suburban or rural) as well as an equitable geographic distribution, we reserve the right to fund or not to fund previous recipients of grants under this program in order for us to fulfill these responsibilities.

(b) No applicant can receive more than \$750,000 in Federal grant funds under this program in any fiscal year.

(c) No applicant can submit more than one application per fiscal year. Applicants that submit multiple applications will have each of their applications deemed ineligible.

(d) The scoring of the applications will determine the distribution of the funding across the eligible programs. Notwithstanding anything in this part, no more than twenty-five (25) percent of the funds appropriated for grants shall be used to assist grant recipients to purchase firefighting vehicles and not less than five (5) percent of the funds shall be used for fire prevention programs.

(e) We will not provide assistance under this part for activities for which another Federal agency has more specific or primary authority to provide assistance for the same purpose. We may disallow or recoup amounts that fall within other Federal agency's authority.

### § 152.4 Roles and responsibilities.

(a) Applicants must:

(1) Complete the application and certify to the accuracy of all the information contained therein;

(2) Certify that they are an eligible applicant, *i.e.*, a fire department, as defined in this part;

(3) Certify that the person submitting the application is duly authorized to do so, and

(b) Recipients (Grantees) must agree to:

(1) Share in the costs of the projects funded under this grant program. Fire departments in areas serving populations over 50,000 must agree to match the Federal grant funds with an amount of non-Federal funds equal to thirty (30) percent of the total project cost. Fire departments serving areas with a population of 50,000 or less will have to match the Federal grant funds with an amount of non-Federal funds equal to ten (10) percent of the total project cost. No waivers of this requirement will be granted except for fire departments of Insular Areas as provided for in 48 U.S.C. 1469a.

(2) Maintain operating expenditures during the grant's period of performance in the areas funded by a grant at a level equal to or greater than the average of their operating expenditures in the two years preceding the year in which this assistance is received.

(3) Obtain the appropriate Federal, State, or local permits necessary to fulfill the grant's scope of work including historical and/or environmental clearances as required.

(4) Retain grant files and supporting documentation for three years after the official closeout of the grant.

(5) Report to FEMA on the progress made on the grant and financial status of the grant. The award documents will detail the specific period of performance for each grantee and provide instructions on the frequency and timing of the required performance reports.

(6) Maintain documentation to support the expenditure of grant funds as well as pertinent grant decisions.

(7) Make their grant files and other books and records related to the grant, available if requested for an audit to ensure compliance with any requirement of the grant program.

(8) Agree to provide information to the U.S. Fire Administration's National Fire Incident Reporting System (NFIRS) for the period covered by the grant. If a grantee does not currently

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participate in the incident reporting system and does not have the capacity to report at the time of the award, that grantee must agree to provide information to the system for a twelve-month period commencing as soon as they develop the capacity to report. Capacity to report to the NFIRS must be established prior to the termination of the one-year performance period.

### (c) FEMA activities:

(1) We will ensure that the funds are awarded based on the priorities and expected benefits articulated in the statute, this part, USFA's strategic plan, and the Notice of Funds Availability.

(2) We will ensure that not more than twenty-five (25) percent of the appropriated funding will be used to purchase firefighting vehicles.

(3) We will ensure that not less than five (5) percent of the funds are made available to national, State, local, or community organizations, including fire departments, for the purpose of carrying out fire prevention programs.

(4) We will ensure that fire departments with volunteer staff, or staff comprised of a combination of career fire fighters and volunteers, receive a proportion of the total grant funding that is not less than the proportion of the United States population that those firefighting departments protect.

(5) We will ensure that grants are made to fire departments located in urban, suburban, and rural communities.

(6) We will strive to ensure geographic diversity of awards as stipulated in §152.6.

(7) We will strive to ensure that activities funded under this grant program are consistent with the programs goals and intent, and generally in the government's best interest.

(8) We will provide the chief executives of the States with information concerning the total number and dollar amount of awards made to fire departments in their States; the program areas and activities supported by these grants; and other information about specific awards when generated and available.

[68 FR 12547, Mar. 14, 2003, as amended at 74 FR 15344, Apr. 3, 2009]

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### § 152.5 Review process and evaluation criteria.

(a) Every application will be evaluated based on the answers to the activity-specific questions during our initial screening. The applications that are determined to best address the Assistance to Firefighters Grant Program's established priorities during this initial screening will be in the "competitive range" and subject to a second level of review. We will use the narratives/supplemental information provided by the applicants in their grant applications to evaluate, on a competitive basis, the merits and benefits of each request for funding. In selecting applications for award, we will evaluate each application for assistance independently based on established eligibility criteria and the program priorities. Eligible applicants that best address the priorities will advance to a second level of review. The second level of review involves an assessment of the financial needs of the applicant, and an analysis of the benefits that would result from the grant award.

(b) In order to be successful at this second level of the evaluation, an applicant must complete the narrative section of the application package. The narrative should include a detailed description of the planned program, uses for the grant funds including details of each budget line item. For example, if personnel costs are included in the budget, please provide a break down of what those costs are for. The narrative should explain why the grant funds are needed and why the department has not been able to obtain funding for the planned activities on its own. A discussion of financial need should include a discussion of any Federal funding received for similar activities. Finally, the applicant's narrative should detail the benefits the department or community will realize as a result of the grant award.

(c) This second level of review will be conducted using a panel of technical evaluation panelists. These panelists are largely made up of non-Federal experts with a fire service background. The panelists will assess the application's merits with respect to the clarity and detail provided in the narrative

about the project, the applicant's financial need, and the project's purported benefit to be derived from the cost. Technical evaluation panelists will independently score each application before them and then discuss the merits/shortcomings of the application in an effort to reconcile any major discrepancies. A consensus on the score is not required. The highest scoring applications resulting from this second level of review will then be considered for award. We seek to maximize the benefits derived from the funding by crediting applicants with the greatest financial need and whose proposed activities provide the greatest benefit versus the cost.

(d) In addition to the project narrative, the applicant must provide an itemized budget detailing the use of the grant funds. If an applicant is seeking funds in more than one eligible activity within a program, separate budgets will have to be generated for each activity and then an overall or summary budget will have to be generated. For those applicants applying on line, the summary budget will be automatically generated by the e-grants system.

(e) Specific rating criteria for each of the eligible programs will be published in a Notice of Funding Availability that we will publish pursuant to the program's annual appropriation.

**§ 152.6 Application review and award process.**

(a) As stated in § 152.5, we will evaluate each application in the preliminary screening process to determine which applications best address the program's established priorities. The best applications as determined in this preliminary step will be deemed to be in the "competitive range." All applications in the competitive range will advance to a second level review by a technical evaluation panel. Using the evaluation criteria detailed in the Program Guidance and in the NOFA (both of which are published pursuant to this program's annual appropriation), the panelists will score each application they evaluate. The assigned score will reflect the degree to which the applicant: clearly relates their proposed project; demonstrates financial need; and, details a high benefit to cost value of the pro-

posed activities. We will provide the panelists the complete application content for their evaluation. We will also provide them with reference materials for national standards or regulations and guidelines with respect to typical costs for proposed apparatus and equipment purchases.

(b) Our award decisions will be based on the stated priorities of the grant program first, then on the demonstrated need of the applicant and the benefits to be derived from the proposed projects. We will make awards on a competitive basis, *i.e.*, we will fund the highest scored applications before considering lower scored applications.

(c) In a few cases, to fulfill our obligations under the law to make grants to a variety of departments, we may also make funding decisions using rank order as the preliminary basis, and then analyze the type of fire department (paid, volunteer, or combination fire departments), the size and character of the community it serves (urban, suburban, or rural), and/or the geographic location of the fire department. In these instances where we are making decisions based on geographic location, we will use States as the basic geographic unit. We may also base our funding decisions on previous grant awards funded by this program and/or grantees' performance on previous grants and a technical evaluation of reasonable costs for labor, services, materials or equipment.

**§ 152.7 Grant payment, reporting and other requirements.**

(a) Grantees will have twelve months to incur obligations and complete the scope of work to fulfill their responsibilities under this grant program. The performance period of each grant will be detailed in the Articles of Agreement that we provide each grantee. Grantees may request funds from FEMA as reimbursement for expenditures made under the grant program or they may request funds for immediate cash needs under 2 CFR 200.305. Advances of funds may also be approved to meet immediate cash needs.

(b) Generally, fire departments cannot use grant funds to pay for products and services contracted for, or purchased prior to the effective date of the

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grant. However, we will consider requests for reimbursement for these on an exception basis. Expenses incurred after the application deadline but prior to award may be eligible for reimbursement if the expenses were justified, unavoidable (i.e., urgent and compelling), consistent with the scope of work, and specifically approved by the Assistance Officer. Expenses, obligations, commitments or contracts incurred or entered into prior to the application deadline are not eligible to be included as an expense.

(c) All grantees must follow their own established procurement process when buying anything with Federal grant funds as provided in 2 CFR 200.317–200.326. If the grantee does not have an established procurement process, they must seek a minimum of two bids for any acquisition.

(d) When requesting funding, grantees can only request an amount that is necessary to satisfy their immediate cash needs directly related to the grant, i.e., an amount equal to the total eligible grant expenses due within 30 days. Grantees can request payments of up to one hundred (100) percent of the federal share of the award amount but only if delivery of the ordered products and/or services is imminent (approximately 30 days) and the resulting payment will require the entire amount of funds.

(e) A grantee may request sufficient funding for a down payment if required to do so by the seller, such as in grants involving some purchases of fire-fighting vehicles. The grantee may request as much as fifty (50) percent of the federal share of the award amount at the time of the order placement to pay the down payment. The grantee may request the balance of the federal share upon delivery of the ordered equipment or vehicle.

(f) The recipients of funding under this program must report to us on how the grant funding was used and the benefits that resulted. This will be accomplished via submission of performance reports. Details regarding the reporting requirements will be provided in the Articles of Agreement provided to each grantee.

(g) Fire departments that receive funding under this program must agree

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to provide information to the National Fire Incident Reporting System (NFIRS) for the period covered by the assistance. If a grantee does not currently participate in the incident reporting system and does not have the capacity to report at the time of the award, that grantee must agree to provide information to the system for a twelve-month period commencing as soon as possible after they develop the capacity to report. Capacity to report to the NFIRS must be established prior to the termination of the one-year performance period.

[68 FR 12547, Mar. 14, 2003, as amended at 74 FR 15344, Apr. 3, 2009; 79 FR 76085, Dec. 19, 2014]

### § 152.8 Application submission and deadline.

In each year that this program is authorized and receives an appropriation, we will announce the grants availability via Notice of Funds Availability. That Notice will contain all pertinent information concerning the eligible funding activities, funding priorities, funding levels, application period, timelines, and deadlines.

### § 152.9 Reconsideration.

(a) *Reconsideration of initial grant award decisions.* We will review our decision with respect to an initial grant award decision only when the applicant asserts that we have made a material technical or procedural error in the processing of the application and can substantiate such assertions. As grants are awarded on a competitive basis, in accordance with the findings of an independent panel of experts, we cannot consider requests for reconsideration based upon the merits of an original application. Similarly, we will not consider new information provided after the submission of the original application. In the case of new information, we encourage applicants to incorporate their changed circumstances into their applications for future grant cycles.

(b) *Reconsideration of other decisions.* We will consider requests for reconsideration of decisions other than those related to the initial grant award on their merits.

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(c) We must receive a request for reconsideration under this section within 60 days of the date of the notice of the decision for which reconsideration is requested.

(d) Requests for reconsideration should be directed to: Assistant Admin-

istrator, Grant Programs Directorate, Assistance to Firefighters Grant Program, FEMA, 800 K Street, NW., South Tower 5th Floor, Washington, DC 20001.

**PARTS 153–199 [RESERVED]**

## SUBCHAPTER D—DISASTER ASSISTANCE

### PART 200 [RESERVED]

### PART 201—MITIGATION PLANNING

- Sec.  
201.1 Purpose.  
201.2 Definitions.  
201.3 Responsibilities.  
201.4 Standard State Mitigation Plans.  
201.5 Enhanced State Mitigation Plans.  
201.6 Local Mitigation Plans.  
201.7 Tribal Mitigation Plans.

**AUTHORITY:** Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Homeland Security Act of 2002, 6 U.S.C. 101; National Flood Insurance Act of 1968, 42 U.S.C. 4104c.

**SOURCE:** 67 FR 8848, Feb. 26, 2002, unless otherwise noted.

#### §201.1 Purpose.

(a) The purpose of this part is to provide information on the policies and procedures for mitigation planning as required by the provisions of section 322 of the Stafford Act, 42 U.S.C. 5165, and section 1366 of the National Flood Insurance Act of 1968, 42 U.S.C. 4104c.

(b) The purpose of mitigation planning is for State, local, and Indian tribal governments to identify the natural hazards that impact them, to identify actions and activities to reduce any losses from those hazards, and to establish a coordinated process to implement the plan, taking advantage of a wide range of resources.

[67 FR 8848, Feb. 26, 2002, as amended at 86 FR 50673, Sept. 10, 2021]

#### §201.2 Definitions.

*Administrator* means the head of the Federal Emergency Management Agency, or his/her designated representative.

*Applicant* means the entity applying to FEMA for a Federal award that will be accountable for the use of funds.

*Federal award* means the Federal financial assistance that a recipient or subrecipient receives directly from FEMA or indirectly from a pass-through entity. The term “grant” or “award” may also be used to describe a Federal award under this part.

*Flood Mitigation Assistance (FMA)* means the program authorized by section 1366 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4104c, and implemented at part 77.

*Hazard mitigation* means any sustained action taken to reduce or eliminate the long-term risk to human life and property from hazards.

*Hazard Mitigation Grant Program (HMGP)* means the program authorized under section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170c, and implemented at part 206, subpart N of this chapter.

*Indian Tribal government* means any Federally recognized governing body of an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian Tribe under the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 5131. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

*Local government* is any county, municipality, city, town, township, public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government; any Indian Tribe or authorized Tribal organization, or Alaska Native village or organization; and any rural community, unincorporated town or village, or other public entity.

*Managing State* means a State to which FEMA has delegated the authority to administer and manage the HMGP under the criteria established by FEMA pursuant to 42 U.S.C. 5170c(c). FEMA may also delegate authority to Tribal governments to administer and manage the HMGP as a Managing State.

*Pass-through entity* means a recipient that provides a subaward to a subrecipient to carry out part of a Federal program.

*Pre-Disaster Mitigation Program (PDM)* means the program authorized under section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5133.

*Recipient* means the government that receives a Federal award directly from FEMA. A recipient may also be a pass-through entity. The term recipient does not include subrecipients. The recipient is the entire legal entity even if only a particular component of the entity is designated in the grant award document. Generally, the State is the recipient. However, an Indian Tribal government may choose to be a recipient, or may act as a subrecipient under the State. An Indian Tribal government acting as recipient will assume the responsibilities of a “State”, as described in this part, for the purposes of administering the grant.

*Regional Administrator* means the head of a Federal Emergency Management Agency regional office, or his/her designated representative.

*Repetitive loss structure* means a structure as defined at §77.2 of this chapter.

*Severe repetitive loss structure* is a structure as defined at §77.2 of this chapter.

*Small and impoverished communities* means a community of 3,000 or fewer individuals that is identified by the State as a rural community, and is not a remote area within the corporate boundaries of a larger city; is economically disadvantaged, by having an average per capita annual income of residents not exceeding 80 percent of national, per capita income, based on best available data; the local unemployment rate exceeds by one percentage point or more, the most recently reported, average yearly national unemployment rate; and any other factors identified in the State Plan in which the community is located.

*The Stafford Act* refers to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended (42 U.S.C. 5121-5207).

*State* is any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

*State Hazard Mitigation Officer* is the official representative of State government who is the primary point of contact with FEMA, other Federal agencies, and local governments in mitigation planning and implementation of mitigation programs and activities required under the Stafford Act.

*Subapplicant* means an entity submitting a subapplication to the applicant for a subaward to carry out part of a Federal award.

*Subaward* means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award.

*Subrecipient* means the entity that receives a subaward from a pass-through entity. Depending on the program, subrecipients of hazard mitigation assistance subawards can be a State agency, local government, private nonprofit organization, or Indian Tribal government. Subrecipients of FMA subawards can be a State agency, community, or Indian Tribal government, as described in 44 CFR part 77. Indian Tribal governments acting as a subrecipient are accountable to the State recipient.

[86 FR 50673, Sept. 10, 2021]

**§ 201.3 Responsibilities.**

(a) *General.* This section identifies the key responsibilities of FEMA, States, and local/Tribal governments in carrying out section 322 of the Stafford Act, 42 U.S.C. 5165.

(b) *FEMA.* The key responsibilities of the Regional Administrator are to:

- (1) Oversee all FEMA related pre- and post-disaster hazard mitigation programs and activities;
- (2) Provide technical assistance and training to State, local, and Indian Tribal governments regarding the mitigation planning process;
- (3) Review and approve all Standard and Enhanced State Mitigation Plans;
- (4) Review and approve all local mitigation plans, unless that authority has been delegated to the State in accordance with §201.6(d);
- (5) Conduct reviews, at least once every 5 years, of State mitigation activities, plans, and programs to ensure that mitigation commitments are fulfilled, and when necessary, take action, including recovery of funds or denial of



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future funds, if mitigation commitments are not fulfilled.

(c) *State.* The key responsibilities of the State are to coordinate all State and local activities relating to hazard evaluation and mitigation and to:

(1) Prepare and submit to FEMA a Standard State Mitigation Plan following the criteria established in § 201.4 as a condition of receiving non-emergency Stafford Act assistance and FEMA mitigation grants. In accordance with § 77.6(b) of this chapter, applicants and subapplicants for FMA project grants must have a FEMA-approved mitigation plan that addresses identified flood hazards and provides for reduction of flood losses to structures for which NFIP coverage is available.

(2) In order to be considered for the 20 percent HMGP funding, prepare and submit an Enhanced State Mitigation Plan in accordance with § 201.5, which must be reviewed and updated, if necessary, every 5 years from the date of the approval of the previous plan.

(3) At a minimum, review and update the Standard State Mitigation Plan every 5 years from the date of the approval of the previous plan in order to continue program eligibility.

(4) Make available the use of up to the 7 percent of HMGP funding for planning in accordance with § 206.434.

(5) Provide technical assistance and training to local governments to assist them in applying for HMGP planning grants, and in developing local mitigation plans.

(6) For Managing States that have been approved under the criteria established by FEMA pursuant to 42 U.S.C. 5170c(c), review and approve local mitigation plans in accordance with § 201.6(d).

(d) *Local governments.* The key responsibilities of local governments are to:

(1) Prepare and adopt a jurisdiction-wide natural hazard mitigation plan as a condition of receiving project grant funds under the HMGP, in accordance with § 201.6.

(2) At a minimum, review and update the local mitigation plan every 5 years from date of plan approval of the previous plan in order to continue program eligibility.

(e) *Indian tribal governments.* The key responsibilities of the Indian tribal government are to coordinate all tribal activities relating to hazard evaluation and mitigation and to:

(1) Prepare and submit to FEMA a Tribal Mitigation Plan following the criteria established in § 201.7 as a condition of receiving non-emergency Stafford Act assistance and FEMA mitigation grants as a recipient. This plan will also allow Indian Tribal governments to apply through the State, as a subrecipient, for any FEMA mitigation project grant. In accordance with § 77.6(b) of this chapter, applicants and subapplicants for FMA project grants must have a FEMA-approved mitigation plan that addresses identified flood hazards and provides for reduction of flood losses to structures for which NFIP coverage is available.

(2) Review and update the Tribal Mitigation Plan at least every 5 years from the date of approval of the previous plan in order to continue program eligibility.

(3) In order to be considered for the increased HMGP funding, the Tribal Mitigation Plan must meet the Enhanced State Mitigation Plan criteria identified in § 201.5. The plan must be reviewed and updated at least every 5 years from the date of approval of the previous plan.

[67 FR 8848, Feb. 26, 2002, as amended at 67 FR 61515, Oct. 1, 2002; 69 FR 55096, Sept. 13, 2004; 72 FR 61748, Oct. 31, 2007; 74 FR 47482, Sept. 16, 2009; 79 FR 22882, Apr. 25, 2014; 86 FR 50673, Sept. 10, 2021]

### § 201.4 Standard State Mitigation Plans.

(a) *Plan requirement.* States must have an approved Standard State Mitigation Plans meeting the requirements of this section as a condition of receiving non-emergency Stafford Act assistance and FEMA mitigation grants. Emergency assistance provided under 42 U.S.C. 5170a, 5170b, 5173, 5174, 5177, 5179, 5180, 5182, 5183, 5184, 5192 will not be affected. Mitigation planning grants provided through the Pre-disaster Mitigation (PDM) program, authorized under section 203 of the Stafford Act, 42 U.S.C. 5133, will also continue to be available. The mitigation plan is the

demonstration of the State’s commitment to reduce risks from natural hazards and serves as a guide for State decision makers as they commit resources to reducing the effects of natural hazards.

(b) *Planning process.* An effective planning process is essential in developing and maintaining a good plan. The mitigation planning process should include coordination with other State agencies, appropriate Federal agencies, interested groups, and be integrated to the extent possible with other ongoing State planning efforts as well as other FEMA mitigation programs and initiatives.

(c) *Plan content.* To be effective the plan must include the following elements:

(1) Description of the *planning process* used to develop the plan, including how it was prepared, who was involved in the process, and how other agencies participated.

(2) *Statewide risk assessments* that provide the factual basis for activities proposed in the strategy portion of the mitigation plan. Statewide risk assessments must characterize and analyze natural hazards and risks to provide a statewide overview. This overview will allow the State to compare potential losses throughout the State and to determine their priorities for implementing mitigation measures under the strategy, and to prioritize jurisdictions for receiving technical and financial support in developing more detailed local risk and vulnerability assessments. The risk assessment must include the following:

(i) An overview of the type and location of all natural hazards that can affect the State, including information on previous occurrences of hazard events, as well as the probability of future hazard events, using maps where appropriate;

(ii) An overview and analysis of the State’s vulnerability to the hazards described in this paragraph (c)(2), based on estimates provided in local risk assessments as well as the State risk assessment. The State must describe vulnerability in terms of the jurisdictions most threatened by the identified hazards, and most vulnerable to damage and loss associated with hazard events.

State owned or operated critical facilities located in the identified hazard areas must also be addressed;

(iii) An overview and analysis of potential losses to the identified vulnerable structures, based on estimates provided in local risk assessments as well as the State risk assessment. The State must estimate the potential dollar losses to State owned or operated buildings, infrastructure, and critical facilities located in the identified hazard areas.

(3) A *Mitigation Strategy* that provides the State’s blueprint for reducing the losses identified in the risk assessment. This section must include:

(i) A description of State goals to guide the selection of activities to mitigate and reduce potential losses.

(ii) A discussion of the State’s pre- and post-disaster hazard management policies, programs, and capabilities to mitigate the hazards in the area, including: An evaluation of State laws, regulations, policies, and programs related to hazard mitigation as well as to development in hazard-prone areas; a discussion of State funding capabilities for hazard mitigation projects; and a general description and analysis of the effectiveness of local mitigation policies, programs, and capabilities.

(iii) An identification, evaluation, and prioritization of cost-effective, environmentally sound, and technically feasible mitigation actions and activities the State is considering and an explanation of how each activity contributes to the overall mitigation strategy. This section should be linked to local plans, where specific local actions and projects are identified.

(iv) Identification of current and potential sources of Federal, State, local, or private funding to implement mitigation activities.

(v) In accordance with §77.6(b) of this chapter, applicants and subapplicants for FMA project grants must have a FEMA-approved mitigation plan that addresses identified flood hazards and provides for reduction of flood losses to structures for which NFIP coverage is available.

(4) A section on the *Coordination of Local Mitigation Planning* that includes the following:

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(i) A description of the State process to support, through funding and technical assistance, the development of local mitigation plans.

(ii) A description of the State process and timeframe by which the local plans will be reviewed, coordinated, and linked to the State Mitigation Plan.

(iii) Criteria for prioritizing communities and local jurisdictions that would receive planning and project grants under available funding programs, which should include consideration for communities with the highest risks, repetitive loss structures, and most intense development pressures. Further, that for non-planning grants, a principal criterion for prioritizing grants will be the extent to which benefits are maximized according to a cost benefit review of proposed projects and their associated costs.

(5) A *Plan Maintenance Process* that includes:

(i) An established method and schedule for monitoring, evaluating, and updating the plan.

(ii) A system for monitoring implementation of mitigation measures and project closeouts.

(iii) A system for reviewing progress on achieving goals as well as activities and projects identified in the Mitigation Strategy.

(6) A *Plan Adoption Process*. The plan must be formally adopted by the State prior to submittal to us for final review and approval.

(7) *Assurances*. The plan must include assurances that the State will comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding, including 2 CFR parts 200 and 3002. The State will amend its plan whenever necessary to reflect changes in State or Federal statutes and regulations.

(d) *Review and updates*. Plan must be reviewed and revised to reflect changes in development, progress in statewide mitigation efforts, and changes in priorities and resubmitted for approval to the appropriate Regional Administrator every 5 years. The Regional review will be completed within 45 days after receipt from the State, whenever possible. We also encourage a State to review its plan in the post-disaster

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timeframe to reflect changing priorities, but it is not required.

[67 FR 8848, Feb. 26, 2002, as amended at 67 FR 61515, Oct. 1, 2002; 69 FR 55096, Sept. 13, 2004; 72 FR 61565, 61738, Oct. 31, 2007; 79 FR 22883, Apr. 25, 2014; 79 FR 76085, Dec. 19, 2014; 80 FR 59551, Oct. 2, 2015; 86 FR 50674, Sept. 10, 2021]

### § 201.5 Enhanced State Mitigation Plans.

(a) A State with a FEMA approved Enhanced State Mitigation Plan at the time of a disaster declaration is eligible to receive increased funds under the HMGP, based on twenty percent of the total estimated eligible Stafford Act disaster assistance. The Enhanced State Mitigation Plan must demonstrate that a State has developed a comprehensive mitigation program, that the State effectively uses available mitigation funding, and that it is capable of managing the increased funding. In order for the State to be eligible for the 20 percent HMGP funding, FEMA must have approved the plan within 5 years prior to the disaster declaration.

(b) Enhanced State Mitigation Plans must include all elements of the Standard State Mitigation Plan identified in § 201.4, as well as document the following:

(1) Demonstration that the plan is integrated to the extent practicable with other State and/or regional planning initiatives (comprehensive, growth management, economic development, capital improvement, land development, and/or emergency management plans) and FEMA mitigation programs and initiatives that provide guidance to State and regional agencies.

(2) Documentation of the State's project implementation capability, identifying and demonstrating the ability to implement the plan, including:

(i) Established eligibility criteria for multi-hazard mitigation measures.

(ii) A system to determine the cost effectiveness of mitigation measures, consistent with OMB Circular A-94, Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs, and to rank the measures according to the State's eligibility criteria.

(iii) Demonstration that the State has the capability to effectively manage the HMGP as well as other mitigation grant programs, including a record of the following:

(A) Meeting HMGP and other mitigation grant application timeframes and submitting complete, technically feasible, and eligible project applications with appropriate supporting documentation;

(B) Preparing and submitting accurate environmental reviews and benefit-cost analyses;

(C) Submitting complete and accurate quarterly progress and financial reports on time; and

(D) Completing HMGP and other mitigation grant projects within established performance periods, including financial reconciliation.

(iv) A system and strategy by which the State will conduct an assessment of the completed mitigation actions and include a record of the effectiveness (actual cost avoidance) of each mitigation action.

(3) Demonstration that the State effectively uses existing mitigation programs to achieve its mitigation goals.

(4) Demonstration that the State is committed to a comprehensive state mitigation program, which might include any of the following:

(i) A commitment to support local mitigation planning by providing workshops and training, State planning grants, or coordinated capability development of local officials, including Emergency Management and Floodplain Management certifications.

(ii) A statewide program of hazard mitigation through the development of legislative initiatives, mitigation councils, formation of public/private partnerships, and/or other executive actions that promote hazard mitigation.

(iii) The State provides a portion of the non-Federal match for HMGP and/or other mitigation projects.

(iv) To the extent allowed by State law, the State requires or encourages local governments to use a current version of a nationally applicable model building code or standard that addresses natural hazards as a basis for design and construction of State sponsored mitigation projects.

(v) A comprehensive, multi-year plan to mitigate the risks posed to existing buildings that have been identified as necessary for post-disaster response and recovery operations.

(vi) A comprehensive description of how the State integrates mitigation into its post-disaster recovery operations.

(c) *Review and updates.* (1) A State must review and revise its plan to reflect changes in development, progress in statewide mitigation efforts, and changes in priorities, and resubmit it for approval to the appropriate Regional Administrator every 5 years. The Regional review will be completed within 45 days after receipt from the State, whenever possible.

(2) In order for a State to be eligible for the 20 percent HMGP funding, the Enhanced State Mitigation plan must be approved by FEMA within the 5 years prior to the current major disaster declaration.

[67 FR 8848, Feb. 26, 2002, as amended at 79 FR 22883, Apr. 25, 2014]

**§ 201.6 Local Mitigation Plans.**

The local mitigation plan is the representation of the jurisdiction's commitment to reduce risks from natural hazards, serving as a guide for decision makers as they commit resources to reducing the effects of natural hazards. Local plans will also serve as the basis for the State to provide technical assistance and to prioritize project funding.

(a) *Plan requirements.* (1) A local government must have a mitigation plan approved pursuant to this section in order to receive HMGP project grants. A local government must have a mitigation plan approved pursuant to this section in order to apply for and receive mitigation project grants under all other mitigation grant programs.

(2) Plans prepared for the FMA program, described at part 77 of this chapter, need only address these requirements as they relate to flood hazards in order to be eligible for FMA project grants. However, these plans must be clearly identified as being flood mitigation plans, and they will not meet the eligibility criteria for other mitigation grant programs, unless flooding is the

only natural hazard the jurisdiction faces.

(3) Regional Administrators may grant an exception to the plan requirement in extraordinary circumstances, such as in a small and impoverished community, when justification is provided. In these cases, a plan will be completed within 12 months of the award of the project grant. If a plan is not provided within this timeframe, the project grant will be terminated, and any costs incurred after notice of grant's termination will not be reimbursed by FEMA.

(4) Multi-jurisdictional plans (*e.g.*, watershed plans) may be accepted, as appropriate, as long as each jurisdiction has participated in the process and has officially adopted the plan. State-wide plans will not be accepted as multi-jurisdictional plans.

(b) *Planning process.* An open public involvement process is essential to the development of an effective plan. In order to develop a more comprehensive approach to reducing the effects of natural disasters, the planning process must include:

(1) An opportunity for the public to comment on the plan during the drafting stage and prior to plan approval;

(2) An opportunity for neighboring communities, local and regional agencies involved in hazard mitigation activities, and agencies that have the authority to regulate development, as well as businesses, academia and other private and nonprofit interests to be involved in the planning process; and

(3) Review and incorporation, if appropriate, of existing plans, studies, reports, and technical information.

(c) *Plan content.* The plan must include the following:

(1) Documentation of the *planning process* used to develop the plan, including how it was prepared, who was involved in the process, and how the public was involved.

(2) A *risk assessment* that provides the factual basis for activities proposed in the strategy to reduce losses from identified hazards. Local risk assessments must provide sufficient information to enable the jurisdiction to identify and prioritize appropriate mitigation actions to reduce losses from identified

hazards. The risk assessment must include:

(i) A description of the type, location, and extent of all natural hazards that can affect the jurisdiction. The plan must include information on previous occurrences of hazard events and on the probability of future hazard events.

(ii) A description of the jurisdiction's vulnerability to the hazards described in paragraph (c)(2)(i) of this section. This description must include an overall summary of each hazard and its impact on the community. All plans approved after October 1, 2008 must also address NFIP insured structures that have been repetitively damaged by floods. The plan should describe vulnerability in terms of:

(A) The types and numbers of existing and future buildings, infrastructure, and critical facilities located in the identified hazard areas;

(B) An estimate of the potential dollar losses to vulnerable structures identified in paragraph (c)(2)(ii)(A) of this section and a description of the methodology used to prepare the estimate;

(C) Providing a general description of land uses and development trends within the community so that mitigation options can be considered in future land use decisions.

(iii) For multi-jurisdictional plans, the risk assessment section must assess each jurisdiction's risks where they vary from the risks facing the entire planning area.

(3) A *mitigation strategy* that provides the jurisdiction's blueprint for reducing the potential losses identified in the risk assessment, based on existing authorities, policies, programs and resources, and its ability to expand on and improve these existing tools. This section must include:

(i) A description of mitigation goals to reduce or avoid long-term vulnerabilities to the identified hazards.

(ii) A section that identifies and analyzes a comprehensive range of specific mitigation actions and projects being considered to reduce the effects of each hazard, with particular emphasis on new and existing buildings and infrastructure. All plans approved by FEMA

after October 1, 2008, must also address the jurisdiction's participation in the NFIP, and continued compliance with NFIP requirements, as appropriate.

(iii) An action plan describing how the actions identified in paragraph (c)(3)(ii) of this section will be prioritized, implemented, and administered by the local jurisdiction. Prioritization will include a special emphasis on the extent to which benefits are maximized according to a cost benefit review of the proposed projects and their associated costs.

(iv) For multi-jurisdictional plans, there must be identifiable action items specific to the jurisdiction requesting FEMA approval or credit of the plan.

(4) A *plan maintenance process* that includes:

(i) A section describing the method and schedule of monitoring, evaluating, and updating the mitigation plan within a five-year cycle.

(ii) A process by which local governments incorporate the requirements of the mitigation plan into other planning mechanisms such as comprehensive or capital improvement plans, when appropriate.

(iii) Discussion on how the community will continue public participation in the plan maintenance process.

(5) *Documentation* that the plan has been formally adopted by the governing body of the jurisdiction requesting approval of the plan (e.g., City Council, County Commissioner, Tribal Council). For multi-jurisdictional plans, each jurisdiction requesting approval of the plan must document that it has been formally adopted.

(d) *Plan review.* (1) Plans must be submitted to the State Hazard Mitigation Officer (SHMO) for initial review and coordination. The State will then send the plan to the appropriate FEMA Regional Office for formal review and approval. Where the State point of contact for the FMA program is different from the SHMO, the SHMO will be responsible for coordinating the local plan reviews between the FMA point of contact and FEMA.

(2) The Regional review will be completed within 45 days after receipt from the State, whenever possible.

(3) A local jurisdiction must review and revise its plan to reflect changes in

development, progress in local mitigation efforts, and changes in priorities, and resubmit it for approval within 5 years in order to continue to be eligible for mitigation project grant funding.

(4) Managing States that have been approved under the criteria established by FEMA pursuant to 42 U.S.C. 5170c(c) will be delegated approval authority for local mitigation plans, and the review will be based on the criteria in this part. Managing States will review the plans within 45 days of receipt of the plans, whenever possible, and provide a copy of the approved plans to the Regional Office.

[67 FR 8848, Feb. 26, 2002, as amended at 67 FR 61515, Oct. 1, 2002; 68 FR 61370, Oct. 28, 2003; 69 FR 55096, Sept. 13, 2004; 72 FR 61748, Oct. 31, 2007 ; 74 FR 47482, Sept. 16, 2009; 86 FR 50674, Sept. 10, 2021]

**§ 201.7 Tribal Mitigation Plans.**

The Indian Tribal Mitigation Plan is the representation of the Indian tribal government's commitment to reduce risks from natural hazards, serving as a guide for decision makers as they commit resources to reducing the effects of natural hazards.

(a) *Plan requirement.* (1) Indian Tribal governments applying to FEMA as a recipient must have an approved Tribal Mitigation Plan meeting the requirements of this section as a condition of receiving non-emergency Stafford Act assistance and FEMA mitigation grants. Emergency assistance provided under 42 U.S.C. 5170a, 5170b, 5173, 5174, 5177, 5179, 5180, 5182, 5183, 5184, 5192 will not be affected. Mitigation planning grants provided through the PDM program, authorized under section 203 of the Stafford Act, 42 U.S.C. 5133, will also continue to be available.

(2) Indian Tribal governments applying through the State as a subrecipient must have an approved Tribal Mitigation Plan meeting the requirements of this section in order to receive HMGP project grants. A Tribe must have an approved Tribal Mitigation Plan in order to apply for and receive FEMA mitigation project grants, under all other mitigation grant programs. The provisions in §201.6(a)(3) are available to Tribes applying as subrecipients.

(3) Multi-jurisdictional plans (e.g., county-wide or watershed plans) may

be accepted, as appropriate, as long as the Indian Tribal government has participated in the process and has officially adopted the plan. Indian Tribal governments must address all the elements identified in this section to ensure eligibility as a recipient or as a subrecipient.

(b) An effective planning process is essential in developing and maintaining a good plan. The mitigation planning process should include coordination with other tribal agencies, appropriate Federal agencies, adjacent jurisdictions, interested groups, and be integrated to the extent possible with other ongoing tribal planning efforts as well as other FEMA mitigation programs and initiatives.

(c) *Plan content.* The plan must include the following:

(1) Documentation of the *planning process* used to develop the plan, including how it was prepared, who was involved in the process, and how the public was involved. This must include:

(i) An opportunity for the public to comment on the plan during the drafting stage and prior to plan approval, including a description of how the Indian Tribal government defined “public;”

(ii) As appropriate, an opportunity for neighboring communities, Tribal and regional agencies involved in hazard mitigation activities, and agencies that have the authority to regulate development, as well as businesses, academia, and other private and nonprofit interests to be involved in the planning process;

(iii) Review and incorporation, if appropriate, of existing plans, studies, and reports; and

(iv) Be integrated to the extent possible with other ongoing Tribal planning efforts as well as other FEMA programs and initiatives.

(2) A *risk assessment* that provides the factual basis for activities proposed in the strategy to reduce losses from identified hazards. Tribal risk assessments must provide sufficient information to enable the Indian Tribal government to identify and prioritize appropriate mitigation actions to reduce losses from identified hazards. The risk assessment must include:

(i) A description of the type, location, and extent of all natural hazards that can affect the Tribal planning area. The plan must include information on previous occurrences of hazard events and on the probability of future hazard events.

(ii) A description of the Indian Tribal government’s vulnerability to the hazards described in paragraph (c)(2)(i) of this section. This description must include an overall summary of each hazard and its impact on the Tribe. The plan should describe vulnerability in terms of:

(A) The types and numbers of existing and future buildings, infrastructure, and critical facilities located in the identified hazard areas;

(B) An estimate of the potential dollar losses to vulnerable structures identified in paragraph (c)(2)(ii)(A) of this section and a description of the methodology used to prepare the estimate;

(C) A general description of land uses and development trends within the Tribal planning area so that mitigation options can be considered in future land use decisions; and

(D) Cultural and sacred sites that are significant, even if they cannot be valued in monetary terms.

(3) A *mitigation strategy* that provides the Indian Tribal government’s blueprint for reducing the potential losses identified in the risk assessment, based on existing authorities, policies, programs and resources, and its ability to expand on and improve these existing tools. This section must include:

(i) A description of mitigation goals to reduce or avoid long-term vulnerabilities to the identified hazards.

(ii) A section that identifies and analyzes a comprehensive range of specific mitigation actions and projects being considered to reduce the effects of each hazard, with particular emphasis on new and existing buildings and infrastructure.

(iii) An action plan describing how the actions identified in paragraph (c)(3)(ii) of this section will be prioritized, implemented, and administered by the Indian Tribal government.

(iv) A discussion of the Indian Tribal government’s pre- and post-disaster

hazard management policies, programs, and capabilities to mitigate the hazards in the area, including: An evaluation of Tribal laws, regulations, policies, and programs related to hazard mitigation as well as to development in hazard-prone areas; and a discussion of Tribal funding capabilities for hazard mitigation projects.

(v) Identification of current and potential sources of Federal, Tribal, or private funding to implement mitigation activities.

(vi) In accordance with §77.6(b) of this chapter, applicants and sub-applicants for FMA project grants must have a FEMA-approved mitigation plan that addresses identified flood hazards and provides for reduction of flood losses to structures for which NFIP coverage is available.

(4) A *plan maintenance process* that includes:

(i) A section describing the method and schedule of monitoring, evaluating, and updating the mitigation plan.

(ii) A system for monitoring implementation of mitigation measures and project closeouts.

(iii) A process by which the Indian Tribal government incorporates the requirements of the mitigation plan into other planning mechanisms such as reservation master plans or capital improvement plans, when appropriate.

(iv) Discussion on how the Indian Tribal government will continue public participation in the plan maintenance process.

(v) A system for reviewing progress on achieving goals as well as activities and projects identified in the mitigation strategy.

(5) The plan must be formally adopted by the governing body of the Indian Tribal government prior to submittal to FEMA for final review and approval.

(6) The plan must include assurances that the Indian Tribal government will comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding, including 2 CFR parts 200 and 3002. The Indian Tribal government will amend its plan whenever necessary to reflect changes in Tribal or Federal laws and statutes.

(d) *Plan review and updates.* (1) Plans must be submitted to the appropriate FEMA Regional Office for formal review and approval. Indian Tribal governments who would like the option of being a subrecipient under the State must also submit their plan to the State Hazard Mitigation Officer for review and coordination.

(2) The Regional review will be completed within 45 days after receipt from the Indian Tribal government, whenever possible.

(3) Indian Tribal governments must review and revise their plan to reflect changes in development, progress in local mitigation efforts, and changes in priorities, and resubmit it for approval within 5 years in order to continue to be eligible for non-emergency Stafford Act assistance and FEMA mitigation grant funding.

[72 FR 61749, Oct. 31, 2007, as amended at 74 FR 47482, Sept. 16, 2009; 79 FR 76085, Dec. 19, 2014; 80 FR 59551, Oct. 2, 2015; 86 FR 50675, Sept. 10, 2021]

**PARTS 202–203 [RESERVED]**

**PART 204—FIRE MANAGEMENT ASSISTANCE GRANT PROGRAM**

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AUTHORITY: 42 U.S.C. 5121 through 5207; 6 U.S.C. 101 *et seq.*; Department of Homeland Security Delegation 9001.1.

SOURCE: 66 FR 57347, Nov. 14, 2001, unless otherwise noted.

**Subpart A—General**

**§ 204.1 Purpose.**

This part provides information on the procedures for the declaration and grants management processes for the Fire Management Assistance Grant Program in accordance with the provisions of section 420 of the Stafford Act. This part also details applicant eligibility and the eligibility of costs to be considered under the program. FEMA will actively work with State and Tribal emergency managers and foresters on the efficient delivery of fire management assistance as directed by this part.

[66 FR 57347, Nov. 14, 2001, as amended at 79 FR 63545, Oct. 24, 2014]

**§ 204.2 Scope.**

This part is intended for those individuals responsible for requesting declarations and administering grants under the Fire Management Assistance Grant Program, as well as those applying for assistance under the program.

**§ 204.3 Definitions used throughout this part.**

*Applicant.* A State or Indian tribal government submitting an application to FEMA for a fire management assistance grant, or a State, local, or Indian tribal government submitting an application to the recipient for a subgrant

under an approved fire management assistance grant.

*Application for Federal Assistance.* The form the State submits to apply for a grant under a fire management assistance declaration.

*Declared fire.* An uncontrolled fire or fire complex, threatening such destruction as would constitute a major disaster, which the Administrator has approved in response to a State’s request for a fire management assistance declaration and in accordance with the criteria listed in § 204.21.

*Demobilization.* The process and procedures for deactivating, disassembling, and transporting back to their point of origin all resources that had been provided to respond to and support a declared fire.

*Fire complex.* Two or more individual fires located in the same general area, which are assigned to a single Incident Commander.

*Governor’s Authorized Representative (GAR).* The person empowered by the Governor to execute, on behalf of the State, all necessary documents for fire management assistance, including the request for a fire management assistance declaration.

*Grant.* An award of financial assistance, including cooperative agreements, by FEMA to an eligible recipient. The grant award will be based on the projected amount of total eligible costs for which a State submits an application and that FEMA approves related to a declared fire.

*Hazard mitigation plan.* A plan to develop actions the State, local, or tribal government will take to reduce the risk to people and property from all hazards. The intent of hazard mitigation planning under the Fire Management Assistance Grant Program is to identify wildfire hazards and cost-effective mitigation alternatives that produce long-term benefits. FEMA addresses mitigation of fire hazards as part of the State’s comprehensive Mitigation Plan, described in 44 CFR part 201.

*Incident commander.* The ranking official responsible for overseeing the management of fire operations, planning, logistics, and finances of the field response.

*Incident period.* The time interval during which the declared fire occurs. The Regional Administrator, in consultation with the Governor's Authorized Representative and the Principal Advisor, will establish the incident period. Generally, costs must be incurred during the incident period to be considered eligible.

*Indian tribal government.* An Indian tribal government is any Federally recognized governing body of an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian tribe under the Federally Recognized Tribe List Act of 1994, 25 U.S.C. 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

*Individual assistance.* Supplementary Federal assistance provided under the Stafford Act to individuals and families adversely affected by a major disaster or an emergency. Such assistance may be provided directly by the Federal Government or through State or local governments or disaster relief organizations. For further information, see subparts D, E, and F of part 206.

*Local government.* A local government is any county, municipality, city, town, township, public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government; any Indian tribal government or authorized tribal organization, or Alaska Native village or organization; and any rural community, unincorporated town or village, or other public entity, for which an application for assistance is made by a State or political subdivision of a State.

*Mitigation, management, and control.* Those activities undertaken, generally during the incident period of a declared fire, to minimize immediate adverse effects and to manage and control the fire. Eligible activities may include associated emergency work and pre-positioning directly related to the declared fire.

*Mobilization.* The process and procedures used for activating, assembling, and transporting all resources that the recipient requested to respond to support a declared fire.

*Performance period.* The time interval designated on the Application for Federal Assistance for the recipient and all subrecipients to submit eligible costs and have those costs processed, obligated, and closed out by FEMA.

*Pre-positioning.* Moving existing fire prevention or suppression resources from an area of lower fire danger to one of higher fire danger in anticipation of an increase in fire activity likely to constitute the threat of a major disaster.

*Principal advisor.* An individual appointed by the Forest Service, United States Department of Agriculture, or Bureau of Land Management, Department of the Interior, who is responsible for providing FEMA with a technical assessment of the fire or fire complex for which a State is requesting a fire management assistance declaration. The Principal Advisor also frequently participates with FEMA on other wildland fire initiatives.

*Project worksheet.* The form which identifies actual costs incurred by eligible applicants as a result of the eligible firefighting activities.

*Public assistance.* Supplementary Federal assistance provided under the Stafford Act to State and local governments or certain private, nonprofit organizations for eligible emergency measures and repair, restoration, and replacement of damaged facilities. For further information, see Subparts G and H of Part 206.

*Recipient.* The recipient is the government to which a grant is awarded which is accountable for the use of the funds provided. The recipient is the entire legal entity even if only a particular component of the entity is designated in the grant award document. Generally, the State, as designated in the FEMA-State Agreement for the Fire Management Assistance Grant Program, is the recipient. However, after a declaration, an Indian tribal government may choose to be a recipient, or it may act as a subgrantee

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under the State. An Indian tribal government acting as recipient will assume the responsibilities of a “state”, as described in this Part, for the purpose of administering the grant.

*Regional Administrator.* The administrator of a regional office of FEMA, or his/her designated representative.

*Subgrant.* An award of financial assistance under a grant by a recipient to an eligible subrecipient.

*Subrecipient.* An applicant that is awarded a subgrant and is accountable to the recipient for the use of grant funding provided.

*Threat of a major disaster.* The potential impact of the fire or fire complex is of a severity and magnitude that would result in a presidential major disaster declaration for the Public Assistance Program, the Individual Assistance Program, or both.

*Uncontrolled fire.* Any fire not safely confined to predetermined control lines as established by firefighting resources.

[66 FR 57347, Nov. 14, 2001, as amended at 68 FR 61370, Oct. 28, 2003; 74 FR 15345, Apr. 3, 2009; 75 FR 50715, Aug. 17, 2010; 79 FR 63545, Oct. 24, 2014; 82 FR 42, Jan. 3, 2017]

§§ 204.4–204.20 [Reserved]

Subpart B—Declaration Process

§ 204.21 Fire management assistance declaration criteria.

(a) *Determinations.* FEMA will approve declarations for fire management assistance when the Administrator determines that a fire or fire complex on public or private forest land or grassland threatens such destruction as would constitute a major disaster.

(b) *Evaluation criteria.* FEMA will evaluate the threat posed by a fire or fire complex based on consideration of the following specific criteria:

(1) Threat to lives and improved property, including threats to critical facilities/infrastructure, and critical watershed areas;

(2) Availability of State and local firefighting resources;

(3) High fire danger conditions, as indicated by nationally accepted indices such as the National Fire Danger Ratings System;

(4) Potential major economic impact.

[66 FR 57347, Nov. 14, 2001, as amended at 75 FR 50715, Aug. 17, 2010; 79 FR 63546, Oct. 24, 2014]

§ 204.22 Submitting a request for a fire management assistance declaration.

The Governor of a State, or the Governor’s Authorized Representative (GAR), may submit a request for a fire management assistance declaration. The request must be submitted while the fire is burning uncontrolled and threatens such destruction as would constitute a major disaster. The request must be submitted to the Regional Administrator and should address the relevant criteria listed in § 204.21, with supporting documentation that contains factual data and professional estimates on the fire or fire complex. To ensure that FEMA can process a State’s request for a fire management assistance declaration as expeditiously as possible, the State should transmit the request by telephone, promptly followed by written documentation.

[66 FR 57347, Nov. 14, 2001, as amended at 79 FR 63546, Oct. 24, 2014]

§ 204.23 Processing a request for a fire management assistance declaration.

(a) In processing a State’s request for a fire management assistance declaration, the Regional Administrator, in coordination with the Principal Advisor, will verify the information submitted in the State’s request.

(b) The Principal Advisor, at the request of the Regional Administrator, is responsible for providing FEMA a technical assessment of the fire or fire complex for which the State is requesting a fire management assistance declaration. The Principal Advisor may consult with State agencies, usually emergency management or forestry, as well as the Incident Commander, in order to provide FEMA with an accurate assessment.

[75 FR 50715, Aug. 17, 2010]

**§ 204.24 Determination on request for a fire management assistance declaration.**

The Administrator will review all information submitted in the State's request along with the Principal Advisor's assessment and render a determination. The determination will be based on the conditions of the fire or fire complex existing at the time of the State's request. When possible, the Administrator will evaluate the request and make a determination within several hours. Once the Administrator renders a determination, FEMA will promptly notify the State of the determination.

[75 FR 50715, Aug. 17, 2010]

**§ 204.25 FEMA-State agreement for fire management assistance grant program.**

(a) After a State's request for a fire management assistance declaration has been approved, the Governor and Regional Administrator will enter into a standing FEMA-State Agreement (the Agreement) for the declared fire and for future declared fires in that calendar year. The State must have a signed and up-to-date FEMA-State Agreement before receiving Federal funding for fire management assistance grants. FEMA will provide no funding absent a signed and up-to-date Agreement. An Indian tribal government serving as recipient, must sign a FEMA-Tribal Agreement, modeled upon the FEMA-State Agreement.

(b) The Agreement states the understandings, commitments, and conditions under which FEMA will provide Federal assistance, including the cost share provision and articles of agreement necessary for the administration of grants approved under fire management assistance declarations. The Agreement must also identify the State legislative authority for fire-fighting, as well as the State's compliance with the laws, regulations, and other provisions applicable to the Fire Management Assistance Grant Program.

(c) For each subsequently declared fire within the calendar year, the parties must add a properly executed amendment, which defines the incident period and contains the official dec-

laration number. Other amendments modifying the standing Agreement may be added throughout the year to reflect changes in the program or signatory parties.

[66 FR 57347, Nov. 14, 2001, as amended at 79 FR 63546, Oct. 24, 2014; 82 FR 42, Jan. 3, 2017]

**§ 204.26 Appeal of fire management assistance declaration denial.**

(a) *Submitting an appeal.* When a State's request for a fire management assistance declaration is denied, the Governor or GAR may appeal the decision in writing within 30 days after the date of the letter denying the request. The State should submit this one-time request for reconsideration in writing, with appropriate additional information to the Administrator through the Regional Administrator. The Administrator will reevaluate the State's request and notify the State of the final determination within 90 days of receipt of the appeal or the receipt of additional requested information.

(b) *Requesting a time-extension.* The Administrator may extend the 30-day period for filing an appeal, provided that the Governor or the GAR submits a written

(c) *Request for such an extension within the 30-day period.* The Administrator will evaluate the need for an extension based on the reasons cited in the request and either approve or deny the request for an extension.

[75 FR 50715, Aug. 17, 2010]

**§§ 204.27-204.40 [Reserved]**

**Subpart C—Eligibility**

**§ 204.41 Applicant eligibility.**

(a) The following entities are eligible to apply through a State recipient for a subgrant under an approved fire management assistance grant:

- (1) State agencies;
- (2) Local governments; and
- (3) Indian tribal governments.

(b) Entities that are not eligible to apply for a subgrant as identified in (a), such as privately owned entities and volunteer firefighting organizations, may be reimbursed through a contract or compact with an eligible

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applicant for eligible costs associated with the fire or fire complex.

(c) Eligibility is contingent upon a finding that the Incident Commander or comparable State official requested the applying entity's resources.

(d) The activities performed must be the legal responsibility of the applying entity, required as the result of the declared fire, and located within the designated area.

[66 FR 57347, Nov. 14, 2001, as amended at 82 FR 42, Jan. 3, 2017]

§ 204.42 Eligible costs.

(a) General. (1) All eligible work and related costs must be associated with the incident period of a declared fire.

(2) Before obligating Federal funds the Regional Administrator must review and approve the initial grant application, along with Project Worksheets submitted with the application and any subsequent amendments to the application.

(3) Recipients will award Federal funds to subrecipients under State law and procedure and complying with 2 CFR parts 200 and 3002.

(b) Equipment and supplies. Eligible costs include:

(1) Personal comfort and safety items normally provided by the State under field conditions for firefighter health and safety.

(2) Firefighting supplies, tools, materials, expended or lost, to the extent not covered by reasonable insurance, will be replaced with comparable items.

(3) Operation and maintenance costs of publicly owned, contracted, rented, or volunteer firefighting department equipment used in eligible firefighting activities to the extent any of these costs are not included in applicable equipment rates.

(4) Use of U.S. Government-owned equipment based on reasonable costs as billed by the Federal agency and paid by the State. (Only direct costs for use of Federal Excess Personal Property (FEPP) vehicles and equipment on loan to State Forestry and local cooperators may be eligible.)

(5) Repair of equipment damaged in firefighting activities to the extent not covered by reasonable insurance. FEMA will use the lowest applicable

equipment rates, or other rates that FEMA determines, to calculate the eligible cost of repairs.

(6) Replacement of equipment lost or destroyed in firefighting activities, to the extent not covered by reasonable insurance, will be replaced with comparable equipment.

(c) Labor costs. Eligible costs include:

(1) Overtime for permanent or re-assigned State and local employees.

(2) Regular time and overtime for temporary and contract employees hired to perform fire-related activities.

(d) Travel and per diem costs. Eligible costs include:

(1) Travel and per diem of employees who are providing services directly associated with eligible fire-related activities may be eligible.

(2) Provision of field camps and meals when made available in place of per diem;

(e) Pre-positioning costs. (1) The actual costs of pre-positioning Federal, out-of-State (including compact), and international resources for a limited period may be eligible when those resources are used in response to a declared fire.

(2) The Regional Administrator must approve all pre-positioning costs.

(i) Upon approval of a State's request for a fire management assistance declaration by the Assistant Administrator for the Disaster Assistance Directorate, the State should immediately notify the Regional Administrator of its intention to seek funding for pre-positioning resources.

(ii) The State must document the number of pre-positioned resources to be funded and their respective locations throughout the State, estimate the cost of the pre-positioned resources that were used on the declared fire and the amount of time the resources were pre-positioned, and provide a detailed explanation of the need to fund the pre-positioned resources.

(iii) The State will base the detailed explanation on recognized scientific indicators, that include, but are not limited to, drought indices, short-term weather forecasts, the current number of fires burning in the State, and the availability of in-State firefighting resources. The State may also include other quantitative indicators with

which to measure the increased risk of the threat of a major disaster.

(iv) Based on the information contained in the State's notification, the Regional Administrator will determine the number of days of pre-positioning to be approved for Federal funding, up to a maximum of 21 days before the fire declaration.

(3) Upon rendering his/her determination on pre-positioning costs, the Regional Administrator will notify the Assistant Administrator for the Disaster Assistance Directorate of his/her determination.

(f) *Emergency work.* FEMA may authorize the use of section 403 of the Stafford Act, Essential Assistance, under an approved fire management assistance grant when directly related to the mitigation, management, and control of the declared fire. Essential assistance activities that may be eligible include, but are not limited to, police barricading and traffic control, extraordinary emergency operations center expenses, evacuations and sheltering, search and rescue, arson investigation teams, public information, and the limited removal of trees that pose a threat to the general public.

(g) *Temporary repair of damage caused by firefighting activities.* Temporary repair of damage caused by eligible firefighting activities listed in this subpart involves short-term actions to repair damage directly caused by the firefighting effort or activities. This includes minimal repairs to bulldozer lines, camps, and staging areas to address safety concerns; as well as minimal repairs to facilities damaged by the firefighting activities such as fences, buildings, bridges, roads, etc. All temporary repair work must be completed within thirty days of the close of the incident period for the declared fire.

(h) *Mobilization and demobilization.* Costs for mobilization to, and demobilization from, a declared fire may be eligible for reimbursement. Demobilization may be claimed at a delayed date if deployment involved one or more declared fires. If resources are being used on more than one declared fire, mobilization and demobilization costs must be claimed against the first declared fire.

(i) *Fires on co-mingled Federal/State lands.* Reasonable costs for the mitigation, management, and control of a declared fire burning on co-mingled Federal and State land may be eligible in cases where the State has a responsibility for suppression activities under an agreement to perform such action on a non-reimbursable basis. (This provision is an exception to normal FEMA policy under the Stafford Act and is intended to accommodate only those rare instances that involve State firefighting on a Stafford Act section 420 fire incident involving co-mingled Federal/State and privately-owned forest or grassland.)

[66 FR 57347, Nov. 14, 2001, as amended at 79 FR 63546, Oct. 24, 2014; 79 FR 76085, Dec. 19, 2014; 82 FR 42, Jan. 3, 2017]

**§ 204.43 Ineligible costs.**

Costs not directly associated with the incident period are ineligible. Ineligible costs include the following:

(a) Costs incurred in the mitigation, management, and control of undeclared fires;

(b) Costs related to planning, pre-suppression (*i.e.*, cutting fire-breaks without the presence of an imminent threat, training, road widening, and other similar activities), and recovery (*i.e.*, land rehabilitation activities, such as seeding, planting operations, and erosion control, or the salvage of timber and other materials, and restoration of facilities damaged by fire);

(c) Costs for the straight or regular time salaries and benefits of a sub-recipient's permanently employed or reassigned personnel;

(d) Costs for mitigation, management, and control of a declared fire on co-mingled Federal land when such costs are reimbursable to the State by a Federal agency under another statute (See 44 CFR part 51);

(e) Fires fought on Federal land are generally the responsibility of the Federal Agency that owns or manages the land. Costs incurred while fighting fires on federally owned land are not eligible under the Fire Management Assistance Grant Program except as noted in § 204.42(i).

[66 FR 57347, Nov. 14, 2001, as amended at 82 FR 42, Jan. 3, 2017]

§§ 204.44–204.50 [Reserved]

**Subpart D—Application Procedures**

**§ 204.51 Application and approval procedures for a fire management assistance grant.**

(a) *Preparing and submitting an application.* (1) After the approval of a fire management assistance declaration, the State may submit an application package for a grant to the Regional Administrator. The application package must include the Application for Federal Assistance and Summary of Assurances—Non-construction Programs, as well as supporting documentation for the budget.

(2) The State must submit its grant application within 9 months of the declaration. Upon receipt of the written request from the State, the Regional Administrator may grant an extension for up to 6 months. The State’s request must include a justification for the extension.

(b) *Fire cost threshold.* (1) FEMA will approve the initial grant award to the State when FEMA determines that the State’s application demonstrates either of the following:

(i) Total eligible costs for the declared fire meet or exceed the individual fire cost threshold; or

(ii) Total costs of all declared and non-declared fires for which a State has assumed responsibility in a given calendar year meet the cumulative fire cost threshold.

(2) The individual fire cost threshold for a State is the greater of the following:

(i) \$100,000; or

(ii) Five percent  $\times$  \$1.07  $\times$  the State population, adjusted annually for inflation using the Consumer Price Index for All Urban Consumers published annually by the Department of Labor.

(3) The cumulative fire cost threshold for a State is the greater of the following:

(i) \$500,000; or

(ii) Three times the five percent  $\times$  \$1.07  $\times$  the State population as described in § 204.51(b)(2)(ii).

(4) States must document the total eligible costs for a declared fire on

Project Worksheets, which they must submit with the grant application.

(5) FEMA will not consider the costs of pre-positioning resources for the purposes of determining whether the grant application meets the fire cost threshold.

(6) When the State’s total eligible costs associated with the fire management assistance declaration meet or exceed the fire cost threshold eligible costs will be cost shared in accordance with § 204.61.

(c) *Approval of the State’s grant application.* The Regional Administrator has 45 days from receipt the State’s grant application or an amendment to the State’s grant application, including attached supporting Project Worksheet(s), to review and approve or deny the grant application or amendment; or to notify the recipient of a delay in processing funding.

(d) *Obligation of the grant.* Before FEMA approves the State’s grant application, the State must have an up-to-date State Administrative Plan and a Hazard Mitigation Plan that has been reviewed and approved by the Regional Administrator. Once these plans are approved by the Regional Administrator, the State’s grant application may be approved and FEMA may begin to obligate the Federal share of funding for subgrants to the recipient.

(1) *State administrative plan.* (i) The State must develop an Administrative Plan (or have a current Administrative Plan on file with FEMA) that describes the procedures for the administration of the Fire Management Assistance Grant Program. The Plan will include, at a minimum, the items listed below:

(A) The designation of the State agency or agencies which will have responsibility for program administration.

(B) The identification of staffing functions for the Fire Management Assistance Program, the sources of staff to fill these functions, and the management and oversight responsibilities of each.

(C) The procedures for:

(1) Notifying potential applicants of the availability of the program;

(2) Assisting FEMA in determining applicant eligibility;

- (3) Submitting and reviewing subgrant applications;
- (4) Processing payment for subgrants;
- (5) Submitting, reviewing, and accepting subgrant performance and financial reports;
- (6) Monitoring, close-out, and audit and reconciliation of subgrants;
- (7) Recovering funds for disallowed costs;
- (8) Processing appeal requests and requests for time extensions; and
- (9) Providing technical assistance to applicants and subgrant recipients, including briefings for potential applicants and materials on the application procedures, program eligibility guidance and program deadlines.

(ii) The recipient may request the Regional Administrator to provide technical assistance in the preparation of the State Administrative Plan.

(2) *Hazard Mitigation Plan.* As a requirement of receiving funding under a fire management assistance grant, a State, or tribal organization, acting as recipient, must:

(i) Develop a Mitigation Plan in accordance with 44 CFR part 201 that addresses wildfire risks and mitigation measures; or

(ii) Incorporate wildfire mitigation into the existing Mitigation Plan developed and approved under 44 CFR part 201 that also addresses wildfire risk and contains a wildfire mitigation strategy and related mitigation initiatives.

[66 FR 57347, Nov. 14, 2001, as amended at 68 FR 61371, Oct. 28, 2003; 79 FR 63546, Oct. 24, 2014; 82 FR 42, Jan. 3, 2017]

**§ 204.52 Application and approval procedures for a subgrant under a fire management assistance grant.**

(a) *Request for Fire Management Assistance.* (1) State, local, and tribal governments interested in applying for fire management assistance subgrants must submit a Request for Fire Management Assistance subgrant to the recipient in accordance with State procedures and within timelines set by the recipient, but no longer than 30 days after the close of the incident period.

(2) The recipient will review and forward the Request to the Regional Administrator for final review and determination. The recipient may also for-

ward a recommendation for approval of the Request to the Regional Administrator when appropriate.

(3) The Regional Administrator will approve or deny the request based on the eligibility requirements outlined in § 204.41.

(4) The Regional Administrator will notify the recipient of his/her determination; the recipient will inform the applicant.

(b) *Preparing a Project Worksheet.* (1) Once the Regional Administrator approves an applicant's Request for Fire Management Assistance, the Regional Administrator's staff may begin to work with the recipient and local staff to prepare Project Worksheets.

(2) The Regional Administrator may request the Principal Advisor to assist in the preparation of Project Worksheets.

(3) The State will be the primary contact for transactions with and on behalf of the applicant.

(c) *Submitting a Project Worksheet.* (1) Applicants should submit all Project Worksheets through the recipient for approval and transmittal to the Regional Administrator as part of the State's application.

(2) The recipient will determine the deadline for an applicant to submit completed Project Worksheets, but the deadline must be no later than six months from close of the incident period.

(3) At the request of the recipient, the Regional Administrator may extend the time limitations in this section for up to 6 months when the recipient justifies and makes a request in writing.

(4) Project Worksheets will not be accepted after the deadline in paragraph (c)(2) of this section has expired, or, if applicable, after an extension specified by the Regional Administrator in paragraph (c)(3) of this section has expired.

(5) *\$1,000 Project Worksheet minimum.* When the costs reported are less than \$1,000, that work is not eligible and FEMA will not approve that Project Worksheet. This minimum threshold does not apply to Project Worksheets submitted for the direct and indirect



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costs of administration of a fire grant, as defined in § 204.63.

[66 FR 57347, Nov. 14, 2001, as amended at 79 FR 63546, Oct. 24, 2014; 82 FR 42, Jan. 3, 2017]

### § 204.53 Certifying costs and payments.

(a) By submitting applicants' Project Worksheets to FEMA, the recipient is certifying that all costs reported on applicant Project Worksheets were incurred for work that was performed in compliance with FEMA laws, regulations, policy and guidance applicable to the Fire Management Assistance Grant Program, as well as with the terms and conditions outlined for the administration of the grant in the FEMA-State Agreement for the Fire Management Assistance Grant Program.

(b) Advancement/Reimbursement for State grant costs will be processed as follows:

(1) Through the U.S. Department of Health and Human Services SMARTLINK system; and

(2) In compliance with 2 CFR 200.305 and U.S. Treasury 31 CFR part 205, Cash Management Improvement Act.

[66 FR 57347, Nov. 14, 2001, as amended at 79 FR 63546, Oct. 24, 2014; 79 FR 76085, Dec. 19, 2014; 82 FR 42, Jan. 3, 2017]

### § 204.54 Appeals.

An eligible applicant, subrecipient, or recipient may appeal any determination FEMA makes related to an application for the provision of Federal assistance according to the procedures below.

(a) *Format and content.* The applicant or subrecipient will make the appeal in writing through the recipient to the Regional Administrator. The recipient will review and evaluate all subrecipient appeals before submission to the Regional Administrator. The recipient may make recipient-related appeals to the Regional Administrator. The appeal will contain documented justification supporting the appellant's position, specifying the monetary figure in dispute and the provisions in Federal law, regulation, or policy with which the appellant believes the initial action was inconsistent.

(b) *Levels of appeal.* (1) The Regional Administrator will consider first ap-

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peals for fire management assistance grant-related decisions under subparts A through E of this part.

(2) The Assistant Administrator for the Disaster Assistance Directorate will consider appeals of the Regional Administrator's decision on any first appeal under paragraph (b)(1) of this section.

(c) *Time limits.* (1) Appellants must file appeals within 60 days after receipt of a notice of the action that is being appealed.

(2) The recipient will review and forward appeals from an applicant or subrecipient, with a written recommendation, to the Regional Administrator within 60 days of receipt.

(3) Within 90 days following receipt of an appeal, the Regional Administrator (for first appeals) or Assistant Administrator for the Disaster Assistance Directorate (for second appeals) will notify the recipient in writing of the disposition of the appeal or of the need for additional information. A request by the Regional Administrator or Assistant Administrator for the Disaster Assistance Directorate for additional information will include a date by which the information must be provided. Within 90 days following the receipt of the requested additional information or following expiration of the period for providing the information, the Regional Administrator or Assistant Administrator for the Disaster Assistance Directorate will notify the recipient in writing of the disposition of the appeal. If the decision is to grant the appeal, the Regional Administrator will take appropriate implementing action.

(d) *Technical advice.* In appeals involving highly technical issues, the Regional Administrator or may, at his or her discretion, submit the appeal to an independent scientific or technical person or group having expertise in the subject matter of the appeal for advice or recommendation. The period for this technical review may be in addition to other allotted time periods. Within 90 days of receipt of the report, the Regional Administrator or Assistant Administrator for the Disaster Assistance Directorate will notify the recipient in writing of the disposition of the appeal.

(e) The decision of the Assistant Administrator for the Disaster Assistance

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Directorate at the second appeal level will be the final administrative decision of FEMA.

[66 FR 57347, Nov. 14, 2001, as amended at 79 FR 63546, Oct. 24, 2014; 82 FR 42, Jan. 3, 2017]

### §§ 204.55–204.60 [Reserved]

#### Subpart E—Grant Administration

##### § 204.61 Cost share.

(a) All fire management assistance grants are subject to a cost share. The Federal cost share for fire management assistance grants is seventy-five percent (75%).

(b) As stated in §204.25, the cost share provision will be outlined in the terms and conditions of the FEMA-State Agreement for the Fire Management Assistance Grant Program.

##### § 204.62 Duplication and recovery of assistance.

(a) *Duplication of benefits.* FEMA provides supplementary assistance under the Stafford Act, which generally may not duplicate benefits received by or available to the applicant from insurance, other assistance programs, legal awards, or any other source to address the same purpose. An applicant must notify FEMA of all benefits that it receives or anticipates from other sources for the same purpose, and must seek all such benefits available to them. FEMA will reduce the grant by the amounts available for the same purpose from another source. FEMA may provide assistance under this Part when other benefits are available to an applicant, but the applicant will be liable to FEMA for any duplicative amounts that it receives or has available to it from other sources, and must repay FEMA for such amounts.

(b) *Duplication of programs.* FEMA will not provide assistance under this part for activities for which another Federal agency has more specific or primary authority to provide assistance for the same purpose. FEMA may disallow or recoup amounts that fall within another Federal agency's authority. FEMA may provide assistance under this part, but the applicant must agree to seek assistance from the appropriate Federal agency and to repay

FEMA for amounts that are within another Agency's authority.

(c) *Negligence.* FEMA will provide no assistance to an applicant for costs attributable to applicant's own negligence. If the applicant suspects negligence by a third party for causing a condition for which FEMA made assistance available under this Part, the applicant is responsible for taking all reasonable steps to recover all costs attributable to the negligence of the third party. FEMA generally considers such amounts to be duplicated benefits available to the recipient or sub-recipient, and will treat them consistent with (a) of this section.

(d) *Intentional acts.* Any person who intentionally causes a condition for which assistance is provided under this part shall be liable to the United States to the extent that FEMA incurs costs attributable to the intentional act or omission that caused the condition. FEMA may provide assistance under this part, but it will be conditioned on an agreement by the applicant to cooperate with FEMA in efforts to recover the cost of the assistance from the liable party. A person shall not be liable under this section as a result of actions the person takes or omits in the course of rendering care or assistance in response to the fire.

[66 FR 57347, Nov. 14, 2001, as amended at 79 FR 63546, Oct. 24, 2014; 82 FR 42, Jan. 3, 2017]

##### § 204.63 Allowable costs.

2 CFR part 200, subpart E—Cost Principles establishes general policies for determining allowable costs.

(a) FEMA will reimburse direct costs for the administration of a fire management assistance grant under 2 CFR part 200.

(b) FEMA will reimburse indirect costs for the administration of a fire management assistance grant in compliance with the recipient's approved indirect cost rate under 2 CFR part 200.

(c) Management costs as defined in 44 CFR part 207 do not apply to this section.

[79 FR 76085, Dec. 19, 2014, as amended at 82 FR 42, Jan. 3, 2017]

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**§ 204.64 Reporting and audit requirements**

(a) *Reporting.* Within 90-days of the Performance Period expiration date, the State will submit a final Financial Status Report, which reports all costs incurred within the incident period and all administrative costs incurred within the performance period; and

(b) *Audit.* (1) Audits will be performed, for both the recipient and the subrecipients, under 2 CFR 200.500–200.520.

(2) FEMA may elect to conduct a program-specific Federal audit on the Fire Management Assistance Grant or a subgrant.

[66 FR 57347, Nov. 14, 2001, as amended at 79 FR 63546, Oct. 24, 2014; 79 FR 76085, Dec. 19, 2014; 82 FR 42, Jan. 3, 2017]

**PART 205 [RESERVED]**

**PART 206—FEDERAL DISASTER ASSISTANCE**

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AUTHORITY: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.*; Department of Homeland Security Delegation 9001.1; sec. 1105, Pub. L. 113-2, 127 Stat. 43 (42 U.S.C. 5189a note).

SOURCE: 54 FR 11615, Mar. 21, 1989, unless otherwise noted.

**Subpart A—General**

SOURCE: 55 FR 2288, Jan. 23, 1990, unless otherwise noted.

## § 206.1

## 44 CFR Ch. I (10–1–23 Edition)

### § 206.1 Purpose.

(a) *Purpose.* The purpose of this subpart is to prescribe the policies and procedures to be followed in implementing those sections of Public Law 93–288, as amended, delegated to the Administrator, Federal Emergency Management Agency (FEMA). The rules in this subpart apply to major disasters and emergencies declared by the President on or after November 23, 1988, the date of enactment of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*

(b) *Prior regulations.* Prior regulations relating to major disasters and emergencies declared by the President before November 23, 1988 were published in 44 CFR part 205 (see 44 CFR part 205 as contained in the CFR edition revised as of October 1, 1994).

[59 FR 53363, Oct. 24, 1994]

### § 206.2 Definitions.

(a) *General.* The following definitions have general applicability throughout this part:

(1) *The Stafford Act:* The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended.

(2) *Applicant:* Individuals, families, States and local governments, or private nonprofit organizations who apply for assistance as a result of a declaration of a major disaster or emergency.

(3) [Reserved]

(4) *Concurrent, multiple major disasters:* In considering a request for an advance, the term concurrent multiple major disasters means major disasters which occur within a 12-month period immediately preceding the major disaster for which an advance of the non-Federal share is requested pursuant to section 319 of the Stafford Act.

(5) *Contractor:* Any individual, partnership, corporation, agency, or other entity (other than an organization engaged in the business of insurance) performing work by contract for the Federal Government or a State or local agency.

(6) *Designated area:* Any emergency or major disaster-affected portion of a State which has been determined eligible for Federal assistance.

(7) *Administrator:* The Administrator, FEMA.

(8) *Disaster Recovery Manager (DRM):* The person appointed to exercise the authority of a Regional Administrator for a particular emergency or major disaster.

(9) *Emergency:* Any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

(10) *Federal agency:* Any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, but shall not include the American National Red Cross.

(11) *Federal Coordinating Officer (FCO):* The person appointed by the Administrator, or in his absence, the Deputy Administrator, to coordinate Federal assistance in an emergency or a major disaster.

(12) *Governor:* The chief executive of any State or the Acting Governor.

(13) *Governor's Authorized Representative (GAR):* The person empowered by the Governor to execute, on behalf of the State, all necessary documents for disaster assistance.

(14) *Hazard mitigation:* Any cost effective measure which will reduce the potential for damage to a facility from a disaster event.

(15) *Individual assistance:* Supplementary Federal assistance provided under the Stafford Act to individuals and families adversely affected by a major disaster or an emergency. Such assistance may be provided directly by the Federal Government or through State or local governments or disaster relief organizations. For further information, see subparts D, E, and F of these regulations.

(16) *Local government:*

(i) A county, municipality, city, town, township, local public authority, school district, special district, intra-state district, council of governments (regardless of whether the council of

governments is incorporated as a non-profit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;

(ii) An Indian tribe or authorized tribal organization, or Alaska Native village or organization; and

(iii) A rural community, unincorporated town or village, or other public entity, for which an application for assistance is made by a State or political subdivision of a State.

(17) *Major disaster*: Any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(18) *Mission assignment*: Work order issued to a Federal agency by the Regional Administrator, Assistant Administrator for the Disaster Operations Directorate, or Administrator, directing completion by that agency of a specified task and citing funding, other managerial controls, and guidance.

(19) *Private nonprofit organization*: Any nongovernmental agency or entity that currently has:

(i) An effective ruling letter from the U.S. Internal Revenue Service granting tax exemption under section 501 (c), (d), or (e) of the Internal Revenue Code of 1954; or

(ii) Satisfactory evidence from the State that the organization or entity is a nonprofit one organized or doing business under State law.

(20) *Public Assistance*: Supplementary Federal assistance provided under the Stafford Act to State and local governments or certain private, nonprofit organizations other than assistance for the direct benefit of individuals and families. For further information, see subparts G and H of this part. Fire

Management Assistance Grants under section 420 of the Stafford Act are also considered Public Assistance. See subpart K of this part and part 204 of this chapter.

(21) *Regional Administrator*: An administrator of a regional office of FEMA, or his/her designated representative. As used in these regulations, Regional Administrator also means the Disaster Recovery Manager who has been appointed to exercise the authority of the Regional Administrator for a particular emergency or major disaster.

(22) *State*: Any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(23) *State Coordinating Officer (SCO)*: The person appointed by the Governor to act in cooperation with the Federal Coordinating Officer to administer disaster recovery efforts.

(24) *State emergency plan*: As used in section 401 or section 501 of the Stafford Act means that State plan which is designated specifically for State-level response to emergencies or major disasters and which sets forth actions to be taken by the State and local governments, including those for implementing Federal disaster assistance.

(25) *Temporary housing*: Temporary accommodations provided by the Federal Government to individuals or families whose homes are made unlivable by an emergency or a major disaster.

(26) *United States*: The 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(27) *Voluntary organization*: Any chartered or otherwise duly recognized tax-exempt local, State, or national organization or group which has provided or may provide needed services to the States, local governments, or individuals in coping with an emergency or a major disaster.

(b) *Additional definitions*. Definitions which apply to individual subparts are found in those subparts.

[54 FR 11615, Mar. 21, 1989, as amended at 63 FR 17110, Apr. 8, 1998; 66 FR 57352, 57353, Nov. 14, 2001; 69 FR 24083, May 3, 2004; 74 FR 15346, Apr. 3, 2009]

## § 206.3

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### § 206.3 Policy.

It is the policy of FEMA to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage that result from major disasters and emergencies by:

(a) Providing Federal assistance programs for public and private losses and needs sustained in disasters;

(b) Encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the States and local governments;

(c) Achieving greater coordination and responsiveness of disaster preparedness and relief programs;

(d) Encouraging individuals, States, and local governments to obtain insurance coverage and thereby reduce their dependence on governmental assistance; and

(e) Encouraging hazard mitigation measures, such as development of land-use and construction regulations, floodplain management, protection of wetlands, and environmental planning, to reduce losses from disasters.

### § 206.4 State emergency plans.

The State shall set forth in its emergency plan all responsibilities and actions specified in the Stafford Act and these regulations that are required of the State and its political subdivisions to prepare for and respond to major disasters and emergencies and to facilitate the delivery of Federal disaster assistance. Although not mandatory, prior to the adoption of the final plan, the State is encouraged to circulate the plan to local governments for review and comment.

[55 FR 2288, Jan. 23, 1990, 55 FR 5458, Feb. 15, 1990]

### § 206.5 Assistance by other Federal agencies.

(a) In any declared major disaster, the Administrator, Assistant Administrator for the Disaster Operations Directorate, or the Regional Administrator may direct any Federal agency to utilize its authorities and the resources granted to it under Federal law

(including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) to support State and local assistance efforts.

(b) In any declared emergency, the Administrator, Assistant Administrator for the Disaster Operations Directorate, or the Regional Administrator may direct any Federal agency to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) to support emergency efforts by State and local governments to save lives; protect property, public health and safety; and lessen or avert the threat of a catastrophe.

(c) In any declared major disaster or emergency, the Administrator, Assistant Administrator for the Disaster Operations Directorate, or the Regional Administrator may direct any Federal agency to provide emergency assistance necessary to save lives and to protect property, public health, and safety by:

(1) Utilizing, lending, or donating to State and local governments Federal equipment, supplies, facilities, personnel, and other resources, other than the extension of credit, for use or distribution by such governments in accordance with the purposes of this Act;

(2) Distributing medicine, food, and other consumable supplies; or

(3) Performing work or services to provide emergency assistance authorized in the Stafford Act.

(d) Disaster assistance by other Federal agencies is subject to the coordination of the FCO. Federal agencies shall provide any reports or information about disaster assistance rendered under the provisions of these regulations or authorities independent of the Stafford Act, that the FCO or Regional Administrator considers necessary and requests from the agencies.

(e) Assistance furnished by any Federal agency under paragraphs (a), (b), or (c) of this section is subject to the criteria provided by the Assistant Administrator for the Disaster Operations Directorate under these regulations.

(f) Assistance under paragraphs (a), (b), or (c) of this section, when directed

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by the Administrator, Assistant Administrator for the Disaster Operations Directorate, or the Regional Administrator, does not apply to nor shall it affect the authority of any Federal agency to provide disaster assistance independent of the Stafford Act.

(g) In carrying out the purposes of the Stafford Act, any Federal agency may accept and utilize, with the consent of the State or local government, the services, personnel, materials, and facilities of any State or local government, agency, office, or employee. Such utilization shall not make such services, materials, or facilities Federal in nature nor make the State or local government or agency an arm or agent of the Federal Government.

(h) Any Federal agency charged with the administration of a Federal assistance program may, if so requested by the applicant State or local authorities, modify or waive, for a major disaster, such administrative conditions for assistance as would otherwise prevent the giving of assistance under such programs if the inability to meet such conditions is a result of the major disaster.

### § 206.6 Donation or loan of Federal equipment and supplies.

(a) In any major disaster or emergency, the Administrator, Assistant Administrator for the Disaster Operations Directorate, or the Regional Administrator may direct Federal agencies to donate or loan their equipment and supplies to State and local governments for use and distribution by them for the purposes of the Stafford Act.

(b) A donation or loan may include equipment and supplies determined under applicable laws and regulations to be surplus to the needs and responsibilities of the Federal Government. The State shall certify that the surplus property is usable and necessary for current disaster purposes in order to receive a donation or loan. Such a donation or loan is made in accordance with procedures prescribed by the General Services Administration.

### § 206.7 Implementation of assistance from other Federal agencies.

All directives, known as mission assignments, to other Federal agencies

shall be in writing, or shall be confirmed in writing if made orally, and shall identify the specific task to be performed and the requirements or criteria to be followed. If the Federal agency is to be reimbursed, the letter will also contain a dollar amount which is not to be exceeded in accomplishing the task without prior approval of the issuing official.

### § 206.8 Reimbursement of other Federal agencies.

(a) Assistance furnished under § 206.5 (a) or (b) of this subpart may be provided with or without compensation as considered appropriate by the Administrator, Assistant Administrator for the Disaster Assistance Directorate, or the Regional Administrator or Regional Director.

(b) The Administrator, Assistant Administrator for the Disaster Assistance Directorate, or the Regional Administrator or the Regional Director may not approve reimbursement of costs incurred while performing work pursuant to disaster assistance authorities independent of the Stafford Act.

(c) *Expenditures eligible for reimbursement.* The Administrator, Assistant Administrator for the Disaster Assistance Directorate, or the Regional Administrator or the Regional Director may approve reimbursement of the following costs which are incurred in providing requested assistance.

(1) Overtime, travel, and per diem of permanent Federal agency personnel.

(2) Wages, travel, and per diem of temporary Federal agency personnel assigned solely to performance of services directed by the Administrator, Assistant Administrator for the Disaster Assistance Directorate, or the Regional Administrator or the Regional Director in the major disaster or emergency area designated by the Regional Director.

(3) Travel and per diem of Federal military personnel assigned solely to the performance of services directed by the Administrator, Assistant Administrator for the Disaster Assistance Directorate, or the Regional Administrator or the Regional Director in the major disaster or emergency area designated by the Regional Director.



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(4) Cost of work, services, and materials procured under contract for the purposes of providing assistance directed by the Administrator, Assistant Administrator for the Disaster Assistance Directorate, or the Regional Administrator or the Regional Director.

(5) Cost of materials, equipment, and supplies (including transportation, repair, and maintenance) from regular stocks used in providing directed assistance.

(6) All costs incurred which are paid from trust, revolving, or other funds, and whose reimbursement is required by law.

(7) Other costs submitted by an agency with written justification or otherwise agreed to in writing by the Administrator, Assistant Administrator for the Disaster Assistance Directorate, or the Regional Administrator or the Regional Director and the agency.

(d) *Procedures for reimbursement.* Federal agencies performing work under a mission assignment will submit requests for reimbursement, as follows:

(1) Federal agencies may submit requests for reimbursement of amounts greater than \$1,000 at any time. Requests for lesser amounts may be submitted only quarterly. An agency shall submit a final accounting of expenditures after completion of the agency's work under each directive for assistance. The time limit and method for submission of reimbursement requests will be stipulated in the mission assignment letter.

(2) An agency shall document its request for reimbursement with specific details on personnel services, travel, and all other expenses by object class as specified in OMB Circular A-12 and by any other subobject class used in the agency's accounting system. Where contracts constitute a significant portion of the billings, the agency shall provide a listing of individual contracts and their associated costs.

(3) Reimbursement requests shall cite the specific mission assignment under which the work was performed, and the major disaster or emergency identification number. Requests for reimbursement of costs incurred under more than one mission assignment may not be combined for billing purposes.

(4) Unless otherwise agreed, an agency shall direct all requests for reimbursement to the Regional Administrator of the region in which the costs were incurred.

(5) A Federal agency requesting reimbursement shall retain all financial records, supporting documents, statistical records, and other records pertinent to the provision of services or use of resources by that agency. These materials shall be accessible to duly authorized representatives of FEMA and the U.S. Comptroller General, for the purpose of making audits, excerpts, and transcripts, for a period of 3 years starting from the date of submission of the final billing.

### § 206.9 Nonliability.

The Federal Government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of the Stafford Act.

### § 206.10 Use of local firms and individuals.

In the expenditure of Federal funds for debris removal, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities which may be carried out by contract or agreement with private organizations, firms, or individuals, preference shall be given, to the extent feasible and practicable, to those organizations, firms, and individuals residing or doing business primarily in the area affected by such major disaster or emergency. This shall not be considered to restrict the use of Department of Defense resources in the provision of major disaster assistance under the Stafford Act.

### § 206.11 Nondiscrimination in disaster assistance.

(a) Federal financial assistance to the States or their political subdivisions is conditioned on full compliance with 44 CFR part 7, Nondiscrimination in Federally-Assisted Programs.

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(b) All personnel carrying out Federal major disaster or emergency assistance functions, including the distribution of supplies, the processing of the applications, and other relief and assistance activities, shall perform their work in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, or economic status.

(c) As a condition of participation in the distribution of assistance or supplies under the Stafford Act, or of receiving assistance under the Stafford Act, government bodies and other organizations shall provide a written assurance of their intent to comply with regulations relating to nondiscrimination.

(d) The agency shall make available to employees, applicants, participants, beneficiaries, and other interested parties such information regarding the provisions of this regulation and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this regulation.

**§ 206.12 Use and coordination of relief organizations.**

(a) In providing relief and assistance under the Stafford Act, the FCO or Regional Administrator may utilize, with their consent, the personnel and facilities of the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other voluntary organizations in the distribution of medicine, food, supplies, or other items, and in the restoration, rehabilitation, or reconstruction of community services and essential facilities, whenever the FCO or Regional Administrator finds that such utilization is necessary.

(b) The Administrator is authorized to enter into agreements with the American Red Cross, The Salvation Army, the Mennonite Disaster Service, and other voluntary organizations engaged in providing relief during and after a major disaster or emergency. Any agreement shall include provisions assuring that use of Federal facilities,

supplies, and services will be in compliance with §206.11, Nondiscrimination in Disaster Assistance, and §206.191, Duplication of Benefits, of these regulations and such other regulations as the Administrator may issue. The FCO may coordinate the disaster relief activities of the voluntary organizations which agree to operate under his/her direction.

(c) Nothing contained in this section shall be construed to limit or in any way affect the responsibilities of the American National Red Cross as stated in Public Law 58-4.

**§ 206.13 Standards and reviews.**

(a) The Administrator shall establish program standards and assess the efficiency and effectiveness of programs administered under the Stafford Act by conducting annual reviews of the activities of Federal agencies and State and local governments involved in major disaster or emergency response efforts.

(b) In carrying out this provision, the Administrator may direct Federal agencies to submit reports relating to their disaster assistance activities. The Administrator may request similar reports from the States relating to these activities on the part of State and local governments. Additionally, the Administrator may conduct independent investigations, studies, and evaluations as necessary to complete the reviews.

[55 FR 2288, Jan. 23, 1990; 55 FR 5458, Feb. 15, 1990]

**§ 206.14 Criminal and civil penalties.**

(a) *Misuse of funds.* Any person who knowingly misapplies the proceeds of a loan or other cash benefit obtained under the Stafford Act shall be fined an amount equal to one and one-half times the misapplied amount of the proceeds or cash benefit.

(b) *Civil enforcement.* Whenever it appears that any person has violated or is about to violate any provision of the Stafford Act, including any civil penalty imposed under the Stafford Act, the Attorney General may bring a civil action for such relief as may be appropriate. Such action may be brought in an appropriate United States district court.

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(c) *Referral to Attorney General.* The Office of Chief Counsel shall expeditiously refer to the Attorney General for appropriate action any evidence developed in the performance of functions under the Stafford Act that may warrant consideration for criminal prosecution.

(d) *Civil penalty.* Any individual who knowingly violates any order or regulation shall be subject to a civil penalty of not more than \$5,500 for each violation.

[55 FR 2288, Jan. 23, 1990, as amended at 74 FR 15346, Apr. 3, 2009; 74 FR 58850, Nov. 16, 2009]

**§ 206.15 Recovery of assistance.**

(a) *Party liable.* Any person who intentionally causes a condition for which Federal assistance is provided under this Act or under any other Federal law as a result of a declaration of a major disaster or emergency under this Act shall be liable to the United States for the reasonable costs incurred by the United States in responding to such disaster or emergency to the extent that such costs are attributable to the intentional act or omission of such person which caused such condition. Such action shall be brought in an appropriate United States District Court.

(b) *Rendering of care.* A person shall not be liable under this section for costs incurred by the United States as a result of actions taken or omitted by such person in the course of rendering care or assistance in response to a major disaster or emergency.

**§ 206.16 Audit and investigations.**

(a) Subject to the provisions of chapter 75 of title 31, United States Code, and 2 CFR parts 200 and 3002, relating to requirements for single audits, the Administrator, the Assistant Administrator for the Disaster Operations Directorate, or the Regional Administrator shall conduct audits and investigations as necessary to assure compliance with the Stafford Act, and in connection therewith may question such persons as may be necessary to carry out such audits and investigations.

(b) For purposes of audits and investigations under this section, FEMA or

State auditors, the Governor’s Authorized Representative, the Administrator, the Regional Administrator, the Assistant Administrator for the Disaster Assistance Directorate, the DHS Inspector General, and the Comptroller General of the United States, or their duly authorized representatives, may inspect any books, documents, papers, and records of any person relating to any activity undertaken or funded under the Stafford Act.

[55 FR 2288, Jan. 23, 1990, as amended at 74 FR 15346, Apr. 3, 2009; 79 FR 76085, Dec. 19, 2014]

**§ 206.17 Effective date.**

These regulations are effective for all major disasters or emergencies declared on or after November 23, 1988.

**§§ 206.18–206.30 [Reserved]**

**Subpart B—The Declaration Process**

SOURCE: 55 FR 2292, Jan. 23, 1990, unless otherwise noted.

**§ 206.31 Purpose.**

The purpose of this subpart is to describe the process leading to a Presidential declaration of a major disaster or an emergency and the actions triggered by such a declaration.

**§ 206.32 Definitions.**

All definitions in the Stafford Act and in § 206.2 apply. In addition, the following definitions apply:

(a) *Appeal:* A request for reconsideration of a determination on any action related to Federal assistance under the Stafford Act and these regulations. Specific procedures for appeals are contained in the relevant subparts of these regulations.

(b) *Commitment:* A certification by the Governor that the State and local governments will expend a reasonable amount of funds to alleviate the effects of the major disaster or emergency, for which no Federal reimbursement will be requested.

(c) *Disaster Application Center*: A center established in a centralized location within the disaster area for individuals, families, or businesses to apply for disaster aid.

(d) *FEMA-State Agreement*: A formal legal document stating the understandings, commitments, and binding conditions for assistance applicable as the result of the major disaster or emergency declared by the President.

(e) *Incident*: Any condition which meets the definition of major disaster or emergency as set forth in §206.2 which causes damage or hardship that may result in a Presidential declaration of a major disaster or an emergency.

(f) *Incident period*: The time interval during which the disaster-causing incident occurs. No Federal assistance under the Act shall be approved unless the damage or hardship to be alleviated resulted from the disaster-causing incident which took place during the incident period or was in anticipation of that incident. The incident period will be established by FEMA in the FEMA-State Agreement and published in the FEDERAL REGISTER.

**§ 206.33 Preliminary damage assessment.**

The preliminary damage assessment (PDA) process is a mechanism used to determine the impact and magnitude of damage and the resulting unmet needs of individuals, businesses, the public sector, and the community as a whole. Information collected is used by the State as a basis for the Governor's request, and by FEMA to document the recommendation made to the President in response to the Governor's request. It is in the best interest of all parties to combine State and Federal personnel resources by performing a joint PDA prior to the initiation of a Governor's request, as follows.

(a) *Preassessment by the State*. When an incident occurs, or is imminent, which the State official responsible for disaster operations determines may be beyond the State and local government capabilities to respond, the State will request the Regional Administrator to perform a joint FEMA-State preliminary damage assessment. It is not anticipated that all occurrences will re-

sult in the requirement for assistance; therefore, the State will be expected to verify their initial information, in some manner, before requesting this support.

(b) *Damage assessment teams*. Damage assessment teams will be composed of at least one representative of the Federal Government and one representative of the State. A local government representative, familiar with the extent and location of damage in his/her community, should also be included, if possible. Other State and Federal agencies, and voluntary relief organizations may also be asked to participate, as needed. It is the State's responsibility to coordinate State and local participation in the PDA and to ensure that the participants receive timely notification concerning the schedule. A FEMA official will brief team members on damage criteria, the kind of information to be collected for the particular incident, and reporting requirements.

(c) *Review of findings*. At the close of the PDA, FEMA will consult with State officials to discuss findings and reconcile any differences.

(d) *Exceptions*. The requirement for a joint PDA may be waived for those incidents of unusual severity and magnitude that do not require field damage assessments to determine the need for supplemental Federal assistance under the Act, or in such other instances determined by the Regional Administrator upon consultation with the State. It may be necessary, however, to conduct an assessment to determine unmet needs for managerial response purposes.

**§ 206.34 Request for utilization of Department of Defense (DOD) resources.**

(a) *General*. During the immediate aftermath of an incident which may ultimately qualify for a Presidential declaration of a major disaster or emergency, when threats to life and property are present which cannot be effectively dealt with by the State or local governments, the Assistant Administrator for the Disaster Assistance Directorate may direct DOD to utilize

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DOD personnel and equipment for removal of debris and wreckage and temporary restoration of essential public facilities and services.

(b) *Request process.* The Governor of a State, or the Acting Governor in his/her absence, may request such DOD assistance. The Governor should submit the request to the Assistant Administrator for the Disaster Assistance Directorate through the appropriate Regional Administrator to ensure prompt acknowledgment and processing. The request must be submitted within 48 hours of the occurrence of the incident. Requests made after that time may still be considered if information is submitted indicating why the request for assistance could not be made during the initial 48 hours. The request shall include:

- (1) Information describing the types and amount of DOD emergency assistance being requested;
- (2) Confirmation that the Governor has taken appropriate action under State law and directed the execution of the State emergency plan;
- (3) A finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and affected local governments and that Federal assistance is necessary for the preservation of life and property;
- (4) A certification by the Governor that the State and local government will reimburse FEMA for the non-Federal share of the cost of such work; and
- (5) An agreement:
  - (i) To provide all lands, easements and rights-of-way necessary to accomplish the approved work without cost to the United States;
  - (ii) To hold and save the United States free from damages due to the requested work, and to indemnify the Federal government against any claims arising from such work; and
  - (iii) To assist DOD in all support and local jurisdictional matters.

(c) *Processing the request.* Upon receipt of the request, the Regional Administrator shall gather adequate information to support a recommendation and forward it to the Assistant Administrator for the Disaster Assistance Directorate. If the Assistant Administrator for the Disaster Assistance

Directorate determines that such work is essential to save lives and protect property, he/she will issue a mission assignment to DOD authorizing direct Federal assistance to the extent deemed appropriate.

(d) *Implementation of assistance.* The performance of emergency work may not exceed a period of 10 days from the date of the mission assignment.

(e) *Limits.* Generally, no work shall be approved under this section which falls within the statutory authority of DOD or another Federal agency. However, where there are significant unmet needs of sufficient severity and magnitude, not addressed by other assistance, which could appropriately be addressed under this section of the Stafford Act, the involvement of other Federal agencies would not preclude the authorization of DOD assistance by the Assistant Administrator for the Disaster Assistance Directorate.

(f) *Federal share.* The Federal share of assistance under this section shall be not less than 75 percent of the cost of eligible work.

(g) *Project management.* DOD shall ensure that the work is completed in accordance with the approved scope of work, costs, and time limitations in the mission assignment. DOD shall also keep the Regional Administrator and the State advised of work progress and other project developments. It is the responsibility of DOD to ensure compliance with applicable Federal, State and local legal requirements. A final report will be submitted to the Regional Administrator upon termination of all direct Federal assistance work. Final reports shall be signed by a representative of DOD and the State. Once the final eligible cost is determined, DOD will request reimbursement from FEMA and FEMA will submit a bill to the State for the non-Federal share of the mission assignment.

(h) *Reimbursement of DOD.* Reimbursement will be made in accordance with § 206.8 of these regulations.

**§ 206.35 Requests for emergency declarations.**

(a) When an incident occurs or threatens to occur in a State, which would not qualify under the definition of a major disaster, the Governor of a

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State, or the Acting Governor in his/her absence, may request that the President declare an emergency. The Governor should submit the request to the President through the appropriate Regional Administrator to ensure prompt acknowledgment and processing. The request must be submitted within 5 days after the need for assistance under title V becomes apparent, but no longer than 30 days after the occurrence of the incident, in order to be considered. The period may be extended by the Assistant Administrator for the Disaster Assistance Directorate provided that a written request for such extension is made by the Governor, or Acting Governor, during the 30-day period immediately following the incident. The extension request must stipulate the reason for the delay.

(b) The basis for the Governor's request must be the finding that the situation:

(1) Is of such severity and magnitude that effective response is beyond the capability of the State and the affected local government(s); and

(2) Requires supplementary Federal emergency assistance to save lives and to protect property, public health and safety, or to lessen or avert the threat of a disaster.

(c) In addition to the above findings, the complete request shall include:

(1) Confirmation that the Governor has taken appropriate action under State law and directed the execution of the State emergency plan;

(2) Information describing the State and local efforts and resources which have been or will be used to alleviate the emergency;

(3) Information describing other Federal agency efforts and resources which have been or will be used in responding to this incident; and

(4) Identification of the type and extent of additional Federal aid required.

(d) *Modified declaration for Federal emergencies.* The requirement for a Governor's request under paragraph (a) of this section can be waived when an emergency exists for which the primary responsibility rests in the Federal government because the emergency involves a subject area for which, under the Constitution or laws

of the United States, the Federal government exercises exclusive or pre-eminent responsibility and authority. Any party may bring the existence of such a situation to the attention of the FEMA Regional Administrator. Any recommendation for a Presidential declaration of emergency in the absence of a Governor's request must be initiated by the Regional Administrator or transmitted through the Regional Administrator by another Federal agency. In determining that such an emergency exists, the Assistant Administrator for the Disaster Assistance Directorate or Regional Administrator shall consult the Governor of the affected State, if practicable.

(e) *Other authorities.* It is not intended for an emergency declaration to preempt other Federal agency authorities and/or established plans and response mechanisms in place prior to the enactment of the Stafford Act.

**§ 206.36 Requests for major disaster declarations.**

(a) When a catastrophe occurs in a State, the Governor of a State, or the Acting Governor in his/her absence, may request a major disaster declaration. The Governor should submit the request to the President through the appropriate Regional Administrator to ensure prompt acknowledgment and processing. The request must be submitted within 30 days of the occurrence of the incident in order to be considered. The 30-day period may be extended by the Assistant Administrator for the Disaster Assistance Directorate, provided that a written request for an extension is submitted by the Governor, or Acting Governor, during this 30-day period. The extension request will stipulate reasons for the delay.

(b) The basis for the request shall be a finding that:

(1) The situation is of such severity and magnitude that effective response is beyond the capabilities of the State and affected local governments; and

(2) Federal assistance under the Act is necessary to supplement the efforts and available resources of the State, local governments, disaster relief organizations, and compensation by insurance for disaster-related losses.

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(c) In addition to the above findings, the complete request shall include:

(1) Confirmation that the Governor has taken appropriate action under State law and directed the execution of the State emergency plan;

(2) An estimate of the amount and severity of damages and losses stating the impact of the disaster on the public and private sector;

(3) Information describing the nature and amount of State and local resources which have been or will be committed to alleviate the results of the disaster;

(4) Preliminary estimates of the types and amount of supplementary Federal disaster assistance needed under the Stafford Act; and

(5) Certification by the Governor that State and local government obligations and expenditures for the current disaster will comply with all applicable cost sharing requirements of the Stafford Act.

(d) For those catastrophes of unusual severity and magnitude when field damage assessments are not necessary to determine the requirement for supplemental Federal assistance, the Governor or Acting Governor may send an abbreviated written request through the Regional Administrator for a declaration of a major disaster. This may be transmitted in the most expeditious manner available. In the event the FEMA Regional Office is severely impacted by the catastrophe, the request may be addressed to the Administrator of FEMA. The request must indicate a finding in accordance with §206.36(b), and must include as a minimum the information requested by §206.36 (c)(1), (c)(3), and (c)(5). Upon receipt of the request, FEMA shall expedite the processing of reports and recommendations to the President. Notification to the Governor of the Presidential declaration shall be in accordance with 44 CFR 206.39. The Assistant Administrator for the Disaster Assistance Directorateshall assure that documentation of the declaration is later assembled to comply fully with these regulations.

§206.37 Processing requests for declarations of a major disaster or emergency.

(a) Acknowledgment. The Regional Administrator shall provide written acknowledgment of the Governor's request.

(b) Regional summary. Based on information obtained by FEMA/State preliminary damage assessments of the affected area(s) and consultations with appropriate State and Federal officials and other interested parties, the Regional Administrator shall promptly prepare a summary of the PDA findings. The data will be analyzed and submitted with a recommendation to the Assistant Administrator for the Disaster Assistance Directorate. The Regional Analysis shall include a discussion of State and local resources and capabilities, and other assistance available to meet the major disaster or emergency-related needs.

(c) FEMA recommendation. Based on all available information, the Administrator shall formulate a recommendation which shall be forwarded to the President with the Governor's request.

(1) Major disaster recommendation. The recommendation will be based on a finding that the situation is or is not of such severity and magnitude as to be beyond the capabilities of the State and its local governments. It will also contain a determination of whether or not supplemental Federal assistance under the Stafford Act is necessary and appropriate. In developing a recommendation, FEMA will consider such factors as the amount and type of damages; the impact of damages on affected individuals, the State, and local governments; the available resources of the State and local governments, and other disaster relief organizations; the extent and type of insurance in effect to cover losses; assistance available from other Federal programs and other sources; imminent threats to public health and safety; recent disaster history in the State; hazard mitigation measures taken by the State or local governments, especially implementation of measures required as a result of previous major disaster declarations; and other factors pertinent to a given incident.

(2) *Emergency recommendation.* The recommendation will be based on a report which will indicate whether or not Federal emergency assistance under section 502 of the Stafford Act is necessary to supplement State and local efforts to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe. Only after it has been determined that all other resources and authorities available to meet the crisis are inadequate, and that assistance provided in section 502 of the Stafford Act would be appropriate, will FEMA recommend an emergency declaration to the President.

(d) *Modified Federal emergency recommendation.* The recommendation will be based on a report which will indicate that an emergency does or does not exist for which assistance under section 502 of the Stafford Act would be appropriate. An emergency declaration will not be recommended in situations where the authority to respond or coordinate is within the jurisdiction of one or more Federal agencies without a Presidential declaration. However, where there are significant unmet needs of sufficient severity and magnitude, not addressed by other assistance, which could appropriately be addressed under the Stafford Act, the involvement of other Federal agencies would not preclude a declaration of an emergency under the Act.

**§ 206.38 Presidential determination.**

(a) The Governor's request for a major disaster declaration may result in either a Presidential declaration of a major disaster or an emergency, or denial of the Governor's request.

(b) The Governor's request for an emergency declaration may result only in a Presidential declaration of an emergency, or denial of the Governor's request.

[55 FR 2292, Jan. 23, 1990; 55 FR 5458, Feb. 15, 1990]

**§ 206.39 Notification.**

(a) The Governor will be promptly notified by the Administrator or his/her designee of a declaration by the President that an emergency or a major disaster exists. FEMA also will

notify other Federal agencies and other interested parties.

(b) The Governor will be promptly notified by the Administrator or his/her designee of a determination that the Governor's request does not justify the use of the authorities of the Stafford Act.

(c) Following a major disaster or emergency declaration, the Regional Administrator or the Assistant Administrator for the Disaster Assistance Directorate will promptly notify the Governor of the designations of assistance and areas eligible for such assistance.

**§ 206.40 Designation of affected areas and eligible assistance.**

(a) *Eligible assistance.* The Assistant Administrator for the Disaster Assistance Directorate has been delegated authority to determine and designate the types of assistance to be made available. The initial designations will usually be announced in the declaration. Determinations by the Assistant Administrator for the Disaster Assistance Directorate of the types and extent of FEMA disaster assistance to be provided are based upon findings whether the damage involved and its effects are of such severity and magnitude as to be beyond the response capabilities of the State, the affected local governments, and other potential recipients of supplementary Federal assistance. The Assistant Administrator for the Disaster Assistance Directorate may authorize all, or only particular types of, supplementary Federal assistance requested by the Governor.

(b) *Areas eligible to receive assistance.* The Assistant Administrator for the Disaster Assistance Directorate also has been delegated authority to designate the affected areas eligible for supplementary Federal assistance under the Stafford Act. These designations shall be published in the FEDERAL REGISTER. An affected area designated by the Assistant Administrator for the Disaster Assistance Directorate includes all local government jurisdictions within its boundaries. The Assistant Administrator for the Disaster Assistance Directorate may, based upon damage assessments in any given area, designate all or only some of the areas



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requested by the Governor for supplementary Federal assistance.

(c) *Requests for additional designations after a declaration.* After a declaration by the President, the Governor, or the GAR, may request that additional areas or types of supplementary Federal assistance be authorized by the Assistant Administrator for the Disaster Assistance Directorate. Such requests shall be accompanied by appropriate verified assessments and commitments by State and local governments to demonstrate that the requested designations are justified and that the unmet needs are beyond State and local capabilities without supplementary Federal assistance. Additional assistance or areas added to the declaration will be published in the FEDERAL REGISTER.

(d) *Time limits to request.* In order to be considered, all supplemental requests under paragraph (c) of this section must be submitted within 30 days from the termination date of the incident, or 30 days after the declaration, whichever is later. The 30-day period may be extended by the Assistant Administrator for the Disaster Assistance Directorate provided that a written request is made by the appropriate State official during this 30-day period. The request must include justification of the State's inability to meet the deadline.

[55 FR 2292, Jan. 23, 1990, as amended at 74 FR 60213, Nov. 20, 2009]

§ 206.41 Appointment of disaster officials.

(a) *Federal Coordinating Officer.* Upon a declaration of a major disaster or of an emergency by the President, the Administrator or Deputy Administrator shall appoint an FCO who shall initiate action immediately to assure that Federal assistance is provided in accordance with the declaration, applicable laws, regulations, and the FEMA-State Agreement.

(b) *Disaster Recovery Manager.* The Regional Administrator shall designate a DRM to exercise all the authority of the Regional Administrator in a major disaster or an emergency.

(c) *State Coordinating Officer.* Upon a declaration of a major disaster or of an emergency, the Governor of the af-

ected State shall designate an SCO who shall coordinate State and local disaster assistance efforts with those of the Federal Government.

(d) *Governor's Authorized Representative.* In the FEMA-State Agreement, the Governor shall designate the GAR, who shall administer Federal disaster assistance programs on behalf of the State and local governments and other grant or loan recipients. The GAR is responsible for the State compliance with the FEMA-State Agreement.

§ 206.42 Responsibilities of coordinating officers.

(a) Following a declaration of a major disaster or an emergency, the FCO shall:

(1) Make an initial appraisal of the types of assistance most urgently needed;

(2) In coordination with the SCO, establish field offices and Disaster Application Centers as necessary to coordinate and monitor assistance programs, disseminate information, accept applications, and counsel individuals, families and businesses concerning available assistance;

(3) Coordinate the administration of relief, including activities of State and local governments, activities of Federal agencies, and those of the American Red Cross, the Salvation Army, the Mennonite Disaster Service, and other voluntary relief organizations which agree to operate under the FCO's advice and direction;

(4) Undertake appropriate action to make certain that all of the Federal agencies are carrying out their appropriate disaster assistance roles under their own legislative authorities and operational policies; and

(5) Take other action, consistent with the provisions of the Stafford Act, as necessary to assist citizens and public officials in promptly obtaining assistance to which they are entitled.

(b) The SCO coordinates State and local disaster assistance efforts with those of the Federal Government working closely with the FCO. The SCO is the principal point of contact regarding coordination of State and local disaster relief activities, and implementation of the State emergency plan. The

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functions, responsibilities, and authorities of the SCO are set forth in the State emergency plan. It is the responsibility of the SCO to ensure that all affected local jurisdictions are informed of the declaration, the types of assistance authorized, and the areas eligible to receive such assistance.

### § 206.43 Emergency support teams.

The Federal Coordinating Officer may activate emergency support teams, composed of Federal program and support personnel, to be deployed into an area affected by a major disaster or emergency. These emergency support teams assist the FCO in carrying out his/her responsibilities under the Stafford Act and these regulations. Any Federal agency can be directed to detail personnel within the agency's administrative jurisdiction to temporary duty with the FCO. Each detail shall be without loss of seniority, pay, or other employee status.

### § 206.44 FEMA-State Agreements.

(a) *General.* Upon the declaration of a major disaster or an emergency, the Governor, acting for the State, and the FEMA Regional Administrator or his/her designee, acting for the Federal Government, shall execute a FEMA-State Agreement. The FEMA-State Agreement states the understandings, commitments, and conditions for assistance under which FEMA disaster assistance shall be provided. This Agreement imposes binding obligations on FEMA, States, their local governments, and private nonprofit organizations within the States in the form of conditions for assistance which are legally enforceable. No FEMA funding will be authorized or provided to any grantees or other recipients, nor will direct Federal assistance be authorized by mission assignment, until such time as this Agreement for the Presidential declaration has been signed, except where it is deemed necessary by the Regional Administrator to begin the process of providing essential emergency services or housing assistance under the Individuals and Households Program.

(b) *Terms and conditions.* This Agreement describes the incident and the incident period for which assistance will

be made available, the type and extent of the Federal assistance to be made available, and contains the commitment of the State and local government(s) with respect to the amount of funds to be expended in alleviating damage and suffering caused by the major disaster or emergency. The Agreement also contains such other terms and conditions consistent with the declaration and the provisions of applicable laws, Executive Order and regulations.

(c) *Provisions for modification.* In the event that the conditions stipulated in the original Agreement are changed or modified, such changes will be reflected in properly executed amendments to the Agreement, which may be signed by the GAR and the Regional Administrator or his/her designee for the specified major disaster or emergency. Amendments most often occur to close or amend the incident period, to add forms of assistance not originally authorized, or to designate additional areas eligible for assistance.

(d) In a modified declaration for a Federal emergency, a FEMA-State Agreement may or may not be required based on the type of assistance being provided.

[55 FR 2292, Jan. 23, 1990, as amended at 67 FR 61460, Sept. 30, 2002]

### § 206.45 Loans of non-Federal share.

(a) *Conditions for making loans.* At the request of the Governor, the Assistant Administrator for the Disaster Assistance Directorate together with the Chief Financial Officer may lend or advance to a State, either for its own use or for the use of public or private nonprofit applicants for disaster assistance under the Stafford Act, the portion of assistance for which the State or other eligible disaster assistance applicant is responsible under the cost-sharing provisions of the Stafford Act in any case in which:

(1) The State or other eligible disaster assistance applicant is unable to assume their financial responsibility under such cost sharing provisions:

- (i) As a result of concurrent, multiple major disasters in a jurisdiction, or
- (ii) After incurring extraordinary costs as a result of a particular disaster;

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(2) The damages caused by such disasters or disaster are so overwhelming and severe that it is not possible for the State or other eligible disaster assistance applicant to immediately assume their financial responsibility under the Act; and

(3) The State and the other eligible disaster applicants are not delinquent in payment of any debts to FEMA incurred as a result of Presidentially declared major disasters or emergencies.

(b) *Repayment of loans.* Any loan made to a State under paragraph (a) of this section must be repaid to the United States. The Governor must include a repayment schedule as part of the request for advance.

(1) The State shall repay the loan (the principal disbursed plus interest) in accordance with the repayment schedule approved by the Assistant Administrator for the Disaster Assistance Directorate together with the Chief Financial Officer.

(2) If the State fails to make payments in accordance with the approved repayment schedule, FEMA will offset delinquent amounts against the current, prior, or any subsequent disasters, or monies due the State under other FEMA programs, in accordance with the established Claims Collection procedures.

(c) *Interest.* Loans or advances under paragraph (a) of this section shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance. Simple interest will be computed from the date of the disbursement of each drawdown of the loan/advance by the State based on 365 days/year.

§ 206.46 Appeals.

(a) *Denial of declaration request.* When a request for a major disaster declaration or for any emergency declaration is denied, the Governor may appeal the decision. An appeal must be made within 30 days after the date of the letter denying the request. This one-time request for reconsideration, along with appropriate additional information, is

submitted to the President through the appropriate Regional Administrator. The processing of this request is similar to the initial request.

(b) *Denial of types of assistance or areas.* In those instances when the type of assistance or certain areas requested by the Governor are not designated or authorized, the Governor, or the GAR, may appeal the decision. An appeal must be submitted in writing within 30 days of the date of the letter denying the request. This one-time request for reconsideration, along with justification and/or additional information, is sent to the Assistant Administrator for the Disaster Assistance Directorate through the appropriate Regional Administrator.

(c) *Denial of advance of non-Federal share.* In those instances where the Governor's request for an advance is denied, the Governor may appeal the decision. An appeal must be submitted in writing within 30 days of the date of the letter denying the request. This one-time request for reconsideration, along with justification and/or additional information, is sent to the Assistant Administrator for the Disaster Assistance Directorate through the appropriate Regional Administrator.

(d) *Extension of time to appeal.* The 30-day period referred to in paragraphs (a), (b), or (c) of this section may be extended by the Assistant Administrator for the Disaster Assistance Directorate provided that a written request for such an extension, citing reasons for the delay, is made during this 30-day period, and if the Assistant Administrator for the Disaster Assistance Directorate agrees that there is a legitimate basis for extension of the 30-day period. Only the Governor may request a time extension for appeals covered in paragraphs (a) and (c) of this section. The Governor, or the GAR if one has been named, may submit the time extension request for appeals covered in paragraph (b) of this section.

§ 206.47 Cost-share adjustments.

(a) We pay seventy-five percent (75%) of the eligible cost of permanent restorative work under section 406 of the Stafford Act and for emergency work under section 403 and section 407 of the

Stafford Act, unless the Federal share is increased under this section.

(b) We recommend an increase in the Federal cost share from seventy-five percent (75%) to not more than ninety percent (90%) of the eligible cost of permanent work under section 406 and of emergency work under section 403 and section 407 whenever a disaster is so extraordinary that actual Federal obligations under the Stafford Act, excluding FEMA administrative cost, meet or exceed a qualifying threshold of:

(1) Beginning in 1999 and effective for disasters declared on or after May 21, 1999, \$75 per capita of State population;

(2) Effective for disasters declared after January 1, 2000, and through December 31, 2000, \$85 per capita of State population;

(3) Effective for disasters declared after January 1, 2001, \$100 per capita of State population; and,

(4) Effective for disasters declared after January 1, 2002 and for later years, \$100 per capita of State population, adjusted annually for inflation using the Consumer Price Index for All Urban Consumers published annually by the Department of Labor.

(c) When we determine whether to recommend a cost-share adjustment we consider the impact of major disaster declarations in the State during the preceding twelve-month period.

(d) If warranted by the needs of the disaster, we recommend up to one hundred percent (100%) Federal funding for emergency work under section 403 and section 407, including direct Federal assistance, for a limited period in the initial days of the disaster irrespective of the per capita impact.

[64 FR 19498, Apr. 21, 1999]

**§ 206.48 Factors considered when evaluating a Governor's request for a major disaster declaration.**

When we review a Governor's request for major disaster assistance under the Stafford Act, these are the primary factors in making a recommendation to the President whether assistance is warranted. We consider other relevant information as well.

(a) *Public Assistance Program.* We evaluate the following factors to evalu-

ate the need for assistance under the Public Assistance Program.

(1) *Estimated cost of the assistance.* We evaluate the estimated cost of Federal and nonfederal public assistance against the statewide population to give some measure of the per capita impact within the State. We use a figure of \$1 per capita as an indicator that the disaster is of such size that it might warrant Federal assistance, and adjust this figure annually based on the Consumer Price Index for all Urban Consumers. We are establishing a minimum threshold of \$1 million in public assistance damages per disaster in the belief that we can reasonably expect even the lowest population States to cover this level of public assistance damage.

(2) *Localized impacts.* We evaluate the impact of the disaster at the county and local government level, as well as impacts at the American Indian and Alaskan Native Tribal Government levels, because at times there are extraordinary concentrations of damages that might warrant Federal assistance even if the statewide per capita is not met. This is particularly true where critical facilities are involved or where localized per capita impacts might be extremely high. For example, we have at times seen localized damages in the tens or even hundreds of dollars per capita though the statewide per capita impact was low.

(3) *Insurance coverage in force.* We consider the amount of insurance coverage that is in force or should have been in force as required by law and regulation at the time of the disaster, and reduce the amount of anticipated assistance by that amount.

(4) *Hazard mitigation.* To recognize and encourage mitigation, we consider the extent to which State and local government measures contributed to the reduction of disaster damages for the disaster under consideration. For example, if a State can demonstrate in its disaster request that a Statewide building code or other mitigation measures are likely to have reduced the damages from a particular disaster, we consider that in the evaluation of the request. This could be especially

significant in those disasters where, because of mitigation, the estimated public assistance damages fell below the per capita indicator.

(5) *Recent multiple disasters.* We look at the disaster history within the last twelve-month period to evaluate better the overall impact on the State or locality. We consider declarations under the Stafford Act as well as declarations by the Governor and the extent to which the State has spent its own funds.

(6) *Programs of other Federal assistance.* We also consider programs of other Federal agencies because at times their programs of assistance might more appropriately meet the needs created by the disaster.

(b) *Factors for the Individual Assistance Program.* The following factors are used to evaluate the need for supplemental Federal assistance to individuals under the Stafford Act, as Federal assistance may not supplant the combined capabilities of a State, Tribal, or local government. Federal Individual Assistance, if authorized, is intended to assist eligible individuals and families when State, Tribal, and local government resources and assistance programs are overwhelmed. State fiscal capacity (44 CFR 206.48(b)(1)(i)) and uninsured home and personal property losses (44 CFR 206.48(b)(2)) are the principal factors that FEMA will consider when evaluating the need for supplemental Federal assistance under the Individuals and Households Program but FEMA will always consider all relevant information submitted as part of a declaration request. If the need for supplemental Federal assistance under the Individuals and Households Program is not clear from the evaluation of the principal factors, FEMA will turn to the other factors to determine the level of need.

(1) *State fiscal capacity and resource availability.* FEMA will evaluate the availability of State resources, and where appropriate, any extraordinary circumstances that contributed to the absence of sufficient resources.

(i) *Fiscal capacity (principal factor for individuals and households program).* Fiscal capacity is a State's potential ability to raise revenue from its own sources to respond to and recover from

a disaster. The following data points are indicators of fiscal capacity.

(A) *Total taxable resources (TTR) of the State.* TTR is the U.S. Department of Treasury's annual estimate of the relative fiscal capacity of a State. A low TTR may indicate a greater need for supplemental Federal assistance than a high TTR.

(B) *Gross domestic product (GDP) by State.* GDP by State is calculated by the Bureau of Economic Analysis. GDP by State may be used as an alternative or supplemental evaluation method to TTR.

(C) *Per capita personal income by local area.* Per capita personal income by local area is calculated by the Bureau of Economic Analysis. A low per capita personal income by local area may indicate a greater need for supplemental Federal assistance than a high per capita personal income by local area.

(D) *Other factors.* Other limits on a State's treasury or ability to collect funds may be considered.

(ii) *Resource availability.* Federal disaster assistance under the Stafford Act is intended to be supplemental in nature, and is not a replacement for State emergency relief programs, services, and funds. FEMA evaluates the availability of resources from State, Tribal, and local governments as well as non-governmental organizations and the private sector.

(A) *State, tribal, and local government; non-governmental organizations (NGO); and Private Sector Activity.* State, Tribal, and local government, Non-Governmental Organizations, and private sector resources may offset the need for or reveal an increased need for supplemental Federal assistance. The State may provide information regarding the resources that have been and will be committed to meet the needs of disaster survivors such as housing programs, resources provided through financial and in-kind donations, and the availability of affordable (as determined by the U.S. Department of Urban and Housing Development's fair market rent standards) rental housing within a reasonable commuting distance of the impacted area.

(B) *Cumulative effect of recent disasters.* The cumulative effect of recent disasters may affect the availability of

State, Tribal, local government, NGO, and private sector disaster recovery resources. The State should provide information regarding the disaster history within the last 24-month period, particularly those occurring within the current fiscal cycle, including both Presidential (public and individual assistance) and gubernatorial disaster declarations.

(2) *Uninsured home and personal property losses (principal factor for individuals and households program).* Uninsured home and personal property losses may suggest a need for supplemental Federal assistance. The State may provide the following preliminary damage assessment data:

- (i) The cause of damage.
- (ii) The jurisdictions impacted and concentration of damage.
- (iii) The number of homes impacted and degree of damage.
- (iv) The estimated cost of assistance.
- (v) The homeownership rate of impacted homes.
- (vi) The percentage of affected households with sufficient insurance coverage appropriate to the peril.
- (vii) Other relevant preliminary damage assessment data.

(3) *Disaster impacted population profile.* The demographics of a disaster impacted population may identify additional needs that require a more robust community response and delay a community's ability to recover from a disaster. FEMA will consider demographics of the impacted communities for the following data points as reported by the U.S. Census Bureau or other Federal agencies:

- (i) The percentage of the population for whom poverty status is determined.
- (ii) The percentage of the population already receiving government assistance such as Supplemental Security Income and Supplemental Nutrition Assistance Program benefits.
- (iii) The pre-disaster unemployment rate.
- (iv) The percentage of the population that is 65 years old and older.
- (v) The percentage of the population 18 years old and younger.
- (vi) The percentage of the population with a disability.
- (vii) The percentage of the population who speak a language other than

English and speak English less than "very well."

(viii) Any unique considerations regarding American Indian and Alaskan Native Tribal populations raised in the State's request for a major disaster declaration that may not be reflected in the data points referenced in paragraphs (b)(3)(i) through (vii) of this section.

(4) *Impact to community infrastructure.* The following impacts to a community's infrastructure may adversely affect a population's ability to safely and securely reside within the community.

(i) *Life saving and life sustaining services.* The effects of a disaster may cause disruptions to or increase the demand for life-saving and life-sustaining services, necessitate a more robust response, and may delay a community's ability to recover from a disaster. The State may provide information regarding the impact on life saving and life sustaining services for a period of greater than 72 hours. Such services include but are not limited to police, fire/EMS, hospital/medical, sewage, and water treatment services.

(ii) *Essential community services.* The effects of a disaster may cause disruptions to or increase the demand for essential community services and delay a community's ability to recover from a disaster. The State may provide information regarding the impact on essential community services for a period greater than 72 hours. Such services include but are not limited to schools, social services programs and providers, child care, and eldercare.

(iii) *Transportation infrastructure and utilities.* Transportation infrastructure or utility disruptions may render housing uninhabitable or inaccessible. Such conditions may also affect the delivery of life sustaining commodities, provision of emergency services, ability to shelter in place, and efforts to rebuild. The State may provide information regarding the impact on transportation infrastructure and utilities for a period of greater than 72 hours.

(5) *Casualties.* The number of individuals who are missing, injured, or deceased due to a disaster may indicate a heightened need for supplemental Federal disaster assistance. The State may

report the number of missing, injured, or deceased individuals.

(6) *Disaster related unemployment.* The number of disaster survivors who lost work or became unemployed due to a disaster and who do not qualify for standard unemployment insurance may indicate a heightened need for supplemental Federal assistance. This usually includes the self-employed, service industry workers, and seasonal workers such as those employed in tourism, fishing, or agriculture industries. The State may provide an estimate of the number of disaster survivors impacted under this paragraph as well as information regarding major employers affected.

[64 FR 47698, Sept. 1, 1999, as amended at 84 FR 10663, Mar. 21, 2019; 85 FR 2039, Jan. 14, 2020]

§§ 206.49–206.60 [Reserved]

**Subpart C—Emergency Assistance**

SOURCE: 55 FR 2296, Jan. 23, 1990, unless otherwise noted.

**§ 206.61 Purpose.**

The purpose of this subpart is to identify the forms of assistance which may be made available under an emergency declaration.

**§ 206.62 Available assistance.**

In any emergency declaration, the Regional Administrator or Administrator may provide assistance, as follows:

(a) Direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical and advisory services) in support of State and local emergency assistance efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe;

(b) Coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments;

(c) Provide technical and advisory assistance to affected State and local governments for:

(1) The performance of essential community services;

(2) Issuance of warnings of risks or hazards;

(3) Public health and safety information, including dissemination of such information;

(4) Provision of health and safety measures; and

(5) Management, control, and reduction of immediate threats to public health and safety;

(d) Provide emergency assistance under the Stafford Act through Federal agencies;

(e) Remove debris in accordance with the terms and conditions of section 407 of the Stafford Act;

(f) Provide assistance in accordance with section 408 of the Stafford Act; and

(g) Assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance.

[55 FR 2296, Jan. 23, 1990, as amended at 67 FR 61460, Sept. 30, 2002]

**§ 206.63 Provision of assistance.**

Assistance authorized by an emergency declaration is limited to immediate and short-term assistance, essential to save lives, to protect property and public health and safety, or to lessen or avert the threat of a catastrophe.

**§ 206.64 Coordination of assistance.**

After an emergency declaration by the President, all Federal agencies, voluntary organizations, and State and local governments providing assistance shall operate under the coordination of the Federal Coordinating Officer.

**§ 206.65 Cost sharing.**

The Federal share for assistance provided under this title shall not be less than 75 percent of the eligible costs.

**§ 206.66 Limitation on expenditures.**

Total assistance provided in any given emergency declaration may not exceed \$5,000,000, except when it is determined by the Administrator that:

(a) Continued emergency assistance is immediately required;

(b) There is a continuing and immediate risk to lives, property, public health and safety; and

(c) Necessary assistance will not otherwise be provided on a timely basis.

**§ 206.67 Requirement when limitation is exceeded.**

Whenever the limitation described in § 206.66 is exceeded, the Administrator must report to the Congress on the nature and extent of continuing emergency assistance requirements and shall propose additional legislation if necessary.

**§§ 206.68–206.100 [Reserved]**

**Subpart D—Federal Assistance to Individuals and Households**

**§ 206.101 Temporary housing assistance for emergencies and major disasters declared on or before October 14, 2002.**

(a) *Purpose.* This section prescribes the policy to be followed by the Federal Government or any other organization when implementing section 408 of the Stafford Act for Presidentially-declared emergencies and major disasters declared on or before October 14, 2002 (Note that the reference to section 408 of the Stafford Act refers to prior legislation amended by the Disaster Mitigation Act 2000).

(b) *Program intent.* Assistance under this program is made available to applicants who require temporary housing as a result of a major disaster or emergency that is declared by the President. Eligibility for assistance is based on need created by disaster-related unlivability of a primary residence or other disaster-related displacement, combined with a lack of adequate insurance coverage. Eligible applicants may be paid for authorized accommodations and/or repairs. In the interest of assisting the greatest number of people in the shortest possible time, applicants who are able to do so will be encouraged to make their own arrangements for temporary housing. Although numerous instances of minor damage may cause some inconvenience to the applicant, the determining eligibility factor must be the livability of the primary residence. FEMA has also

determined that it is reasonable to expect applicants or their landlords to make some repairs of a minor nature. Temporary housing will normally consist of a check to cover housing-related costs wherever possible.

(c) *Definitions—(1) Adequate alternate housing* means housing that:

(i) Accommodates the needs of the occupants.

(ii) Is within reasonable commuting distance of work, school, or agricultural activities which provide over 25% of the household income.

(iii) Is within the financial ability of the occupant in the realization of a permanent housing plan.

(2) *Effective date of assistance* means the date the eligible applicant received temporary housing assistance but, where applicable, only after appropriate insurance benefits are exhausted.

(3) *Essential living area* means that area of the residence essential to normal living, i.e., kitchen, one bathroom, dining area, living room, entrances and exits, and essential sleeping areas. It does not include family rooms, guest rooms, garages, or other nonessential areas, unless hazards exist in these areas which impact the safety of the essential living area.

(4) *Fair market rent* means a reasonable amount to pay in the local area for the size and type of accommodations which meets the applicant's needs.

(5) *Financial ability* is the determination of the occupant's ability to pay housing costs. The determination is based upon the amount paid for housing before the disaster, provided the household income has not changed subsequent to or as a result of the disaster or 25 percent of gross post disaster income if the household income changed as a result of the disaster. When computing financial ability, extreme or unusual financial circumstances may be considered by the Regional Administrator.

(6) *Household* means all residents of the predisaster residence who request temporary housing assistance, plus any additions during the temporary housing period, such as infants, spouses, or part-time residents who were not present at the time of the disaster but



who are expected to return during the temporary housing period.

(7) *Housing costs* means shelter rent and mortgage payments including principal, interest, real estate taxes, real property insurance, and utility costs, where appropriate.

(8) *Occupant* means an eligible applicant residing in temporary housing provided under this section.

(9) *Owner-occupied* means that the residence is occupied by: the legal owner; a person who does not hold formal title to the residence and pays no rent but is responsible for the payment of taxes, or maintenance of the residence; or a person who has lifetime occupancy rights with formal title vested in another.

(10) *Primary residence* means the dwelling where the applicant normally lives during the major portion of the calendar year, a dwelling which is required because of proximity to employment, or to agricultural activities as referenced in paragraph (c)(1)(ii) of this section.

(d) *Duplication of benefits*—(1) *Requirement to avoid duplication.* Temporary housing assistance shall not be provided to an applicant if such assistance has been provided by any other source. If any State or local government or voluntary agency has provided temporary housing, the assistance under this section begins at the expiration of such assistance, and may continue for a period not to exceed 18 months from the date of declaration, provided the criteria for continued assistance in paragraph (k)(3) of this section are met. If it is determined that temporary housing assistance will be provided under this section, notification shall be given those agencies which have the potential for duplicating such assistance. In the instance of insured applicants, temporary housing assistance shall be provided only when:

- (i) Payment of the applicable benefits has been significantly delayed;
- (ii) Applicable benefits have been exhausted;
- (iii) Applicable benefits are insufficient to cover the temporary housing need; or
- (iv) Housing is not available on the private market.

(2) *Recovery of funds.* Prior to provision of assistance, the applicant must agree to repay to FEMA from insurance proceeds or recoveries from any other source an amount equivalent to the value of the temporary housing assistance provided. In no event shall the amount repaid to FEMA exceed the amount recovered by the applicant. All claims shall be collected in accordance with agency procedures for debt collection.

(e) *Applications*—(1) *Application period.* The standard FEMA application period is the 60 days following the date the President declares an incident a major disaster or an emergency. The Regional Administrator may, however, extend the application period, when we anticipate that we need more time to collect applications from the affected population or to establish the same application deadline for contiguous Counties or States. After the application period has ended, FEMA will accept and process applications for an additional 60 days only from persons who can provide an acceptable explanation (and documentation to substantiate their explanation) for why they were not able to contact FEMA before the application period ended.

(2) *Household composition.* Members of a household shall be included on a single application and be provided one temporary housing residence unless it is determined by the Regional Administrator that the size of the household requires that more than one residence be provided.

(f) *General eligibility guidelines.* Temporary housing assistance may be made available to those applicants who, as a result of a major disaster or emergency declared by the President, are qualified for such assistance.

(1) *Conditions of eligibility.* Temporary housing assistance may be provided only when *both* of the following conditions are met:

- (i) The applicant's primary residence has been made unlivable or the applicant has been displaced as the result of a major disaster or emergency because:
  - (A) The residence has been destroyed, essential utility service has been interrupted, or the essential living area has been damaged as a result of the disaster to such an extent as to constitute

a serious health or safety hazard which did not exist prior to the disaster. The Regional Administrator shall prepare additional guidelines when necessary to respond to a particular disaster;

(B) The residence has been made inaccessible as a result of the incident to the extent that the applicant cannot reasonably be expected to gain entry due to the disruption or destruction of transportation routes, other impediments to access, or restrictions placed on movement by a responsible official due to continued health and safety problems;

(C) The owner of the applicant's residence requires the residence to meet their personal needs because the owner's predisaster residence was made unlivable as a result of the disaster;

(D) Financial hardship resulting from the disaster has led to eviction or dispossession; or

(E) Other circumstances resulting from the disaster, as determined by the Regional Administrator, prevent the applicant from occupying their predisaster primary residence.

(ii) Insured applicants have made every reasonable effort to secure insurance benefits, and the insured has agreed to repay FEMA from whatever insurance proceeds are later received, pursuant to paragraph (d)(2) of this section.

(2) *Conditions of ineligibility.* Except as provided for in section 408(b), Temporary Housing Assistance shall not be provided:

(i) To an applicant who is displaced from other than their primary residence; or

(ii) When the residence in question is livable, i.e., only minor damage exists and it can reasonably be expected to be repaired by the applicant/owner or the landlord; or

(iii) When the applicant owns a secondary or vacation residence, or unoccupied rental property which meets their temporary housing needs; or

(iv) To an applicant who has adequate rent-free housing accommodations; or

(v) To an applicant who has adequate insurance coverage and there is no indication that benefits will be delayed; or

(vi) When a late application is not approved for processing by the Regional Administrator; or

(vii) To an applicant who evacuated the residence in response to official warnings solely as a precautionary measure, and who is able to return to the residence immediately after the incident (i.e., the applicant is not otherwise eligible for temporary housing assistance).

(g) *Forms of Temporary Housing Assistance.* All proceeds received or receivable by the applicant under §206.101 shall be exempt from garnishment, seizure, encumbrance, levy, execution, pledge, attachment, release, or waiver. No rights under this provision are assignable or transferable.

(1) Temporary Housing Assistance is normally provided in the form of a check to cover the cost of rent or essential home repairs. The exceptions to this are when existing rental resources are not available and repairs to the home will not make it livable in a reasonable period of time, or when the eligible applicant is unable to physically leave the home due to the need to tend crops or livestock.

(i) *Government-owned, private, and commercial properties.* When an eligible applicant is unable to obtain an available temporary housing unit, FEMA may enter into a leasing agreement for the eligible applicant. Rent payments shall be in accordance with the fair market rent (FMR) rates established for each operation for the type and size residence.

(ii) *Transient accommodations.* Immediately following a Presidentially declared major disaster or emergency, disaster victims are expected to stay with family or friends without FEMA assistance, or to make use of mass shelters to the fullest extent possible for short-term housing. Transient accommodations may be provided when individual circumstances warrant such assistance for only a short period of time or pending provision of other temporary housing resources. Transient accommodations may be provided for up to 30 days unless this period is extended by the Regional Administrator. Authorized expenditures for transient accommodations shall be restricted to

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the rental cost including utilities except for those which are separately metered. Payment for food, telephone, or other similar services is not authorized under this section.

(2) Mobile homes, travel trailers, and other manufactured housing units. Government-owned or privately owned mobile homes, travel trailers, and other manufactured housing units may be placed on commercial, private, or group sites. The placement must comply with applicable State and local codes and ordinances as well as FEMA'S regulations at 44 CFR part 9, Floodplain Management and Protection of Wetlands, and the regulations at 44 CFR part 10, Environmental Considerations.

(i) A commercial site is a site customarily leased for a fee because it is fully equipped to accommodate a housing unit. In accordance with section 408(a)(2)(B), the Assistant Administrator for the Disaster Assistance Directorate has determined that leasing commercial sites at Federal expense is in the public interest. When the Regional Administrator determines that upgrading of commercial sites or installation of utilities on such sites will provide more cost-effective, timely, and suitable temporary housing than other types of resources, they may authorize such action at Federal expense.

(ii) A private site is a site provided or obtained by the applicant at no cost to the Federal Government. Also in accordance with section 408(a)(2)(B), the Assistant Administrator for the Disaster Assistance Directorate has determined that the cost of installation or repairs of essential utilities on private sites is authorized at Federal expense when such actions will provide more cost-effective, timely, and suitable temporary housing than other types of resources.

(iii) A group site is a site which accommodates two or more units. In accordance with section 408(a)(2)(A), locations for group sites shall be provided by State or local government complete with utilities. However, the Assistant Administrator for the Disaster Assistance Directorate may authorize development of group sites, including installation of essential utilities, by the Federal Government, based on a rec-

ommendation from the Regional Administrator; provided, however, that the Federal expense is limited to 75 percent of the cost of construction and development (including installation of utilities). In accordance with section 408(a)(4) of the Stafford Act, the State or local government shall pay any cost which is not paid for from the Federal share, including long-term site maintenance such as snow removal, street repairs and other services of a governmental nature.

(3) *Temporary mortgage and rental payments.* Assistance in the form of mortgage or rental payments may be paid to or be provided on behalf of eligible applicants who, as a result of a major disaster or emergency, have received written notice of dispossession or eviction from their primary residence by foreclosure of any mortgage or lien, cancellation of any contract of sale, or termination of any lease entered into prior to the disaster. Written notice, for the purpose of this paragraph, means a communication in writing by a landlord, mortgage holder, or other party authorized under State law to file such notice. The purpose of such notice is to notify a person of impending termination of a lease, foreclosure of a mortgage or lien, or cancellation of any contract of sale, which would result in the person's dispossession or eviction. Applications for this type of assistance may be filed for up to 6 months following the date of declaration. This assistance may be provided for a period not to exceed 18 months or for the duration of the period of financial hardship, as determined by the Regional Administrator, whichever is less. The location of the residence of an applicant for assistance under this section shall not be a consideration of eligibility.

(4) *Home repairs.* Repairs may be authorized to quickly repair or restore to a livable condition that portion of or areas affecting the essential living area of, or private access to, an owner-occupied primary residence which was damaged as a result of the disaster. Installation of utilities or conveniences not available in the residence prior to the disaster shall not be provided. However, repairs which are authorized shall conform to applicable local and/or

State building codes; upgrading of existing damaged utilities may be authorized when required by these codes.

(i) *Options for repairs.* Eligible applicants approved for repairs may be assisted through one or a combination of the following methods:

(A) *Cash payment.* Payment shall be limited to the reasonable costs for the repairs and replacements in the locality, as determined by the Regional Administrator. This will be the method normally used, unless unusual circumstances warrant the methods listed under paragraph (g)(4), (i) (B) or (C) of this section.

(B) Provision of materials and replacement items.

(C) Government awarded repair contracts when authorized by the Assistant Administrator for the Disaster Assistance Directorate.

(ii) *Feasibility.* Repairs may be provided to those eligible applicants:

(A) Who are owner-occupants of the residence to be made livable;

(B) Whose residence can be made livable by repairs to the essential living area within 30 days following the feasibility determination. The Regional Administrator may extend this period for extenuating circumstances by determining that this type of assistance is still more cost effective, timely and otherwise suitable than other forms for temporary housing; and

(C) Whose residence can be made livable by repairs to the essential living area, the cost of which do not exceed the dollar limitations established by the Assistant Administrator for the Disaster Assistance Directorate. The Regional Administrator may, on a case-by-case basis, waive the dollar limitations when repairs are more cost effective and appropriate than other forms of housing assistance or when extenuating circumstances warrant.

(iii) *Scope of work.* The type of repair or replacement authorized may vary depending upon the nature of the disaster. Items will be repaired where feasible or replaced only when necessary to insure the safety or health of the occupant. Replacement items shall be of average quality, size, and capacity taking into consideration the needs of the occupant. Repairs shall be disaster related and shall be limited to:

(A) Repairs to the plumbing system, including repairs to or replacement of fixtures, providing service to the kitchen and one bathroom;

(B) Repairs to the electrical system providing service to essential living areas, including repairs to or replacement of essential fixtures;

(C) Repairs to the heating unit, including repairs to duct work, vents, and integral fuel and electrical systems. If repair or replacement through other forms of assistance cannot be accomplished before the start of the season requiring heat, home repairs may be authorized by the Regional Administrator when an inspection shows that the unit has been damaged beyond repair, or when the availability of necessary parts or components makes repair impossible;

(D) Repairs to or replacement of essential components of the fuel system to provide for cooking;

(E) Pumping and cleaning of the septic system, repairs to or replacement of the tank, drainfield, or repairs to sewer lines;

(F) Flushing and/or purifying the water well, and repairs to or replacement of the pump, controls, tank, and pipes;

(G) Repairs to or replacement of exterior doors, repair of windows and/or screens needed for health purposes;

(H) Repairs to the roof, when the damages affect the essential living area;

(I) Repairs to interior floors, when severe buckling or deterioration creates a serious safety hazard;

(J) Blocking, leveling, and anchoring of a mobile home; and reconnecting and/or resetting mobile home sewer, water, electrical and fuel lines, and tanks;

(K) Emergency repairs to private access routes, limited to those repairs that meet the minimum safety standards and using the most economical materials available. Such repairs are provided on a one-time basis when no alternative access facilities are immediately available and when the repairs are more cost effective, timely or otherwise suitable than other forms of temporary housing.

(L) Repairs to the foundation piers, walls or footings when the damages affect the structural integrity of the essential living area;

(M) Repairs to the stove and refrigerator, when feasible; and

(N) Elimination of other health and safety hazards or performance of essential repairs which are authorized by the Regional Administrator as not available through emergency services provided by voluntary or community agencies, and cannot reasonably be expected to be completed on a timely basis by the occupant without FEMA assistance.

(iv) Requirements of the Flood Disaster Protection Act. FEMA has determined that flood insurance purchase requirements need not be imposed as a condition of receiving assistance under paragraph (g)(4) of this section. Repair recipients will normally receive assistance for further repairs from other programs which will impose the purchase and maintenance requirements. Home repairs may not be provided in Zones A or V of a sanctioned or suspended community except for items that are not covered by flood insurance.

(h) *Appropriate form of temporary housing.* The form of temporary housing provided should not exceed occupants' minimum requirements, taking into consideration items such as timely availability, cost effectiveness, permanent housing plans, special needs (handicaps, the location of crops and livestock, etc.) of the occupants, and the requirements of FEMA'S floodplain management regulations at 44 CFR part 9. An eligible applicant shall receive one form of temporary housing, except for transient accommodations or when provision of an additional form is in the best interest of the Government. An eligible applicant is expected to accept the first offer of temporary housing; unwarranted refusal shall result in forfeiture of temporary housing assistance. Existing rental resources and home repairs shall be utilized to the fullest extent practicable prior to provision of government-owned mobile homes.

(i) *Utility costs and security deposits.* All utility costs shall be the responsibility of the occupant except where utility services are not metered separately

and are therefore a part of the rental charge. Utility use charges and deposits shall always be the occupants responsibility. When authorized by the Regional Administrator, the Federal Government may pay security deposits; however, the owner or occupant shall reimburse the full amount of the security deposit to the Federal Government before or at the time that the temporary housing assistance is terminated.

(j) *Furniture.* An allowance for essential furniture may be provided to occupants when such assistance is required to occupy the primary or temporary housing residence. However, loss of furniture does not in and of itself constitute eligibility for temporary housing assistance. Luxury items shall not be provided.

(k) *Duration of assistance—(1) Commencement.* Temporary housing assistance may be provided as of the date of the incident of the major disaster or emergency as specified in the FEDERAL REGISTER notice and may continue for 18 months from the date of declaration. An effective date of assistance shall be established for each applicant.

(2) *Continued assistance.* Predisaster renters normally shall be provided no more than 1 month of assistance unless the Regional Administrator determines that continued assistance is warranted in accordance with paragraph (k)(3) of this section. All other occupants of temporary housing shall be certified eligible for continued assistance in increments not to exceed 3 months. Recertification of eligibility for continued assistance shall be in accordance with paragraph (k)(3) of this section, taking into consideration the occupant's permanent housing plan. A realistic permanent housing plan shall be established for each occupant requesting additional assistance no later than at the time of the first recertification.

(3) *Criteria for continued assistance.* A temporary housing occupant shall make every effort to obtain and occupy permanent housing at the earliest possible time. A temporary housing occupant will be required to provide receipts documenting disaster related housing costs and shall be eligible for continued assistance when:

(i) Adequate alternate housing is not available;

(ii) The permanent housing plan has not been realized through no fault of the occupant; or

(iii) In the case of FEMA-owner leases, the occupant is in compliance with the terms of the lease/rental agreement.

(l) *Period of assistance.* Provided the occupant is eligible for continued assistance, assistance shall be provided for a period not to exceed 18 months from the declaration date.

(m) *Appeals.* Occupants shall have the right to appeal a program determination in accordance with the following:

(1) An applicant declared ineligible for temporary housing assistance, an applicant whose application has been cancelled for cause, an applicant whose application has been refused because of late filing, and an occupant who received a direct housing payment but is not eligible for continued assistance in accordance with paragraph (k) of this section, shall have the right to dispute such a determination within 60 calendar days following notification of such action. The Regional Administrator shall reconsider the original decision within 15 calendar days after its receipt. The appellant shall be given a written notice of the disposition of the dispute. The decision of the Regional Administrator is final.

(2) An occupant who has been notified that his/her request to purchase a mobile home or manufactured housing unit or that a request for an adjustment to the sales price has been denied shall have the right to dispute such a determination within 60 business days after receipt of such notice. The Regional Administrator shall reconsider the original decision within 15 calendar days after receipt of the appeal. The appellant shall receive written notice of the disposition of the dispute. The decision of the Regional Administrator is final.

(3) Termination of assistance provided through a FEMA lease agreement shall be initiated with a 15-day written notice after which the occupant shall be liable for such additional charges as are deemed appropriate by the Regional Administrator including, but

not limited to, the fair market rental for the temporary housing residence.

(i) *Grounds for termination.* Temporary housing assistance may be terminated for reasons including, but not limited to the following:

(A) Adequate alternate housing is available to the occupant(s);

(B) The temporary housing assistance was obtained either through misrepresentation or fraud; or

(C) Failure to comply with any term of the lease/rental agreement.

(ii) *Termination procedures.* These procedures shall be utilized in all instances except when a State is administering the Temporary Housing Assistance program. States shall be subject to their own procedures provided they afford the occupant(s) with due process safeguards described in paragraph (m)(2)(v)(B) of this section.

(A) *Notification to occupant.* Written notice shall be given by FEMA to the occupant(s) at least 15 days prior to the proposed termination of assistance. This notice shall specify: the reasons for termination of assistance/occupancy; the date of termination, which shall be not less than 15 days after receipt of the notice; the administrative procedure available to the occupant if they wish to dispute the action; and the occupant's liability after the termination date for additional charges.

(B) *Filing of appeal.* If the occupant desires to dispute the termination, upon receipt of the written notice specified in paragraph (m)(2)(i) of this section, he/she shall present an appeal in writing to the appropriate office in person or by mail within 60 days from the date of the termination notice. The appeal must be signed by the occupant and state the reasons why the assistance or occupancy should not be terminated. If a hearing is desired, the appeal should so state.

(C) *Response to appeal.* If a hearing pursuant to paragraph (m)(2)(ii) of this section has not been requested, the occupant has waived the right to a hearing. The appropriate program official shall deliver or mail a written response to the occupant within 5 business days after the receipt of the appeal.

(D) *Request for hearing.* If the occupant requests a hearing pursuant to paragraph (m)(2)(ii) of this section,

FEMA shall schedule a hearing date within 10 business days from the receipt of the appeal, at a time and place reasonably convenient to the occupant, who shall be notified promptly thereof in writing. The notice of hearing shall specify the procedure governing the hearing.

(E) *Hearing*—(1) *Hearing officer*. The hearing shall be conducted by a Hearing Officer, who shall be designated by the Regional Administrator, and who shall not have been involved with the decision to terminate the occupant’s temporary housing assistance, nor be a subordinate of any individual who was so involved.

(2) *Due process*. The occupant shall be afforded a fair hearing and provided the basic safeguards of due process, including cross-examination of the responsible official(s), access to the documents on which FEMA is relying, the right to counsel, the right to present evidence, and the right to a written decision.

(3) *Failure to appear*. If an occupant fails to appear at a hearing, the Hearing Officer may make a determination that the occupant has waived the right to a hearing, or may, for good cause shown, postpone the hearing for no more than 5 business days.

(4) *Proof*. At the hearing, the occupant must first attempt to establish that continued assistance is appropriate; thereafter, FEMA must sustain the burden of proof in justifying that termination of assistance is appropriate. The occupant shall have the right to present evidence and arguments in support of their complaint, to controvert evidence relied on by FEMA, and to cross examine all witnesses on whose testimony or information FEMA relies. The hearing shall be conducted by the Hearing Officer, and any evidence pertinent to the facts and issues raised may be received without regard to its admissibility under rules of evidence employed in formal judicial proceedings.

(F) *Decision*. The decision of the Hearing Officer shall be based solely upon applicable Federal and State law, and FEMA regulations and requirements promulgated thereunder. The Hearing Officer shall prepare a written decision setting forth a statement of

findings and conclusions together with the reasons therefor, concerning all material issues raised by the complainant within 5 business days after the hearing. The decision of the Hearing Officer shall be binding on FEMA, which shall take all actions necessary to carry out the decision or refrain from any actions prohibited by the decision.

(1) The decision shall include a notice to the occupant that he/she must vacate the premises within 3 days of receipt of the written notice or on the termination date stated in the original notice of termination, as required in paragraph (m)(2)(i) of this section, whichever is later. If the occupant does not quit the premises, appropriate action shall be taken and, if suit is brought, the occupant may be required to pay court costs and attorney fees.

(2) If the occupant is required to give a specific number of days’ notice which exceeds the number of days in the termination notice, the Regional Administrator may approve the payment of rent for this period of time if requested by the occupant.

(n) *Disposition of temporary housing units*—(1) *Acquisition*. The Assistant Administrator for the Disaster Assistance Directorate may purchase mobile homes or other manufactured housing units for those who require temporary housing. After such temporary housing is vacated, it shall be returned to one of the FEMA-operated Strategic Storage Centers for refurbishment and storage until needed in a subsequent major disaster or emergency. When returning the unit to a Strategic Storage Center is not feasible or cost effective, the Assistant Administrator for the Disaster Assistance Directorate may prescribe a different method of disposition in accordance with applicable Federal statutes and regulations.

(2) *Sales*—(i) *Eligibility*. When adequate alternate housing is not available, the Regional Administrator shall make available for sale directly to a temporary housing occupant(s) any mobile home or manufactured housing unit acquired by purchase, in accordance with the following:

(A) The unit is to be used as a primary residence;

(B) The purchaser has a site that complies with local codes and ordinances as well as FEMA's floodplain management regulations at 44 CFR part 9 (in particular §9.13(e)); and

(C) The purchaser has sufficient funds to purchase and, if necessary, relocate the unit. The Assistant Administrator for the Disaster Assistance Directorate may approve the sale of a mobile home or manufactured housing unit to a temporary housing occupant when adequate alternate housing is available but only when such sales are clearly in the best interest of the Government.

(ii) *Sales price.* Units shall be sold at prices that are fair and equitable to the purchaser and to the Government, as determined by the Assistant Administrator for the Disaster Assistance Directorate. The purchaser shall pay the total sales price at the time of sale.

(iii) Adjustment to the sales price.

(A) Adjustments to the sales price may be provided only when both of the following conditions are met:

(1) There is a need to purchase the unit for use as the purchaser's primary residence because other adequate alternate housing is unavailable. Adequate alternate housing must meet the criteria in paragraph (c)(1) of this section, and may consist of:

(i) Existing housing;

(ii) Additional resources such as disaster-damaged rental accommodations which can reasonably be expected to be repaired and become available in the near future;

(iii) New housing construction or housing to be made available through Government subsidy which is included in the immediate recovery plans for the area; and

(iv) Residences which can be repaired by the predisaster owner/occupant through funds available from insurance, other disaster assistance programs, or through their own resources.

(2) In addition to his/her resources, the purchaser cannot obtain sufficient funds through insurance proceeds, disaster loans, grants, and commercial lending institutions to cover the sales price.

(B) To determine the adjusted sales price, the current available financial resources of the purchaser shall be cal-

culated. If the financial resources are equal to or greater than the basic sales price, then no adjustment shall be approved. If the purchaser's financial resources are less than the basic sales price, the sales price shall be adjusted to take into consideration the financial resources available but shall include some consideration. Deviations from this rule may be reviewed on a case-by-case basis by the Assistant Administrator for the Disaster Assistance Directorate.

(C) The Regional Administrator must approve all adjustments to the sales price of a mobile home.

(iv) Other conditions of sale.

(A) A unit shall be sold "as is, where is" except for repairs necessary to protect health or safety, which are to be completed prior to sale. There shall be no implied warranties. In addition, the purchaser must be informed that he/she may have to bring the unit up to codes and standards which are applicable at the proposed site.

(B) In accordance with the Flood Disaster Protection Act of 1973, Public Law 93-234, as amended, the sale of a unit for the purpose of meeting the permanent housing need of an individual or family may not be approved where the unit would be placed in a designated special flood hazard area which has been identified by the Administrator for at least 1 year as floodprone unless the community in which the unit is to be located after the sale is, at the time of approval, participating in the National Flood Insurance Program. The purchaser must agree to buy and maintain an adequate flood insurance policy for as long as the unit is occupied by the purchaser. An adequate policy for purposes of this paragraph shall mean one which provides coverage for the basic sales price of the unit. The purchaser must provide proof of purchase of the initial flood insurance policy.

(3) *Transfer.* The Assistant Administrator for the Disaster Assistance Directorate may lend temporary housing units purchased under section 408(a) of the Act directly to States, other governmental entities, or voluntary organizations. Such transfers may be made only in connection with a Presidential declaration of a major disaster or



emergency. Donations may be made only when it is in the best interest of the Government, such as when future re-use by the Federal Government would not be economically feasible. As a condition of such transfers, the Assistant Administrator for the Disaster Assistance Directorate shall require that the recipient:

(i) Utilize the units for the purpose of providing temporary housing for victims of major disasters or emergencies in accordance with the written agreement; and

(ii) Comply with the current applicable FEMA policies and regulations, including this section; 44 CFR part 9 (especially §§9.13 and 9.14), Floodplain Management and Protection of Wetlands; 44 CFR part 10, Environmental Considerations. The Assistant Administrator for the Disaster Assistance Directorate may order returned any temporary housing unit made available under this section which is not used in accordance with the terms of transfer.

(o) *Reports.* The Assistant Administrator for the Disaster Assistance Directorate, Regional Administrator, or Federal Coordinating Officer may require from field operations such reports, plans, and evaluations as they deem necessary to carry out their responsibilities under the Act and these regulations.

(p) *Federal responsibility.* The Federal financial and operational responsibility for the Temporary Housing Assistance program shall not exceed 18 months from the date of the declaration of the major disaster or emergency. This period may be extended in writing by the Assistant Administrator for the Disaster Assistance Directorate, based on a determination that an extension is necessary and in the public interest. The Regional Administrator may authorize continued use on a non-reimbursable basis of Government property, office space, and equipment by a State, other Government entity, or voluntary organization after the 18 month period.

(q) *Applicant notification*—(1) *General.* All applicants for temporary housing assistance will be notified regarding the type and amount of assistance for which they are qualified. Whenever practicable, such notification will be

provided within 7 days of their application and will be in writing.

(2) Eligible applicants for temporary housing assistance will be provided information regarding:

(i) All forms of housing assistance available;

(ii) The criteria which must be met to qualify for each type of assistance;

(iii) Any limitations which apply to each type of assistance; and

(iv) The address and telephone number of offices responsible for responding to appeals and requests for changes in the type or amount of assistance provided.

(r) *Location.* In providing temporary housing assistance, consideration will be given to the location of:

(1) The eligible applicants' home and place of business;

(2) Schools which the eligible applicant or members of the household attend; and

(3) Agricultural activities which provide 25 percent or more of the eligible applicants' annual income.

(s) *NonFederal administration of temporary housing assistance.* A State may request authority to administer all or part of the temporary housing assistance program in the Governor's request for a declaration or in a subsequent written request to the Regional Administrator from the Governor or his/her authorized representative. The Associate Director shall approve such a request based on the Regional Administrator's recommendation and based on a finding that State administration is both in the interest of the Federal Government and those needing temporary housing assistance. The State must have an approved plan prior to the incident and an approved operational annex within 3 days of the declaration in order to administer the program. When administering the program the State must comply with FEMA program regulations and policies.

(1) *State temporary housing assistance plan.* (i) States which have an interest in administering the Temporary Housing Assistance program shall be required to develop a plan that includes, at a minimum, the items listed below:

(A) Assignment of temporary housing assistance responsibilities to State and/or local officials and agencies;

(B) A description of the program, its functions, goals and objectives of the program, and proposed organization and staffing plan;

(C) Procedures for:

(1) Accepting applications at Disaster Application Centers and subsequently at a State established disaster housing office;

(2) Determining eligibility utilizing FEMA's habitability contract and notifying applicants of the determination;

(3) Preventing duplication of benefits between temporary housing assistance and assistance from other means, as well as a recoupment procedure when duplication occurs;

(4) Providing the various types of assistance (home repairs, existing rental resources, transient accommodations, and mobile homes);

(5) Providing furniture assistance;

(6) Recertifying occupants for continued assistance;

(7) Terminating assistance;

(8) Contracting for services and/or supplies;

(9) Quality control;

(10) Maintaining a management information system;

(11) Financial management;

(12) Public information;

(13) Processing appeals; and

(14) Arranging for a program review.

(ii) The Governor or his/her designee may request the Regional Administrator to provide technical assistance in the preparation of an administrative plan.

(iii) The Governor or designee shall submit the plan to the Regional Administrator for approval. Plans shall be revised, as necessary, and shall be reviewed at least annually by the Regional Administrator.

(2) *Operational annex.* Prior to the State administering the program, the state must submit an operational annex which tailors the approved State plan to the particular disaster or emergency. The annex must be reviewed and approved by the Regional Administrator within 3 days of the declaration or the State shall not be permitted to administer the program. The operational annex shall include but not be limited to:

(i) Organization and staffing specific to the major disaster or emergency;

(ii) Pertinent goals and management objectives;

(iii) A proposed budget; and

(iv) A narrative which describes methods for orderly tracking and processing of applications; assuring timely delivery of assistance; identification of potential problem areas; and any deviations from the approved plan. The Regional Administrator may require additional annexes as necessary for subsequent phases of the operation.

(3) *Evaluation of capability.* State and local government assumption of the temporary housing assistance program for a particular disaster shall be approved by the Assistant Administrator for the Disaster Assistance Directorate based on an evaluation of the capabilities and commitment of the entity by the Regional Administrator. At a minimum, the evaluation shall include a review of the following:

(i) The State temporary housing assistance plan which has been approved by the Regional Administrator prior to the incident, and the specific operational annex which has been approved in accordance with paragraph (s)(2) of this section.

(ii) Past performance in administration of temporary housing assistance or other similar operations;

(iii) Management and staff capabilities; and

(iv) Demonstrated understanding of the tasks to be performed.

(4) *Grant application.* Approval of funding shall be obtained through submission of a project application by the State or local government through the Governor's Authorized Representative. The State shall maintain adequate documentation according to the requirements of 44 CFR part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, to enable analysis of the program. Final reimbursement to the State, or final debt collection, shall be based on an examination of the voucher filed by the State.

(5) *Authorized costs.* All expenditures associated with administering the program are authorized if in compliance with 44 CFR 13.22, Allowable Costs, and the associated OMB Circular A-87, Cost

Principles for State and Local Governments. Examples of program costs allowable under the Temporary Housing Assistance program include home repairs, costs associated with rental payments, reimbursements for temporary housing including transient accommodations and commercial site rental, mobile home installation and maintenance, mobile home private site development, cost of supplemental assistance, mortgage and rental payments, other necessary costs, when approved by the Assistant Administrator for the Disaster Assistance Directorate. All contracts require the review and approval of the Regional Administrator prior to award, in order to be considered as an authorized expenditure.

(6) *Federal monitoring and oversight.* The Regional Administrator shall monitor State-administered activities since he/she remains responsible for the overall delivery of temporary housing assistance. In addition, policy guidance and interpretations to meet specific needs of a disaster shall be provided through the oversight function.

(7) *Technical assistance.* The Regional Administrator shall provide technical assistance as necessary to support State-administered operations through training, procedural issuances, and by providing experienced personnel to assist the State and local staff.

(8) *Operational resources.* The Regional Administrator shall make available for use in State or locally administered temporary housing programs Federal stand-by contracts, memoranda of understanding with Government and voluntary agencies, and Federal property, such as government-owned mobile homes and travel trailers.

(9) *Program reviews and audits.* The State shall conduct program review of each operation. All operations are subject to Federal audit.

[55 FR 2296, Jan. 23, 1990, as amended at 61 FR 7224, Feb. 27, 1996; 64 FR 46853, Aug. 27, 1999; 67 FR 61460, Sept. 30, 2002; 74 FR 15347, Apr. 3, 2009]

§§ 206.102–206.109 [Reserved]

§ 206.110 Federal assistance to individuals and households.

(a) *Purpose.* This section implements the policy and procedures set forth in section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5174, as amended by the Disaster Mitigation Act of 2000. This program provides financial assistance and, if necessary, direct assistance to eligible individuals and households who, as a direct result of a major disaster or emergency, have uninsured or under-insured, necessary expenses and serious needs and are unable to meet such expenses or needs through other means.

(b) *Maximum amount of assistance.* No individual or household will receive financial assistance greater than \$25,000 under this subpart with respect to a single major disaster or emergency. FEMA will adjust the \$25,000 limit annually to reflect changes in the Consumer Price Index (CPI) for All Urban Consumers that the Department of Labor publishes.

(c) *Multiple types of assistance.* One or more types of housing assistance may be made available under this section to meet the needs of individuals and households in the particular disaster situation. FEMA shall determine the appropriate types of housing assistance to be provided under this section based on considerations of cost effectiveness, convenience to the individuals and households and the suitability and availability of the types of assistance. An applicant is expected to accept the first offer of housing assistance; unwarranted refusal of assistance may result in the forfeiture of future housing assistance. Temporary housing and repair assistance shall be utilized to the fullest extent practicable before other types of housing assistance.

(d) *Date of eligibility.* Eligibility for Federal assistance under this subpart will begin on the date of the incident that results in a presidential declaration that a major disaster or emergency exists, except that reasonable lodging expenses that are incurred in anticipation of and immediately preceding such event may be eligible for Federal assistance under this chapter.

(e) *Period of assistance.* FEMA may provide assistance under this subpart for a period not to exceed 18 months from the date of declaration. The Assistant Administrator for the Disaster Assistance Directorate may extend this period if he/she determines that due to extraordinary circumstances an extension would be in the public interest.

(f) *Assistance not counted as income.* Assistance under this subpart is not to be counted as income or a resource in the determination of eligibility for welfare, income assistance or income-tested benefit programs that the Federal Government funds.

(g) *Exemption from garnishment.* All assistance provided under this subpart is exempt from garnishment, seizure, encumbrance, levy, execution, pledge, attachment, release or waiver. Recipients of rights under this provision may not reassign or transfer the rights. These exemptions do not apply to FEMA recovering assistance fraudulently obtained or misapplied.

(h) *Duplication of benefits.* In accordance with the requirements of section 312 of the Stafford Act, 42 U.S.C. 5155, FEMA will not provide assistance under this subpart when any other source has already provided such assistance or when such assistance is available from any other source. In the instance of insured applicants, we will provide assistance under this subpart only when:

- (1) Payment of the applicable benefits are significantly delayed;
- (2) Applicable benefits are exhausted;
- (3) Applicable benefits are insufficient to cover the housing or other needs; or
- (4) Housing is not available on the private market.

(i) *Cost sharing.* (1) Except as provided in paragraph (i)(2) of this section, the Federal share of eligible costs paid under this subpart shall be 100 percent.

(2) Federal and State cost shares for "Other Needs" assistance under subsections 408 (e) and (f) of the Stafford Act will be as follows;

- (i) The Federal share shall be 75 percent; and
- (ii) The non-federal share shall be paid from funds made available by the State. If the State does not provide the non-Federal share to FEMA before

FEMA begins to provide assistance to individuals and households under subsection 408(e) of the Stafford Act, FEMA will still process applications. The State will then be obliged to reimburse FEMA for the non-Federal cost share of such assistance on a monthly basis. If the State does not provide such reimbursement on a monthly basis, then FEMA will issue a Bill for Collection to the State on a monthly basis for the duration of the program. FEMA will charge interest, penalties, and administrative fees on delinquent Bills for Collection in accordance with the Debt Collection Improvement Act. Cost shared funds, interest, penalties and fees owed to FEMA through delinquent Bills for Collections may be offset from other FEMA disaster assistance programs (*i.e.* Public Assistance) from which the State is receiving, or future grant awards from FEMA or other Federal Agencies. Debt Collection procedures will be followed as outlined in 44 CFR part 11.

(j) *Application of the Privacy Act.* (1) All provisions of the Privacy Act of 1974, 5 U.S.C. 552a, apply to this subpart. FEMA may not disclose an applicant's record except:

(i) In response to a release signed by the applicant that specifies the purpose for the release, to whom the release is to be made, and that the applicant authorizes the release;

(ii) In accordance with one of the published routine uses in our system of records; or

(iii) As provided in paragraph (j)(2) of this section.

(2) Under section 408(f)(2) of the Stafford Act, 42 U.S.C. 5174(f)(2), FEMA must share applicant information with States in order for the States to make available any additional State and local disaster assistance to individuals and households.

(i) States receiving applicant information under this paragraph must protect such information in the same manner that the Privacy Act requires FEMA to protect it.

(ii) States receiving such applicant information shall not further disclose the information to other entities, and shall not use it for purposes other than

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providing additional State or local disaster assistance to individuals and households.

(k) *Flood Disaster Protection Act requirement.* (1) The Flood Disaster Protection Act of 1973, Public Law 93–234, as amended (42 U.S.C. 4106), imposes certain restrictions on federal financial assistance for acquisition and construction purposes. For the purpose of this paragraph, *financial assistance for acquisition or construction purposes* means assistance to an individual or household to buy, receive, build, repair or improve insurable portions of a home and/or to purchase or repair insurable contents. For a discussion of what elements of a home and contents are insurable, See 44 CFR part 61, Insurance Coverage and Rates.

(2) Individuals or households that are located in a special flood hazard area may not receive Federal Assistance for National Flood Insurance Program (NFIP)—insurable real and/or personal property, damaged by a flood, unless the community in which the property is located is participating in the NFIP (See 44 CFR part 59.1), or the exception in 42 U.S.C. 4105(d) applies. However, if the community in which the damaged property is located qualifies for and enters the NFIP during the six-month period following the declaration, the Governor’s Authorized Representative may request a time extension for FEMA (See § 206.112) to accept registrations and to process assistance applications in that community.

(3) *Flood insurance purchase requirement:* (i) As a condition of the assistance and in order to receive any Federal assistance for future flood damage to any insurable property, individuals and households named by FEMA as eligible recipients under section 408 of the Stafford Act who receive assistance, due to flood damages, for acquisition or construction purposes under this subpart must buy and maintain flood insurance, as required in 42 U.S.C. 4012a, for at least the assistance amount. This applies only to real and personal property that is in or will be in a designated Special Flood Hazard Area and that can be insured under the National Flood Insurance Program.

(A) If the applicant is a homeowner, flood insurance coverage must be

maintained at the address of the flood-damaged property for as long as the address exists. The flood insurance requirement is reassigned to any subsequent owner of the flood-damaged address.

(B) If the applicant is a renter, flood insurance coverage must be maintained on the contents for as long as the renter resides at the flood-damaged rental unit. The restriction is lifted once the renter moves from the rental unit.

(C) When financial assistance is used to purchase a dwelling, flood insurance coverage must be maintained on the dwelling for as long as the dwelling exists and is located in a designated Special Flood Hazard Area. The flood insurance requirement is reassigned to any subsequent owner of the dwelling.

(ii) FEMA may not provide financial assistance for acquisition or construction purposes to individuals or households who fail to buy and maintain flood insurance required under paragraph (k)(3)(i) of this section or required by the Small Business Administration.

(1) *Environmental requirements.* Assistance provided under this subpart must comply with the National Environmental Policy Act (NEPA) and other environmental laws, regulations, Executive Orders, and applicable agency policy.

(m) *Historic preservation.* Assistance provided under this subpart generally does not have the potential to affect historic properties and thus is exempted from review in accordance with section 106 of the National Historic Preservation Act, with the exception of ground disturbing activities and construction related to §§ 206.117(b)(1)(ii) (Temporary housing), 206.117(b)(3) (Replacement housing), and 206.117(b)(4) (Permanent housing construction).

[67 FR 61452, Sept. 30, 2002; 67 FR 62896, Oct. 9, 2002, as amended at 81 FR 56533, Aug. 22, 2016]

### § 206.111 Definitions.

*Adequate, alternate housing* means housing that accommodates the needs of the occupants; is within the normal commuting patterns of the area or is within reasonable commuting distance

of work, school, or agricultural activities that provide over 50 percent of the household income; and is within the financial ability of the occupant.

*Alternative housing resources* means any housing that is available or can quickly be made available in lieu of permanent housing construction and is cost-effective when compared to permanent construction costs. Some examples are rental resources, mobile homes and travel trailers.

*Applicant* means an individual or household who has applied for assistance under this subpart.

*Assistance from other* means includes monetary or in-kind contributions from voluntary or charitable organizations, insurance, other governmental programs, or from any sources other than those of the applicant.

*Dependent* means someone who is normally claimed as such on the Federal tax return of another, according to the Internal Revenue Code. It may also mean the minor children of a couple not living together, where the children live in the affected residence with the parent or guardian who does not actually claim them on the tax return.

*Displaced applicant* means one whose primary residence is uninhabitable, inaccessible, made unavailable by the landlord (to meet their disaster housing need) or not functional as a direct result of the disaster and has no other housing available in the area, *i.e.*, a secondary home or vacation home.

*Effective date of assistance* means the date that the applicant was determined eligible for assistance.

*Eligible hazard mitigation measures* are home improvements that an applicant can accomplish in order to reduce or prevent future disaster damages to essential components of the home.

*Fair market rent* means housing market-wide estimates of rents that provide opportunities to rent standard quality housing throughout the geographic area in which rental housing units are in competition. The fair market rent rates applied are those identified by the Department of Housing and Urban Development as being adequate for existing rental housing in a particular area.

*Financial ability* means the applicant's capability to pay housing costs.

If the household income has not changed subsequent to or as a result of the disaster then the determination is based upon the amount paid for housing before the disaster. If the household income is reduced as a result of the disaster then the applicant will be deemed capable of paying 30 percent of gross post disaster income for housing. When computing financial ability, extreme or unusual financial circumstances may be considered by the Regional Administrator.

*Financial assistance* means cash that may be provided to eligible individuals and households, usually in the form of a check or electronic funds transfer.

*Functional* means an item or home capable of being used for its intended purpose.

*Household* means all persons (adults and children) who lived in the pre-disaster residence who request assistance under this subpart, as well as any persons, such as infants, spouse, or part-time residents who were not present at the time of the disaster, but who are expected to return during the assistance period.

*Housing costs* means rent and mortgage payments, including principal, interest, real estate taxes, real property insurance, and utility costs.

*Inaccessible* means as a result of the incident, the applicant cannot reasonably be expected to gain entry to his or her pre-disaster residence due to the disruption, or destruction, of access routes or other impediments to access, or restrictions placed on movement by a responsible official due to continued health, safety or security problems.

*In-kind contributions* mean something other than monetary assistance, such as goods, commodities or services.

*Lodging expenses* means expenses for reasonable short-term accommodations that individuals or households incur in the immediate aftermath of a disaster. Lodging expenses may include but are not limited to the cost of brief hotel stays.

*Manufactured housing sites* means those sites used for the placement of government or privately owned mobile homes, travel trailers, and other manufactured housing units, including:

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(1) *Commercial site*, a site customarily leased for a fee, which is fully equipped to accommodate a housing unit;

(2) *Private site*, a site that the applicant provides or obtains at no cost to the Federal Government, complete with utilities; and

(3) *Group site*, a site provided by the State or local government that accommodates two or more units and is complete with utilities.

*Necessary expense* means the cost associated with acquiring an item or items, obtaining a service, or paying for any other activity that meets a serious need.

*Occupant* means a resident of a housing unit.

*Owner-occupied* means that the residence is occupied by:

(1) The legal owner;

(2) A person who does not hold formal title to the residence and pays no rent, but is responsible for the payment of taxes or maintenance of the residence; or

(3) A person who has lifetime occupancy rights with formal title vested in another.

*Permanent housing plan* means a realistic plan that, within a reasonable timeframe, puts the disaster victim back into permanent housing that is similar to the victim's pre-disaster housing situation. A reasonable timeframe includes sufficient time for securing funds, locating a permanent dwelling, and moving into the dwelling.

*Primary residence* means the dwelling where the applicant normally lives, during the major portion of the calendar year; or the dwelling that is required because of proximity to employment, including agricultural activities, that provide 50 percent of the household's income.

*Reasonable commuting distance* means a distance that does not place undue hardship on an applicant. It also takes into consideration the traveling time involved due to road conditions, e.g., mountainous regions or bridges out and the normal commuting patterns of the area.

*Safe* means secure from disaster-related hazards or threats to occupants.

*Sanitary* means free of disaster-related health hazards.

*Serious need* means the requirement for an item, or service, that is essential to an applicant's ability to prevent, mitigate, or overcome a disaster-related hardship, injury or adverse condition.

*Significantly delayed* means the process has taken more than 30 days.

*Uninhabitable* means the dwelling is not safe, sanitary or fit to occupy.

*We, our, and us* mean FEMA.

[67 FR 61452, Sept. 30, 2002; 67 FR 62896, Oct. 9, 2002]

§ 206.112 Registration period.

(a) *Initial period*. The standard FEMA registration period is 60 days following the date that the President declares an incident a major disaster or an emergency.

(b) *Extension of the registration period*. The regional administrator or his/her designee may extend the registration period when the State requests more time to collect registrations from the affected population. The Regional Administrator or his/her designee may also extend the standard registration period when necessary to establish the same registration deadline for contiguous counties or States.

(c) *Late registrations*. After the standard or extended registration period ends, FEMA will accept late registrations for an additional 60 days. We will process late registrations for those registrants who provide suitable documentation to support and justify the reason for the delay in their registration.

[67 FR 61452, Sept. 30, 2002; 67 FR 62896, Oct. 9, 2002]

§ 206.113 Eligibility factors.

(a) *Conditions of eligibility*. In general, FEMA may provide assistance to individuals and households who qualify for such assistance under section 408 of the Stafford Act and this subpart. FEMA may only provide assistance:

(1) When the individual or household has incurred a disaster-related necessary expense or serious need in the state in which the disaster has been declared, without regard to their residency in that state;

(2) In a situation where the applicant has insurance, when the individual or

household files a claim with their insurance provider for all potentially applicable types of insurance coverage and the claim is denied;

(3) In a situation where the applicant has insurance, when the insured individual or household's insurance proceeds have been significantly delayed through no fault of his, her or their own, and the applicant has agreed to repay the assistance to FEMA or the State from insurance proceeds that he, she or they receive later;

(4) In a situation where the applicant has insurance, when the insured individual or household's insurance proceeds are less than the maximum amount of assistance FEMA can authorize and the proceeds are insufficient to cover the necessary expenses or serious needs;

(5) In a situation where the applicant has insurance, when housing is not available on the private market;

(6) In a situation where the applicant has insurance, when the insured individual or household has accepted all assistance from other sources for which he, she, or they are eligible, including insurance, when the insured individual or household's insurance proceeds and all other assistance are less than the maximum amount of assistance FEMA can authorize and the proceeds are insufficient to cover the necessary expense or serious needs;

(7) When the applicant agrees to refund to FEMA or the State any portion of the assistance that the applicant receives or is eligible to receive as assistance from another source;

(8) With respect to housing assistance, if the primary residence has been destroyed, is uninhabitable, or is inaccessible; and

(9) With respect to housing assistance, if a renter's primary residence is no longer available as a result of the disaster.

(b) *Conditions of ineligibility.* We may not provide assistance under this subpart:

(1) For housing assistance, to individuals or households who are displaced from other than their pre-disaster primary residence;

(2) For housing assistance, to individuals or households who have adequate rent-free housing accommodations;

(3) For housing assistance, to individuals or households who own a secondary or vacation residence within reasonable commuting distance to the disaster area, or who own available rental property that meets their temporary housing needs;

(4) For housing assistance, to individuals or households who evacuated the residence in response to official warnings solely as a precautionary measure and who are able to return to the residence immediately after the incident;

(5) For housing assistance, for improvements or additions to the pre-disaster condition of property, except those required to comply with local and State ordinances or eligible mitigation measures;

(6) To individuals or households who have adequate insurance coverage and where there is no indication that insurance proceeds will be significantly delayed, or who have refused assistance from insurance providers;

(7) To individuals or households whose damaged primary residence is located in a designated special flood hazard area, and in a community that is not participating in the National Flood Insurance Program, except that financial assistance may be provided to rent alternate housing and for medical, dental, funeral expenses and uninsurable items to such individuals or households. However, if the community in which the damaged property is located qualifies for and enters the NFIP during the six-month period following the declaration then the individual or household may be eligible;

(8) To individuals or households who did not fulfill the condition to purchase and maintain flood insurance as a requirement of receiving previous Federal disaster assistance;

(9) For business losses, including farm businesses and self-employment; or

(10) For any items not otherwise authorized by this section.

[67 FR 61452, Sept. 30, 2002; 67 FR 62896, Oct. 9, 2002]

**§ 206.114 Criteria for continued assistance.**

(a) FEMA expects all recipients of assistance under this subpart to obtain and occupy permanent housing at the



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earliest possible time. FEMA may provide continued housing assistance during the period of assistance, but not to exceed the maximum amount of assistance for the program, based on need, and generally only when adequate, alternate housing is not available or when the permanent housing plan has not been fulfilled through no fault of the applicant.

(b) *Additional criteria for continued assistance.* (1) All applicants requesting continued rent assistance must establish a realistic permanent housing plan no later than the first certification for continued assistance. Applicants will be required to provide documentation showing that they are making efforts to obtain permanent housing.

(2) Applicants requesting continued rent assistance must submit rent receipts to show that they have exhausted the FEMA rent funds, and provide documentation identifying the continuing need.

(3) FEMA generally expects that pre-disaster renters will use their initial rental assistance to obtain permanent housing. However, we may certify them, during the period of assistance, for continued rent assistance when adequate, alternate housing is not available, or when they have not realized a permanent housing plan through no fault of their own.

(4) FEMA may certify pre-disaster owners for continued rent assistance, during the period of assistance, when adequate, alternate housing is not available, or when they have not realized a permanent housing plan through no fault of their own.

(5) Individuals or households requesting additional repair assistance will be required to submit information and/or documentation identifying the continuing need.

(6) Individuals or households requesting additional assistance for personal property, transportation, medical, dental, funeral, moving and storage, or other necessary expenses and serious needs will be required to submit information and/or documentation identifying the continuing need.

[67 FR 61452, Sept. 30, 2002; 67 FR 62896, Oct. 9, 2002]

**§ 206.115 Appeals.**

(a) Under the provisions of section 423 of the Stafford Act, applicants for assistance under this subpart may appeal any determination of eligibility for assistance made under this subpart. Applicants must file their appeal within 60 days after the date that we notify the applicant of the award or denial of assistance. Applicants may appeal the following:

- (1) Eligibility for assistance, including recoupment;
- (2) Amount or type of assistance;
- (3) Cancellation of an application;
- (4) The rejection of a late application;
- (5) The denial of continued assistance under § 206.114, Criteria for continued assistance;
- (6) FEMA's intent to collect rent from occupants of a housing unit that FEMA provides;
- (7) Termination of direct housing assistance;
- (8) Denial of a request to purchase a FEMA-provided housing unit at the termination of eligibility;
- (9) The sales price of a FEMA-provided housing unit they want to purchase; or
- (10) Any other eligibility-related decision.

(b) Appeals must be in writing and explain the reason(s) for the appeal. The applicant or person who the applicant authorizes to act on his or her behalf must sign the appeal. If someone other than the applicant files the appeal, then the applicant must also submit a signed statement giving that person authority to represent him, her or them.

(c) Applicants must appeal to the Regional Administrator or his/her designee for decisions made under this subpart, unless FEMA has made a grant to the State to provide assistance to individuals and households under § 206.120(a), State administration of other needs assistance; then the applicant must appeal to the State.

(d) An applicant may ask for a copy of information in his or her file by writing to FEMA or the State as appropriate. If someone other than the applicant is submitting the request, then the applicant must also submit a

signed statement giving that person authority to represent him or her.

(e) The appropriate FEMA or State program official will notify the applicant in writing of the receipt of the appeal.

(f) The Regional Administrator or his/her designee or appropriate State official will review the original decision after receiving the appeal. FEMA or the State, as appropriate, will give the appellant a written notice of the disposition of the appeal within 90 days of the receiving the appeal. The decision of the appellate authority is final.

[67 FR 61452, Sept. 30, 2002; 67 FR 62896, Oct. 9, 2002]

**§ 206.116 Recovery of funds.**

(a) The applicant must agree to repay to FEMA (when funds are provided by FEMA) and/or the State (when funds are provided by the State) from insurance proceeds or recoveries from any other source an amount equivalent to the value of the assistance provided. In no event must the amount repaid to FEMA and/or the State exceed the amount that the applicant recovers from insurance or any other source.

(b) An applicant must return funds to FEMA and/or the State (when funds are provided by the State) when FEMA and/or the State determines that the assistance was provided erroneously, that the applicant spent the funds inappropriately, or that the applicant obtained the assistance through fraudulent means.

[67 FR 61452, Sept. 30, 2002; 67 FR 62896, Oct. 9, 2002]

**§ 206.117 Housing assistance.**

(a) *Definitions.* The definitions in this paragraph apply to this section only.

“*Caused by the disaster*” means as a direct result of a peril identified in the FEDERAL REGISTER Notice of a Presidentially-declared major disaster or emergency, the component is no longer functional.

“*Real Property Component*” or “*Component*” means each individual part of a dwelling that makes it habitable, as enumerated in paragraph (b)(2)(ii) of this section.

“*Semi-Permanent Housing*” means housing designed and constructed with

finishes, material, and systems selected for moderate (or better) energy efficiency, maintenance, and life cycle cost, and with a life expectancy of more than 5 years but less than 25 years.

(b) *Types of housing assistance*—(1) *Temporary housing assistance*—(i) *Financial assistance.* Eligible individuals and households may receive financial assistance to rent alternate housing resources, existing rental units, manufactured housing, recreational vehicles, or other readily fabricated dwellings. FEMA may also provide assistance for the reasonable cost of any transportation, utility hookups, or installation of a manufactured housing unit or recreational vehicle to be used for housing. This includes reimbursement for reasonable short-term lodging expenses that individuals or households incur in the immediate aftermath of a disaster.

(A) FEMA will include all members of a pre-disaster household in a single registration and will provide assistance for one temporary housing residence, unless the Regional Administrator or his/her designee determines that the size or nature of the household requires that we provide assistance for more than one residence.

(B) FEMA will base the rental assistance on the Department of Housing and Urban Development’s current fair market rates for existing rental units. FEMA will further base the applicable rate on the household’s bedroom requirement and the location of the rental unit.

(C) All utility costs and utility security deposits are the responsibility of the occupant except where the utility does not meter utility services separately and utility services are a part of the rental charge.

(D) The occupant is responsible for all housing security deposits. In extraordinary circumstances, the Regional Administrator or his/her designee may authorize the payment of security deposits; however, the owner or occupant must reimburse the full amount of the security deposit to the Federal Government before or at the time that the temporary housing assistance ends.

(ii) *Direct assistance.* (A) FEMA may provide direct assistance in the form of

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purchased or leased temporary housing units directly to individuals or households who lack available housing resources and would be unable to make use of the assistance provided under paragraph (b)(1)(i) of this section.

(B) FEMA will include all members of a pre-disaster household in a single application and will provide assistance for one temporary housing residence, unless the Regional Administrator or his/her designee determines that the size or nature of the household requires that we provide assistance for more than one residence.

(C) Any site upon which a FEMA-provided housing unit is placed must comply with applicable State and local codes and ordinances, as well as 44 CFR part 9, Floodplain Management and Protection of Wetlands, and all other applicable environmental and historic preservation laws, regulations, Executive Orders, and agency policy.

(D) All utility costs and utility security deposits are the responsibility of the occupant except where the utility does not meter utility services separately and utility services are a part of the rental charge.

(E) FEMA-provided or funded housing units may be placed in the following locations:

(1) A commercial site that is complete with utilities; when the Regional Administrator or his/her designee determines that the upgrading of commercial sites, or installation of utilities on such sites, will provide more cost-effective, timely and suitable temporary housing than other types of resources, then Federal assistance may be authorized for such actions.

(2) A private site that an applicant provides, complete with utilities; when the Regional Administrator or his/her designee determines that the cost of installation or repairs of essential utilities on private sites will provide more cost effective, timely, and suitable temporary housing than other types of resources, then Federal assistance may be authorized for such actions.

(3) A group site that the State or local government provides that accommodates two or more units and is complete with utilities; when the Regional Administrator or his/her designee determines that the cost of developing a

group site provided by the State or local government, to include installation or repairs of essential utilities on the sites, will provide more cost effective, timely, and suitable temporary housing than other types of resources, then Federal assistance may be authorized for such actions.

(4) A group site provided by FEMA, if the Regional Administrator or his/her designee determines that such a site would be more economical or accessible than one that the State or local government provides.

(F) After the end of the 18-month period of assistance, FEMA may begin to charge up to the fair market rent rate for each temporary housing unit provided. We will base the rent charged on the number of bedrooms occupied and needed by the household. When establishing the amount of rent, FEMA will take into account the financial ability of the household.

(G) We may terminate direct assistance for reasons that include, but are not limited to, the following:

(1) The period of assistance expired under § 206.110(e) and has not been extended;

(2) Adequate alternate housing is available to the occupant(s);

(3) The occupant(s) obtained housing assistance through either misrepresentation or fraud;

(4) The occupant(s) failed to comply with any term of the lease/rental agreement or other rules of the site where the unit is located.

(5) The occupant(s) does not provide evidence documenting that they are working towards a permanent housing plan.

(H) FEMA will provide a 15 day written notice when initiating the termination of direct assistance that we provide under our lease agreements. This notice will specify the reasons for termination of assistance and occupancy, the date of termination, the procedure for appealing the determination, and the occupant's liability for such additional charges as the Regional Administrator or his/her designee deems appropriate after the termination date, including fair market rent for the unit.

(I) Duplication of benefits may occur when an applicant has additional living expense insurance benefits to cover the

cost of renting alternate housing. In these instances, FEMA may provide a temporary housing unit if adequate alternate housing is not available, or if doing so is in the best interest of the household and the government. We will establish fair market rent, not to exceed insurance benefits available.

(2) *Repairs.* (i) FEMA may provide financial assistance for the repair of real property components in an owner's primary residence if:

(A) The eligibility criteria in §206.113 are met;

(B) The component was functional immediately before the declared event;

(C) The component was damaged, and the damage was caused by the disaster;

(D) The damage to the component is not covered by insurance; and

(E) Repair of the component is necessary to ensure the safety or health of the occupant or to make the residence functional.

(ii) FEMA may provide financial assistance for the repair of:

(A) Structural components of the residence. This includes real property components, such as the foundation, exterior walls, and roof.

(B) Windows and doors.

(C) The Heating, Ventilation and Air Conditioning system.

(D) Utility systems. This includes electrical, gas, water and sewage systems.

(E) Interior components. This includes, but is not limited to, the structure's floors, walls, ceilings, and cabinetry.

(F) The structure's access and egress, including privately owned access roads and privately owned bridges.

(G) Blocking, leveling, and anchoring of a mobile home, and reconnecting or resetting mobile home sewer, water, electrical and fuel lines and tanks.

(H) Items or services determined to be eligible hazard mitigation measures that reduce the likelihood of future damage to the residence, utilities, or infrastructure.

(iii) The components that may be deemed eligible for repair assistance, and the type of repairs authorized, will vary depending upon the nature of the disaster. Repairs are limited to restoration of the dwelling to a safe and sanitary living or functioning condi-

tion. Repair assistance will only be provided to the extent that the work makes the component functional. FEMA may provide for the replacement of components if repair is not feasible. The repairs of components must be of average quality, size, and capacity, taking into consideration the needs of the occupant.

(iv) Components that were functional immediately before the declared event may be eligible for repair assistance if the damage to the component was caused by the disaster and the component is no longer functional.

(v) Eligible individuals or households may receive up to the maximum amount of assistance (*See* §206.110(b) of this part) to repair damages to their primary residence irrespective of other financial resources, except insurance proceeds.

(vi) The individual or household is responsible for obtaining all local permits or inspections that applicable State or local building codes may require.

(vii) If the applicant disputes a determination made by FEMA regarding eligibility for repair assistance, the applicant may appeal that determination pursuant to the procedures in §206.115 of this part. In addition to the requirements in §206.115, the applicant must provide proof that the component meets the requirements of paragraph (b)(2)(i) of this section, including that the component was functional before the declared event and proof that the declared event caused the component to stop functioning. If the applicant disputes the amount of repair assistance awarded, the applicant must also provide justification for the amount sought.

(3) *Housing replacement.* (i) FEMA may provide financial assistance for the replacement of an owner's primary residence if:

(A) The eligibility criteria in §206.113 of this part are met;

(B) The residence was functional immediately before the disaster;

(C) The residence was destroyed, and the damage was caused by, the disaster;

(D) The damage to the residence is not covered by insurance;

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(E) Repair is not feasible, will not ensure the safety or health of the occupant, or will not make the residence functional; and

(F) Replacement is necessary to ensure the safety or health of the occupant.

(ii) All replacement assistance awards must be approved by the Regional Administrator or his/her designee. If replacement assistance is granted, the applicant may either use the maximum amount of assistance (See §206.110(b) of this part) to replace the dwelling in its entirety, or may use the assistance toward the cost of acquiring a new permanent residence.

(iii) Housing replacement assistance will be based on the verified disaster-related level of damage to the dwelling, or the statutory maximum (See §206.110(b) of this part), whichever is less.

(iv) If the applicant disputes a determination made by FEMA regarding eligibility for replacement assistance, the applicant may appeal that determination pursuant to the procedures in §206.115 of this part. In addition to the requirements in §206.115, the applicant must provide proof that repair is not feasible, or will not ensure the safety or health of the occupant or make the residence functional. If the applicant disputes the amount of replacement assistance awarded, the applicant must also provide justification for the amount sought.

(4) *Permanent and semi-permanent housing construction.* (i) FEMA may provide financial or direct assistance to applicants for the purpose of constructing permanent and semi-permanent housing if:

(A) The eligibility criteria in §206.113 of this part are met;

(B) The residence was functional immediately before the declared event;

(C) The residence was damaged by the event;

(D) The damage to the residence is not covered by insurance;

(E) The residence was an owner-occupied primary residence; and

(F) The residence is located in an insular area outside the continental United States or in another location where alternative housing resources are not available and the types of fi-

nancial or direct temporary housing assistance described in paragraphs (b)(1), (2), and (3) of this section are unavailable, infeasible, or not cost-effective.

(ii) Permanent and semi-permanent housing construction, in general, must be consistent with current minimal local building codes and standards where they exist, or minimal acceptable construction industry standards in the area, including reasonable hazard mitigation measures, and Federal environmental laws and regulations. Dwellings will be of average quality, size and capacity, taking into consideration the needs of the occupant.

(iii) If the applicant disputes a determination made by FEMA regarding eligibility for construction assistance, the applicant may appeal that determination pursuant to the procedures in §206.115 of this part. In addition to the requirements in §206.115, the applicant must provide proof that the property is either located in an insular area outside the continental United States, or in a location where alternative housing resources are not available. The applicant must also provide proof that the types of financial or direct temporary housing assistance described in paragraph (b)(1) of this section are unavailable, infeasible, or not cost effective. If the applicant disputes the amount of construction assistance awarded, the applicant must also provide justification for the amount sought.

[67 FR 61452, Sept. 30, 2002; 67 FR 62896, Oct. 9, 2002, as amended at 78 FR 66856, Nov. 7, 2013; 81 FR 56533, Aug. 22, 2016]

**§206.118 Disposal of housing units.**

(a) FEMA may sell housing units purchased under §206.117(b)(1)(ii), Temporary housing, direct assistance, as follows:

(1) Sale to an applicant.

(i) Sale to the individual or household occupying the unit, if the occupant lacks permanent housing, has a site that complies with local codes and ordinances and part 9 of this Title.

(ii) Adjustment to the sales price. FEMA may approve adjustments to the sales price when selling a housing unit to the occupant of a unit if the purchaser is unable to pay the fair market value of the home or unit and when

doing so is in the best interest of the applicant and FEMA.

(iii) FEMA may sell a housing unit to the occupant only on the condition that the purchaser agrees to obtain and maintain hazard insurance, as well as flood insurance on the unit if it is or will be in a designated Special Flood Hazard Area.

(2) Other methods of disposal:

(i) FEMA may sell, transfer, donate, or otherwise make a unit available directly to a State or other governmental entity, or to a voluntary organization, for the sole purpose of providing temporary housing to disaster victims in major disasters and emergencies. As a condition of the sale, transfer, or donation, or other method of provision, the State, governmental entity, or voluntary organization must agree to:

(A) Comply with the nondiscrimination provisions of the Stafford Act, 42 U.S.C. 5151; and

(B) Obtain and maintain hazard insurance on the unit, as well as flood insurance if the housing unit is or will be in a designated Special Flood Hazard Area.

(ii) FEMA may also sell housing units at a fair market value to any other person.

(b) A unit will be sold “as is, where is”, except for repairs FEMA deems necessary to protect health or safety, which are to be completed before the sale. There will be no implied warranties. In addition, FEMA will inform the purchaser that he/she may have to bring the unit up to codes and standards that are applicable at the proposed site.

[67 FR 61452, Sept. 30, 2002; 67 FR 62896, Oct. 9, 2002]

**§ 206.119 Financial assistance to address other needs.**

(a) *Purpose.* FEMA and the State may provide financial assistance to individuals and households who have other disaster-related necessary expenses or serious needs. To qualify for assistance under this section, an applicant must also:

(1) Apply to the United States Small Business Administration’s (SBA) Disaster Home Loan Program for all avail-

able assistance under that program; and

(2) Be declined for SBA Disaster Home Loan Program assistance; or

(3) Demonstrate that the SBA assistance received does not satisfy their total necessary expenses or serious needs arising out of the major disaster.

(b) *Types of assistance.* (1) Medical, dental, and funeral expenses. FEMA may provide financial assistance for medical, dental and funeral items or services to meet the disaster-related necessary expenses and serious needs of individuals and households.

(2) Personal property, transportation, and other expenses.

(i) FEMA may provide financial assistance for personal property and transportation items or services to meet the disaster-related necessary expenses and serious needs of individuals and households.

(ii) FEMA may provide financial assistance for other items or services that are not included in the specified categories for other assistance but which FEMA approves, in coordination with the State, as eligible to meet unique disaster-related necessary expenses and serious needs of individuals and households.

(c) *Eligible costs*—(1) *Personal property.* Necessary expenses and serious needs for repair or replacement of personal property are generally limited to the following:

(i) Clothing;

(ii) Household items, furnishings or appliances;

(iii) Tools, specialized or protective clothing, and equipment required by an employer as a condition of employment;

(iv) Computers, uniforms, schoolbooks and supplies required for educational purposes; and

(v) Cleaning or sanitizing any eligible personal property item.

(2) *Transportation.* Necessary expenses or serious needs for transportation are generally limited to the following:

(i) Repairing or replacing vehicles; and

(ii) Financial assistance for public transportation and any other transportation related costs or services.

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(3) *Medical expenses.* Medical expenses are generally limited to the following:

- (i) Medical costs;
- (ii) Dental costs; and
- (iii) Repair or replacement of medical equipment.

(4) *Funeral expenses.* Funeral expenses are generally limited to the following:

- (i) Funeral services;
- (ii) Burial or cremation; and
- (iii) Other related funeral expenses.

(5) *Moving and storage expenses.* Necessary expenses and serious needs related to moving and storing personal property to avoid additional disaster damage generally include storage of personal property while disaster-related repairs are being made to the primary residence, and return of the personal property to the individual or household’s primary residence.

(6) *Other.* Other disaster-related expenses not addressed in this section may include:

(i) The purchase of a Group Flood Insurance Policy as described in paragraph (d) of this section.

(ii) Other miscellaneous items or services that FEMA, in consultation with the State, determines are necessary expenses and serious needs.

(d) *Group Flood Insurance purchase.* Individuals identified by FEMA as eligible for “Other Needs” assistance under section 408 of the Stafford Act as a result of flood damage caused by a Presidentially-declared major disaster and who reside in a special flood hazard area (SFHA) may be included in a Group Flood Insurance Policy (GFIP) established under the National Flood Insurance Program (NFIP) regulations at 44 CFR 61.17.

(1) The premium for the GFIP is a necessary expense within the meaning of this section. FEMA or the State shall withhold this portion of the Other Needs award and provide it to the NFIP on behalf of individuals and households who are eligible for coverage. The coverage shall be equivalent to the maximum assistance amount established under section 408 of the Stafford Act.

(2) FEMA or the State IHP staff shall provide the NFIP with records of individuals who received an “Other Needs” award and are to be insured through the GFIP. Records of “Other Needs” applicants to be insured shall be ac-

companied by payments to cover the premium amounts for each applicant for the 3-year policy term. The NFIP will then issue a Certificate of Flood Insurance to each applicant. Flood insurance coverage becomes effective on the 30th day following the receipt of records of GFIP insureds and their premium payments from the State or FEMA, and such coverage terminates 36 months from the inception date of the GFIP, which is 60 days from the date of the disaster declaration.

(3) Insured applicants would not be covered if they are determined to be ineligible for coverage based on a number of exclusions established by the NFIP. Therefore, once applicants/policyholders receive the Certificate of Flood Insurance that contains a list of the policy exclusions, they should review that list to see if they are ineligible for coverage. Those applicants who fail to do this may find that their property is, in fact, not covered by the insurance policy when the next flooding incident occurs and they file for losses. Once the applicants find that their damaged buildings, contents, or both, are ineligible for coverage, they should notify the NFIP in writing in order to have their names removed from the GFIP, and to have the flood insurance maintenance requirement expunged from the data-tracking system.

[67 FR 61452, Sept. 30, 2002; 67 FR 62896, Oct. 9, 2002]

§ 206.120 State administration of other needs assistance.

(a) *State administration of other needs assistance.* A State may request a grant from FEMA to provide financial assistance to individuals and households in the State under §206.119. The State may also expend administrative costs not to exceed 5 percent of the amount of the grant in accordance with section 408(f)(1)(b) of the Stafford Act. Any State that administers the program to provide financial assistance to individuals and households must administer the program consistent with §206.119 and the State Administrative Plan and the State Administrative Plan that we describe at paragraph (b) and (c) of this section.

(b) *State administrative options.* The delivery of assistance under §206.119 is

contingent upon the State choosing an administrator for the assistance. The State may either request that FEMA administer the assistance or the State may request a grant from FEMA for State administration. The Governor or designee will execute the State Administrative Option annually. During non-disaster periods the State may submit any proposed amendments to the administrative option in writing to the FEMA Regional Administrator. FEMA shall review the request and respond to the Governor or his/her designee within 45 days of receipt of the proposed amendment;

(c) *State Administrative Plan (SAP)*. The delivery of assistance by a State under this section is contingent upon approval of a SAP, which describes the procedures the State will use to deliver assistance under section 408 of the Stafford Act, 42 U.S.C. 5174, when a State requests a grant to administer Other Needs assistance. All implementation procedures must be in compliance with Federal laws and requirements, State laws and procedures, and paragraphs (c) and (d) of this section.

(1) *Timeframe for submission of SAP*. A signed SAP, or renewal, must be provided to the FEMA Regional Administrator prior to November 30 of each year. A SAP shall be effective for at least one year, and must be resubmitted in full every three years.

(2) *Renewals*. Annual updates/revisions to the SAP must be submitted by November 30 of each year for FEMA's review and approval by December 31. If the SAP does not need to be updated/revised, a letter from the State stating the SAP is still current must be submitted by November 30 to document the SAP submission requirement.

(3) *Amendments*. The State may request amendments to the SAP at any time. An amendment is effective upon signature by the FEMA Regional Administrator and the Governor or his/her designee. The State may request an amendment to the administrative plan as follows:

(i) *During non-disaster periods*. The State may submit any proposed amendments to the SAP in writing to the FEMA Regional Administrator. FEMA shall review the request and respond to the Governor or his/her designee within

45 days of receipt of the proposed amendment;

(ii) *During Presidentially-declared disasters*. The State shall submit any proposed amendments to the SAP in writing to FEMA within three days after disaster declaration. FEMA shall review the request and respond to the Governor or his/her designee within three days of receipt.

(d) *State administrative plan requirements*. The State shall develop a plan for the administration of the Other Needs assistance that describes, at a minimum, the following items:

(1) Assignment of grant program responsibilities to State officials or agencies.

(2) Staffing Schedule that identifies the position, salary and percent of time for each staff person assigned to program administration and/or implementation.

(3) Procedures for interaction with applicants:

(i) Procedures for notifying potential applicants of the availability of the program, to include the publication of application deadlines, pertinent program descriptions, and further program information on the requirements which must be met by the applicant in order to receive assistance;

(ii) Procedures for registration and acceptance of applications, including late applications, up to the prescribed time limitations as described in §206.112;

(iii) Procedures for damage inspection and/or other verifications.

(iv) Eligibility determinations.

(A) *Under a cooperative agreement*: The procedure for eligibility determinations when the FEMA application and inspection systems are used by the State but additional eligibility criteria are necessary to make State eligibility determinations.

(B) *Under a grant*: The procedure for eligibility determinations when the FEMA application and inspection systems are not used by the State, including the method for determination of costs for personal property and provision of a standard list for personal property items with allowable costs identified for each item.



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(v) Procedures for checking compliance for mandated flood insurance in accordance with § 206.110(k);

(vi) Procedures for notifying applicants of the State’s eligibility decision;

(vii) Procedures for disbursement of funds to applicants;

(viii) Procedures for applicant appeal processing. Procedures must provide for any appealable determination as identified in § 206.115(a);

(ix) Procedures for expeditious reporting of allegations of fraud, waste or abuse to DHS Office of Inspector General.

(x) Capacity to investigate allegations of waste, fraud and abuse independently if requested by DHS OIG, or in conjunction with DHS OIG.

(xi) Provisions for safeguarding the privacy of applicants and the confidentiality of information, in accordance with § 206.110(j).

(xii) Provisions for complying with § 206.116(b), Recovery of funds.

(4) Procedures for financial management, accountability and oversight.

(i) Procedures for verifying by random sample that assistance funds are meeting applicants’ needs, are not duplicating assistance from other means, and are meeting flood insurance requirements.

(ii) Provisions for specifically identifying, in the accounts of the State, all Federal and State funds committed to each grant program; and for immediately returning, upon discovery, all Federal funds that are excess to program needs.

(iii) Provisions for accounting for cash in compliance with State law and procedure and the Cash Management Improvement Act of 1990, as amended.

(iv) Reports.

(A) Procedures for preparing and submitting quarterly and final Financial Status Reports in compliance with 2 CFR 200.327.

(B) Procedures for submitting Program Status Reports in compliance with paragraph (f)(2)(iii) of this section.

(C) Procedures for preparing and submitting the PSC 272, Federal Cash Transactions Report.

(v) Procedures for inventory control, including a system for identifying and tracking placement of equipment pur-

chased with grant funds or loaned by FEMA to the State for purposes of administering the Individuals and Households Program.

(vi) Procedures for return of funds to FEMA.

(vii) State criteria and requirements for closing out Federal grants.

(viii) Process for retention of records.

(e) *Application for assistance procedure.* This section describes the procedures that must be followed by the State to submit an application to administer the Individuals and Households Program through a Grant Award or a Cooperative Agreement.

(1) The State must submit an Other Needs assistance application to the Regional Administrator within 72 hours of the major disaster declaration before IHP assistance may be provided. FEMA will work with the State to approve the application or to modify it so it can be approved.

(2) The application shall include:

(i) Standard Form (SF) 424, Application for Federal Assistance;

(ii) FEMA Form (FF) 20–20 Budget Information—Non Construction Programs;

(iii) Copy of approved indirect cost rate from a Federal cognizant agency if indirect costs will be charged to the grant. Indirect costs will be included in the administrative costs of the grant allowed under paragraph (a) of this section; and

(iv) Disaster specific changes to the State Administrative Plan, if applicable.

(f) *Grants management oversight*—(1) *Period of assistance.* All costs must be incurred within the period of assistance, which is 18 months from the date of the disaster declaration. This period of assistance may be extended if requested in writing by the State and approved in writing by the Assistant Administrator for the Disaster Assistance Directorate. The State must include a justification for an extension of the assistance period.

(2) *Reporting requirements.* (i) The State shall provide financial status reports as required by 2 CFR 200.327.

(ii) The State shall provide copies of PSC 272, Federal Cash Transactions Report to FEMA. The PSC 272 is required quarterly by the Department of Health

and Human Services from users of its SMARTLINK service.

(iii) The State shall provide weekly program status reports which include the number and dollar amount of applications approved, the amount of assistance disbursed and the number of appeals received.

(3) *Ineligible costs.* Funds provided to the State for the administrative costs of administering Other Needs assistance shall not be used to pay regular time for State employees, but may be used to pay overtime for those employees.

(4) *Closeout.* The State has primary responsibility to closeout the tasks approved under the Grant Award. In compliance with the period of assistance, as identified in the award, the State must reconcile costs and payments, resolve negative audit findings, and submit final reports within 90 days of the end of the period of assistance. The State must also provide an inventory of equipment purchased with grant funds and loaned to it by FEMA for purposes of administering IHP, which lists the items, dates, and costs of equipment purchased.

(5) *Recovery of funds.* The State is responsible for recovering assistance awards from applicants obtained fraudulently, expended for unauthorized items or services, expended for items for which assistance is received from other means, and awards made in error.

(i) Adjustments to expenditures will be made as funding is recovered and will be reported quarterly on the Financial Status Report.

(ii) A list of applicants from whom recoveries are processed will be submitted on the quarterly progress report to allow FEMA to adjust its program and financial information systems.

(iii) The State will reimburse FEMA for the Federal share of awards not recovered through quarterly financial adjustments within the 90 day close out liquidation period of the grant award.

(iv) If the State does not reimburse FEMA within the 90 day close out liquidation period, a bill for collection will be issued. FEMA will charge interest, penalties, and administrative fees on delinquent bills for collection in accordance with the Debt Collection Improvement Act. Recovered funds, interest,

penalties, and fees owed to FEMA through delinquent bills for collection may be offset from other FEMA disaster assistance programs from which the State is receiving funds or future grant awards from FEMA or other Federal agencies. Debt collection procedures will be followed as outlined in 44 CFR part 11.

(6) *Audit requirements.* Pursuant to 2 CFR 200.500–200.520, uniform audit requirements apply to all grants provided under this subpart.

(7) *Document retention.* Pursuant to 2 CFR 200.333–200.337, States are required to retain records, including source documentation, to support expenditures/costs incurred against the grant award, for 3 years from the date of submission to FEMA of the Financial Status Report. The State is responsible for resolving questioned costs that may result from an audit conducted during the three-year record retention period and for returning disallowed costs from ineligible activities.

[67 FR 61452, Sept. 30, 2002; 67 FR 62896, 62897, Oct. 9, 2002; 79 FR 76085, Dec. 19, 2014; 82 FR 42, Jan. 3, 2017]

§§ 206.121–206.130 [Reserved]

**Subpart E—Individual and Family Grant Programs**

**§ 206.131 Individual and Family Grant Program for major disasters declared on or before October 14, 2002.**

(a) *General.* The Governor may request that a Federal grant be made to a State for the purpose of such State making grants to individuals or families who, as a result of a major disaster, are unable to meet disaster-related necessary expenses or serious needs for Presidentially-declared major disasters declared on or before October 14, 2002 (Note that the reference to section 411 of the Stafford Act refers to prior legislation amended by the Disaster Mitigation Act 2000). The total Federal grant under this section will be equal to 75 percent of the actual cost of meeting necessary expenses or serious needs of individuals and families, plus State administrative expenses not to exceed 5 percent of the Federal grant (see paragraph (g) of this section). The

total Federal grant is made only on condition that the remaining 25 percent of the actual cost of meeting individuals' or families' necessary expenses or serious needs is paid from funds made available by the State. With respect to any one major disaster, an individual or family may not receive a grant or grants under this section totaling more than \$10,000 including both the Federal and State shares. The \$10,000 limit will be adjusted annually, at the beginning of each fiscal year, to reflect changes in the Consumer Price Index for all Urban Consumers. IFG assistance for damages or losses to real or personal property, or both, will be provided to individuals or families with those IFG-eligible losses totaling \$201 or more; those individuals with damages or losses of \$200 or less to real or personal property, or both, are ineligible. The Governor or his/her designee is responsible for the administration of the grant program. The provisions of this regulation are in accordance with 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(b) *Purpose.* The grant program is intended to provide funds to individuals or families to permit them to meet those disaster-related necessary expenses or serious needs for which assistance from other means is either unavailable or inadequate. Meeting those expenses and needs as expeditiously as possible will require States to make an early commitment of personnel and resources. States may make grants in instances where the applicant has not received other benefits to which he/she may be entitled by the time of application to the IFG program, and if the applicant agrees to repay all duplicated assistance to the State. The grant program is not intended to indemnify disaster losses or to permit purchase of items or services which may generally be characterized as nonessential, luxury, or decorative. Assistance under this program is not to be counted as income or a resource in the determination of eligibility for welfare or other income-tested programs supported by the Federal Government, in that IFG assistance is intended to address only disaster-related needs.

(c) *Definitions used in this section.* (1) *Necessary expense* means the cost of a serious need.

(2) *Serious need* means the requirement for an item or service essential to an individual or family to prevent, mitigate, or overcome a disaster-related hardship, injury, or adverse condition.

(3) *Family* means a social unit living together and composed of:

(i) Legally married individuals or those couples living together as if they were married and their dependents; or

(ii) A single person and his/her dependents; or

(iii) Persons who jointly own the residence and their dependents.

(4) *Individual* means anyone who is not a member of a family as described above.

(5) *Dependent* means someone who is normally claimed as such on the Federal tax return of another, according to the Internal Revenue Code. It may also mean the minor children of a couple not living together where the children live in the affected residence with the parent who does not actually claim them on the tax return.

(6) *Expendable items* means consumables, as follows: linens, clothes, and basic kitchenware (pots, pans, utensils, dinnerware, flatware, small kitchen appliances).

(7) *Assistance from other means* means assistance including monetary or in-kind contributions, from other governmental programs, insurance, voluntary or charitable organizations, or from any sources other than those of the individual or family. It does not include expendable items.

(8) *Owner-occupied* means that the residence is occupied by: The legal owner; a person who does not hold formal title to the residence but is responsible for payment of taxes, maintenance of the residence, and pays no rent; or a person who has lifetime occupancy rights in the residence with formal title vested in another. In States where documentation proving ownership is not recorded or does not exist, the State is required to include in its administrative plan a State Attorney General approved set of conditions describing adequate proof of ownership.

(9) *Flowage easement* means an area where the landowner has given the right to overflow, flood, or submerge the land to the government or other entity for a public purpose.

(d) *National eligibility criteria.* In administering the IFG program, a State shall determine the eligibility of an individual or family in accordance with the following criteria;

(1) *General.* (i) To qualify for a grant under this section, an individual or family representative must:

(A) Make application to all applicable available governmental disaster assistance programs for assistance to meet a necessary expense or serious need, and be determined not qualified for such assistance, or demonstrate that the assistance received does not satisfy the total necessary expense or serious need;

(B) Not have previously received or refused assistance from other means for the specific necessary expense or serious need, or portion thereof, for which application is made; and

(C) Certify to refund to the State that part of the grant for which assistance from other means is received, or which is not spent as identified in the grant award document.

(ii) Individuals and families who incur a necessary expense or serious need in the major disaster area may be eligible for assistance under this section without regard to their alienage, their residency in the major disaster area, or their residency within the State in which the major disaster has been declared except that for assistance in the "housing" category, ownership and residency in the declared disaster area are required (see paragraph (d)(2)(i) of this section).

(iii) The Flood Disaster Protection Act of 1973, Public Law 93-234, as amended, imposes certain restriction on approval of Federal financial assistance for acquisition and construction purposes. This paragraph states those requirements for the IFG program.

(A) For the purpose of this paragraph, *financial assistance for acquisition or construction purposes* means a grant to an individual or family to repair, replace, or rebuild the insurable portions of a home, and/or to purchase or repair insurable contents. For a discussion of

what elements of a home and contents are insurable, see 44 CFR part 61, Insurance Coverage and Rates.

(B) A State may not make a grant for acquisition or construction purposes where the structure to which the grant assistance relates is located in a designated special flood hazard area which has been identified by the Assistant Administrator for Mitigation for at least 1 year as floodprone, unless the community in which the structure is located is participating in the National Flood Insurance Program (NFIP). However, if a community qualifies for and enters the NFIP during the 6-month period following the major disaster declaration, the Governor's Authorized Representative (GAR) may request a time extension (see paragraph (j)(1)(ii) of this section) from the Regional Administrator for the purpose of accepting and processing grant applications in that community. The Regional Administrator or Assistant Administrator for the Disaster Assistance Directorate, as appropriate, may approve the State's request if those applicable governmental disaster assistance programs which were available during the original application period are available to the grant applicants during the extended application period.

(C)(1) The State may not make a grant for acquisition or construction purposes in a designated special flood hazard area in which the sale of flood insurance is available under the NFIP unless the individual or family obtains adequate flood insurance and maintains such insurance for as long as they live at that property address. The coverage shall equal the maximum grant amount established under §411(f) of the Stafford Act. If the grantee is a homeowner, flood insurance coverage must be maintained on the residence at the flood-damaged property address for as long as the structure exists if the grantee, or any subsequent owner of that real estate, ever wishes to be assisted by the Federal government with any subsequent flood damages or losses to real or personal property, or both. If the grantee is a renter, flood insurance coverage must be maintained on the

contents for as long as the renter resides at the flood-damaged property address. The restriction is lifted once the renter moves from the rental unit.

(2) Individuals named by a State as eligible recipients under §411 of the Stafford Act for an IFG program award for flood damage as a result of a Presidential major disaster declaration will be included in a Group Flood Insurance Policy (GFIP) established under the National Flood Insurance Program (NFIP) regulations, at 44 CFR 61.17.

(i) The premium for the GFIP is a necessary expense within the meaning of this section. The State shall withhold this portion of the IFG award and provide it to the NFIP on behalf of individuals and families who are eligible for coverage. The coverage shall be equivalent to the maximum grant amount established under §411(f) of the Stafford Act.

(ii) The State IFG program staff shall provide the NFIP with records of individuals who received an IFG award and are, therefore, to be insured. Records of IFG grantees to be insured shall be accompanied by payments to cover the premium amounts for each grantee for the 3-year policy term. The NFIP will then issue a Certificate of Flood Insurance to each grantee. Flood insurance coverage becomes effective on the 30th day following the receipt of records of GFIP insureds and their premium payments from the State, and terminates 36 months from the inception date of the GFIP, i.e., 60 days from the date of the disaster declaration.

(iii) Insured grantees would not be covered if they are determined to be ineligible for coverage based on a number of exclusions established by the NFIP. Therefore, once grantees/policyholders receive the Certificate of Flood Insurance that contains a list of the policy exclusions, they should review that list to see if they are ineligible for coverage. Those grantees who fail to do this may find that their property is, in fact, not covered by the insurance policy when the next flooding incident occurs and they file for losses. Once the grantees find that their damaged buildings, contents, or both, are ineligible for coverage, they should notify the NFIP in writing in order to have their names removed from the GFIP, and to

have the flood insurance maintenance requirement expunged from the NFIP data-tracking system. (If the grantee wishes to refer to or review a Standard Flood Insurance Policy, it will be made available by the NFIP upon request.)

(D) A State may not make a grant to any individual or family who received Federal disaster assistance for flood damage occurring after September 23, 1994, if that property has already received Federal flood-disaster assistance in a disaster declared after September 23, 1994, a flood insurance purchase and maintenance requirement was levied as a condition or result of receiving that Federal disaster assistance, and flood insurance was, in fact, not maintained in an amount at least equal to the maximum IFG grant amount. However, if that property was determined to be ineligible for NFIP flood insurance coverage and is in a special flood hazard area located in a community participating in the NFIP, then the State may continue to make grants to those individuals or families that receive additional damage in all subsequent Presidentially declared major disasters involving floods.

(iv) In order to comply with the President's Executive Orders on Floodplain Management (E.O. 11988) and Protection of Wetlands (E.O. 11990), the State must implement the IFG program in accordance with FEMA regulations 44 CFR part 9. That part specifies which IFG program actions require a floodplain management decision-making process before a grant may be made, and also specifies the steps to follow in the decisionmaking process. Should the State determine that an individual or family is otherwise eligible for grant assistance, the State shall accomplish the necessary steps in accordance with that section, and request the Regional Administrator to make a final floodplain management determination.

(2) *Eligible categories.* Assistance under this section shall be made available to meet necessary expenses or serious needs by providing essential items or services in the following categories:

(i) Housing. With respect to primary residences (including mobile homes) which are owner-occupied at the time

of the disaster, grants may be authorized to:

- (A) Repair, replace, or rebuild;
- (B) Provide access. When an access serves more than one individual or family, an owner-occupant whose primary residence is served by the access may be eligible for a proportionate share of the cost of jointly repairing or providing such access. The owner-occupant may combine his/her grant funds with funds made available by the other individuals or families if a joint use agreement is executed (with no cost or charge involved) or if joint ownership of the access is agreed to;
- (C) Clean or make sanitary;
- (D) Remove debris from such residences. Debris removal is limited to the minimum required to remove health or safety hazards from, or protect against additional damage to the residence;
- (E) Provide or take minimum protective measures required to protect such residences against the immediate threat of damage, which means that the disaster damage is causing a potential safety hazard and, if not repaired, will cause actual safety hazards from common weather or environmental events (example: additional rain, flooding, erosion, wind); and
- (F) Minimization measures required by owner-occupants to comply with the provision of 44 CFR part 9 (Floodplain Management and Protection of Wetlands), to enable them to receive assistance from other means, and/or to enable them to comply with a community's floodplain management regulations.
  - (ii) Personal property. Proof of ownership of personal property is not required. This category includes:
    - (A) Clothing;
    - (B) Household items, furnishings, or appliances. If a predisaster renter receives a grant for household items, furnishings, or appliances and these items are an integral part of mobile home or other furnished unit, the predisaster renter may apply the funds awarded for these specific items toward the purchase of the furnished unit, and toward mobile home site development, towing, set-up, connecting and/or reconnecting;
    - (C) Tools, specialized or protective clothing, and equipment which are re-

quired by an employer as a condition of employment;

- (D) Repairing, cleaning or sanitizing any eligible personal property item; and
- (E) Moving and storing to prevent or reduce damage.
  - (iii) Transportation. Grants may be authorized to repair, replace, or provide privately owned vehicles or to provide public transportation.
  - (iv) Medical or dental expenses.
  - (v) Funeral expenses. Grants may include funeral and burial (and/or cremation) and related expenses.
  - (vi) Cost of the first year's flood insurance premium to meet the requirement of this section.
  - (vii) Costs for estimates required for eligibility determinations under the IFG program. Housing and personal property estimates will be provided by the government. However, an applicant may appeal to the State if he/she feels the government estimate is inaccurate. The cost of an applicant-obtained estimate to support the appeal is not an eligible cost.
  - (viii) Other. A State may determine that other necessary expenses and serious needs are eligible for grant assistance. If such a determination is made, the State must summarize the facts of the case and thoroughly document its findings of eligibility. Should the State require technical assistance in making a determination of eligibility, it may provide a factual summary to the Regional Administrator and request guidance. The Assistant Administrator for the Disaster Assistance Directorate also may determine that other necessary expenses and serious needs are eligible for grant assistance. Following such a determination, the Assistant Administrator for the Disaster Assistance Directorate shall advise the State, through the Regional Administrator, and provide the necessary program guidance.
- (3) *Ineligible categories.* Assistance under this section shall not be made available for any item or service in the following categories:
  - (i) Business losses, including farm businesses and self-employment;
  - (ii) Improvements or additions to real or personal property, except those

required to comply with paragraph (d)(2)(i)(F) of this section;

- (iii) Landscaping;
- (iv) Real or personal property used exclusively for recreation; and
- (v) Financial obligations incurred prior to the disaster.

(4) *Verification.* The State will be provided most verification data on IFG applicants who were not required to first apply to the SBA. The FEMA Regional Administrator shall be responsible for performing most of the required verifications in the categories of housing (to include documentation of home ownership and primary residency); personal property; and transportation (to include notation of the plate or title number of the vehicle; the State may wish to follow up on this). Certain verifications may still be required to be performed by the State, such as on late applicants or reverifications, when FEMA or its contractors are no longer available, and on medical/dental, funeral and “other” categories. Eligibility determination functions shall be performed by the State. The SBA will provide copies of verification performed by SBA staff on housing and personal property (including vehicles) for those applicants who were first required to apply to SBA. This will enable the State to make an eligibility determination on those applicants. When an applicant disagrees with the grant award, he/she may appeal to the State. The cost of any estimate provided by the applicant in support of his/her appeal is not eligible under the program.

(e) *State administrative plan.* (1) The State shall develop a plan for the administration of the IFG program that includes, as a minimum, the items listed below.

(i) Assignment of grant program responsibilities to State officials or agencies.

(ii) Procedures for:

(A) Notifying potential grant applicants of the availability of the program, to include the publication of application deadlines, pertinent program descriptions, and further program information on the requirements which must be met by the applicant in order to receive assistance;

(B) Participating with FEMA in the registration and acceptance of applications, including late applications, up to the prescribed time limitations;

(C) Reviewing verification data provided by FEMA and performing verifications for medical, dental, funeral, and “other” expenses, and also for all grant categories in the instance of late applications and appeals. FEMA will perform any necessary reverifications while its contract personnel are in the disaster area, and the State will perform any others;

(D) Determining applicant eligibility and grant amounts, and notifying applicants of the State’s decision;

(E) Determining the requirement for flood insurance;

(F) Preventing duplication of benefits between grant assistance and assistance from other means;

(G) At the applicant’s request, and at the State’s option, reconsidering the State’s determinations;

(H) Processing applicant appeals, recognizing that the State has final authority. Such procedures must provide for:

(1) The receipt of oral or written evidence from the appellate or representative;

(2) A determination on the record; and

(3) A decision by an impartial person or board;

(I) Disbursing grants in a timely manner;

(J) Verifying by random sample that grant funds are meeting applicants’ needs, are not duplicating assistance from other means, and are meeting floodplain management and flood insurance requirements. Guidance on the sample size will be provided by the Regional Administrator;

(K) Recovering grant funds obtained fraudulently, expended for unauthorized items or services, expended for items for which assistance is received from other means, or authorized for acquisition or construction purposes where proof of purchase of flood insurance is not provided to the State. Except for those mentioned in the previous sentence, grants made properly by the State on the basis of federally sponsored verification information are not subject to recovery by the State,

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i.e., FEMA will not hold the State responsible for repaying to FEMA the Federal share of those grants. The State is responsible for its 25 percent share of those grants. As an attachment to its voucher, the State must identify each case where recovery actions have been taken or are to be taken, and the steps taken or to be taken to accomplish recovery;

(L) Conducting any State audits that might be performed in compliance with the Single Audit Act of 1984; and ensuring that appropriate corrective action is taken within 6 months after receipt of the audit report in instances of non-compliance with Federal laws and regulations;

(M) Reporting to the Regional Administrator, and to the Federal Coordinating Officer as required; and

(N) Reviewing and updating the plan each January.

(iii) National eligibility criteria as defined in paragraph (d) of this section.

(iv) Provisions for compliance with 44 CFR part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; 44 CFR part 11, Claims; the State's own debt collection procedures; and all applicable Federal laws and regulations.

(v) Pertinent time limitations for accepting applications, grant award activities, and administrative activities, to comply with Federal time limitations.

(vi) Provisions for specifically identifying, in the accounts of the State, all Federal and State funds committed to each grant program; for repaying the loaned State share as of the date agreed upon in the FEMA-State Agreement; and for immediately returning, upon discovery, all Federal funds that are excess to program needs.

(vii) Provisions for safeguarding the privacy of applicants and the confidentiality of information, except that the information may be provided to agencies or organizations who require it to make eligibility decisions for assistance programs, or to prevent duplication of benefits, to State agencies responsible for audit or program review, and to FEMA or the Government Accountability Office for the purpose of

making audits or conducting program reviews.

(viii) A section identifying the management and staffing functions in the IFG program, the sources of staff to fill these functions, and the management and oversight responsibilities of:

(A) The GAR;

(B) The department head responsible for the IFG program;

(C) The Grant Coordinating Officer, i.e., the State official assigned management responsibility for the IFG program; and

(D) The IFG program manager, where management responsibilities are assigned to such a person on a day-to-day basis.

(2) The Governor or his/her designee may request the Regional Administrator to provide technical assistance in the preparation of an administrative plan to implement this program.

(3) The Governor shall submit a revised State administrative plan each January to the Regional Administrator. The Regional Administrator shall review and approve the plan annually. In each disaster for which assistance under this section is requested, the Regional Administrator shall request the State to prepare any amendments required to meet current policy guidance. The Regional Administrator must then work with the State until the plan and amendment(s) are approved.

(4) The State shall make its approved administrative plan part of the State emergency plan, as described in subpart A of these regulations.

(f) *State initiation of the IFG program.* To make assistance under this section available to disaster victims, the Governor must, either in the request of the President for a major disaster declaration or by separate letter to the Regional Administrator, express his/her intention to implement the program. This expression of intent must include an estimate of the size and cost of the program. In addition, this expression of intent represents the Governor's agreement to the following:

(1) That the program is needed to satisfy necessary expenses and serious needs of disaster victims which cannot otherwise be met;



(2) That the State will pay its 25 percent share of all grants to individuals and families;

(3) That the State will return immediately upon discovery advanced Federal funds that exceed actual requirements;

(4) To implement an administrative plan as identified in paragraph (e) of this section;

(5) To implement the grant program throughout the area designated as eligible for assistance by the Assistant Administrator for the Disaster Assistance Directorate; and

(6) To maintain close coordination with and provide reports to the Regional Administrator.

(g) *Funding.* (1) The Regional Administrator may obligate the Federal share of the IFG program based upon the determination that:

(i) The Governor has indicated the intention to implement the program, in accordance with paragraph (f) of this section;

(ii) The State's administrative plan meets the requirements of this section and current policy guidance; and

(iii) There is no excess advance of the Federal share due FEMA from a prior IFG program. The State may eliminate any such debt by paying it immediately, or by accepting an offset of the owed funds against other funds payable by FEMA to the State. When the excess Federal share has been repaid, the Regional Administrator may then obligate funds for the Federal share for the current disaster.

(2) The Regional Administrator may increase the State's letter of credit to meet the Federal share of program needs if the above conditions are met. The State may withdraw funds for the Federal share in the amount made available to it by the Regional Administrator. Advances to the State are governed by 44 CFR 13.21, Payment.

(3) The Regional Administrator may lend to the State its share in accordance with subpart A of these regulations.

(4) Payable costs are governed by 44 CFR 13.22, Allowable Costs, and the associated OMB Circular A-87, Cost Principles for State and Local Governments. Also, the costs must be in accordance with the national eligibility

criteria stated in paragraph (d) of this section, and the State's administrative plan, as stated in paragraph (e) of this section. The Federal contribution to this program shall be 75 percent of program costs and shall be made in accordance with 44 CFR 13.25, Matching or Cost-Sharing.

(h) *Final payment.* Final payment to the State for the Federal share of the IFG program plus administrative costs, is governed by 44 CFR 13.21, Payment, and 44 CFR 13.50, Closeout. The voucher is Standard Form 270, Request for Advance or Reimbursement). A separate voucher for the State share will be prepared, to include all disaster programs for which the State is requesting a loan of the non-Federal share. The FEMA Regional Administrator will analyze the voucher and approve, disapprove, or suspend approval until deficiencies are corrected.

(i) *Audits.* The State should perform the audits required by the Single Audit Act of 1984. Refer to 44 CFR part 13. All programs are subject to Federal audit.

(j) *Time limitations.* (1) In the administration of the IFG program:

(i) The Governor shall indicate his/her intention to implement the IFG program no later than 7 days following the day on which the major disaster was declared and in the manner set forth in paragraph (f) of this section;

(ii) Applications shall be accepted from individuals or families for a period of 60 days following the declaration, and for no longer than 30 days thereafter when the State determines that extenuating circumstances beyond the applicants' control (such as, but not limited to, hospitalization, illness, or inaccessibility to application centers) prevented them from applying in a timely manner. *Exception:* If applicants exercising their responsibility to first apply to the Small Business Administration do so after SBA's deadline, and SBA accepts their case for processing because of "substantial causes essentially beyond the control of the applicant," and provides a formal decline or insufficient loan based on lack of repayment ability, unsatisfactory credit, or unsatisfactory experience with prior loans (i.e., the reasons a loan denial client would normally be eligible for IFG assistance),

then such an application referred to the State by the SBA is considered as meeting the IFG filing deadline. The State may then apply its own criteria in determining whether to process the case for grant assistance. The State automatically has an extension of time to complete the processing, eligibility, and disbursement functions. However, the State must still complete all administrative activity within the 270-day period described in this section.

(iii) The State shall complete all grant award activity, including eligibility determinations, disbursement, and disposition of State level appeals, within 180 days following the declaration date. The Regional Administrator shall suspend all grant awards disbursed after the specified completion date; and

(iv) The State shall complete all administrative activities and submit final reports and vouchers to the Regional Administrator within 90 days of the completion of all grant award activity.

(2) The GAR may submit a request with appropriate justification for the extension of any time limitation. The Regional Administrator may approve the request for a period not to exceed 90 days. The Assistant Administrator for the Disaster Assistance Directorate may approve any request for a further extension of the time limitations.

(k) *Appeals—(1) Bills for collection (BFC's).* The State may appeal the issuance of a BFC by the Regional Administrator. Such an appeal shall be made in writing within 60 days of the issuance of the bill. The appeal must include information justifying why the bill is incorrect. The Regional Administrator shall review the material submitted and notify the State, in writing, within 15 days of receipt of the appeal, of his/her decision. Interest on BFC's starts accruing on the date of issuance of the BFC, but is not charged if the State pays within 30 days of issuance. If the State is successful in its appeal, interest will not be charged; if unsuccessful, interest is due and payable, as above.

(2) *Other appeals.* The State may appeal any other decision of the regional Administrator. Such appeals shall be made in writing within 60 days of the

Regional Administrator's decision. The appeal must include information justifying a reversal of the decision. The Regional Administrator shall review the material submitted and notify the State, in writing, within 15 days of receipt of the appeal, of his/her decision.

(3) *Appeals to the Assistant Administrator for the Disaster Assistance Directorate.* The State may further appeal the Regional Administrator's decisions to the Assistant Administrator for the Disaster Assistance Directorate. This appeal shall be made in writing within 60 days of the Regional Administrator's decision. The appeal must include information justifying a reversal of the decision. The Assistant Administrator for the Disaster Assistance Directorate shall review the material submitted and notify the State, in writing, within 15 days of receipt of the appeal, of his/her decision.

(1) *Exemption from garnishment.* All proceeds received or receivable under the IFG program shall be exempt from garnishment, seizure, encumbrance, levy, execution, pledge, attachment, release, or waiver. No rights under this provision are assignable or transferable. The above exemptions will not apply to the requirement imposed by paragraph (e)(1)(ii)(K) of this section.

(m) *Debt collection.* If the State has been unable to recover funds as stated in paragraph (e)(1)(k) of this section, the Regional Administrator shall institute debt collection activities against the individual according to the procedures outlined in 44 CFR part 11, Claims, and 44 CFR 13.52, Collection of Amounts Due.

[54 FR 11615, Mar. 21, 1989, as amended at 55 FR 28627, July 12, 1990; 60 FR 7130, Feb. 7, 1995; 61 FR 19201, May 1, 1996; 67 FR 61460, Sept. 30, 2002; 74 FR 15348, Apr. 3, 2009]

§§ 206.132–206.140 [Reserved]

**Subpart F—Other Individual Assistance**

**§ 206.141 Disaster unemployment assistance.**

The authority to implement the disaster unemployment assistance (DUA) program authorized by section 410 of the Stafford Act, and the authority to

**§§ 206.142–206.150**

issue regulations, are currently delegated to the Secretary of Labor.

**§§ 206.142–206.150 [Reserved]**

**§ 206.151 Food commodities.**

(a) The Administrator will assure that adequate stocks of food will be ready and conveniently available for emergency mass feeding or distribution in any area of the United States which suffers a major disaster or emergency.

(b) In carrying out the responsibilities in paragraph (a) of this section, the Administrator may direct the Secretary of Agriculture to purchase food commodities in accordance with authorities prescribed in section 413(b) of the Stafford Act.

**§§ 206.152–206.160 [Reserved]**

**§ 206.161 Relocation assistance.**

Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.

**§§ 206.162–206.163 [Reserved]**

**§ 206.164 Disaster legal services.**

(a) Legal services, including legal advice, counseling, and representation in non fee-generating cases, except as provided in paragraph (b) of this section, may be provided to low-income individuals who require them as a result of a major disaster. For the purpose of this section, *low-income individuals* means those disaster victims who have insufficient resources to secure adequate legal services, whether the insufficiency existed prior to or results from the major disaster. In cases where questions arise about the eligibility of an individual for legal services, the Regional Administrator or his/her representative shall make a determination.

(b) Disaster legal services shall be provided free to such individuals. Fee-generating cases shall not be accepted by lawyers operating under these regu-

lations. For purposes of this section, a fee-generating case is one which would not ordinarily be rejected by local lawyers as a result of its lack of potential remunerative value. Where any question arises as to whether a case is fee-generating as defined in this section, the Regional Administrator or his/her representative, after any necessary consultation with local or State bar associations, shall make the determination. Any fee-generating cases shall be referred by the Regional Administrator or his/her representative to private lawyers, through existing lawyer referral services, or, where that is impractical or impossible, the Regional Administrator may provide a list of lawyers from which the disaster victim may choose. Lawyers who have rendered voluntary legal assistance under these regulations are not precluded from taking fee-generating cases referred to them in this manner while in their capacity as private lawyers.

(c) When the Regional Administrator determines after any necessary consultation with the State Coordinating Officer, that implementation of this section is necessary, provision of disaster legal services may be accomplished by:

(1) Use of volunteer lawyers under the terms of appropriate agreements;

(2) Use of Federal lawyers, provided that these lawyers do not represent an eligible disaster victim before a court or Federal agency in a matter directly involving the United States, and further provided that these lawyers do not act in a way which will violate the standards of conduct of their respective agencies or departments;

(3) Use of private lawyers who may be paid by the Federal Emergency Management Agency when the Regional Administrator has determined that there is no other means of obtaining adequate legal assistance for qualified disaster victims; or

(4) Any other arrangement the Regional Administrator deems appropriate.

The Assistant Administrator for the Disaster Assistance Directorate shall coordinate with appropriate Federal agencies and the appropriate national,

state and local bar associations, as necessary, in the implementation of the disaster legal services programs.

(d) In the event it is necessary for FEMA to pay lawyers for the provision of legal services under these regulations, the Regional Administrator, in consultation with State and local bar associations, shall determine the amount of reimbursement due to the lawyers who have provided disaster legal services at the request of the Regional Administrator. At the Regional Administrator's discretion, administrative costs of lawyers providing legal services requested by him or her may also be paid.

(e) Provision of disaster legal services is confined to the securing of benefits under the Act and claims arising out of a major disaster.

(f) Any disaster legal services shall be provided in accordance with subpart A of these regulations, Non-discrimination in disaster assistance.

§§ 206.165–206.170 [Reserved]

§ 206.171 Crisis counseling assistance and training.

(a) *Purpose.* This section establishes the policy, standards, and procedures for implementing section 416 of the Act, Crisis Counseling Assistance and Training. FEMA will look to the Director, National Institute of Mental Health (NIMH), as the delegate of the Secretary of the Department of Health and Human Services (DHHS).

(b) *Definitions.* (1) *Assistant Administrator* means the head of the Disaster Assistance Directorate; the official who approves or disapproves a request for assistance under section 416 of the Act, and is the final appeal authority.

(2) *Crisis* means any life situation resulting from a major disaster or its aftermath which so affects the emotional and mental equilibrium of a disaster victim that professional mental health counseling services should be provided to help preclude possible damaging physical or psychological effects.

(3) *Crisis counseling* means the application of individual and group treatment procedures which are designed to ameliorate the mental and emotional crises and their subsequent psychological and behavioral conditions re-

sulting from a major disaster or its aftermath.

(4) *Federal Coordinating Officer (FCO)* means the person appointed by the Administrator or Deputy Administrator to coordinate Federal assistance in an emergency or a major disaster.

(5) *Grantee* means the State mental health agency or other local or private mental health organization which is designated by the Governor to receive funds under section 416 of the Act.

(6) *Immediate services* means those screening or diagnostic techniques which can be applied to meet mental health needs immediately after a major disaster. Funds for immediate services may be provided directly by the Regional Administrator to the State or local mental health agency designated by the Governor, prior to and separate from the regular program application process of crisis counseling assistance.

(7) *Major disaster* means any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(8) *Project Officer* means the person assigned by the Secretary, DHHS, to monitor a crisis counseling program, provide consultation, technical assistance, and guidance, and be the contact point within the DHHS for program matters.

(9) *Regional Administrator* means the director of a regional office of FEMA, or the Disaster Recovery Manager, as the delegate of the Regional Administrator.

(10) *Secretary* means the Secretary of DHHS or his/her delegate.

(11) *State Coordinating Officer (SCO)* means the person appointed by the

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Governor to act in cooperation with the FCO.

(c) *Agency policy.* (1) It is agency policy to provide crisis counseling services, when required, to victims of a major disaster for the purpose of relieving mental health problems caused or aggravated by a major disaster or its aftermath. Assistance provided under this section is short-term in nature and is provided at no cost to eligible disaster victims.

(2) The Regional Administrator and Assistant Administrator for the Disaster Assistance Directorate, in fulfilling their responsibilities under this section, shall coordinate with the Secretary.

(3) In meeting the responsibilities under this section, the Secretary or his/her delegate will coordinate with the Assistant Administrator for the Disaster Assistance Directorate.

(d) *State initiation of the crisis counseling program.* To obtain assistance under this section, the Governor or his/her authorized representative must initiate an assessment of the need for crisis counseling services within 10 days of the date of the major disaster declaration. The purpose of the assessment is to provide an estimate of the size and cost of the program needed and to determine if supplemental Federal assistance is required. The factors of the assessment must include those described in paragraphs (f)(2) (ii) and (iii) and (g)(2) (iii) and (iv) of this section.

(e) *Public or private mental health agency programs.* If the Governor determines during the assessment that because of unusual circumstances or serious conditions within the State or local mental health network, the State cannot carry out the crisis counseling program, he/she may identify a public or private mental health agency or organization to carry out the program or request the Regional Administrator to identify, with the assistance of the Secretary, such an agency or organization. Preference should be given to the extent feasible and practicable to those public and private agencies or organizations which are located in or do business primarily in the major disaster area.

(f) *Immediate services.* If, during the course of the assessment, the State determines that immediate mental health services are required because of the severity and magnitude of the disaster, and if State or local resources are insufficient to provide these services, the State may request and the Regional Administrator, upon determining that State resources are insufficient, may provide funds to the State, separate from the application process for regular program funds (described at paragraph (g) of this section).

(1) The application must be submitted to the Regional Administrator no later than 14 days following the declaration of the major disaster. This application represents the Governor's agreement and/or certification:

(i) That the requirements are beyond the State and local governments' capabilities;

(ii) That the program, if approved, will be implemented according to the plan contained in the application approved by the Regional Administrator;

(iii) To maintain close coordination with and provide reports to the Regional Administrator; and

(iv) To include mental health disaster planning in the State's emergency plan prepared under title II of the Stafford Act.

(2) The application must include:

(i) The geographical areas within the designated disaster area for which services will be provided;

(ii) An estimate of the number of disaster victims requiring assistance;

(iii) A description of the State and local resources and capabilities, and an explanation of why these resources cannot meet the need;

(iv) A description of response activities from the date of the disaster incident to the date of application;

(v) A plan of services to be provided to meet the identified needs; and

(vi) A detailed budget, showing the cost of proposed services separately from the cost of reimbursement for any eligible services provided prior to application.

(3) *Reporting requirements.* The State shall submit to the Regional Administrator:

(i) A mid-program report only when a regular program grant application is

being prepared and submitted. This report will be included as part of the regular program grant application;

(ii) A final program report, a financial status report, and a final voucher 90 days after the last day of immediate services funding.

(4) Immediate services program funding:

(i) Shall not exceed 60 days following the declaration of the major disaster, except when a regular program grant application has been submitted;

(ii) May continue for up to 30 additional days when a regular program grant application has been submitted;

(iii) May be extended by the Regional Administrator, upon written request from the State, documenting extenuating circumstances; and

(iv) May reimburse the State for documented, eligible expenses from the date of the occurrence of the event or incurred in anticipation of and immediately preceding the disaster event which results in a declaration.

(v) Any funds granted pursuant to an immediate services program, paragraph (f) of this section, shall be expended solely for the purposes specified in the approved application and budget, these regulations, the terms and conditions of the award, and the applicable principles prescribed in 2 CFR parts 200 and 3002.

(5) *Appeals.* There are two levels of appeals. If a State submits appeals at both levels, the first appeal must be submitted early enough to allow the latter appeal to be submitted within 60 days following the date of the funding determination on the immediate services program application.

(i) The State may appeal the Regional Administrator's decision. This appeal must be submitted in writing within 60 days of the date of notification of the application decision, but early enough to allow for further appeal if desired. The appeal must include information justifying a reversal of the decision. The Regional Director shall review the material submitted, and after consultation with the Secretary, notify the State, in writing within 15 days of receipt of the appeal, of his/her decision;

(ii) The State may further appeal the Regional Administrator's decision to

the Assistant Administrator for the Disaster Assistance Directorate. This appeal shall be made in writing within 60 days of the date of the Regional Administrator's notification of the decision on the immediate services application. The appeal must include information justifying a reversal of the decision. The Assistant Administrator for the Disaster Assistance Directorate, or other impartial person, shall review the material submitted, and after consultation with the Secretary and Regional Administrator, notify the State, in writing, within 15 days of receipt of the appeal, of his/her decision.

(g) *Regular program.* (1) The application must be submitted by the Governor or his/her authorized representative to the Assistant Administrator for the Disaster Assistance Directorate through the Regional Administrator, and simultaneously to the Secretary no later than 60 days following the declaration of the major disaster. This application represents the Governor's agreement and/or certification:

(i) That the requirements are beyond the State and local governments' capabilities;

(ii) That the program, if approved, will be implemented according to the plan contained in the application approved by the Assistant Administrator for the Disaster Assistance Directorate;

(iii) To maintain close coordination with and provide reports to the Regional Administrator, the Assistant Administrator for the Disaster Assistance Directorate, and the Secretary; and

(iv) To include mental health disaster planning in the State's emergency plan prepared under title II of the Stafford Act.

(2) The application must include:

(i) Standard Form 424, Application for Federal Assistance;

(ii) The geographical areas within the designated disaster area for which services will be supplied;

(iii) An estimate of the number of disaster victims requiring assistance. This documentation of need should include the extent of physical, psychological, and social problems observed, the types of mental health problems

encountered by victims, and a description of how the estimate was made;

(iv) A description of the State and local resources and capabilities, and an explanation of why these resources cannot meet the need;

(v) A plan of services which must include at a minimum:

(A) The manner in which the program will address the needs of the affected population, including the types of services to be offered, an estimate of the length of time for which mental health services will be required, and the manner in which long-term cases will be handled;

(B) A description of the organizational structure of the program, including designation by the Governor of an individual to serve as administrator of the program. If more than one agency will be delivering services, the plan to coordinate services must also be described;

(C) A description of the training program for project staff, indicating the number of workers needing such training;

(D) A description of the facilities to be utilized, including plans for securing office space if necessary to the project; and

(E) A detailed budget, including identification of the resources the State and local governments will commit to the project, proposed funding levels for the different agencies if more than one is involved, and an estimate of the required Federal contribution.

(3) *Reporting requirements.* The State shall submit the following reports to the Regional Administrator, the Secretary, and the State Coordinating Officer:

(i) Quarterly progress reports, as required by the Regional Administrator or the Secretary, due 30 days after the end of the reporting period. This is consistent with 2 CFR 200.328, Monitoring and Reporting Program Performance;

(ii) A final program report, to be submitted within 90 days after the end of the program period. This is also consistent with 2 CFR 200.328, Monitoring and Reporting Program Performance;

(iii) An accounting of funds, in accordance with 2 CFR 200.327, Financial Reporting, to be submitted with the final program report; and

(iv) Such additional reports as the Regional Administrator, Secretary, or SCO may require.

(4) Regular program funding:

(i) Shall not exceed 9 months from the date of the DHHS notice of grant award, except that upon the request of the State to the Regional Administrator and the Secretary, the Assistant Administrator for the Disaster Assistance Directorate may authorize up to 90 days of additional program period because of documented extraordinary circumstances. In limited circumstances, such as disasters of a catastrophic nature, the Assistant Administrator for the Disaster Assistance Directorate may extend the program period for more than 90 days where he or she deems it to be in the public interest.

(ii) The amount of the regular program grant award will take into consideration the Secretary's estimate of the sum necessary to carry out the grant purpose.

(iii) Any funds granted pursuant to a regular program, paragraph (g) of this section, shall be expended solely for the purposes specified in the approved application and budget, these regulations, the terms and conditions of the award, and the applicable cost principles prescribed in subpart Q of 45 CFR part 92.

(5) *Appeals.* The State may appeal the Assistant Administrator for the Disaster Assistance Directorate's decision, in writing, within 60 days of the date of notification of the decision. The appeal must include information justifying a reversal of the decision. The Assistant Administrator for the Disaster Assistance Directorate, or other impartial person, in consultation with the Secretary and Regional Administrator, shall review the material submitted and notify the State, in writing within 15 days of receipt of the appeal, of his/her decision.

(h) *Eligibility guidelines.* (1) For services. An individual may be eligible for crisis counseling services if he/she was a resident of the designated major disaster areas or was located in the area at the time of the disaster event and if:

(i) He/she has a mental health problem which was caused or aggravated by the major disaster or its aftermath; or

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(ii) He/she may benefit from preventive care techniques.

(2) For training. (i) The crisis counseling project staff or consultants to the project are eligible for the specific instruction that may be required to enable them to provide professional mental health crisis counseling to eligible individuals;

(ii) All Federal, State, and local disaster workers responsible for assisting disaster victims are eligible for general instruction designed to enable them to deal effectively and humanely with disaster victims.

(i) *Assignment of responsibilities.* (1) The Regional Administrator shall:

(i) In the case of an immediate services program application, acknowledge receipt of the request, verify (with assistance from the Secretary) that State resources are insufficient, approve or disapprove the State's application, obligate and advance funds for this purpose, review appeals, make a determination (with assistance from the Secretary), and notify the State;

(ii) In the case of a regular program grant application:

(A) Acknowledge receipt of the request;

(B) Request the Secretary to conduct a review to determine the extent to which assistance requested by the Governor or his/her authorized representative is warranted;

(C) Considering the Secretary's recommendation, recommend approval or disapproval of the application for assistance under this section; and forward the Regional Administrator's and Secretary's recommendations and documentation to the Assistant Administrator for the Disaster Assistance Directorate;

(D) Assist the State in preliminary surveys and provide guidance and technical assistance if requested to do so; and

(E) Maintain liaison with the Secretary and look to the Secretary for program oversight and monitoring.

(2) The Secretary shall:

(i) Provide technical assistance, consultation, and guidance to the Regional Administrator in reviewing a State's application, to a State during program implementation and development, and

to mental health agencies, as appropriate;

(ii) At the request of the Regional Administrator, conduct a review to verify the extent to which the requested assistance is needed and provide a recommendation on the need for supplementary Federal assistance. The review must include:

(A) A verification of the need for services with an indication of how the verification was conducted;

(B) Identification of the Federal mental health programs in the area, and the extent to which such existing programs can help alleviate the need;

(C) An identification of State, local, and private mental health resources, and the extent to which these resources can assume the workload without assistance under this section and the extent to which supplemental assistance is warranted;

(D) A description of the needs; and

(E) A determination of whether the plan adequately addresses the mental health needs;

(iii) If the application is approved, provide grant assistance to States or the designated public or private entities;

(iv) If the application is approved, monitor the progress of the program and perform program oversight;

(v) Coordinate with, and provide program reports to, the Regional Administrator, and the Assistant Administrator for the Disaster Assistance Directorate;

(vi) Make the appeal determination, for regular program grants, involving allowable costs and termination for cause as described in paragraph (j)(2) of this section;

(vii) As part of the project monitoring responsibilities, report to the Regional Administrator and Assistant Administrator for the Disaster Assistance Directorate at least quarterly on the progress of crisis counseling programs, in a report format jointly agreed upon by the Secretary and FEMA; provide special reports, as requested by the Regional Administrator, FCO, or Assistant Administrator for the Disaster Assistance Directorate;



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(viii) Require progress reports and other reports from the grantee to facilitate his/her project monitoring responsibilities;

(ix) Properly account for all Federal funds made available to grantees under this section. Submit to the Assistant Administrator for the Disaster Assistance Directorate, within 120 days of completion of a program, a final accounting of all expenditures for the program and return to FEMA all excess funds. Attention is called to the reimbursement requirements of this part.

(3) The Assistant Administrator for the Disaster Assistance Directorate shall:

(i) Approve or disapprove a State’s request for assistance based on recommendations of the Regional Administrator and the Secretary;

(ii) Obligate funds and authorize advances of funds to the DHHS;

(iii) Request that the Secretary designate a Project Officer;

(iv) Maintain liaison with the Secretary and Regional Administrator; and

(v) Review and make determinations on appeals, except for regular program appeals involving allowable costs and termination for cause as described in paragraph (j)(2) of this section, and notify the State of the decision.

(j) *Grant awards.* (1) Neither the approval of any application nor the award of any grant commits or obligates the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of any approved application.

(2) Several other regulations of the DHHS apply to grants under this section. These include, but are not limited to:

- 45 CFR part 16—DHHS grant appeals procedures
- 42 CFR part 50, subpart D—PHS grant appeals procedures
- 45 CFR part 74—Administration of grants
- 45 CFR part 75—Informal grant appeals procedures (indirect cost rates and other cost allocations)
- 45 CFR part 80—Nondiscrimination under programs receiving Federal assistance through the DHHS (effectuation of Title VI of the Civil Rights Act of 1964)
- 45 CFR part 81—Practice and procedure for hearings under part 80

45 CFR part 84—Nondiscrimination on the basis of handicap in federally assisted programs

45 CFR part 86—Nondiscrimination on the basis of sex in federally assisted programs

45 CFR part 91—Nondiscrimination on the basis of age in federally assisted programs

45 CFR part 92—Uniform administrative requirements for grants and cooperative agreements to State and local governments

(k) *Federal audits.* The crisis counseling program is subject to Federal audit. The Assistant Administrator for the Disaster Assistance Directorate, the Regional Administrator, the DHS Inspector General, The Secretary, and the Comptroller General of the United States, or their duly authorized representatives, shall have access to any books, documents, papers, and records that pertain to Federal funds, equipment, and supplies received under this section for the purpose of audit and examination.

[54 FR 11615, Mar. 21, 1989, as amended at 68 FR 9900, Mar. 3, 2003; 79 FR 76085, Dec. 19, 2014]

§§ 206.172–206.180 [Reserved]

§ 206.181 Use of gifts and bequests for disaster assistance purposes.

(a) *General.* FEMA sets forth procedures for the use of funds made possible by a bequest of funds from the late Cora C. Brown of Kansas City, Missouri, who left a portion of her estate to the United States for helping victims of natural disasters and other disasters not caused by or attributable to war. FEMA intends to use the funds, and any others that may be bequeathed under this authority, in the manner and under the conditions described below.

(b) *Purposes for awarding funds.* Money from the Cora Brown Fund may only be used to provided for disaster-related needs that have not been or will not be met by governmental agencies or any other organizations which have programs to address such needs; however, the fund is not intended to replace or supersede these programs. For example, if assistance is available from another source, including the Individual and Family Grant program and government-sponsored disaster loan assistance, then money from the Cora

Brown Fund will not be available to the applicant for the same purpose. Listed below are the general categories of assistance which can be provided by the Cora Brown Fund:

(1) Disaster-related home repair and rebuilding assistance to families for permanent housing purposes, including site acquisition and development, relocation of residences out of hazardous areas, assistance with costs associated with temporary housing or permanent rehousing (e.g., utility deposits, access, transportation, connection of utilities, etc.);

(2) Disaster-related unmet needs of families who are unable to obtain adequate assistance under the Act or from other sources. Such assistance may include but is not limited to: health and safety measures; evacuation costs; assistance delineated in the Act or other Federal, State, local, or volunteer programs; hazard mitigation or floodplain management purposes; and assistance to self-employed persons (with no employees) to reestablish their businesses; and

(3) Other services which alleviate human suffering and promote the well being of disaster victims. For example, services to the elderly, to children, or to handicapped persons, such as transportation, recreational programs, provision of special ramps, or hospital or home visiting services. The funds may be provided to individual disaster victims, or to benefit a group of disaster victims.

(c) *Conditions for use of the Cora Brown Fund.* (1) The Cora Brown Fund is available only when the President declares that a major disaster or emergency exists under the Act, only in areas designated as eligible for Federal disaster assistance through notice in the FEDERAL REGISTER, and only at the discretion of the Assistant Administrator for the Disaster Assistance Directorate. The fund is limited to the initial endowment plus accrued interest, and this assistance program will cease when the fund is used up.

(2) A disaster victim normally will receive no more than \$2,000 from this fund in any one declared disaster unless the Assistant Administrator for the Disaster Assistance Directorate determines that a larger amount is in the

best interest of the disaster victim and the Federal Government. Funds to provide service which benefit a group may be awarded in an amount determined by the Assistant Administrator for the Disaster Assistance Directorate, based on the Regional Administrator's recommendation.

(3) The fund may not be used in a way that is inconsistent with other federally mandated disaster assistance or insurance programs, or to modify other generally applicable requirements.

(4) Funds awarded to a disaster victim may be provided by FEMA jointly to the disaster victim and to a State or local agency, or volunteer organization, to enable such an agent to assist in providing the approved assistance to an applicant. Example: Repair funds may be provided jointly to an applicant and the Mennonite Disaster Service, who will coordinate the purchase of supplies and provide the labor.

(5) Money from this fund will not duplicate assistance for which a person is eligible from other sources.

(6) In order to comply with the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended, any award for acquisition or construction purposes shall carry a requirement that any adequate flood insurance policy be purchased and maintained. The Assistant Administrator for the Disaster Assistance Directorate shall determine what is adequate based on the purpose of the award.

(7) The fund shall be administered in an equitable and impartial manner without discrimination on the grounds of race, color, religion, national origin, sex, age, or economic status.

(8) Funds awarded to a disaster victim from this fund may be combined with funds from other sources.

(d) *Administrative procedures.* (1) The Assistant Administrator for the Disaster Assistance Directorate, shall be responsible for awarding funds and authorizing disbursement.

(2) The Chief Financial Officer shall be responsible for fund accountability and, in coordination with the Assistant Administrator for the Disaster Assistance Directorate, for liaison with the Department of the Treasury concerning the investment of excess

money in the fund pursuant to the provisions contained in section 601 of the Act.

(3) Each FEMA Regional Administrator may submit requests to the Assistant Administrator for the Disaster Assistance Directorate on a disaster victim's behalf by providing documentation describing the needs of the disaster victim, a verification of the disaster victim's claim, a record of other assistance which has been or will be available for the same purpose, and his/her recommendation as to the items and the amount. The Assistant Administrator for the Disaster Assistance Directorate shall review the facts and make a determination. If the award amount is below \$2,000, the Assistant Administrator for the Disaster Assistance Directorate may appoint a designee to have approval authority; approval authority of \$2,000 or above shall be retained by the Assistant Administrator for the Disaster Assistance Directorate. The Assistant Administrator for the Disaster Assistance Directorate shall notify the Chief Financial Officer of a decision for approval, and the Chief Financial Officer shall order a check to be sent to the disaster victim (or jointly to the disaster victim and an assistance organization), through the Regional Administrator. The Assistant Administrator for the Disaster Assistance Directorate shall also notify the Regional Administrator of the decision, whether for approval or disapproval. The Regional Administrator shall notify the disaster victim in writing, identify any award as assistance from the Cora Brown Fund, and advise the recipient of appeal procedures.

(4) If the award is to be for a service to a group of disaster victims, the Regional Administrator shall submit his/her recommendation and supporting documentation to the Assistant Administrator for the Disaster Assistance Directorate (or his/her designee if the award is below \$2,000), who shall review the information and make a determination. In cases of approval, the Assistant Administrator for the Disaster Assistance Directorate shall request the Chief Financial Officer to send a check to the intended recipient or provider, as appropriate. The Assistant

Administrator for the Disaster Assistance Directorate shall notify the Regional Administrator of the decision. The Regional Administrator shall notify a representative of the group in writing.

(5) The Chief Financial Officer shall process requests for checks, shall keep records of disbursements and balances in the account, and shall provide the Assistant Administrator for the Disaster Assistance Directorate with quarterly reports.

(e) *Audits.* The Inspector General of DHS may audit the use of money in this account to determine whether the funds are being administered according to these regulations and whether the financial management of the account is adequate. The Inspector General shall provide his/her findings to the Administrator, for information, comments and appropriate action. A copy shall be provided to the Chief Financial Officer for the same purpose.

§§ 206.182–206.190 [Reserved]

§ 206.191 Duplication of benefits.

(a) *Purpose.* This section establishes the policies for implementing section 312 of the Stafford Act, entitled Duplication of Benefits. This section relates to assistance for individuals and families.

(b) *Government policy.* (1) Federal agencies providing disaster assistance under the Act or under their own authorities triggered by the Act, shall cooperate to prevent and rectify duplication of benefits, according to the general policy guidance of the Federal Emergency Management Agency. The agencies shall establish appropriate agency policies and procedures to prevent duplication of benefits.

(2) Major disaster and emergency assistance provided to individuals and families under the Act, and comparable disaster assistance provided by States, local governments, and disaster assistance organizations, is not considered as income or a resource when determining eligibility for or benefit levels under federally funded income assistance or resource-tested programs. Examples of federally funded income assistance or resource-tested programs are the food

stamp program and welfare assistance programs.

(c) *FEMA policy.* It is FEMA policy:

(1) To prevent duplication of benefits between its own programs and insurance benefits, and between its own programs and other disaster assistance. Assistance under the Act may be provided in instances where the applicant has not received other benefits to which he/she may be entitled by the time of application and if the applicant agrees to repay all duplicated assistance to the agency providing the Federal assistance;

(2) To examine a debt resulting from duplication to determine that the likelihood of collecting the debt and the best interests of the Federal Government justify taking the necessary recovery actions to remedy duplication which has occurred when other assistance has become available;

(3) To assure uniformity in preventing duplication of benefits, by consulting with other Federal agencies and by performing selected quality control reviews, that the other disaster relief agencies establish and follow policies and procedures to prevent and remedy duplication among their programs, other programs, and insurance benefits; and

(4) To coordinate the effort of agencies providing assistance so that each agency understands the prevention and remedial policies of the others and is able to fulfill its own responsibilities regarding duplication of benefits.

(d) *Guidance to prevent duplication of benefits.* (1) Delivery sequence. FEMA provides the following policy and procedural guidance to ensure uniformity in preventing duplication of benefits.

(i) Duplication occurs when an agency has provided assistance which was the primary responsibility of another agency, and the agency with primary responsibility later provides assistance. A delivery sequence establishes the order in which disaster relief agencies and organizations provide assistance. The specific sequence, in accordance with the mandates of the assistance programs, is to be generally followed in the delivery of assistance.

(ii) When the delivery sequence has been disrupted, the disrupting agency is responsible for rectifying the dupli-

cation. The delivery sequence pertains to that period of time in the recovery phase when most of the traditional disaster assistance programs are available.

(2) The delivery sequence is, in order of delivery:

(i) Volunteer agencies' emergency assistance (except expendable items such as clothes, linens, and basic kitchenware); insurance (including flood insurance);

(ii) Housing assistance pursuant to section 408 of the Stafford Act.

(iii) Small Business Administration and Farmers Home Administration disaster loans;

(iv) Other Needs assistance, pursuant to section 408 of the Stafford Act or its predecessor program, the Individual and Family Grant Program.

(v) Volunteer agencies' "additional assistance" programs; and

(vi) The "Cora Brown Fund."

(3) Two significant points about the delivery sequence are that:

(i) Each assistance agency should, in turn, offer and be responsible for delivering assistance without regard to duplication with a program later in the sequence; and

(ii) The sequence itself determines what types of assistance can duplicate other assistance (i.e., a Federal program can duplicate insurance benefits, however, insurance benefits cannot duplicate the Federal assistance). An agency's position in the sequence determines the order in which it should provide assistance and what other resources it must consider before it does so.

(4) If following the delivery sequence concept would adversely affect the timely receipt of essential assistance by a disaster victim, an agency may offer assistance which is the primary responsibility of another agency. There also may be cases when an agency (Agency B) delivers assistance which is normally the primary responsibility of another agency (Agency A) because Agency A has, for good cause, denied assistance. After the assistance is delivered, Agency A reopens the case. If the primary response Agency A then provides assistance, that Agency A is responsible for coordinating with Agency B to either:

(i) Assist Agency B in preventing the duplication of benefits, or

(ii) In the case where the disaster victim has refused assistance from Agency A, notify Agency B that it must recover assistance previously provided.

(e) *Program guidance*—(1) *Programs under the Act vs. other agency assistance.*

(i) In making an eligibility determination, the FEMA Regional Administrator, in the case of federally operated programs, or the State, in the case of State operated programs, shall determine whether assistance is the primary responsibility of another agency to provide, according to the delivery sequence; and determine whether that primary response agency can provide assistance in a timely way.

(ii) If it is determined that timely assistance can be provided by the agency with primary responsibility, refrain from providing assistance under the Act. If it is determined that assistance from the agency with primary responsibility will be delayed, assistance under the Act may be provided, but then must be recovered from the applicant when the other assistance becomes available.

(2) *Programs under the Act vs. insurance.* In making an eligibility determination, the FEMA Regional Administrator or State shall:

(i) Remind the applicant about his/her responsibility to pursue an adequate settlement. The applicant must provide information concerning insurance recoveries.

(ii) Determine whether the applicant's insurance settlement will be sufficient to cover the loss or need without disaster assistance; and

(iii) Determine whether insurance benefits (including flood insurance) will be provided in a timely way. Where flood insurance is involved, the Regional Administrator shall coordinate with the Federal Insurance Administration. The purpose of this coordination is to obtain information about flood insurance coverage and settlements.

(3) *Random sample.* Each disaster assistance agency is responsible for preventing and rectifying duplication of benefits under the coordination of the Federal Coordinating Officer (FCO) and the general authority of section 312. To

determine whether duplication has occurred and established procedures have been followed, the Regional Administrator shall, within 90 days after the close of the disaster assistance programs application period, for selected disaster declarations, examine on a random sample basis, FEMA's and other government and voluntary agencies' case files and document the findings in writing.

(4) *Duplication when assistance under the Act is involved.* If duplication is discovered, the Regional Administrator shall determine whether the duplicating agency followed its own remedial procedures.

(i) If the duplicating agency followed its procedures and was successful in correcting the duplication, the Regional Administrator will take no further action. If the agency was not successful in correcting the duplication, and the Regional Administrator is satisfied that the duplicating agency followed its remedial procedures, no further action will be taken.

(ii) If the duplicating agency did not follow its duplication of benefits procedures, or the Regional Administrator is not satisfied that the procedures were followed in an acceptable manner, then the Regional Administrator shall provide an opportunity for the agency to take the required corrective action. If the agency cannot fulfill its responsibilities for remedial action, the Regional Administrator shall notify the recipient of the excess assistance, and after examining the debt, if it is determined that the likelihood of collecting the debt and the best interests of the Federal Government justify taking the necessary recovery actions, then take those recovery actions in conjunction with agency representatives for each identified case in the random sample (or larger universe, at the Regional Administrator's discretion).

(5) *Duplication when assistance under other authorities is involved.* When the random sample shows evidence that duplication has occurred and corrective action is required, the Regional Administrator and the FCO shall urge the duplicating agency to follow its own procedures to take corrective action, and shall work with the agency toward that end. Under his/her authority in section

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312, the Regional Administrator shall require the duplicating agency to report to him/her on its attempt to correct the duplications identified in the sample.

(f) *Recovering FEMA funds: debt collection.* Funds due to FEMA are recovered in accordance with the Department of Homeland Security's Debt Collection Regulations (6 CFR part 11—Claims).

[54 FR 11615, Mar. 21, 1989, as amended at 67 FR 61460, Sept. 30, 2002; 74 FR 15350, Apr. 3, 2009]

### §§ 206.192–206.199 [Reserved]

### Subpart G—Public Assistance Project Administration

SOURCE: 55 FR 2304, Jan. 23, 1990, unless otherwise noted.

#### § 206.200 General.

(a) *Purpose.* This subpart establishes procedures for the administration of Public Assistance grants approved under the provisions of the Stafford Act.

(b) *What policies apply to FEMA public assistance grants?* (1) The Stafford Act requires that we deliver eligible assistance as quickly and efficiently as possible consistent with Federal laws and regulations. We expect the recipient and the subrecipient to adhere to Stafford Act requirements and to these regulations when administering our public assistance grants.

(2) The regulations entitled “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” published at 2 CFR parts 200 and 3002, place requirements on the State in its role as recipient and gives the recipient discretion to administer federal programs under their own procedures. We expect the recipient to:

(i) Inform subrecipients about the status of their applications, including notifications of our approvals of Project Worksheets and our estimates of when we will make payments;

(ii) Pay the full amounts due to subrecipients as soon as practicable after we approve payment, including the State contribution required in the FEMA-State Agreement; and

(iii) Pay the State contribution consistent with State laws.

[55 FR 2304, Jan. 23, 1990, as amended at 63 FR 64425, Nov. 20, 1998; 64 FR 55160, Oct. 12, 1999; 79 FR 76086, Dec. 19, 2014; 82 FR 42, Jan. 3, 2017]

#### § 206.201 Definitions used in this subpart.

(a) *Applicant* means a State agency, local government, or eligible private nonprofit organization, as identified in Subpart H of this regulation, submitting an application to the recipient for assistance under the State's grant.

(b) *Emergency work* means that work which must be done immediately to save lives and to protect improved property and public health and safety, or to avert or lessen the threat of a major disaster.

(c) *Facility* means any publicly or privately owned building, works, system, or equipment, built or manufactured, or an improved and maintained natural feature. Land used for agricultural purposes is not a facility.

(d) *Grant* means an award of financial assistance. The grant award shall be based on the total eligible Federal share of all approved projects.

(e) *Hazard mitigation* means any cost effective measure which will reduce the potential for damage to a facility from a disaster event.

(f) *Host-State.* A State or Indian Tribal government that by agreement with FEMA provides sheltering and/or evacuation support to evacuees from an impact-State. An Indian Tribal government may also be referred to as a “Host-Tribe.”

(g) *Impact-State.* The State for which the President has declared an emergency or major disaster and that, due to a need to evacuate and/or shelter affected individuals outside the State, requests such assistance from FEMA pursuant to § 206.208.

(h) *Indian Tribal government* means any federally recognized governing body of 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 Tribe List Act of 1994, 25 U.S.C.

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479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

(i) *Permanent work* means that restorative work that must be performed through repairs or replacement, to restore an eligible facility on the basis of its predisaster design and current applicable standards.

(j) *Predisaster design* means the size or capacity of a facility as originally designed and constructed or subsequently modified by changes or additions to the original design. It does not mean the capacity at which the facility was being used at the time the major disaster occurred if different from the most recent designed capacity.

(k) A *project* is a logical grouping of work required as a result of the declared major disaster or emergency. The scope of work and cost estimate for a project are documented on a Project Worksheet (FEMA Form 90–91).

(1) We must approve a scope of eligible work and an itemized cost estimate before funding a project.

(2) A project may include eligible work at several sites.

(1) *Project approval* means the process in which the Regional Administrator, or designee, reviews and signs an approval of work and costs on a Project Worksheet or on a batch of Project Worksheets. Such approval is also an obligation of funds to the recipient.

(m) *Recipient*. Recipient means the government to which a grant is awarded, and which is accountable for the use of the funds provided. The recipient is the entire legal entity even if only a particular component of the entity is designated in the grant award document. Generally, except as provided in §206.202(f), the State for which the emergency or major disaster is declared is the recipient. However, an Indian Tribal government may choose to be a recipient, or it may act as a subrecipient under the State. If an Indian Tribal government is the recipient, it will assume the responsibilities of the “recipient” or “State” as described in this part with respect to administration of the Public Assistance program.

(n) *Subgrant* means an award of financial assistance under a grant by a recipient to an eligible subrecipient.

(o) *Subrecipient* means the government or other legal entity to which a subgrant is awarded and which is accountable to the recipient for the use of the funds provided.

[55 FR 2304, Jan. 23, 1990, as amended at 63 FR 64425, Nov. 20, 1998; 64 FR 55160, Oct. 12, 1999; 74 FR 60213, Nov. 20, 2009; 82 FR 43, Jan. 3, 2017]

§ 206.202 Application procedures.

(a) *General*. This section describes the policies and procedures that we use to process public assistance grants to States. Under this section the State is the recipient. As recipient you are responsible for processing subgrants to applicants under 2 CFR parts 200 and 3002, and 44 CFR part 206, and your own policies and procedures.

(b) *Recipient*. You are the grant administrator for all funds provided under the Public Assistance grant program. Your responsibilities under this section include:

(1) Providing technical advice and assistance to eligible subrecipients;

(2) Providing State support for project identification activities to include small and large project formulation and the validation of small projects;

(3) Ensuring that all potential applicants are aware of available public assistance; and

(4) Submitting documents necessary for the award of grants.

(c) *Request for Public Assistance (Request)*. The recipient must send a completed *Request* (FEMA Form 90–49) to the Regional Administrator for each applicant who requests public assistance. You must send *Requests* to the Regional Administrator within 30 days after designation of the area where the damage occurred.

(d) *Project Worksheets*. (1) An applicant’s authorized local representative is responsible for representing the applicant and for ensuring that the applicant has identified all eligible work and submitted all costs for disaster-related damages for funding.

(i) We or the applicant, assisted by the State as appropriate, will prepare a Project Worksheet (FEMA Form 90–91) for each project. The Project Worksheet must identify the eligible scope

of work and must include a quantitative estimate for the eligible work.

(ii) The applicant will have 60 days following its first substantive meeting with us to identify and to report damage to us.

(2) When the estimated cost of work on a project is less than \$3,000, that work is not eligible and we will not approve a Project Worksheet for the project. Such \$3,000 amount shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(e) *Grant approval.* (1) Before we obligate any funds to the State, the recipient must complete and send to the Regional Administrator a Standard Form (SF) 424, Application for Federal Assistance, and a SF 424D, Assurances for Construction Programs. After we receive the SF 424 and SF 424D, the Regional Administrator will obligate funds to the recipient based on the approved Project Worksheets. The recipient will then approve subgrants based on the Project Worksheets approved for each applicant.

(2) When the applicant submits the Project Worksheets, we will have 45 days to obligate Federal funds. If we have a delay beyond 45 days we will explain the delay to the recipient.

(f) *Exceptions.* The following are exceptions to the procedures and time limitations outlined in this section.

(1) *Host-State Evacuation and/or Sheltering*—(i) *General.* A grant to a host-State for sheltering and/or evacuation support is available under this section when an impact-State requests direct Federal assistance for sheltering and/or evacuation support pursuant to § 206.208. To receive this grant, a host-State must enter into a FEMA-Host-State Agreement, amend its State Administrative Plan pursuant to § 206.207, and submit a Standard Form SF424 *Application for Federal Assistance* directly to FEMA to apply for reimbursement of eligible costs for evacuating and/or sheltering individuals from an impact-State. Upon award, the host-State assumes the responsibilities of the “recipient” or “State” under this part with respect to its grant award.

(ii) *Force Account Labor Costs.* For the performance of eligible evacuation and

sheltering support under sections 403 or 502 of the Stafford Act, the straight-time salaries and benefits of a host-State’s permanently employed personnel are eligible for reimbursement. This is an exception to § 206.228(a)(2).

(2) *Time limitations.* The Regional Administrator may extend the time limitations shown in paragraphs (c) and (d) of this section when the recipient justifies and makes a request in writing. The justification must be based on extenuating circumstances beyond the recipient’s or subrecipient’s control.

[64 FR 55160, Oct. 12, 1999, as amended at 74 FR 15350, Apr. 3, 2009; 74 FR 60213, Nov. 20, 2009; 79 FR 10686, Feb. 26, 2014; 79 FR 76086, Dec. 19, 2014; 82 FR 43, Jan. 3, 2017]

**§ 206.203 Federal grant assistance.**

(a) *General.* This section describes the types and extent of Federal funding available under State disaster assistance grants, as well as limitations and special procedures applicable to each.

(b) *Cost sharing.* All projects approved under State disaster assistance grants will be subject to the cost sharing provisions established in the FEMA-State Agreement and the Stafford Act.

(c) *Project funding*—(1) *Large projects.* When the approved estimate of eligible costs for an individual project is \$1,000,000 or greater, Federal funding shall equal the Federal share of the actual eligible costs documented by a recipient. Such \$1,000,000 amount shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(2) *Small projects.* When the approved estimate of costs for an individual project is less than \$1,000,000, Federal funding shall equal the Federal share of the approved estimate of eligible costs. Such \$1,000,000 amount shall be adjusted annually as indicated in paragraph (c)(1) of this section.

(3) *Applicability date.* The dollar threshold provided in this paragraph (c) applies to project worksheets that have not been obligated as of August 3, 2022 for major disasters and emergencies declared on or after March 13, 2020.

(d) *Funding options*—(1) *Improved projects.* If a subrecipient desires to make improvements, but still restore



the predisaster function of a damaged facility, the recipient's approval must be obtained. Federal funding for such improved projects shall be limited to the Federal share of the approved estimate of eligible costs.

(2) *Alternate projects.* In any case where a subrecipient determines that the public welfare would not be best served by restoring a damaged public facility or the function of that facility, the recipient may request that the Regional Administrator approve an alternate project.

(i) The alternate project option may be taken only on permanent restorative work.

(ii) Federal funding for alternate projects for damaged public facilities will be 90 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.

(iii) Federal funding for alternate projects for damaged private nonprofit facilities will be 75 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.

(iv) Funds contributed for alternate projects may be used to repair or expand other selected public facilities, to construct new facilities, or to fund hazard mitigation measures. These funds may not be used to pay the non-Federal share of any project, nor for any operating expense.

(v) Prior to the start of construction of any alternate project the recipient shall submit for approval by the Regional Administrator the following: a description of the proposed alternate project(s); a schedule of work; and the projected cost of the project(s). The recipient shall also provide the necessary assurances to document compliance with special requirements, including, but not limited to floodplain management, environmental assessment, hazard mitigation, protection of wetlands, and insurance.

[55 FR 2304, Jan. 23, 1990, as amended at 66 FR 22444, May 4, 2001; 73 FR 20551, Apr. 16, 2008; 79 FR 10686, Feb. 26, 2014; 82 FR 43, Jan. 3, 2017; 87 FR 47379, Aug. 3, 2022]

§ 206.204 **Project performance.**

(a) *General.* This section describes the policies and procedures applicable during the performance of eligible work.

(b) *Advances of funds.* Advances of funds will be made in accordance with 2 CFR 200.305.

(c) *Time limitations for completion of work—(1) Deadlines.* The project completion deadlines shown below are set from the date that a major disaster or emergency is declared and apply to all projects approved under State disaster assistance grants.

| COMPLETION DEADLINES   |        |
|------------------------|--------|
| Type of work           | Months |
| Debris clearance ..... | 6      |
| Emergency work .....   | 6      |
| Permanent work .....   | 18     |

(2) *Exceptions.* (i) The recipient may impose lesser deadlines for the completion of work under paragraph (c)(1) of this section if considered appropriate.

(ii) Based on extenuating circumstances or unusual project requirements beyond the control of the subrecipient, the recipient may extend the deadlines under paragraph (c)(1) of this section for an additional 6 months for debris clearance and emergency work and an additional 30 months, on a project by project basis for permanent work.

(d) *Requests for time extensions.* Requests for time extensions beyond the recipient's authority shall be submitted by the recipient to the Regional Administrator and shall include the following:

(1) The dates and provisions of all previous time extensions on the project; and

(2) A detailed justification for the delay and a projected completion date. The Regional Administrator shall review the request and make a determination. The recipient shall be notified of the Regional Administrator's determination in writing. If the Regional Administrator approves the request, the letter shall reflect the approved completion date and any other requirements the Regional Administrator may determine necessary to ensure that the new completion date is

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met. If the Regional Administrator denies the time extension request, the recipient may, upon completion of the project, be reimbursed for eligible project costs incurred only up to the latest approved completion date. If the project is not completed, no Federal funding will be provided for that project.

(e) *Cost Overruns.* (1) During the execution of approved work a subrecipient may find that the actual project costs exceed the approved Project Worksheet estimates. Such cost overruns normally fall into the following three categories:

- (i) Variations in unit prices;
- (ii) Change in the scope of eligible work; or
- (iii) Delays in timely starts or completion of eligible work.

(2) The subrecipient must evaluate each cost overrun and, when justified, submit a request for additional funding through the recipient to the Regional Administrator for a final determination. All requests for the Regional Administrator's approval will contain sufficient documentation to support the eligibility of all claimed work and costs. The recipient must include a written recommendation when forwarding the request. The Regional Administrator will notify the recipient in writing of the final determination. FEMA will not normally review an overrun for an individual small project. The normal procedure for small projects will be that when a subrecipient discovers a significant overrun related to the total final cost for all small projects, the subrecipient may submit an appeal for additional funding in accordance with §206.206, within 60 days following the completion of all its small projects.

(f) *Progress reports.* Progress reports will be submitted by the recipient to the Regional Administrator quarterly. The Regional Administrator and recipient shall negotiate the date for submission of the first report. Such reports will describe the status of those projects on which a final payment of the Federal share has not been made to the recipient and outline any problems or circumstances expected to result in

noncompliance with the approved grant conditions.

[55 FR 2304, Jan. 23, 1990; 55 FR 5458, Feb. 15, 1990, as amended at 64 FR 55161, Oct. 12, 1999; 79 FR 76086, Dec. 19, 2014; 82 FR 43, Jan. 3, 2017]

**§ 206.205 Payment of claims.**

(a) *Small Projects.* Final payment of the Federal share of these projects will be made to the recipient upon approval of the Project Worksheet. The recipient will make payment of the Federal share to the subrecipient as soon as practicable after Federal approval of funding. Before the closeout of the disaster contract, the recipient must certify that all such projects were completed in accordance with FEMA approvals and that the State contribution to the non-Federal share, as specified in the FEMA-State Agreement, has been paid to each subrecipient. Such certification is not required to specify the amount spent by a subrecipient on small projects. The Federal payment for small projects shall not be reduced if all of the approved funds are not spent to complete a project. However, failure to complete a project may require that the Federal payment be refunded.

(b) *Large projects.* (1) The recipient shall make an accounting to the Regional Administrator of eligible costs for each approved large project. In submitting the accounting the recipient shall certify that reported costs were incurred in the performance of eligible work, that the approved work was completed, that the project is in compliance with the provisions of the FEMA-State Agreement, and that payments for that project have been made in accordance with 2 CFR 200.305. Each large project shall be submitted as soon as practicable after the subrecipient has completed the approved work and requested payment.

(2) The Regional Administrator shall review the accounting to determine the eligible amount of reimbursement for each large project and approve eligible costs. If a discrepancy between reported costs and approved funding exists, the Regional Administrator may conduct field reviews to gather additional information. If discrepancies in the claim cannot be resolved through a

field review, a Federal audit may be conducted. If the Regional Administrator determines that eligible costs exceed the initial approval, he/she will obligate additional funds as necessary.

[55 FR 2304, Jan. 23, 1990, as amended at 64 FR 55161, Oct. 12, 1999; 79 FR 76086, Dec. 19, 2014; 82 FR 43, Jan. 3, 2017]

**§ 206.206 Appeals and arbitrations.**

(a) *Definitions.* The following definitions apply to this section:

*Administrator* means the Administrator of the Federal Emergency Management Agency.

*Amount in dispute* means the difference between the amount of financial assistance sought for a Public Assistance project and the amount of financial assistance for which FEMA has determined such Public Assistance project is eligible.

*Applicant* has the same meaning as the definition at § 206.201(a).

*Final agency determination means:* (1) The decision of FEMA, if the applicant or recipient does not submit a first appeal within the time limits provided for in paragraph (b)(1)(ii)(A) of this section; or

(2) The decision of FEMA, if the applicant or recipient withdraws the pending appeal and does not file a request for arbitration within 30 calendar days of the withdrawal of the pending appeal; or

(3) The decision of the FEMA Regional Administrator, if the applicant or recipient does not submit a second appeal within the time limits provided for in paragraph (b)(2)(ii)(A) of this section.

*Recipient* has the same meaning as the definition at § 206.201(m).

*Regional Administrator* means an administrator of a regional office of FEMA, or his/her designated representative.

*Rural area* means an area with a population of less than 200,000 outside an urbanized area.

*Urbanized area* means an area that consists of densely settled territory that contains 50,000 or more people.

(b) *Appeals and arbitrations.* An eligible applicant or recipient may appeal any determination previously made related to an application for or the provision of Public Assistance according to

the procedures of this section. An eligible applicant may request arbitration to dispute the eligibility for assistance or repayment of assistance.

(1) *First appeal.* The applicant must make a first appeal in writing and submit it electronically through the recipient to the Regional Administrator. The recipient must include a written recommendation on the applicant's appeal with the electronic submission of the applicant's first appeal to the Regional Administrator. The recipient may make recipient-related appeals to the Regional Administrator.

(i) *Content.* A first appeal must:

(A) Contain all documented justification supporting the applicant or recipient's position;

(B) Specify the amount in dispute, as applicable; and

(C) Specify the provisions in Federal law, regulation, or policy with which the applicant or recipient believes the FEMA determination was inconsistent.

(ii) *Time limits.* (A) The applicant may make a first appeal through the recipient within 60 calendar days from the date of the FEMA determination that is the subject of the appeal and the recipient must electronically forward to the Regional Administrator the applicant's first appeal with a recommendation within 120 calendar days from the date of the FEMA determination that is the subject of the appeal. If the applicant or the recipient do not meet their respective 60-calendar day and 120-calendar day deadlines, FEMA will deny the appeal. A recipient may make a recipient-related first appeal within 60 calendar days from the date of the FEMA determination that is the subject of the appeal and must electronically submit their first appeal to the Regional Administrator.

(B) Within 90 calendar days following receipt of a first appeal, if there is a need for additional information, the Regional Administrator will provide electronic notice to the recipient and applicant. If there is no need for additional information, then FEMA will not provide notification. The Regional Administrator will generally allow the recipient 30 calendar days to provide any additional information.

(C) The Regional Administrator will provide electronic notice of the disposition of the appeal to the applicant and recipient within 90 calendar days of receipt of the appeal or within 90 calendar days following the receipt of additional information or following expiration of the period for providing the information.

(iii) *Technical advice.* In appeals involving highly technical issues, the Regional Administrator may, at his or her discretion, submit the appeal to an independent scientific or technical person or group having expertise in the subject matter of the appeal for advice or recommendation. The period for this technical review may be in addition to other allotted time periods. Within 90 calendar days of receipt of the report, the Regional Administrator will provide electronic notice of the disposition of the appeal to the recipient and applicant.

(iv) *Effect of an appeal.* (A) FEMA will take no action to implement any determination pending an appeal decision from the Regional Administrator, subject to the exceptions in paragraph (b)(1)(iv)(B) of this section.

(B) Notwithstanding paragraph (b)(1)(iv)(A) of this section, FEMA may:

(1) Suspend funding (see 2 CFR 200.339);

(2) Defer or disallow other claims questioned for reasons also disputed in the pending appeal; or

(3) Take other action to recover, withhold, or offset funds if specifically authorized by statute or regulation.

(v) *Implementation.* If the Regional Administrator grants an appeal, the Regional Administrator will take appropriate implementing action(s).

(vi) *Guidance.* FEMA may issue separate guidance as necessary to supplement paragraph (b)(1) of this section.

(2) *Second appeal.* If the Regional Administrator denies a first appeal in whole or in part, the applicant may make a second appeal in writing and submit it electronically through the recipient to the Assistant Administrator for the Recovery Directorate. The recipient must include a written recommendation on the applicant's appeal with the electronic submission of the applicant's second appeal to the

Assistant Administrator for the Recovery Directorate. The recipient may make recipient-related second appeals to the Assistant Administrator for the Recovery Directorate.

(i) *Content.* A second appeal must:

(A) Contain all documented justification supporting the applicant or recipient's position;

(B) Specify the amount in dispute, as applicable; and

(C) Specify the provisions in Federal law, regulation, or policy with which the applicant or recipient believes the FEMA determination was inconsistent.

(ii) *Time limits.* (A) If the Regional Administrator denies a first appeal in whole or in part, the applicant may make a second appeal through the recipient within 60 calendar days from the date of the Regional Administrator's first appeal decision and the recipient must electronically forward to the Assistant Administrator for the Recovery Directorate the applicant's second appeal with a recommendation within 120 calendar days from the date of the Regional Administrator's first appeal decision. If the applicant or the recipient do not meet their respective 60-calendar day and 120-calendar day deadlines, FEMA will deny the appeal. If the Regional Administrator denies a recipient-related first appeal in whole or in part, the recipient may make a recipient-related second appeal within 60 calendar days from the date of the Regional Administrator's first appeal decision and the recipient must electronically submit their second appeal to the Assistant Administrator for the Recovery Directorate.

(B) Within 90 calendar days following receipt of a second appeal, if there is a need for additional information, the Assistant Administrator for the Recovery Directorate will provide electronic notice to the recipient and applicant. If there is no need for additional information, then FEMA will not provide notification. The Assistant Administrator for the Recovery Directorate will generally allow the recipient 30 calendar days to provide any additional information.

(C) The Assistant Administrator for the Recovery Directorate will provide electronic notice of the disposition of

the appeal to the recipient and applicant within 90 calendar days of receipt of the appeal or within 90 calendar days following the receipt of additional information or following expiration of the period for providing the information.

(iii) *Technical advice.* In appeals involving highly technical issues, the Assistant Administrator for the Recovery Directorate may, at his or her discretion, submit the appeal to an independent scientific or technical person or group having expertise in the subject matter of the appeal for advice or recommendation. The period for this technical review may be in addition to other allotted time periods. Within 90 calendar days of receipt of the report, the Assistant Administrator for the Recovery Directorate will provide electronic notice of the disposition of the appeal to the recipient and applicant.

(iv) *Effect of an appeal.* (A) FEMA will take no action to implement any determination pending an appeal decision from the Assistant Administrator for the Recovery Directorate, subject to the exceptions in paragraph (b)(2)(iv)(B) of this section.

(B) Notwithstanding paragraph (b)(2)(iv)(A) of this section, FEMA may:

(1) Suspend funding (see 2 CFR 200.339);

(2) Defer or disallow other claims questioned for reasons also disputed in the pending appeal; or

(3) Take other action to recover, withhold, or offset funds if specifically authorized by statute or regulation.

(v) *Implementation.* If the Assistant Administrator for the Recovery Directorate grants an appeal, the Assistant Administrator for the Recovery Directorate will direct the Regional Administrator to take appropriate implementing action(s).

(vi) *Guidance.* FEMA may issue separate guidance as necessary to supplement paragraph (b)(2) of this section.

(3) *Arbitration*—(i) *Applicability.* An applicant may request arbitration from the Civilian Board of Contract Appeals (CBCA) if:

(A) There is a dispute of the eligibility for assistance or of the repayment of assistance arising from a

major disaster declared on or after January 1, 2016; and

(B) The amount in dispute is greater than \$500,000, or greater than \$100,000 for an applicant for assistance in a rural area; and

(C) The Regional Administrator has denied a first appeal decision or received a first appeal but not rendered a decision within 180 calendar days of receipt.

(ii) *Limitations.* A request for arbitration is in lieu of a second appeal.

(iii) *Request for arbitration.* (A) An applicant may initiate arbitration by submitting an electronic request simultaneously to the recipient, the CBCA, and FEMA. See 48 CFR part 6106.

(B) *Time limits.* (1) An applicant must submit a request for arbitration within 60 calendar days from the date of the Regional Administrator's first appeal decision; or

(2) If the first appeal was timely submitted, and the Regional Administrator has not rendered a decision within 180 calendar days of receiving the appeal, an applicant may arbitrate the decision of FEMA. To request arbitration, the applicant must first electronically submit a withdrawal of the pending appeal simultaneously to the recipient and the FEMA Regional Administrator. The applicant must then submit a request for arbitration to the recipient, the CBCA, and FEMA within 30 calendar days from the date of the withdrawal of the pending appeal.

(C) *Content of request.* The request for arbitration must contain a written statement that specifies the amount in dispute, all documentation supporting the position of the applicant, the disaster number, and the name and address of the applicant's authorized representative or counsel.

(iv) *Expenses.* Expenses for each party will be paid by the party who incurred the expense.

(v) *Guidance.* FEMA may issue separate guidance as necessary to supplement paragraph (b)(3) of this section.

(c) *Finality of decision.* (1) A FEMA final agency determination or a decision of the Assistant Administrator for the Recovery Directorate on a second appeal constitutes a final decision of

FEMA. Final decisions are not subject to further administrative review.

(2) In the alternative, a decision of the majority of the CBCA panel constitutes a final decision, binding on all parties. See 48 CFR 6106.613. Final decisions are not subject to further administrative review.

[86 FR 45683, Aug. 16, 2021]

**§ 206.207 Administrative and audit requirements.**

(a) *General.* Uniform administrative requirements which are set forth in 2 CFR parts 200 and 3002 apply to all disaster assistance grants and subgrants.

(b) *State administrative plan.* (1) The State shall develop a plan for the administration of the Public Assistance program that includes at a minimum, the items listed below:

(i) The designation of the State agency or agencies which will have the responsibility for program administration.

(ii) The identification of staffing functions in the Public Assistance program, the sources of staff to fill these functions, and the management and oversight responsibilities of each.

(iii) Procedures for:

(A) Notifying potential applicants of the availability of the program;

(B) Conducting briefings for potential applicants and application procedures, program eligibility guidance and program deadlines;

(C) Assisting FEMA in determining applicant eligibility;

(D) Participating with FEMA in conducting damage surveys to serve as a basis for obligations of funds to subrecipients;

(E) Participating with FEMA in the establishment of hazard mitigation and insurance requirements;

(F) Processing appeal requests, requests for time extensions and requests for approval of overruns, and for processing appeals of recipient decisions;

(G) Compliance with the administrative requirements of 2 CFR parts 200 and 3002 and 44 CFR part 206;

(H) Compliance with the audit requirements of 2 CFR parts 200 and 3002;

(I) Processing requests for advances of funds and reimbursement; and

(J) Determining staffing and budgeting requirements necessary for proper program management.

(K) Determining the reasonable percentage or amount of pass-through funds for management costs provided under 44 CFR part 207 that the recipient will make available to subrecipients, and the basis, criteria, or formula for determining the subrecipient percentage or amount.

(2) The recipient may request the Regional Administrator to provide technical assistance in the preparation of such administrative plan.

(3) In accordance with the Interim Rule published March 21, 1989, the recipient was to have submitted an administrative plan to the RD for approval by September 18, 1989. An approved plan must be on file with FEMA before grants will be approved in a future major disaster. Thereafter, the recipient shall submit a revised plan to the Regional Administrator annually. In each disaster for which Public Assistance is included, the Regional Administrator shall request the recipient to prepare any amendments required to meet current policy guidance.

(4) The recipient shall ensure that the approved administrative plan is incorporated into the State emergency plan.

(c) *Audit*—(1) *Nonfederal audit.* For recipients or subrecipients, requirements for nonfederal audit are contained in 2 CFR parts 200 and 3002.

(2) *Federal audit.* In accordance with 2 CFR part 200 and 3002, FEMA may elect to conduct a Federal audit of the disaster assistance grant or any of the subgrants.

[55 FR 2304, Jan. 23, 1990; 55 FR 5458, Feb. 15, 1990, as amended at 72 FR 57875, Oct. 11, 2007; 74 FR 15350, Apr. 3, 2009; 79 FR 76086, Dec. 19, 2014; 82 FR 43, Jan. 3, 2017]

**§ 206.208 Direct Federal assistance.**

(a) *General.* When the State and local government lack the capability to perform or to contract for eligible emergency work and/or debris removal, under sections 402(1) and (4), 403, 407, 502(a)(1), (5) and (7) of the Act, the recipient may request that the work be accomplished by a Federal agency. Such assistance is subject to the cost sharing provisions outlined in

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§ 206.203(b) of this subpart. Direct Federal assistance is also subject to the eligibility criteria contained in Subpart H of these regulations. FEMA will reimburse other Federal agencies in accordance with Subpart A of these regulations.

(b) *Requests for assistance.* All requests for direct Federal assistance shall be submitted by the recipient to the Regional Administrator and shall include:

(1) A written agreement that the State will:

(i) Provide without cost to the United States all lands, easements and rights-of-ways necessary to accomplish the approved work;

(ii) Hold and save the United States free from damages due to the requested work, and shall indemnify the Federal Government against any claims arising from such work;

(iii) Provide reimbursement to FEMA for the non-Federal share of the cost of such work in accordance with the provisions of the FEMA-State Agreement; and

(iv) Assist the performing Federal agency in all support and local jurisdictional matters.

(2) A statement as to the reasons the State and the local government cannot perform or contract for performance of the requested work.

(3) A written agreement from an eligible applicant that such applicant will be responsible for the items in subparagraph (b)(1) (i) and (ii) of this section, in the event that a State is legally unable to provide the written agreement.

(c) *Implementation.* (1) If the Regional Administrator approves the request, a mission assignment will be issued to the appropriate Federal agency. The mission assignment letter to the agency will define the scope of eligible work, the estimated cost of the eligible work and the billing period frequency. The Federal agency must not exceed the approved funding limit without the authorization of the Regional Administrator.

(2) If all or any part of the requested work falls within the statutory authority of another Federal agency, the Regional Administrator shall not approve that portion of the work. In such case, the unapproved portion of the request

will be referred to the appropriate agency for action.

(3) If an impact-State requests assistance in providing evacuation and sheltering support outside an impact-State, FEMA may directly reimburse a host-State for such eligible costs through a grant to a host-State under an impact-State's declaration, consistent with § 206.202(f)(1). FEMA may award a grant to a host-State when FEMA determines that a host-State has sufficient capability to meet some or all of the sheltering and/or evacuation needs of an impact-State, and a host-State agrees in writing to provide such support to an impact-State.

(d) *Time limitation.* The time limitation for completion of work by a Federal agency under a mission assignment is 60 days after the President's declaration. Based on extenuating circumstances or unusual project requirements, the Regional Administrator may extend this time limitation.

(e) *Project management.* (1) The performing Federal agency shall ensure that the work is completed in accordance with the Regional Administrator's approved scope of work, costs and time limitations. The performing Federal agency shall also keep the Regional Administrator and recipient advised of work progress and other project developments. It is the responsibility of the performing Federal agency to ensure compliance with applicable Federal, State and local legal requirements. A final inspection report will be completed upon termination of all direct Federal assistance work. Final inspection reports shall be signed by a representative of the performing Federal agency and the State. Once the final eligible cost is determined (including Federal agency overhead), the State will be billed for the non-Federal share of the mission assignment in accordance with the cost sharing provisions of the FEMA-State Agreement.

(2) Pursuant to the agreements provided in the request for assistance the recipient shall assist the performing Federal agency in all State and local jurisdictional matters. These matters include securing local building permits and rights of entry, control of traffic

and pedestrians, and compliance with local building ordinances.

[55 FR 2304, Jan. 23, 1990, as amended at 64 FR 55161, Oct. 12, 1999; 74 FR 60214, Nov. 20, 2009; 82 FR 43, Jan. 3, 2017]

**§ 206.209 Arbitration for Public Assistance determinations related to Hurricanes Katrina and Rita (Major disaster declarations DR-1603, DR-1604, DR-1605, DR-1606, and DR-1607).**

(a) *Scope.* Pursuant to section 601 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, this section establishes procedures for arbitration to resolve disputed Public Assistance applications under the following major disaster declarations: DR-1603, DR-1604, DR-1605, DR-1606, and DR-1607.

(b) *Applicability.* An applicant or sub-recipient (hereinafter “applicant” for purposes of this section) may request arbitration of a determination made by FEMA on an application for Public Assistance, provided that the total amount of the project is greater than \$500,000, and provided that:

(1) the applicant is eligible to file an appeal under § 206.206; or

(2) the applicant had a first or second level appeal pending with FEMA pursuant to § 206.206 on or after February 17, 2009.

(c) *Governing rules.* An applicant that elects arbitration agrees to abide by this section and applicable guidance. The arbitration will be conducted pursuant to procedure established by the arbitration panel.

(d) *Limitations—(1) Election of remedies.* A request for arbitration under this section is in lieu of filing or continuing an appeal under § 206.206.

(2) *Final agency action under § 206.206.* Arbitration is not available for any matter that obtained final agency action by FEMA pursuant to § 206.206 prior to February 17, 2009. Arbitration is not available for determinations for which the applicant failed to file a timely appeal under the provisions of § 206.206 prior to August 31, 2009, or for determinations which received a decision on a second appeal from FEMA prior to February 17, 2009.

(e) *Request for arbitration—(1) Content of request.* The request for arbitration

must contain a written statement and all documentation supporting the position of the applicant, the disaster number, and the name and address of the applicant’s authorized representative or counsel.

(2) *Submission by the applicant to the recipient, the FEMA Regional Administrator, and the arbitration administrator.* An applicant under paragraph (b)(1) of this section must submit its request for arbitration in writing simultaneously to the recipient, the FEMA Regional Administrator, and the arbitration administrator within 30 calendar days after receipt of notice of the determination that is the subject of the arbitration request or by September 30, 2009, whichever is later. An applicant under paragraph (b)(2) of this section must make a request for arbitration in writing and, if FEMA has not issued a decision on the appeal, submit a withdrawal of the pending appeal, simultaneously to the recipient, the FEMA Regional Administrator, and the arbitration administrator by October 30, 2009.

(3) *Submission by the recipient to the arbitration administrator and FEMA.* Within 15 calendar days of receipt of the applicant’s request for arbitration, the recipient must forward the name and address of the recipient’s authorized representative or counsel, and may forward a written recommendation in support or opposition to the applicant’s request for arbitration, simultaneously to the FEMA Regional Administrator, the arbitration administrator, and the applicant.

(4) *Submission of FEMA’s response.* FEMA will submit a memorandum in support of its position, a copy of the Project Worksheet(s), and any other supporting information, as well as the name and address of its authorized representative or counsel, simultaneously to the arbitration administrator, the recipient, and the applicant, within 30 calendar days of receipt of the applicant’s request for arbitration.

(5) *Process for submissions.* When submitting a request for arbitration, the applicant should describe its claim with sufficient detail so that the circumstances of the dispute are clear to the arbitration panel. All papers, notices, or other documents submitted to the arbitration administrator under



this section by the applicant, the recipient, or FEMA will be served on each party's authorized representative or counsel. The submitting party will make such service by courier or overnight delivery service (such as Federal Express, DHL, United Parcel Service, or the United States Postal Service overnight delivery), addressed to the party, representative, or counsel, as applicable, at its last known address.

(f) *Selection of arbitration panel.* The arbitration administrator will select the arbitration panel for arbitration and notify the applicant, FEMA, and the recipient of the names and identities of the arbitrators selected for the panel.

(g) *Preliminary conference.* The arbitration panel will hold a preliminary conference with the parties and/or representatives of the parties within 10 business days of the panel's receipt of FEMA's response to the request for arbitration. The panel and the parties will discuss the future conduct of the arbitration, including clarification of the disputed issues, request for disqualification of an arbitrator (if applicable), and any other preliminary matters. The date and place of any oral hearing will be set at the preliminary conference. The preliminary conference will be conducted by telephone.

(h) *Hearing—(1) Request for hearing.* The panel will provide the applicant and FEMA with an opportunity to make an oral presentation on the substance of the applicant's claim in person, by telephone conference, or other means during which all the parties may simultaneously hear all other participants. If the applicant or FEMA would like to request an oral hearing, the request must be made no later than the preliminary conference.

(2) *Location of hearing.* If an in-person hearing is authorized, it will be held at a hearing facility of the arbitration panel's choosing.

(3) *Conduct of hearing.* Each party may present its position through oral presentations by individuals designated in advance of the hearing. These presentations may reference documents submitted pursuant to paragraph (e) of this section; the parties may not provide additional paper submissions at the hearing. If the panel deems it ap-

propriate or necessary, it may request additional written materials from either or both parties or seek the advice or expertise of independent scientific or technical subject matter experts.

(4) *Closing of hearing.* The panel will inquire of each party whether it has any further argument. When satisfied that the record is complete, the panel will declare the hearing closed, unless a post-hearing submission of additional information or a memorandum of law is to be provided in accordance with this paragraph. The hearing will be declared closed as of the date set by the panel for the submission of the additional information or the memorandum of law.

(5) *Time limits.* The panel will endeavor to hold the hearing within 60 calendar days of the preliminary conference.

(6) *Postponement.* The arbitration panel may postpone a hearing upon agreement of the parties, or upon request of a party for good cause shown. Within 10 business days of the postponement, the arbitration panel will notify the parties of the rescheduled date of the hearing.

(7) *Record of the hearing.* There will be no recording of the hearing, unless a party specifically requests and arranges for such recording at its own expense.

(8) *Post-hearing submission of additional information.* A party may file with the arbitration panel additional information or a memorandum of law after the hearing upon the arbitration panel's request or upon the request of one of the parties with the panel's consent. The panel will set the time for submission of the additional information or the memorandum of law.

(9) *Reopening of hearing.* The hearing may be reopened on the panel's initiative under compelling circumstances at any time before the decision is made.

(i) *Review by the arbitration panel—(1) Determination of timeliness.* Upon notification by FEMA, or on its own initiative, the arbitration panel will determine whether the applicant timely filed a request for arbitration.

(2) *Substantive review.* The arbitration panel will consider all relevant written materials provided by the applicant, the recipient, and FEMA, as well as

oral presentations, if any. If the panel deems it appropriate or necessary, it may request additional written materials from either or both parties or seek the advice or expertise of independent scientific or technical subject matter experts.

(j) *Ex parte communications.* No party and no one acting on behalf of any party will engage in ex parte communications with a member of the arbitration panel. If a party or someone acting on behalf of any party engages in ex parte communications with a member of the arbitration panel, the party that engaged in such communication will provide a summary or a transcript of the entire communication to the other parties.

(k) *Decision—(1) Time limits.* The panel will make every effort to issue a written decision within 60 calendar days after the panel declares the hearing closed pursuant to paragraph (h)(4) of this section, or, if a hearing was not requested, within 60 calendar days following the receipt of FEMA’s response to the request for arbitration. A decision of the panel may take longer than 60 calendar days if the arbitration involves a highly technical or complex matter.

(2) *Form and content.* The decision of the panel will be in writing and signed by each member of the panel. The panel will issue a reasoned decision that includes a brief and informal discussion of the factual and legal basis for the decision.

(3) *Finality of decision.* A decision of the majority of the panel shall constitute a final decision, binding on all parties. Final decisions are not subject to further administrative review. Final decisions are not subject to judicial review, except as permitted by 9 U.S.C. 10.

(4) *Delivery of decision.* Notice and delivery of the decision will be by facsimile or other electronic means and by regular mail to each party or its authorized representative or counsel.

(1) *Costs.* FEMA will pay the fees associated with the arbitration panel, the costs of any expert retained by the panel, and the arbitration facility costs, if any. The expenses for each party, including attorney’s fees, representative fees, copying costs, costs

associated with attending any hearing, or any other fees not listed in this paragraph will be paid by the party incurring such costs.

(m) *Guidance.* FEMA may issue separate guidance as necessary to supplement this section.

[74 FR 44767, Aug. 31, 2009, as amended at 82 FR 43, Jan. 3, 2017]

§§ 206.210–206.219 [Reserved]

**Subpart H—Public Assistance Eligibility**

SOURCE: 55 FR 2307, Jan. 23, 1990, unless otherwise noted.

**§ 206.220 General.**

This subpart provides policies and procedures for determinations of eligibility of applicants for public assistance, eligibility of work, and eligibility of costs for assistance under sections 402, 403, 406, 407, 418, 419, 421(d), 502, and 503 of the Stafford Act. Assistance under this subpart must also conform to requirements of 44 CFR part 201, Mitigation Planning, 44 CFR part 206, subparts G—Public Assistance Project Administration, I—Public Assistance Insurance Requirements, J—Coastal Barrier Resources Act, and M—Minimum Standards, 44 CFR part 9—Floodplain Management, and other applicable environmental and historic preservation laws, regulations, Executive Orders, and agency policy.

[81 FR 56533, Aug. 22, 2016]

**§ 206.221 Definitions.**

(a) *Educational institution* means:

(1) Any elementary school as defined by section 801(c) of the Elementary and Secondary Education Act of 1965; or

(2) Any secondary school as defined by section 801(h) of the Elementary and Secondary Education Act of 1965; or

(3) Any institution of higher education as defined by section 1201 of the Higher Education Act of 1965.

(b) *Force account* means an applicant’s own labor forces and equipment.

(c) *Immediate threat* means the threat of additional damage or destruction from an event which can reasonably be expected to occur within five years.

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(d) *Improved property* means a structure, facility or item of equipment which was built, constructed or manufactured. Land used for agricultural purposes is not improved property.

(e) *Private nonprofit facility* means any private nonprofit educational, utility, emergency, medical, or custodial care facility, including a facility for the aged or disabled, and other facility providing essential governmental type services to the general public, and such facilities on Indian reservations. Further definition is as follows:

(1) *Educational facilities* means classrooms plus related supplies, equipment, machinery, and utilities of an educational institution necessary or appropriate for instructional, administrative, and support purposes, but does not include buildings, structures and related items used primarily for religious purposes or instruction.

(2) *Utility* means buildings, structures, or systems of energy, communication, water supply, sewage collection and treatment, or other similar public service facilities.

(3) *Irrigation facility* means those facilities that provide water for essential services of a governmental nature to the general public. Irrigation facilities include water for fire suppression, generating and supplying electricity, and drinking water supply; they do not include water for agricultural purposes.

(4) *Emergency facility* means those buildings, structures, equipment, or systems used to provide emergency services, such as fire protection, ambulance, or rescue, to the general public, including the administrative and support facilities essential to the operation of such emergency facilities even if not contiguous.

(5) *Medical facility* means any hospital, outpatient facility, rehabilitation facility, or facility for long term care as such terms are defined in section 645 of the Public Health Service Act (42 U.S.C. 2910) and any similar facility offering diagnosis or treatment of mental or physical injury or disease, including the administrative and support facilities essential to the operation of such medical facilities even if not contiguous.

(6) *Custodial care facility* means those buildings, structures, or systems in-

cluding those for essential administration and support, which are used to provide institutional care for persons who require close supervision and some physical constraints on their daily activities for their self-protection, but do not require day-to-day medical care.

(7) *Other essential governmental service facility* means museums, zoos, community centers, libraries, homeless shelters, senior citizen centers, rehabilitation facilities, shelter workshops and facilities which provide health and safety services of a governmental nature. All such facilities must be open to the general public.

(f) *Private nonprofit organization* means any nongovernmental agency or entity that currently has:

(1) An effective ruling letter from the U.S. Internal Revenue Service, granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954, or

(2) Satisfactory evidence from the State that the nonrevenue producing organization or entity is a nonprofit one organized or doing business under State law.

(g) *Public entity* means an organization formed for a public purpose whose direction and funding are provided by one or more political subdivisions of the State.

(h) *Public facility* means the following facilities owned by a State or local government: any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; any non-Federal aid, street, road, or highway; and any other public building, structure, or system, including those used for educational, recreational, or cultural purposes; or any park.

(i) *Standards* means codes, specifications or standards required for the construction of facilities.

[55 FR 2307, Jan. 23, 1990, as amended at 58 FR 47994, Sept. 14, 1993; 66 FR 22445, May 4, 2001]

§ 206.222 Applicant eligibility.

The following entities are eligible to apply for assistance under the State public assistance grant:

- (a) State and local governments.

(b) Private non-profit organizations or institutions which own or operate a private nonprofit facility as defined in § 206.221(e).

(c) Indian tribes or authorized tribal organizations and Alaska Native villages or organizations, but not Alaska Native Corporations, the ownership of which is vested in private individuals.

[55 FR 2307, Jan. 23, 1990, as amended at 82 FR 44, Jan. 3, 2017]

**§ 206.223 General work eligibility.**

(a) *General.* To be eligible for financial assistance, an item of work must:

- (1) Be required as the result of the emergency or major disaster event;
- (2) Be located within the designated area of a major disaster or emergency declaration, except that sheltering and evacuation activities may be located outside the designated area; and
- (3) Be the legal responsibility of an eligible applicant.

(b) *Private nonprofit facilities.* To be eligible, all private nonprofit facilities must be owned and operated by an organization meeting the definition of a private nonprofit organization [see § 206.221(f)].

(c) *Public entities.* Facilities belonging to a public entity may be eligible for assistance when the application is submitted through the State or a political subdivision of the State.

(d) *Facilities serving a rural community or unincorporated town or village.* To be eligible for assistance, a facility not owned by an eligible applicant, as defined in § 206.222, must be owned by a private nonprofit organization; and provide an essential governmental service to the general public. Applications for these facilities must be submitted through a State or political subdivision of the State.

(e) *Negligence.* No assistance will be provided to an applicant for damages caused by its own negligence. If negligence by another party results in damages, assistance may be provided, but will be conditioned on agreement by the applicant to cooperate with FEMA in all efforts necessary to recover the cost of such assistance from the negligent party.

[55 FR 2307, Jan. 23, 1990, as amended at 71 FR 40027, July 14, 2006; 74 FR 60214, Nov. 20, 2009]

**§ 206.224 Debris removal.**

(a) *Public interest.* Upon determination that debris removal is in the public interest, the Regional Administrator may provide assistance for the removal of debris and wreckage from publicly and privately owned lands and waters. Such removal is in the public interest when it is necessary to:

- (1) Eliminate immediate threats to life, public health, and safety; or
- (2) Eliminate immediate threats of significant damage to improved public or private property; or
- (3) Ensure economic recovery of the affected community to the benefit of the community-at-large; or
- (4) Mitigate the risk to life and property by removing substantially damaged structures and associated appurtenances as needed to convert property acquired through a FEMA hazard mitigation program to uses compatible with open space, recreation, or wetlands management practices. Such removal must be completed within two years of the declaration date, unless the Assistant Administrator for the Disaster Assistance Directorate extends this period.

(b) *Debris removal from private property.* When it is in the public interest for an eligible applicant to remove debris from private property in urban, suburban and rural areas, including large lots, clearance of the living, recreational and working area is eligible except those areas used for crops and livestock or unused areas.

(c) *Assistance to individuals and private organizations.* No assistance will be provided directly to an individual or private organization, or to an eligible applicant for reimbursement of an individual or private organization, for the cost of removing debris from their own property. Exceptions to this are those private nonprofit organizations operating eligible facilities.

[55 FR 2307, Jan. 23, 1990, as amended at 66 FR 33901, June 26, 2001]

**§ 206.225 Emergency work.**

(a) *General.* (1) Emergency protective measures to save lives, to protect public health and safety, and to protect improved property are eligible.

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(2) In determining whether emergency work is required, the Regional Administrator may require certification by local State, and/or Federal officials that a threat exists, including identification and evaluation of the threat and recommendations of the emergency work necessary to cope with the threat.

(3) In order to be eligible, emergency protective measures must:

(i) Eliminate or lessen immediate threats to life, public health or safety; or

(ii) Eliminate or lessen immediate threats of significant additional damage to improved public or private property through measures which are cost effective.

(b) *Emergency access.* An access facility that is not publicly owned or is not the direct responsibility of an eligible applicant for repair or maintenance may be eligible for emergency repairs or replacement provided that emergency repair or replacement of the facility economically eliminates the need for temporary housing. The work will be limited to that necessary for the access to remain passable through events which can be considered an immediate threat. The work must be performed by an eligible applicant and will be subject to cost sharing requirements.

(c) *Emergency communications.* Emergency communications necessary for the purpose of carrying out disaster relief functions may be established and may be made available to State and local government officials as deemed appropriate. Such communications are intended to supplement but not replace normal communications that remain operable after a major disaster. FEMA funding for such communications will be discontinued as soon as the needs have been met.

(d) *Emergency public transportation.* Emergency public transportation to meet emergency needs and to provide transportation to public places and such other places as necessary for the community to resume its normal pattern of life as soon as possible is eligible. Such transportation is intended to supplement but not replace predisaster transportation facilities that remain operable after a major disaster. FEMA

funding for such transportation will be discontinued as soon as the needs have been met.

§ 206.226 Restoration of damaged facilities.

Work to restore eligible facilities on the basis of the design of such facilities as they existed immediately prior to the disaster and in conformity with the following is eligible:

(a) *Assistance under other Federal agency (OFA) programs.* (1) Generally, disaster assistance will not be made available under the Stafford Act when another Federal agency has specific authority to restore facilities damaged or destroyed by an event which is declared a major disaster.

(2) An exception to the policy described in paragraph (a)(1) of this section exists for public elementary and secondary school facilities which are otherwise eligible for assistance from the Department of Education (ED) under 20 U.S.C. 241–1 and 20 U.S.C. 646. Such facilities are also eligible for assistance from FEMA under the Stafford Act, and recipients shall accept applications from local educational agencies for assistance under the Stafford Act.

(3) The exception does not cover payment of increased current operating expenses or replacement of lost revenues as provided in 20 U.S.C. 241–1(a) and implemented by 34 CFR 219.14. Such assistance shall continue to be granted and administered by the Department of Education.

(b) *Mitigation planning.* In order to receive assistance under this section, the State or Indian Tribal government applying to FEMA as a recipient must have in place a FEMA approved State or Tribal Mitigation Plan, as applicable, in accordance with 44 CFR part 201.

(c) *Private nonprofit facilities.* Eligible private nonprofit facilities may receive funding under the following conditions:

(1) The facility provides critical services, which include power, water (including water provided by an irrigation organization or facility in accordance with §206.221(e)(3)), sewer services, wastewater treatment, communications, emergency medical care, fire department services, emergency rescue, and nursing homes; or

(2) The private nonprofit organization not falling within the criteria of § 206.226(c)(1) has applied for a disaster loan under section 7(b) of the Small Business Act (15 U.S.C.636(b)) and

(i) The Small Business Administration has declined the organization's application; or

(ii) Has eligible damages greater than the maximum amount of the loan for which it is eligible, in which case the excess damages are eligible for FEMA assistance.

(d) *Standards.* For the costs of Federal, State, and local repair or replacement standards which change the predisaster construction of facility to be eligible, the standards must:

(1) Apply to the type of repair or restoration required;

(Standards may be different for new construction and repair work)

(2) Be appropriate to the predisaster use of the facility;

(3)(i) Be found reasonable, in writing, and formally adopted and implemented by the State or local government on or before the disaster declaration date or be a legal Federal requirement applicable to the type of restoration.

(ii) This paragraph (d) applies to local governments on January 1, 1999 and to States on January 1, 2000. Until the respective applicability dates, the standards must be in writing and formally adopted by the applicant prior to project approval or be a legal Federal or State requirement applicable to the type of restoration.

(4) Apply uniformly to all similar types of facilities within the jurisdiction of owner of the facility; and

(5) For any standard in effect at the time of a disaster, it must have been enforced during the time it was in effect.

(e) *Hazard mitigation.* In approving grant assistance for restoration of facilities, the Regional Administrator may require cost effective hazard mitigation measures not required by applicable standards. The cost of any requirements for hazard mitigation placed on restoration projects by FEMA will be an eligible cost for FEMA assistance.

(f) *Repair vs. replacement.* (1) A facility is considered repairable when disaster damages do not exceed 50 percent

of the cost of replacing a facility to its predisaster condition, and it is feasible to repair the facility so that it can perform the function for which it was being used as well as it did immediately prior to the disaster.

(2) If a damaged facility is not repairable in accordance with paragraph (f)(1) of this section, approved restorative work may include replacement of the facility. The applicant may elect to perform repairs to the facility, in lieu of replacement, if such work is in conformity with applicable standards. However, eligible costs shall be limited to the less expensive of repairs or replacement.

(3) An exception to the limitation in paragraph (d)(2) of this section may be allowed for facilities eligible for or on the National Register of Historic Properties. If an applicable standard requires repair in a certain manner, costs associated with that standard will be eligible.

(g) *Relocation.* (1) The Regional Administrator may approve funding for and require restoration of a destroyed facility at a new location when:

(i) The facility is and will be subject to repetitive heavy damage;

(ii) The approval is not barred by other provisions of title 44 CFR; and

(iii) The overall project, including all costs, is cost effective.

(2) When relocation is required by the Regional Administrator, eligible work includes land acquisition and ancillary facilities such as roads and utilities, in addition to work normally eligible as part of a facility reconstruction. Demolition and removal of the old facility is also an eligible cost.

(3) When relocation is required by the Regional Administrator, no future funding for repair or replacement of a facility at the original site will be approved, except those facilities which facilitate an open space use in accordance with 44 CFR part 9.

(4) When relocation is required by the Regional Administrator, and, instead of relocation, the applicant requests approval of an alternate project [see § 206.203(d)(2)], eligible costs will be limited to 90 percent of the estimate of restoration at the original location excluding hazard mitigation measures.

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(5) If relocation of a facility is not feasible or cost effective, the Regional Administrator shall disapprove Federal funding for the original location when he/she determines in accordance with 44 CFR parts 9, 10, 201, or subpart M of this part 206, that restoration in the original location is not allowed. In such cases, an alternative project may be applied for.

(h) *Equipment and furnishings.* If equipment and furnishings are damaged beyond repair, comparable items are eligible as replacement items.

(i) *Library books and publications.* Replacement of library books and publications is based on an inventory of the quantities of various categories of books or publications damaged or destroyed. Cataloging and other work incidental to replacement are eligible.

(j) *Beaches.* (1) Replacement of sand on an unimproved natural beach is not eligible.

(2) Improved beaches. Work on an improved beach may be eligible under the following conditions:

(i) The beach was constructed by the placement of sand (of proper grain size) to a designed elevation, width, and slope; and

(ii) A maintenance program involving periodic renourishment of sand must have been established and adhered to by the applicant.

(k) *Restrictions—(1) Alternative use facilities.* If a facility was being used for purposes other than those for which it was designed, restoration will only be eligible to the extent necessary to restore the immediate predisaster alternate purpose.

(2) *Inactive facilities.* Facilities that were not in active use at the time of the disaster are not eligible except in those instances where the facilities were only temporarily inoperative for repairs or remodeling, or where active use by the applicant was firmly established in an approved budget or the owner can demonstrate to FEMA's satisfaction an intent to begin use within a reasonable time.

[55 FR 2307, Jan. 23, 1990, as amended at 58 FR 55022, Oct. 25, 1993; 63 FR 5897, Feb. 5, 1998; 66 FR 22445, May 4, 2001; 67 FR 8854, Feb. 26, 2002; 68 FR 61371, Oct. 28, 2003; 69 FR 55097, Sept. 13, 2004; 74 FR 15350, Apr. 3, 2009; 74 FR 47482, Sept. 16, 2009; 82 FR 44, Jan. 3, 2017]

§ 206.227 Snow assistance.

Emergency or major disaster declarations based on snow or blizzard conditions will be made only for cases of record or near record snowstorms, as established by official government records. Federal assistance will be provided for all costs eligible under 44 CFR 206.225 for a specified period of time which will be determined by the circumstances of the event.

[62 FR 45330, Aug. 27, 1997]

§ 206.228 Allowable costs.

General policies for determining allowable costs are established in 2 CFR 200, subpart E. Exceptions to those policies as allowed in 2 CFR 200, subpart E and 2 CFR 200.102 are explained below.

(a) *Eligible direct costs—(1) Applicant-owned equipment.* Reimbursement for ownership and operation costs of applicant-owned equipment used to perform eligible work shall be provided in accordance with the following guidelines:

(i) *Rates established under State guidelines.* In those cases where an applicant uses reasonable rates which have been established or approved under State guidelines, in its normal daily operations, reimbursement for applicant-owned equipment which has an hourly rate of \$75 or less shall be based on such rates. Reimbursement for equipment which has an hourly rate in excess of \$75 shall be determined on a case by case basis by FEMA.

(ii) *Rates established under local guidelines.* Where local guidelines are used to establish equipment rates, reimbursement will be based on those rates or rates in a Schedule of Equipment Rates published by FEMA, whichever is lower. If an applicant certifies that its locally established rates do not reflect actual costs, reimbursement may be based on the FEMA Schedule of Equipment Rates, but the applicant will be expected to provide documentation if requested. If an applicant wishes to claim an equipment rate which exceeds the FEMA Schedule, it must document the basis for that rate and obtain FEMA approval of an alternate rate.

(iii) *No established rates.* The FEMA Schedule of Equipment Rates will be the basis for reimbursement in all

cases where an applicant does not have established equipment rates.

(2) *Force Account Labor Costs.* The straight- or regular-time salaries and benefits of a recipient's or subrecipient's permanently employed personnel are:

(i) Eligible in calculating the cost of eligible permanent repair, restoration, and replacement of facilities under section 406 of the Stafford Act;

(ii) Eligible, at the Administrator's discretion, in calculating the cost of eligible debris removal work under sections 403(a)(3)(A), 502(a)(5), and 407 of the Stafford Act for a period not to exceed 30 consecutive calendar days, provided the recipient's or subrecipient's permanently employed personnel are dedicated solely to eligible debris removal work for any major disaster or emergency declared by the President on or after October 27, 2012, in response to Hurricane Sandy; and

(iii) Not eligible in calculating the cost of other eligible emergency protective measures under sections 403 and 502 of the Stafford Act, except for those costs associated with host state evacuation and sheltering, as established in § 206.202.

(3) Administrative and management costs for major disasters and emergencies will be paid in accordance with 44 CFR part 207.

(b) [Reserved]

[55 FR 2307, Jan. 23, 1990, as amended at 58 FR 47996, Sept. 14, 1993; 63 FR 64426, Nov. 20, 1998; 64 FR 55161, Oct. 12, 1999; 72 FR 57875, Oct. 11, 2007; 77 FR 67290, Nov. 9, 2012; 82 FR 44, Jan. 3, 2017]

§§ 206.229–206.249 [Reserved]

**Subpart I—Public Assistance Insurance Requirements**

SOURCE: 56 FR 64560, Dec. 11, 1991, unless otherwise noted.

**§ 206.250 General.**

(a) Sections 311 and 406(d) of the Stafford Act, and the Flood Disaster Protection Act of 1973, Public Law 93–234, set forth certain insurance requirements which apply to disaster assistance provided by FEMA. The requirements of this subpart apply to all assistance provided pursuant to section

406 of the Stafford Act with respect to any major disaster declared by the President after November 23, 1988.

(b) Insurance requirements prescribed in this subpart shall apply equally to private nonprofit (PNP) facilities which receive assistance under section 406 of the Act. PNP organizations shall submit the necessary documentation and assurances required by this subpart to the recipient.

(c) Actual and anticipated insurance recoveries shall be deducted from otherwise eligible costs, in accordance with this subpart.

(d) The full coverage available under the standard flood insurance policy from the National Flood Insurance Program (NFIP) will be subtracted from otherwise eligible costs for a building and its contents within the special flood hazard area in accordance with § 206.252.

(e) The insurance requirements of this subpart should not be interpreted as a substitute for various hazard mitigation techniques which may be available to reduce the incidence and severity of future damage.

[56 FR 64560, Dec. 11, 1991, as amended at 82 FR 44, Jan. 3, 2017]

**§ 206.251 Definitions.**

(a) *Assistance* means any form of a Federal grant under section 406 of the Stafford Act to replace, restore, repair, reconstruct, or construct any facility and/or its contents as a result of a major disaster.

(b) *Building* means a walled and roofed structure, other than a gas, or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation.

(c) *Community* means any State or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaskan Native Village or authorized native organization which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

(d) *National Flood Insurance Program* (NFIP) means the program authorized by the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.*

(e) *Special flood hazard area* means an area having special flood, mudslide,



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and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary map (FHBM) or the Flood Insurance Rate Map (FIRM) issued by FEMA as Zone A, AO, A1-30, AE, A99, AH, VO, V1-30 VE, V, M, or E. "Special flood hazard area" is synonymous with "special hazard area", as defined in 44 CFR part 59.

(f) *Standard Flood Insurance Policy* means the flood insurance policy issued by the Federal Insurance Administrator, or by a Write-Your-Own Company pursuant to 44 CFR 62.23.

**§ 206.252 Insurance requirements for facilities damaged by flood.**

(a) Where an insurable building damaged by flooding is located in a special flood hazard area identified for more than one year by the Administrator, assistance pursuant to section 406 of the Stafford Act shall be reduced. The amount of the reduction shall be the maximum amount of the insurance proceeds which would have been received had the building and its contents been fully covered by a standard flood insurance policy.

(b) The reduction stated above shall not apply to a PNP facility which could not be insured because it was located in a community not participating in the NFIP. However, the provisions of the Flood Disaster Protection Act of 1973 prohibit approval of assistance for the PNP unless the community agrees to participate in the NFIP within six months after the major disaster declaration date, and the required flood insurance is purchased.

(c) Prior to approval of a Federal grant for the restoration of a facility and its contents which were damaged by a flood, the recipient shall notify the Regional Administrator of any entitlement to an insurance settlement or recovery. The Regional Administrator shall reduce the eligible costs by the amount of insurance proceeds which the recipient receives.

(d) The recipient or subrecipient is required to obtain and maintain flood insurance in the amount of eligible disaster assistance, as a condition of receiving Federal assistance that may be available. This requirement also applies to insurable flood damaged facili-

ties located outside a special flood hazard area when it is reasonably available, adequate, and necessary. However, the Regional Administrator shall not require greater types and amounts of insurance than are certified as reasonable by the State Insurance Commissioner. The requirement to purchase flood insurance is waived when eligible costs for an insurable facility do not exceed \$5,000.

[56 FR 64560, Dec. 11, 1991, as amended at 82 FR 44, Jan. 3, 2017]

**§ 206.253 Insurance requirements for facilities damaged by disasters other than flood.**

(a) Prior to approval of a Federal grant for the restoration of a facility and its contents which were damaged by a disaster other than flood, the recipient shall notify the Regional Administrator of any entitlement to insurance settlement or recovery for such facility and its contents. The Regional Administrator shall reduce the eligible costs by the actual amount of insurance proceeds relating to the eligible costs.

(b)(1) Assistance under section 406 of the Stafford Act will be approved only on the condition that the recipient obtain and maintain such types and amounts of insurance as are reasonable and necessary to protect against future loss to such property from the types of hazard which caused the major disaster. The extent of insurance to be required will be based on the eligible damage that was incurred to the damaged facility as a result of the major disaster. The Regional Administrator shall not require greater types and extent of insurance than are certified as reasonable by the State Insurance Commissioner.

(2) Due to the high cost of insurance, some applicants may request to insure the damaged facilities under a blanket insurance policy covering all their facilities, an insurance pool arrangement, or some combination of these options. Such an arrangement may be accepted for other than flood damages. However, if the same facility is damaged in a similar future disaster, eligible costs will be reduced by the amount of eligible damage sustained on the previous disaster.

(c) The Regional Administrator shall notify the recipient of the type and amount of insurance required. The recipient may request that the State Insurance Commissioner review the type and extent of insurance required to protect against future loss to a disaster-damaged facility, the Regional Administrator shall not require greater types and extent of insurance than are certified as reasonable by the State Insurance Commissioner.

(d) The requirements of section 311 of the Stafford Act are waived when eligible costs for an insurable facility do not exceed \$5,000. The Regional Administrator may establish a higher waiver amount based on hazard mitigation initiatives which reduce the risk of future damages by a disaster similar to the one which resulted in the major disaster declaration which is the basis for the application for disaster assistance.

(e) The recipient shall provide assurances that the required insurance coverage will be maintained for the anticipated life of the restorative work or the insured facility, whichever is the lesser.

(f) No assistance shall be provided under section 406 of the Stafford Act for any facility for which assistance was provided as a result of a previous major disaster unless all insurance required by FEMA as a condition of the previous assistance has been obtained and maintained.

[56 FR 64560, Dec. 11, 1991, as amended at 82 FR 44, Jan. 3, 2017]

§§ 206.254–206.339 [Reserved]

**Subpart J—Coastal Barrier Resources Act**

SOURCE: 55 FR 2311, Jan. 23, 1990, unless otherwise noted.

**§ 206.340 Purpose of subpart.**

This subpart implements the Coastal Barrier Resources Act (CBRA) (Pub. L. 97-348) as that statute applies to disaster relief granted to individuals and State and local governments under the Stafford Act. CBRA prohibits new expenditures and new financial assistance within the Coastal Barrier Resources System (CBRS) for all but a few types of activities identified in CBRA. This

subpart specifies what actions may and may not be carried out within the CBRS. It establishes procedures for compliance with CBRA in the administration of disaster assistance by FEMA.

**§ 206.341 Policy.**

It shall be the policy of FEMA to achieve the goals of CBRA in carrying out disaster relief on units of the Coastal Barrier Resources System. It is FEMA's intent that such actions be consistent with the purpose of CBRA to minimize the loss of human life, the wasteful expenditure of Federal revenues, and the damage to fish, wildlife and other natural resources associated with coastal barriers along the Atlantic and Gulf coasts and to consider the means and measures by which the long-term conservation of these fish, wildlife, and other natural resources may be achieved under the Stafford Act.

**§ 206.342 Definitions.**

Except as otherwise provided in this subpart, the definitions set forth in part 206 of subchapter D are applicable to this subject.

(a) *Consultation* means that process by which FEMA informs the Secretary of the Interior through his/her designated agent of FEMA proposed disaster assistance actions on a designated unit of the Coastal Barrier Resources System and by which the Secretary makes comments to FEMA about the appropriateness of that action. Approval by the Secretary is not required in order that an action be carried out.

(b) *Essential link* means that portion of a road, utility, or other facility originating outside of the system unit but providing access or service through the unit and for which no alternative route is reasonably available.

(c) *Existing facility* on a unit of CBRS established by Public Law 97-348 means a publicly owned or operated facility on which the start of a construction took place prior to October 18, 1982, and for which this fact can be adequately documented. In addition, a legally valid building permit or equivalent documentation, if required, must have been obtained for the construction prior to October 18, 1982. If a facility

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has been substantially improved or expanded since October 18, 1982, it is not an existing facility. For any other unit added to the CBRS by amendment to Public Law 97-348, the enactment date of such amendment is substituted for October 18, 1982, in this definition.

(d) *Expansion* means changing a facility to increase its capacity or size.

(e) *Facility* means “public facility” as defined in §206.201. This includes any publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; and nonfederal-aid street, road, or highway; and any other public building, structure, or system, including those used for educational, recreational, or cultural purposes, or any park.

(f) *Financial assistance* means any form of Federal loan, grant guaranty, insurance, payment rebate, subsidy or any other form of direct or indirect Federal assistance.

(g) *New financial assistance* on a unit of the CBRS established by Public Law 97-348 means an approval by FEMA of a project application or other disaster assistance after October 18, 1982. For any other unit added to the CBRS by amendment to Public Law 97-348, the enactment date such amendment is substituted for October 18, 1982, in this definition.

(h) *Start of construction* for a structure means the first placement of permanent construction, such as the placement of footings or slabs or any work beyond the stage of excavation. Permanent construction for a structure does not include land preparation such as clearing, grading, and placement of fill, nor does it include excavation for a basement, footings, or piers. For a facility which is not a structure, start of construction means the first activity for permanent construction of a substantial part of the facility. Permanent construction for a facility does not include land preparation such as clearing and grubbing but would include excavation and placement of fill such as for a road.

(i) *Structure* means a walled and roofed building, including a gas or liquid storage tank, that is principally

above ground, as well as a mobile home.

(j) *Substantial improvement* means any repair, reconstruction or other improvement of a structure or facility, that has been damaged in excess of, or the cost of which equals or exceeds, 50 percent of the market value of the structure or placement cost of the facility (including all “public facilities”) as defined in the Stafford Act) either:

(1) Before the repair or improvement is started; or

(2) If the structure or facility has been damaged and is proposed to be restored, before the damage occurred. If a facility is a link in a larger system, the percentage of damage will be based on the relative cost of repairing the damaged facility to the replacement cost of that portion of the system which is operationally dependent on the facility. The term *substantial improvement* does not include any alternation of a structure or facility listed on the National Register of Historic Places or a State Inventory of Historic Places.

(k) *System unit* means any undeveloped coastal barrier, or combination of closely related undeveloped coastal barriers included within the Coastal Barrier Resources System as established by the section 4 of the CBRA, or as modified by the Secretary in accordance with that statute.

§ 206.343 Scope.

(a) The limitations on disaster assistance as set forth in this subpart apply only to FEMA actions taken on a unit of the Coastal Barrier Resources System or any conduit to such unit, including, but not limited to a bridge, causeway, utility, or similar facility.

(b) FEMA assistance having a social program orientation which is unrelated to development is not subject to the requirements of these regulations. This assistance includes:

- (1) Individual and Family Grants that are not for acquisition or construction purposes;
- (2) Crisis counseling;
- (3) Disaster Legal services; and
- (4) Disaster unemployment assistance.

**§ 206.344 Limitations on Federal expenditures.**

Except as provided in §§ 206.345 and 206.346, no new expenditures or financial assistance may be made available under authority of the Stafford Act for any purpose within the Coastal Barrier Resources System, including but not limited to:

- (a) Construction, reconstruction, replacement, repair or purchase of any structure, appurtenance, facility or related infrastructure;
- (b) Construction, reconstruction, replacement, repair or purchase of any road, airport, boat landing facility, or other facility on, or bridge or causeway to, any System unit; and
- (c) Carrying out of any project to prevent the erosion of, or to otherwise stabilize, any inlet, shoreline, or inshore area, except that such assistance and expenditures may be made available on units designated pursuant to Section 4 on maps numbered S01 through S08 for purposes other than encouraging development and, in all units, in cases where an emergency threatens life, land, and property immediately adjacent to that unit.

**§ 206.345 Exceptions.**

The following types of disaster assistance actions are exceptions to the prohibitions of § 206.344.

- (a) After consultation with the Secretary of the Interior, the Regional Administrator may make disaster assistance available within the CBRS for:
  - (1) Replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system;
  - (2) Repair of any facility necessary for the exploration, extraction, or transportation of energy resources which activity can be carried out only on, in, or adjacent to coastal water areas because the use or facility requires access to the coastal water body; and
  - (3) Restoration of existing channel improvements and related structures, such as jetties, and including the disposal of dredge materials related to such improvements.

(b) After consultation with the Secretary of the Interior, the Regional Administrator may make disaster assistance available within the CBRS for the following types of actions, provided such assistance is consistent with the purposes of CBRA;

- (1) Emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 402, 403, and 502 of the Stafford Act and are limited to actions that are necessary to alleviate the impacts of the event;
- (2) Replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities, except as provided in § 206.347(c)(5);
- (3) Repair of air and water navigation aids and devices, and of the access thereto;
- (4) Repair of facilities for scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications;
- (5) Repair of facilities for the study, management, protection and enhancement of fish and wildlife resources and habitats, including but not limited to, acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects; and
- (6) Repair of nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.

**§ 206.346 Applicability to disaster assistance.**

- (a) *Emergency assistance.* The Regional Administrator may approve assistance pursuant to sections 402, 403, or 502 of the Stafford Act, for emergency actions which are essential to the saving of lives and the protection of property and the public health and safety, are necessary to alleviate the emergency, and are in the public interest. Such actions include but are not limited to:
  - (1) Removal of debris from public property;
  - (2) Emergency protection measures to prevent loss of life, prevent damage

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to improved property and protect public health and safety;

(3) Emergency restoration of essential community services such as electricity, water or sewer;

(4) Provision of access to a private residence;

(5) Provision of emergency shelter by means of providing emergency repair of utilities, provision of heat in the season requiring heat, or provision of minimal cooking facilities;

(6) Relocation of individuals or property out of danger, such as moving a mobile home to an area outside of the CBRS (but disaster assistance funds may not be used to relocate facilities back into the CBRS);

(7) Home repairs to private owner-occupied primary residences to make them habitable;

(8) Housing eligible families in existing resources in the CBRS; and

(9) Mortgage and rental payment assistance.

(b) *Permanent restoration assistance.* Subject to the limitations set out below, the Regional Administrator may approve assistance for the repair, reconstruction, or replacement but not the expansion of the following publicly owned or operated facilities and certain private nonprofit facilities.

- (1) Roads and bridges;
- (2) Drainage structures, dams, levees;
- (3) Buildings and equipment;
- (4) Utilities (gas, electricity, water, etc.); and
- (5) Park and recreational facilities.

§ 206.347 Requirements.

(a) *Location determination.* For each disaster assistance action which is proposed on the Atlantic or Gulf Coasts, the Regional Administrator shall:

(1) Review a proposed action's location to determine if the action is on or connected to the CBRS unit and thereby subject to these regulations. The appropriate Department of Interior map identifying units of the CBRS will be the basis of such determination. The CBRS units are also identified on FEMA Flood Insurance Maps (FIRM's) for the convenience of field personnel.

(2) If an action is determined not to be on or connected to a unit of the CBRS, no further requirements of these regulations needs to be met, and the

action may be processed under other applicable disaster assistance regulations.

(3) If an action is determined to be on or connected to a unit of the CBRS, it is subject to the consultation and consistency requirements of CBRA as prescribed in §§ 206.348 and 206.349.

(b) *Emergency disaster assistance.* For each emergency disaster assistance action listed in §206.346(a), the Regional Administrator shall perform the required consultation. CBRA requires that FEMA consult with the Secretary of the Interior before taking any action on a System unit. The purpose of such consultation is to solicit advice on whether the action is or is not one which is permitted by section 6 of CBRA and whether the action is or is not consistent with the purposes of CBRA as defined in section 1 of that statute.

(1) FEMA has conducted advance consultation with the Department of the Interior concerning such emergency actions. The result of the consultation is that the Secretary of the Interior through the Assistance Secretary for Fish and Wildlife and Parks has concurred that the emergency work listed in §206.346(a) is consistent with the purposes of CBRA and may be approved by FEMA without additional consultation.

(2) *Notification.* As soon as practicable, the Regional Administrator will notify the designated Department of the Interior representative at the regional level of emergency projects that have been approved. Upon request from the Secretary of the Interior, the Director, Office of Environmental Planning and Historic Preservation, Mitigation Directorate will supply reports of all current emergency actions approved on CBRS units. Notification will contain the following information:

- (i) Identification of the unit in the CBRS;
- (ii) Description of work approved;
- (iii) Amount of Federal funding; and
- (iv) Additional measures required.

(c) *Permanent restoration assistance.* For each permanent restoration assistance action including but not limited to those listed in §206.346(b), the Regional Administrator shall meet the requirements set out below.

(1) *Essential links.* For the repair or replacement of publicly owned or operated roads, structures or facilities which are essential links in a larger network or system:

(i) No facility may be expanded beyond its predisaster design.

(ii) Consultation in accordance with § 206.348 shall be accomplished.

(2) *Channel improvements.* For the repair of existing channels, related structures and the disposal of dredged materials:

(i) No channel or related structure may be repaired, reconstructed, or replaced unless funds were appropriated for the construction of such channel or structure before October 18, 1982;

(ii) Expansion of the facility beyond its predisaster design is not permitted;

(iii) Consultation in accordance with § 206.348 shall be accomplished.

(3) *Energy facilities.* For the repair of facilities necessary for the exploration, extraction or transportation of energy resources:

(i) No such facility may be repaired, reconstructed or replaced unless such function can be carried out only in, on, or adjacent to a coastal water area because the use or facility requires access to the coastal water body;

(ii) Consultation in accordance with § 206.348 shall be accomplished.

(4) *Special-purpose facilities.* For the repair of facilities used for the study, management, protection or enhancement of fish and wildlife resources and habitats and related recreational projects; air and water navigation aids and devices and access thereto; and facilities used for scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications; and, nonstructural facilities that are designed to mimic, enhance or restore natural shoreline stabilization systems:

(i) Consultation in accordance with § 206.348 shall be accomplished;

(ii) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with § 206.349.

(5) *Other public facilities.* For the repair, reconstruction, or replacement of publicly owned or operated roads,

structures, or facilities that do not fall within the categories identified in paragraphs (c)(1), (2), (3), and (4) of this section:

(i) No such facility may be repaired, reconstructed, or replaced unless it is an "existing facility;"

(ii) Expansion of the facility beyond its predisaster design is not permitted;

(iii) Consultation in accordance with § 206.348 shall be accomplished;

(iv) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with § 206.349.

(6) *Private nonprofit facilities.* For eligible private nonprofit facilities as defined in these regulations and of the type described in paragraphs (c)(1), (2), (3), and (4) of this section:

(i) Consultation in accordance with § 206.348 shall be accomplished.

(ii) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with § 206.349.

(7) *Improved project.* An improved project may not be approved for a facility in the CBRS if such grant is to be combined with other funding, resulting in an expansion of the facility beyond the predisaster design. If a facility is exempt from the expansion prohibitions of CBRA by virtue of falling into one of the categories identified in paragraph (c)(1), (2), (3), or (4) of this section, then an improved project for such facilities is not precluded.

(8) *Alternate project.* A new or enlarged facility may not be constructed on a unit of the CBRS under the provisions of the Stafford Act unless the facility is exempt from the expansion prohibition of CBRA by virtue of falling into one of the categories identified in paragraph (c)(1), (2), (3), or (4) of this section.

**§ 206.348 Consultation.**

As required by section 6 of the CBRA, the FEMA Regional Administrator will consult with the designated representative of the Department of the Interior (DOI) at the regional level before approving any action involving permanent restoration of a facility or structure on or attached to a unit of the CBRS.

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(a) The consultation shall be by written memorandum to the DOI representative and shall contain the following:

- (1) Identification of the unit within the CBRs;
- (2) Description of the facility and the proposed repair or replacement work; including identification of the facility as an exception under section 6 of CBRA; and full justification of its status as an exception;
- (3) Amount of proposal Federal funding;
- (4) Additional mitigation measures required; and
- (5) A determination of the action's consistency with the purposes of CBRA, if required by these regulations, in accordance with § 206.349.

(b) Pursuant to FEMA understanding with DOI, the DOI representative will provide technical information and an opinion whether or not the proposed action meets the criteria for a CBRA exception, and on the consistency of the action with the purposes of CBRA (when such consistency is required). DOI is expected to respond within 12 working days from the date of the FEMA request for consultation. If a response is not received within the time limit, the FEMA Regional Administrator shall contact the DOI representative to determine if the request for consultation was received in a timely manner. If it was not, an appropriate extension for response will be given. Otherwise, he or she may assume DOI concurrence and proceed with approval of the proposed action.

(c) For those cases in which the regional DOI representative believes that the proposed action should not be taken and the matter cannot be resolved at the regional level, the FEMA Regional Administrator will submit the issue to the Director, Office of Environmental Planning and Historic Preservation, Mitigation Directorate. In coordination with the Office of Chief Counsel (OCC), consultation will be accomplished at the FEMA National Office with the DOI consultation officer. After this consultation, the Director, Office of Environmental Planning and Historic Preservation, Mitigation Directorate, determines whether or not to approve the proposed action.

§ 206.349 Consistency determinations.

Section 6(a)(6) of CBRA requires that certain actions be consistent with the purposes of that statute if the actions are to be carried out on a unit of the CBRA. The purpose of CBRA, as stated in section 2(b) of that statute, is to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with the coastal barriers along with Atlantic and Gulf coasts. For those actions where a consistency determination is required, the FEMA Regional Administrator shall evaluate the action according to the following procedures, and the evaluation shall be included in the written request for consultation with DOI.

(a) *Impact identification.* FEMA shall identify impacts of the following types that would result from the proposed action:

- (1) Risks to human life;
- (2) Risks of damage to the facility being repaired or replaced;
- (3) Risks of damage to other facilities;
- (4) Risks of damage to fish, wildlife, and other natural resources;
- (5) Condition of existing development served by the facility and the degree to which its redevelopment would be encouraged; and
- (6) Encouragement of new development.

(b) *Mitigation.* FEMA shall modify actions by means of practicable mitigation measures to minimize adverse effects of the types listed in paragraph (a) of this section.

(c) *Conservation.* FEMA shall identify practicable measures that can be incorporated into the proposed action and will conserve natural and wildlife resources.

(d) *Finding.* For those actions required to be consistent with the purposes of CBRA, the above evaluation must result in a finding of consistency with CBRA by the Regional Administrator before funding may be approved for that action.

§§ 206.350–206.359 [Reserved]

**Subpart K—Community Disaster Loans**

SOURCE: 55 FR 2314, Jan. 23, 1990, unless otherwise noted.

**§ 206.360 Purpose.**

This subpart provides policies and procedures for local governments and State and Federal officials concerning the Community Disaster Loan program under section 417 of the Stafford Act. Sections 206.360 through 206.367 of the subpart do not implement the Community Disaster Loan Act of 2005. (see § 206.370).

[70 FR 60446, Oct. 18, 2005]

**§ 206.361 Loan program.**

(a) *General.* The Assistant Administrator for the Disaster Assistance Directorate may make a Community Disaster Loan to any local government which has suffered a substantial loss of tax and other revenues as a result of a major disaster and which demonstrates a need for Federal financial assistance in order to perform its governmental functions.

(b) *Amount of loan.* The amount of the loan is based upon need, not to exceed 25 percent of the operating budget of the local government for the fiscal year in which the disaster occurs, but shall not exceed \$5 million. The term *fiscal year* as used in this subpart means the local government's fiscal year.

(c) *Interest rate.* The interest rate is the rate for five year maturities as determined by the Secretary of the Treasury in effect on the date that the Promissory Note is executed. This rate is from the monthly Treasury schedule of certified interest rates which takes into consideration the current average yields on outstanding marketable obligations of the United States, adjusted to the nearest 1/8 percent.

(d) *Time limitation.* The Assistant Administrator for the Disaster Assistance Directorate may approve a loan in either the fiscal year in which the disaster occurred or the fiscal year immediately following that year. Only one loan may be approved under section

417(a) for any local government as the result of a single disaster.

(e) *Term of loan.* The term of the loan is 5 years, unless otherwise extended by the Assistant Administrator for the Disaster Assistance Directorate. The Assistant Administrator for the Disaster Assistance Directorate may consider requests for an extensions of loans based on the local government's financial condition. The total term of any loan under section 417(a) normally may not exceed 10 years from the date the Promissory Note was executed. However, when extenuating circumstances exist and the Community Disaster Loan recipient demonstrates an inability to repay the loan within the initial 10 years, but agrees to repay such loan over an extended period of time, additional time may be provided for loan repayment. (See § 206.367(c).)

(f) *Use of loan funds.* The local government shall use the loaned funds to carry on existing local government functions of a municipal operation character or to expand such functions to meet disaster-related needs. The funds shall not be used to finance capital improvements nor the repair or restoration of damaged public facilities. Neither the loan nor any cancelled portion of the loans may be used as the non-Federal share of any Federal program, including those under the Act.

(g) *Cancellation.* The Assistant Administrator for the Disaster Assistance Directorate shall cancel repayment of all or part of a Community Disaster Loan to the extent that he/she determines that revenues of the local government during the 3 fiscal years following the disaster are insufficient to meet the operating budget of that local government because of disaster-related revenue losses and additional unreimbursed disaster-related municipal operating expenses.

(h) *Relation to other assistance.* Any community disaster loans including cancellations made under this subpart shall not reduce or otherwise affect any commitments, grants, or other assistance under the Act or these regulations.

[55 FR 2314, Jan. 23, 1990, as amended at 66 FR 22445, May 4, 2001]



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### § 206.362 Responsibilities.

(a) The local government shall submit the financial information required by FEMA in the application for a Community Disaster Loan and in the application for loan cancellation, if submitted, and comply with the assurances on the application, the terms and conditions of the Promissory Note, and these regulations. The local government shall send all loan application, loan administration, loan cancellation, and loan settlement correspondence through the GAR and the FEMA Regional Office to the FEMA Assistant Administrator for the Disaster Assistance Directorate.

(b) The GAR shall certify on the loan application that the local government can legally assume the proposed indebtedness and that any proceeds will be used and accounted for in compliance with the FEMA-State Agreement for the major disaster. States are encouraged to take appropriate pre-disaster action to resolve any existing State impediments which would preclude a local government from incurring the increased indebtedness associated with a loan in order to avoid protracted delays in processing loan application requests in major disasters or emergencies.

(c) The Regional Administrator or designee shall review each loan application or loan cancellation request received from a local government to ensure that it contains the required documents and transmit the application to the Assistant Administrator for the Disaster Assistance Directorate. He/she may submit appropriate recommendations to the Assistant Administrator for the Disaster Assistance Directorate.

(d) The Assistant Administrator for the Disaster Assistance Directorate, or a designee, shall execute a Promissory Note with the local government, and the FEMA Finance Center, shall administer the loan until repayment or cancellation is completed and the Promissory Note is discharged.

(e) The Assistant Administrator for the Disaster Assistance Directorate or designee shall approve or disapprove each loan request, taking into consideration the information provided in the local government's request and the rec-

ommendations of the GAR and the Regional Administrator. The Assistant Administrator for the Disaster Assistance Directorate or designee shall approve or disapprove a request for loan cancellation in accordance with the criteria for cancellation in these regulations.

(f) The Chief Financial Officer shall establish and maintain a financial account for each outstanding loan and disburse funds against the Promissory Note.

### § 206.363 Eligibility criteria.

(a) *Local government.* (1) The local government must be located within the area designated by the Assistant Administrator for the Disaster Assistance Directorate as eligible for assistance under a major disaster declaration. In addition, State law must not prohibit the local government from incurring the indebtedness resulting from a Federal loan.

(2) Criteria considered by FEMA in determining the eligibility of a local government for a Community Disaster Loan include the loss of tax and other revenues as result of a major disaster, a demonstrated need for financial assistance in order to perform its governmental functions, the maintenance of an annual operating budget, and the responsibility to provide essential municipal operating services to the community. Eligibility for other assistance under the Act does not, by itself, establish entitlement to such a loan.

(b) *Loan eligibility*—(1) *General.* To be eligible, the local government must show that it may suffer or has suffered a substantial loss of tax and other revenues as a result of a major disaster or emergency, must demonstrate a need for financial assistance in order to perform its governmental functions, and must not be in arrears with respect to any payments due on previous loans. Loan eligibility is based on the financial condition of the local government and a review of financial information and supporting documentation accompanying the application.

(2) *Substantial loss of tax and other revenues.* The fiscal year of the disaster or the succeeding fiscal year is the base period for determining whether a local government may suffer or has suffered

a substantial loss of revenue. Criteria used in determining whether a local government has or may suffer a substantial loss of tax and other revenue include the following disaster-related factors:

(i) Whether the disaster caused a large enough reduction in cash receipts from normal revenue sources, excluding borrowing, which affects significantly and adversely the level and/or categories of essential municipal services provided prior to the disaster;

(ii) Whether the disaster caused a revenue loss of over 5 percent of total revenue estimated for the fiscal year in which the disaster occurred or for the succeeding fiscal year;

(3) *Demonstrated need for financial assistance.* The local government must demonstrate a need for financial assistance in order to perform its governmental functions. The criteria used in making this determination include the following:

(i) Whether there are sufficient funds to meet current fiscal year operating requirements;

(ii) Whether there is availability of cash or other liquid assets from the prior fiscal year;

(iii) Current financial condition considering projected expenditures for governmental services and availability of other financial resources;

(iv) Ability to obtain financial assistance or needed revenue from State and other Federal agencies for direct program expenditures;

(v) Debt ratio (relationship of annual receipts to debt service);

(vi) Ability to obtain financial assistance or needed revenue from State and other Federal agencies for direct program expenditures;

(vii) Displacement of revenue-producing business due to property destruction;

(viii) Necessity to reduce or eliminate essential municipal services; and

(ix) Danger of municipal insolvency.

[55 FR 2314, Jan. 23, 1990, as amended at 66 FR 22445, May 4, 2001]

**§ 206.364 Loan application.**

(a) *Application.* (1) The local government shall submit an application for a Community Disaster Loan through the GAR. The loan must be justified on the

basis of need and shall be based on the actual and projected expenses, as a result of the disaster, for the fiscal year in which the disaster occurred and for the 3 succeeding fiscal years. The loan application shall be prepared by the affected local government and be approved by the GAR. FEMA has determined that a local government, in applying for a loan as a result of having suffered a substantial loss of tax and other revenue as a result of a major disaster, is not required to first seek credit elsewhere (see § 206.367(c)).

(2) The State exercises administrative authority over the local government's application. The State's review should include a determination that the applicant is legally qualified, under State law, to assume the proposed debt, and may include an overall review for accuracy for the submission. The Governor's Authorized Representative may request the Regional Administrator to waive the requirement for a State review if an otherwise eligible applicant is not subject to State administration authority and the State cannot legally participate in the loan application process.

(b) *Financial requirements.* (1) The loan application shall be developed from financial information contained in the local government's annual operating budget (see § 206.364(b)(2)) and shall include a Summary of Revenue Loss and Unreimbursed Disaster-Related Expenses, a Statement of the Applicant's Operating Results—Cash Position, a Debt History, Tax Assessment Data, Financial Projections, Other Information, a Certification, and the Assurances listed on the application.

(i) Copies of the local government's financial reports (Revenue and Expense and Balance Sheet) for the 3 fiscal years immediately prior to the fiscal year of the disaster and the applicant's most recent financial statement must accompany the application. The local government's financial reports to be submitted are those annual (or interim) consolidated and/or individual official annual financial presentations for the General Fund and all other funds maintained by the local government.

(ii) Each application for a Community Disaster Loan must also include:

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(A) A statement by the local government identifying each fund (i.e. General Fund, etc.) which is included as its annual Operating budget, and

(B) A copy of the pertinent State statutes, ordinance, or regulations which prescribe the local government’s system of budgeting, accounting and financial reporting, including a description of each fund account.

(2) *Operating budget.* For loan application purposes, the operating budget is that document or documents approved by an appropriating body, which contains an estimate of proposed expenditures, other than capital outlays for fixed assets for a stated period of time, and the proposed means of financing the expenditures. For loan cancellation purposes, FEMA interprets the term “operating budget” to mean actual revenues and expenditures of the local government as published in the official financial statements of the local government.

(3) *Operating budget increases.* Budget increases due to increases in the level of, or additions to, municipal services not rendered at the time of the disaster or not directly related to the disaster shall be identified.

(4) *Revenue and assessment information.* The applicant shall provide information concerning its method of tax assessment including assessment dates and the dates payments are due. Tax revenues assessed but not collected, or other revenues which the local government chooses to forgive, stay, or otherwise not exercise the right to collect, are not a legitimate revenue loss for purposes of evaluating the loan application.

(5) *Estimated disaster-related expense.* Unreimbursed disaster-related expenses of a municipal operating character should be estimated. These are discussed in § 206.366(b).

(c) *Federal review.* (1) The Assistant Administrator for the Disaster Assistance Directorate or designee shall approve a community disaster loan to the extent it is determined that the local government has suffered a substantial loss of tax and other revenues and demonstrates a need for financial assistance to perform its governmental function as the result of the disaster.

(2) *Resubmission of application.* If a loan application is disapproved, in whole or in part, by the Assistant Administrator for the Disaster Assistance Directorate because of inadequacy of information, a revised application may be resubmitted by the local government within sixty days of the date of the disapproval. Decision by the Assistant Administrator for the Disaster Assistance Directorate on the resubmission is final.

(d) *Community disaster loan.* (1) The loan shall not exceed the lesser of:

(i) The amount of projected revenue loss plus the projected unreimbursed disaster-related expenses of a municipal operating character for the fiscal year of the major disaster and the subsequent 3 fiscal years, or

(ii) 25 percent of the local government’s annual operating budget for the fiscal year in which the disaster occurred.

(2) *Promissory note.* (i) Upon approval of the loan by the Assistant Administrator for the Disaster Assistance Directorate or designee, he or she, or a designated Loan Officer will execute a Promissory Note with the applicant. The Note must be co-signed by the State (see § 206.364(d)(2)(ii)). The applicant should indicate its funding requirements on the Schedule of Loan Increments on the Note.

(ii) If the State cannot legally cosign the Promissory Note, the local government must pledge collateral security, acceptable to the Assistant Administrator for the Disaster Assistance Directorate, to cover the principal amount of the Note. The pledge should be in the form of a resolution by the local governing body identifying the collateral security.

[55 FR 2314, Jan. 23, 1990, as amended at 74 FR 15351, Apr. 3, 2009]

§ 206.365 Loan administration.

(a) *Funding.* (1) FEMA will disburse funds to the local government when requested, generally in accordance with the Schedule of Loan Increments in the Promissory Note. As funds are disbursed, interest will accrue against each disbursement.

(2) When each incremental disbursement is requested, the local government shall submit a copy of its most

recent financial report (if not submitted previously) for consideration by FEMA in determining whether the level and frequency of periodic payments continue to be justified. The local government shall also provide the latest available data on anticipated and actual tax and other revenue collections. Desired adjustments in the disbursement schedule shall be submitted in writing at least 10 days prior to the proposed disbursement date in order to ensure timely receipt of the funds. A sinking fund should be established to amortize the debt.

(b) *Financial management.* (1) Each local government with an approved Community Disaster Loan shall establish necessary accounting records, consistent with local government's financial management system, to account for loan funds received and disbursed and to provide an audit trail.

(2) FEMA auditors, State auditors, the GAR, the Regional Administrator, the Assistant Administrator for the Disaster Assistance Directorate, and the Comptroller General of the United States or their duly authorized representatives shall, for the purpose of audits and examination, have access to any books, documents, papers, and records that pertain to Federal funds, equipments, and supplies received under these regulations.

(c) *Loan servicing.* (1) The applicant annually shall submit to FEMA copies of its annual financial reports (operating statements, balance sheets, etc.) for the fiscal year of the major disaster, and for each of the 3 subsequent fiscal years.

(2) The Disaster Assistance Directorate, will review the loan periodically. The purpose of the reevaluation is to determine whether projected revenue losses, disaster-related expenses, operating budgets, and other factors have changed sufficiently to warrant adjustment of the scheduled disbursement of the loan proceeds.

(3) The Disaster Assistance Directorate, shall provide each loan recipient with a loan status report on a quarterly basis. The recipient will notify FEMA of any changes of the responsible municipal official who executed the Promissory Note.

(d) *Inactive loans.* If no funds have been disbursed from the Treasury, and if the local government does not anticipate a need for such funds, the note may be cancelled at any time upon a written request through the State and Regional Office to FEMA. However, since only one loan may be approved, cancellation precludes submission of a second loan application request by the same local government for the same disaster.

**§ 206.366 Loan cancellation.**

(a) *Policies.* (1) FEMA shall cancel repayment of all or part of a Community Disaster Loan to the extent that the Assistant Administrator for the Disaster Assistance Directorate determines that revenues of the local government during the full three fiscal year period following the disaster are insufficient, as a result of the disaster, to meet the operating budget for the local government, including additional unreimbursed disaster-related expenses for a municipal operating character. For loan cancellation purposes, FEMA interprets that term *operating budget* to mean actual revenues and expenditures of the local government as published in the official financial statements of the local government.

(2) If the tax and other revenues rates or the tax assessment valuation of property which was not damaged or destroyed by the disaster are reduced during the 3 fiscal years subsequent to the major disaster, the tax and other revenue rates and tax assessment valuation factors applicable to such property in effect at the time of the major disaster shall be used without reduction for purposes of computing revenues received. This may result in decreasing the potential for loan cancellations.

(3) If the local government's fiscal year is changed during the "full 3 year period following the disaster" the actual period will be modified so that the required financial data submitted covers an inclusive 36-month period.

(4) If the local government transfers funds from its operating funds accounts to its capital funds account, utilizes operating funds for other than routine maintenance purposes, or significantly increases expenditures

which are not disaster related, except increases due to inflation, the annual operating budget or operating state- ment expenditures will be reduced ac- cordingly for purposes of evaluating any request for loan cancellation.

(5) It is not the purpose of this loan program to underwrite predisaster budget or actual deficits of the local government. Consequently, such defi- cits carried forward will reduce any amounts otherwise eligible for loan cancellation.

(b) *Disaster-related expenses of a mu- nicipal operation character.* (1) For pur- pose of this loan, unreimbursed ex- penses of a municipal operating char- acter are those incurred for general government purposes, such as police and fire protection, trash collection, collection of revenues, maintenance of public facilities, flood and other hazard insurance, and other expenses normally budgeted for the general fund, as de- fined by the Municipal Finance Officers Association.

(2) Disaster-related expenses do not include expenditures associated with debt service, any major repairs, re- building, replacement or reconstruc- tion of public facilities or other capital projects, intragovernmental services, special assessments, and trust and agency fund operations. Disaster ex- penses which are eligible for reim- bursement under project applications or other Federal programs are not eli- gible for loan cancellation.

(3) Each applicant shall maintain records including documentation nec- essary to identify expenditures for un- reimbursed disaster-related expenses. Examples of such expenses include but are not limited to:

- (i) Interest paid on money borrowed to pay amounts FEMA does not ad- vance toward completion of approved Project Applications.
- (ii) Unreimbursed costs to local gov- ernments for providing usable sites with utilities for mobile homes used to meet disaster temporary housing re- quirements.
- (iii) Unreimbursed costs required for police and fire protection and other community services for mobile home parks established as the result of or for use following a disaster.

(iv) The cost to the applicant of flood insurance required under Public Law 93-234, as amended, and other hazard insurance required under section 311, Public Law 93-288, as amended, as a condition of Federal disaster assistance for the disaster under which the loan is authorized.

(4) The following expenses are not considered to be disaster-related for Community Disaster Loan purposes:

- (i) The local government's share for assistance provided under the Act in- cluding flexible funding under section 406(c)(1) of the Act.
- (ii) Improvements related to the re- pair or restoration of disaster public facilities approved on Project Applica- tions.
- (iii) Otherwise eligible costs for which no Federal reimbursement is re- quested as a part of the applicant's dis- aster response commitment, or cost sharing as specified in the FEMA-State Agreement for the disaster.

(iv) Expenses incurred by the local government which are reimbursed on the applicant's project application.

(c) *Cancellation application.* A local government which has drawn loan funds from the Treasury may request cancellation of the principal and re- lated interest by submitting an Appli- cation for Loan Cancellation through the Governor's Authorized Representa- tive to the Regional Administrator prior to the expiration date of the loan.

(1) Financial information submitted with the application shall include the following:

- (i) Annual Operating Budgets for the fiscal year of the disaster and the 3 subsequent fiscal years;
- (ii) Annual Financial Reports (Re- venue and Expense and Balance Sheet) for each of the above fiscal years. Such financial records must include copies of the local government's annual finan- cial reports, including operating state- ments balance sheets and related con- solidated and individual presentations for each fund account. In addition, the local government must include an ex- planatory statement when figures in the Application for Loan Cancellation form differ from those in the sup- porting financial reports.
- (iii) The following additional infor- mation concerning annual real estate

property taxes pertaining to the community for each of the above fiscal years:

- (A) The market value of the tax base (dollars);
  - (B) The assessment ratio (percent);
  - (C) The assessed valuation (dollars);
  - (D) The tax levy rate (mils);
  - (E) Taxes levied and collected (dollars).
- (iv) Audit reports for each of the above fiscal years certifying to the validity of the Operating Statements. The financial statements of the local government shall be examined in accordance with generally accepted auditing standards by independent certified public accountants. The report should not include recommendations concerning loan cancellation or repayment.

(v) Other financial information specified in the Application for Loan Cancellation.

(2) *Narrative justification.* The application may include a narrative presentation to amplify the financial material accompanying the application and to present any extenuating circumstances which the local government wants the Assistant Administrator for the Disaster Assistance Directorate to consider in rendering a decision on the cancellation request.

(d) *Determination.* (1) If, based on a review of the Application for Loan Cancellation and FEMA audit, when determined necessary, the Assistant Administrator for the Disaster Assistance Directorate determines that all or part of the Community Disaster Loan funds should be canceled, the principal amount which is canceled will become a grant, and the related interest will be forgiven. The Assistant Administrator for the Disaster Assistance Directorate's determination concerning loan cancellation will specify that any uncanceled principal and related interest must be repaid immediately and that, if immediate repayment will constitute a financial hardship, the local government must submit for FEMA review and approval, a repayment schedule for settling the indebtedness on timely basis. Such repayments must be made to the Treasurer of the United States and be sent to FEMA, Attention: Chief Financial Officer.

(2) A loan or cancellation of a loan does not reduce or affect other disaster-related grants or other disaster assistance. However, no cancellation may be made that would result in a duplication of benefits to the applicant.

(3) The uncanceled portion of the loan must be repaid in accordance with § 206.367.

(4) *Appeals.* If an Application for Loan Cancellation is disapproved, in whole or in part, by the Assistant Administrator for the Disaster Assistance Directorate or designee, the local government may submit any additional information in support of the application within 60 days of the date of disapproval. The decision by the Assistant Administrator for the Disaster Assistance Directorate or designee on the submission is final.

[55 FR 2314, Jan. 23, 1990, as amended at 74 FR 15351, Apr. 3, 2009]

**§ 206.367 Loan repayment.**

(a) *Prepayments.* The local government may make prepayments against loan at any time without any prepayment penalty.

(b) *Repayment.* To the extent not otherwise cancelled, Community Disaster Loan funds become due and payable in accordance with the terms and conditions of the Promissory Note. The note shall include the following provisions:

(1) The term of a loan made under this program is 5 years, unless extended by the Assistant Administrator for the Disaster Assistance Directorate. Interest will accrue on outstanding cash from the actual date of its disbursement by the Treasury.

(2) The interest amount due will be computed separately for each Treasury disbursement as follows:  $I = P \times R \times T$ , where I = the amount of simple interest, P = the principal amount disbursed; R = the interest rate of the loan; and, T = the outstanding term in years from the date of disbursement to date of repayment, with periods less than 1 year computed on the basis of 365 days/year. If any portion of the loan is cancelled, the interest amount due will be computed on the remaining principal with the shortest outstanding term.

(3) Each payment made against the loan will be applied first to the interest

computed to the date of the payment, and then to the principal. Prepayments of scheduled installments, or any portion thereof, may be made at any time and shall be applied to the installments last to become due under the loan and shall not affect the obligation of the borrower to pay the remaining installments.

(4) The Assistant Administrator for the Disaster Assistance Directorate may defer payments of principal and interest until FEMA makes its final determination with respect to any Application for Loan Cancellation which the borrower may submit. However, interest will continue to accrue.

(5) Any costs incurred by the Federal Government in collecting the note shall be added to the unpaid balance of the loan, bear interest at the same rate as the loan, and be immediately due without demand.

(6) In the event of default on this note by the borrower, the FEMA claims collection officer will take action to recover the outstanding principal plus related interest under Federal debt collection authorities, including administrative offset against other Federal funds due the borrower and/or referral to the Department of Justice for judicial enforcement and collection.

(c) *Additional time.* In unusual circumstances involving financial hardship, the local government may request an additional period of time beyond the original 10 year term to repay the indebtedness. Such request may be approved by the Assistant Administrator for the Disaster Assistance Directorate subject to the following conditions:

(1) The local government must submit documented evidence that it has applied for the same credit elsewhere and that such credit is not available at a rate equivalent to the current Treasury rate.

(2) The principal amount shall be the original uncanceled principal plus related interest.

(3) The interest rate shall be the Treasury rate in effect at the time the new Promissory Note is executed but in no case less than the original interest rate.

(4) The term of the new Promissory Note shall be for the settlement period requested by the local government but

not greater than 10 years from the date the new note is executed.

§§ 206.368–206.369 [Reserved]

§ 206.370 Purpose and scope.

(a) *Purpose.* Sections 206.370 through 206.377 provide procedures for local governments and State and Federal officials concerning the Special Community Disaster Loans program under section 417 of the Stafford Act (42 U.S.C. 5184), the Community Disaster Loan Act of 2005, Public Law 109–88, and the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006, Public Law 109–234.

(b) *Scope.* Sections 206.370 through 206.377 apply only to Special Community Disaster Loans issued under the Community Disaster Loan Act of 2005, Public Law 109–88, and the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006, Public Law 109–234.

[70 FR 60446, Oct. 18, 2005, as amended at 75 FR 2817, Jan. 19, 2010]

§ 206.371 Loan program.

(a) *General.* The Assistant Administrator for the Disaster Assistance Directorate may make a Special Community Disaster Loan to any local government which has suffered a substantial loss of tax and other revenues as a result of a major disaster and which demonstrates a need for Federal financial assistance in order to provide essential services.

(b) *Amount of loan.* The amount of the loan is based upon need, not to exceed 25 percent of the operating budget of the local government for the fiscal year in which the disaster occurs. The term fiscal year as used in this subpart means the local government’s fiscal year.

(c) *Interest rate.* The interest rate is the rate for five year maturities as determined by the Secretary of the Treasury in effect on the date that the Promissory Note is executed. This rate is from the monthly Treasury schedule of certified interest rates which takes into consideration the current average

yields on outstanding marketable obligations of the United States. If an applicant can demonstrate *unusual circumstances involving financial hardship*, the Assistant Administrator for the Disaster Assistance Directorate may approve a rate equal to the five year maturity rate plus 1 per centum, adjusted to the nearest  $\frac{1}{8}$  percent, and further reduced by one-half.

(d) *Time limitation.* The Assistant Administrator for the Disaster Assistance Directorate may approve a loan in either the fiscal year in which the disaster occurred or the fiscal year immediately following that year.

(e) *Term of loan.* The term of the loan is 5 years, unless otherwise extended by the Assistant Administrator for the Disaster Assistance Directorate. The Assistant Administrator for the Disaster Assistance Directorate may consider a request for an extension of a loan based on the local government's financial condition. The total term of any loan under section 417(a) of the Stafford Act normally may not exceed 10 years from the date the Promissory Note was executed. However, when extenuating circumstances exist and the recipient demonstrates an inability to repay the loan within the initial 10 years, but agrees to repay such loan over an extended period of time, additional time may be provided for loan repayment (see §206.377(c)).

(f) *Use of loan funds.* The local government shall use the loaned funds to assist in providing essential services. The funds shall not be used to finance capital improvements nor the repair or restoration of damaged public facilities. Neither the loan nor any cancelled portion of the loans may be used as the non-Federal share of any Federal program, including those under the Stafford Act.

(g) *Relation to other assistance.* Any Special Community Disaster Loans including cancellations of loans made under this subpart shall not reduce or otherwise affect any commitments, grants, or other assistance provided under the authority of the Stafford Act or this part.

(h) *Cancellation.* The Director of the Public Assistance Division shall cancel repayment of all or part of a Special Community Disaster Loan to the ex-

tent that he/she determines that revenues of the local government during the three full fiscal years following the disaster are insufficient to meet the operating budget of that local government because of disaster-related revenue losses and additional unreimbursed disaster-related municipal operating expenses.

[70 FR 60446, Oct. 18, 2005, as amended at 75 FR 2817, Jan. 19, 2010]

#### § 206.372 Responsibilities.

(a) The local government shall submit the financial information required by FEMA in the application for a Community Disaster Loan or other format specified by FEMA and comply with the assurances on the application, the terms and conditions of the Promissory Note, the application for loan cancellation, if submitted, and §§206.370 through 206.377. The local government shall send all loan application, loan administration, loan cancellation, and loan settlement correspondence through the Governor's Authorized Representative (GAR) and the FEMA Regional Office to the Director of the Public Assistance Division.

(b) The GAR shall certify on the loan application that the local government can legally assume the proposed indebtedness and that any proceeds will be used and accounted for in compliance with the FEMA-State Agreement for the major disaster. States are encouraged to take appropriate pre-disaster action to resolve any existing State impediments which would preclude a local government from incurring the increased indebtedness associated with a loan in order to avoid protracted delays in processing loan application requests resulting from major disasters.

(c) The Regional Administrator or designee shall review each loan application or loan cancellation request received from a local government to ensure that it contains the required documents and transmit the application to the Director of the Public Assistance Division. He/she may also submit appropriate recommendations to the Director of the Public Assistance Division.



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(d) The Director of the Public Assistance Division or a designee, shall execute a Promissory Note with the local government and shall administer the loan until repayment or cancellation is completed and the Promissory Note is discharged.

(e) The Director of the Public Assistance Division shall approve or disapprove each loan request, taking into consideration the information provided in the local government’s request and the recommendations of the GAR and the Regional Administrator. The Director of the Public Assistance Division shall approve or disapprove a request for loan cancellation in accordance with the criteria for cancellation in these regulations.

(f) The FEMA Chief Financial Officer shall establish and maintain a financial account for each outstanding loan and disburse funds against the Promissory Note.

[70 FR 60446, Oct. 18, 2005, as amended at 75 FR 2818, Jan. 19, 2010]

§ 206.373 Eligibility criteria.

(a) *Local government.* (1) The local government must be located within the area eligible for assistance under a major disaster declaration. In addition, State law must not prohibit the local government from incurring the indebtedness resulting from a Federal loan.

(2) Criteria considered by FEMA in determining the eligibility of a local government for a Special Community Disaster Loan include the loss of tax and other revenues as result of a major disaster, a demonstrated need for financial assistance in order to perform essential governmental functions, the maintenance of an annual operating budget, and the responsibility to provide essential services to the community. Eligibility for other assistance under the Stafford Act does not, by itself, establish entitlement to such a loan.

(b) *Loan eligibility*—(1) *General.* To be eligible, the local government must show that it may suffer or has suffered a substantial loss of tax and other revenues as a result of a major disaster or emergency, and it must demonstrate a need for financial assistance in order to provide essential municipal services. Loan eligibility is based on the finan-

cial condition of the local government and a review of financial information and supporting documentation accompanying the application.

(2) *Substantial loss of tax and other revenues.* The fiscal year of the disaster or the succeeding fiscal year is the base period for determining whether a local government may suffer or has suffered a substantial loss of revenue. Criteria used in determining whether a local government has or may suffer a substantial loss of tax and other revenue include the following disaster-related factors:

(i) Whether the disaster caused a large enough reduction in cash receipts from normal revenue sources, excluding borrowing, which affects significantly and adversely the level and/or categories of essential services provided prior to the disaster;

(ii) Whether the disaster caused a revenue loss of over 5 percent of total revenue estimated for the fiscal year in which the disaster occurred or for the succeeding fiscal year.

(3) *Demonstrated need for financial assistance.* The local government must demonstrate a need for financial assistance in order to perform essential governmental functions. The criteria used in making this determination may include some or all of the following factors:

(i) Whether there are sufficient funds to meet current fiscal year operating requirements;

(ii) Whether there is availability of cash or other liquid assets from the prior fiscal year;

(iii) Current financial condition considering projected expenditures for governmental services and availability of other financial resources;

(iv) Ability to obtain financial assistance or needed revenue from State and other Federal agencies for direct program expenditures;

(v) Debt ratio (relationship of annual receipts to debt service);

(vi) Displacement of revenue-producing business due to property destruction;

(vii) Necessity to reduce or eliminate essential services; and

(viii) Danger of municipal insolvency.

[70 FR 60446, Oct. 18, 2005]

**§ 206.374 Loan application.**

(a) *Application.* (1) The local government shall submit an application for a Special Community Disaster Loan through the GAR. The loan must be justified on the basis of need and shall be based on the actual and projected expenses, as a result of the disaster, for the fiscal year in which the disaster occurred and for the 3 succeeding fiscal years. The loan application shall be prepared by the affected local government and be approved by the GAR. FEMA has determined that a local government, in applying for a loan as a result of having suffered a substantial loss of tax and other revenue as a result of a major disaster, is not required to first seek credit elsewhere (see § 206.377(c)).

(2) The State exercises administrative authority over the local government's application. The State's review should include a determination that the applicant is legally qualified, under State law, to assume the proposed debt, and may include an overall review for accuracy of the submission. The GAR may request the Regional Administrator to waive the requirement for a State review if an otherwise eligible applicant is not subject to State administration authority and the State cannot legally participate in the loan application process.

(b) *Financial requirements.* (1) The loan application shall be developed from financial information contained in the local government's annual operating budget (see paragraph (b)(2) of this section) and shall include a Summary of Revenue Loss and Unreimbursed Disaster-Related Expenses, a Statement of the Applicant's Operating Results—Cash Position, and certification and assurances requested by the Assistant Administrator for the Disaster Assistance Directorate.

(i) Copies of the local government's financial reports (Revenue and Expense and Balance Sheet) for the 3 fiscal years immediately prior to the fiscal year of the disaster and the applicant's most recent financial statement must, unless impracticable, accompany the application. The local government's financial reports to be submitted are those annual (or interim) consolidated and/or individual official annual finan-

cial presentations for the General Fund and all other funds maintained by the local government.

(ii) Each application for a Special Community Disaster Loan must also include:

(A) A statement by the local government identifying each fund (i.e. General Fund, etc.) which is included as its annual Operating budget, and

(B) A copy of the pertinent State statutes, ordinances, or regulations which prescribe the local government's system of budgeting, accounting and financial reporting, including a description of each fund account.

(2) *Operating budget.* For loan application purposes, the operating budget is that document or documents approved by an appropriating body, which contains an estimate of proposed expenditures, other than capital outlays for fixed assets for a stated period of time, and the proposed means of financing the expenditures. For loan cancellation purposes, FEMA interprets the term "operating budget" to mean actual revenues and expenditures of the local government as published in the official financial statements of the local government.

(3) *Operating budget increases.* Budget increases due to increases in the level of, or additions to, municipal services not rendered at the time of the disaster or not directly related to the disaster shall be identified.

(4) *Revenue and assessment information.* The applicant shall provide information concerning its method of tax assessment including assessment dates and the dates payments are due.

(5) *Estimated disaster-related expense.* Unreimbursed disaster-related expenses of a municipal operating character should be estimated.

(c) *Federal review.* (1) The Assistant Administrator for the Disaster Assistance Directorate or designee shall approve a Special Community Disaster Loan to the extent it is determined that the local government has suffered a substantial loss of tax and other revenues and demonstrates a need for financial assistance as the result of the disaster to provide essential municipal services.

(2) *Resubmission of application.* If a loan application is disapproved, in

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whole or in part, by the Assistant Administrator for the Disaster Assistance Directorate because of inadequacy of information, a revised application may be submitted by the local government within sixty days of the date of the disapproval. Decision by the Assistant Administrator for the Disaster Assistance Directorate on the resubmission is final.

(d) *Special Community Disaster Loan.* (1) The loan shall not exceed the lesser of:

(i) The amount of projected revenue loss plus the projected unreimbursed disaster-related expenses of a municipal operating character for the fiscal year of the major disaster and the subsequent 3 fiscal years, or

(ii) 25 percent of the local government's annual operating budget for the fiscal year in which the disaster occurred.

(2) *Promissory note.* (i) Upon approval of the loan by the Assistant Administrator for the Disaster Assistance Directorate or designee, he or she, or a designated Loan Officer will execute a Promissory Note with the applicant. The Note must be co-signed by the State (see paragraph (d)(2)(ii) of this section). The applicant should indicate its funding requirements on the Schedule of Loan Increments on the Note.

(ii) If the State cannot legally cosign the Promissory Note, the local government must pledge collateral security, acceptable to the Assistant Administrator for the Disaster Assistance Directorate, to cover the principal amount of the Note. The pledge should be in the form of a resolution by the local governing body identifying the collateral security.

(e) *Waiver of requirements.* Notwithstanding any other provision of this or other sections promulgated pursuant to Public Law 109–88, the Assistant Administrator for the Disaster Assistance Directorate may, upon the request of an applicant or loan recipient, waive any specific application requirement or financial reporting requirement (see, e.g., § 206.375(a)(2)) upon a finding by the Assistant Administrator for the Disaster Assistance Directorate that the effects of the major disaster prevent the applicant from fulfilling the application requirement and that

waiving the requirements would be consistent with the purposes of the Community Disaster Loan Act of 2005.

[70 FR 60446, Oct. 18, 2005, as amended at 75 FR 2818, Jan. 19, 2010]

§ 206.375 Loan administration.

(a) *Funding.* (1) FEMA will disburse funds to the local government when requested, generally in accordance with the Schedule of Loan Increments in the Promissory Note. As funds are disbursed, interest will accrue against each disbursement.

(2) When each incremental disbursement is requested, the local government shall submit a copy of its most recent financial report (if not submitted previously) for consideration by FEMA in determining whether the level and frequency of periodic payments continue to be justified. The local government shall also provide the latest available data on anticipated and actual tax and other revenue collections. Desired adjustments in the disbursement schedule shall be submitted in writing at least 10 days prior to the proposed disbursement date in order to ensure timely receipt of the funds.

(b) *Financial management.* (1) Each local government with an approved Special Community Disaster Loan shall establish necessary accounting records, consistent with local government's financial management system, to account for loan funds received and disbursed and to provide an audit trail.

(2) FEMA auditors, State auditors, the GAR, the Regional Administrator, the Assistant Administrator for the Disaster Assistance Directorate, the Department of Homeland Security Inspector General, and the Comptroller General of the United States or their duly authorized representatives shall, for the purpose of audits and examination, have access to any books, documents, papers, and records that pertain to Federal funds, equipments, and supplies received under §§ 206.370 through 206.377.

(c) *Loan servicing.* (1) The applicant annually shall submit to FEMA copies of its annual financial reports (operating statements, balance sheets, etc.)

for the fiscal year of the major disaster, and for each of the 3 subsequent fiscal years.

(2) FEMA will review the loan periodically. The purpose of the reevaluation is to determine whether projected revenue losses, disaster-related expenses, operating budgets, and other factors have changed sufficiently to warrant adjustment of the scheduled disbursement of the loan proceeds.

(3) FEMA shall provide each loan recipient with a loan status report on a quarterly basis. The recipient will notify FEMA of any changes of the responsible municipal official who executed the Promissory Note.

(d) *Inactive loans.* If no funds have been disbursed from the loan program, and if the local government does not anticipate a need for such funds, the note may be cancelled at any time upon a written request through the State and Regional Office to FEMA.

[70 FR 60446, Oct. 18, 2005]

**§ 206.376 Loan cancellation.**

(a) FEMA shall cancel repayment of all or part of a Special Community Disaster Loan to the extent that the Director of the Public Assistance Division determines that revenues of the local government during the three-full-fiscal-year period following the disaster are insufficient, as a result of the disaster, to meet the operating budget for the local government, including additional unreimbursed disaster-related expenses of a municipal operating character.

(b) *Definitions.* For loan cancellation purposes,

(1) “Operating budget” means actual revenues and expenditures of the local government as published in the official financial statements of the local government.

(2) “Revenue” means any source of income from taxes, fees, fines, and other sources of income, and will be recognized only as they become susceptible to accrual (measurable and available).

(3) “Three-full-fiscal-year period following the disaster” means either a 36-month period beginning on September 1, 2005, or the 36 months of the applicant’s fiscal year as established before

the disaster, at the applicant’s discretion.

(4) “Operating expenses” means those expenses and expenditures incurred as a result of performing services, including salaries and benefits, contractual services, and commodities. Capital expenditures and debt service payments and capital leases are not considered operating expenses. Under accrual accounting, expenses are recognized as soon as a liability is incurred, regardless of the timing of related cash flows.

(c) *Revenue Calculation procedures.* (1) If the tax rates and other revenues or the tax assessment valuation of property which was not damaged or destroyed by the disaster are reduced during the three full fiscal years subsequent to the major disaster, the tax rates and other revenues and tax assessment valuation factors applicable to such property in effect at the time of the major disaster shall be used without reduction for purposes of computing revenues received.

(2) At the applicant’s discretion, the three-full-fiscal-year period following the disaster is either a 36-month period beginning on September 1, 2005 or the 36 months of the applicant’s fiscal year as established before the disaster. If the applicant’s fiscal year is changed within the 36 months immediately following the disaster, the actual period will be modified so that the required financial data submitted covers an inclusive 36-month period. Should the applicant elect the 36-month period beginning September 1, 2005, FEMA will prorate the revenues and expenses for the partial years based on the applicant’s annual financial statements.

(3) If the local government transfers funds from its operating funds accounts to its capital funds account, utilizes operating funds for other than routine maintenance purposes, or significantly increases expenditures which are not disaster related, except increases due to inflation, the annual operating budget or operating statement expenditures will be reduced accordingly for purposes of evaluating any request for loan cancellation.

(4) Notwithstanding paragraph (c)(3) of this section, the amount of property taxes that are transferred to other

funds for Debt Service or Pension Obligations funding will not be excluded from the calculation of the operating budget or from expenditures in calculation of the operating deficit, to the extent that the property tax revenues in the General Fund are less than they were pre-disaster. FEMA will consider the impact of the loss of property tax revenue in Debt Service or Pension Funds (non-operating funds) if all of the following conditions are met:

(i) The entity experienced a loss of property tax revenue as a result of the disaster and the assessed value during the three years following the disaster, in the aggregate, is less than the pre-disaster assessed value;

(ii) the entity has a property tax cap limitation on the ability to raise property taxes post-disaster; and

(iii) the property taxes are levied through the General Operating Fund and transfers for obligations mandated by law are made to fund Debt Service or Pension Obligations which result in the entity experiencing a reduction of property tax revenues in the General Fund.

(5) It is not the purpose of this loan program to underwrite pre-disaster budget or actual deficits of the local government. Consequently, such deficits carried forward will reduce any amounts otherwise eligible for loan cancellation.

(6) The provisions of this section apply to all Special Community Disaster loans issued from the dates of enactment of Public Law 109–88 and Public Law 109–234.

(d) *Disaster-related expenses of a municipal operation character.* (1) For purposes of this loan, unreimbursed expenses of a municipal operating character are those incurred for general government purposes, including but not limited to police and fire protection, trash collection, collection of revenues, maintenance of public facilities, flood and other hazard insurance.

(2) Disaster-related expenses do not include expenditures associated with debt service, any major repairs, rebuilding, replacement or reconstruction of public facilities or other capital projects, intragovernmental services, special assessments, and trust and agency fund operations. Disaster ex-

penses which are eligible for reimbursement under project applications or other Federal programs are not eligible for loan cancellation.

(3) Each applicant shall maintain records including documentation necessary to identify expenditures for unreimbursed disaster-related expenses. Examples of such expenses include but are not limited to:

(i) Interest paid on money borrowed to pay amounts FEMA does not advance toward completion of approved Project Applications.

(ii) Unreimbursed costs to local governments for providing usable sites with utilities for mobile homes used to meet disaster temporary housing requirements.

(iii) Unreimbursed costs required for police and fire protection and other community services for mobile home parks established as the result of or for use following a disaster.

(iv) The cost to the applicant of flood insurance required under Public Law 93–234, as amended, and other hazard insurance required under section 311, Public Law 93–288, as amended, as a condition of Federal disaster assistance for the disaster under which the loan is authorized.

(4) The following expenses are not considered to be disaster-related for Special Community Disaster Loan purposes:

(i) The local government’s share for assistance provided under the Stafford Act including flexible funding under section 406(c)(1) of the Act (42 U.S.C. 5172).

(ii) Improvements related to the repair or restoration of disaster public facilities approved on Project Applications.

(iii) Otherwise eligible costs for which no Federal reimbursement is requested as a part of the applicant’s disaster response commitment, or cost sharing as specified in the FEMA–State Agreement for the disaster.

(iv) Expenses incurred by the local government which are reimbursed on the applicant’s Project Application.

(e) *Cancellation application.* A local government which has drawn loan funds from the U.S. Treasury may request cancellation of the principal and

related interest by submitting an Application for Loan Cancellation through the Governor's Authorized Representative to the Regional Administrator prior to the expiration date of the loan.

(1) Financial information submitted with the application shall include the following:

(i) Annual Operating Budgets for the fiscal year of the disaster and the three subsequent fiscal years;

(ii) Annual Financial Reports (Revenue and Expense and Balance Sheet) for each of the above fiscal years. Such financial records must include copies of the local government's annual financial reports, including operating statements and balance sheets and related consolidated and individual presentations for each fund account. In addition, the local government must include an explanatory statement when figures in the Application for Loan Cancellation form differ from those in the supporting financial reports.

(iii) The following additional information concerning annual real estate property taxes pertaining to the community for each of the above fiscal years:

(A) The market value of the tax base (dollars);

(B) The assessment ratio (percent);

(C) The assessed valuation (dollars);

(D) The tax levy rate (mils);

(E) Taxes levied and collected (dollars).

(iv) Audit reports for each of the above fiscal years certifying to the validity of the Operating Statements. The financial statements of the local government shall be examined in accordance with generally accepted auditing standards by independent certified public accountants. The report should not include recommendations concerning loan cancellation or repayment.

(v) Other financial information specified in the Application for Loan Cancellation.

(2) *Narrative justification.* The application may include a narrative presentation to supplement the financial material accompanying the application and to present any extenuating circumstances which the local government wants the Director of the Public

Assistance Division to consider in rendering a decision on the cancellation request.

(f) *Determination.* (1) The Director of the Public Assistance Division will make a cancellation determination within 60 days of the date the applicant submits all required and requested information, including documentation in support of un-reimbursed disaster related expenses.

(2) If, based on a review of the Application for Loan Cancellation and FEMA audit, the Director of the Public Assistance Division determines that all or part of the Special Community Disaster Loan funds should be canceled, the amount of principal canceled and the related interest will be forgiven. The Director of the Public Assistance Division's determination concerning loan cancellation will specify that any uncanceled principal and related interest must be repaid in accordance with the terms and conditions of the Promissory Note, and that, if repayment will constitute a financial hardship, the local government must submit for FEMA review and approval, a repayment schedule for settling the indebtedness on a timely basis. Such repayments must be made to the Treasurer of the United States and be sent to FEMA, Attention: Office of the Chief Financial Officer.

(3) A loan or cancellation of a loan does not reduce or affect other disaster-related grants or other disaster assistance. However, no cancellation may be made that would result in a duplication of benefits to the applicant.

(4) The uncanceled portion of the loan must be repaid in accordance with §206.377.

(5) *Appeals.* If an Application for Loan Cancellation is disapproved, in whole or in part, by the Director of the Public Assistance Division, the local government may submit any additional information in support of the application within 60 days of the date of disapproval. The decision by the Assistant Administrator for the Disaster Assistance Directorate on the additional information is final.

[75 FR 2818, Jan. 19, 2010]

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§ 206.377 Loan repayment.

(a) *Prepayments.* The local government may make prepayments against loan at any time without any prepayment penalty.

(b) *Repayment.* To the extent not otherwise cancelled, loan funds become due and payable in accordance with the terms and conditions of the Promissory Note. The note shall include the following provisions:

(1) The term of a loan made under this program is 5 years, unless extended by the Assistant Administrator for the Disaster Assistance Directorate. Interest will accrue on outstanding cash from the actual date of its disbursement by FEMA or FEMA's designated Disbursing Agency.

(2) The interest amount due will be computed separately for each Treasury disbursement as follows:  $I = P \times R \times T$ , where I = the amount of simple interest, P = the principal amount disbursed; R = the interest rate of the loan; and, T = the outstanding term in years from the date of disbursement to date of repayment, with periods less than 1 year computed on the basis of 365 days/year. If any portion of the loan is cancelled, the interest amount due will be computed on the remaining principal with the shortest outstanding term.

(3) Each payment made against the loan will be applied first to the interest computed to the date of the payment, and then to the principal. Prepayments of scheduled installments, or any portion thereof, may be made at any time and shall be applied to the installments last to become due under the loan and shall not affect the obligation of the borrower to pay the remaining installments.

(4) The Assistant Administrator for the Disaster Assistance Directorate may defer payments of principal and interest until FEMA makes its final determination with respect to any Application for Loan Cancellation which the borrower may submit. However, interest will continue to accrue.

(5) Any costs incurred by the Federal Government in collecting the note shall be added to the unpaid balance of the loan, bear interest at the same rate as the loan, and be immediately due without demand.

(6) In the event of default on this note by the borrower, the FEMA claims collection officer will take action to recover the outstanding principal plus related interest under Federal debt collection authorities, including administrative offset against other Federal funds due the borrower and/or referral to the Department of Justice for judicial enforcement and collection.

(c) *Additional time.* In unusual circumstances involving financial hardship, the local government may request an additional period of time beyond the original 10 year term to repay the indebtedness. Such request may be approved by the Assistant Administrator for the Disaster Assistance Directorate subject to the following conditions:

(1) The local government must submit documented evidence that it has applied for the same credit elsewhere and that such credit is not available at a rate equivalent to the current Treasury rate.

(2) The principal amount shall be the original uncanceled principal plus related interest less any payments made.

(3) The interest rate shall be the Treasury rate in effect at the time the new Promissory Note is executed but in no case less than the original interest rate. A reduced rate may not be applied if it was not previously applied to the loan.

(4) The term of the new Promissory Note shall be for the settlement period requested by the local government but not greater than 10 years from the date the new note is executed.

[70 FR 60446, Oct. 18, 2005, as amended at 75 FR 2820, Jan. 19, 2010]

§§ 206.378-206.389 [Reserved]

Subpart L [Reserved]

Subpart M—Minimum Standards

SOURCE: 67 FR 8852, Feb. 26, 2002, unless otherwise noted.

§ 206.400 General.

(a) As a condition of the receipt of any disaster assistance under the Stafford Act, the applicant shall carry out any repair or construction to be financed with the disaster assistance in

accordance with applicable standards of safety, decency, and sanitation and in conformity with applicable codes, specifications and standards.

(b) Applicable codes, specifications, and standards shall include any disaster resistant building code that meets the minimum requirements of the National Flood Insurance Program (NFIP) as well as being substantially equivalent to the recommended provisions of the National Earthquake Hazards Reduction Program (NEHRP). In addition, the applicant shall comply with any requirements necessary in regards to Executive Order 11988, Floodplain Management, Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction, and any other applicable Executive orders.

(c) In situations where there are no locally applicable standards of safety, decency and sanitation, or where there are no applicable local codes, specifications and standards governing repair or construction activities, or where the Regional Administrator determines that otherwise applicable codes, specifications, and standards are inadequate, then the Regional Administrator may, after consultation with appropriate State and local officials, require the use of nationally applicable codes, specifications, and standards, as well as safe land use and construction practices in the course of repair or construction activities.

(d) The mitigation planning process that is mandated by section 322 of the Stafford Act and 44 CFR part 201 can assist State and local governments in determining where codes, specifications, and standards are inadequate, and may need to be upgraded.

**§ 206.401 Local standards.**

The cost of repairing or constructing a facility in conformity with minimum codes, specifications and standards may be eligible for reimbursement under section 406 of the Stafford Act, as long as such codes, specifications, and standards meet the criteria that are listed at 44 CFR 206.226(d).

[74 FR 47482, Sept. 16, 2009]

**§ 206.402 Compliance.**

A recipient of disaster assistance under the Stafford Act must document for the Regional Administrator its compliance with this subpart following the completion of any repair or construction activities.

**Subpart N—Hazard Mitigation Grant Program**

SOURCE: 55 FR 35537, Aug. 30, 1990, unless otherwise noted.

**§ 206.430 General.**

This subpart provides guidance on the administration of hazard mitigation grants made under the provisions of section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170c, hereafter Stafford Act, or the Act.

[59 FR 24356, May 11, 1994]

**§ 206.431 Definitions.**

*Activity* means any mitigation measure, project, or action proposed to reduce risk of future damage, hardship, loss or suffering from disasters.

*Applicant* means the non-Federal entity consisting of a State or Indian Tribal government, applying to FEMA for a Federal award under the Hazard Mitigation Grant Program. Upon award, the applicant becomes the recipient and may also be a pass-through entity.

*Enhanced State Mitigation Plan* is the hazard mitigation plan approved under 44 CFR part 201 as a condition of receiving increased funding under the HMGP.

*Grant application* means the request to FEMA for HMGP funding, as outlined in §206.436, by a State or Tribal government that will act as recipient.

*Grant award* means total of Federal and non-Federal contributions to complete the approved scope of work.

*Indian Tribal government* means any Federally recognized governing body of an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian Tribe under the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C.



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5131. This does not include Alaska Native corporations, the ownership of which is vested in private individuals. Indian Tribal governments have the option to apply as an applicant or sub-applicant.

*Local Mitigation Plan* is the hazard mitigation plan required of a local government acting as a subrecipient as a condition of receiving a project subaward under the HMGP as outlined in 44 CFR 201.6.

*Pass-through entity* means a recipient that provides a subaward to a subrecipient.

*Recipient* means the State or Indian Tribal government that receives a Federal award directly from FEMA. A recipient may also be a pass-through entity. The term recipient does not include subrecipients. The recipient is the entire legal entity even if only a particular component of the entity is designated in the grant award document. Generally, the State is the recipient. However, an Indian Tribal government may choose to be a recipient, or may act as a subrecipient under the State. An Indian Tribal government acting as recipient will assume the responsibilities of a “State”, as described in this part, for the purposes of administering the grant.

*Standard State Mitigation Plan* is the hazard mitigation plan approved under 44 CFR part 201, as a condition of receiving Stafford Act assistance as outlined in §201.4 of this chapter.

*State Administrative Plan for the Hazard Mitigation Grant Program* means the plan developed by the State to describe the procedures for administration of the HMGP.

*Subapplicant* means the State agency, local government, eligible private non-profit organization, or Indian Tribal government submitting a subapplication to the applicant for financial assistance under HMGP. Upon award, the subapplicant becomes the subrecipient.

*Subaward* means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award.

*Subaward application* means the request to the recipient for HMGP funding by the eligible subrecipient, as outlined in §206.436.

*Subrecipient* means the government or other legal entity to which a subaward is awarded and which is accountable to the recipient for the use of the funds provided. Subrecipients can be a State agency, local government, private non-profit organization, or Indian Tribal government as outlined in §206.433. Indian Tribal governments acting as a subrecipient are accountable to the State recipient.

*Tribal Mitigation Plan* is the hazard mitigation plan required of an Indian Tribal government acting as a recipient or subrecipient as a condition of receiving a project award or subaward under the HMGP as outlined in 44 CFR 201.7.

[86 FR 50676, Sept. 10, 2021]

§ 206.432 Federal grant assistance.

(a) *General.* This section describes the extent of Federal funding available under the State’s grant, as well as limitations and special procedures applicable to each.

(b) *Amounts of assistance.* The total Federal contribution of funds is based on the estimated aggregate grant amount to be made under the Stafford Act for the major disaster (less associated administrative costs), and must be as follows:

(1) *Standard percentages.* Not to exceed 15 percent for the first \$2,000,000,000 or less of such amounts; not to exceed 10 percent of the portion of such amounts over \$2,000,000,000 and not more than \$10,000,000,000; and not to exceed 7.5 percent of the portion of such amounts over \$10,000,000,000 and not more than \$35,333,000,000.

(2) *Twenty (20) percent.* A State with an approved Enhanced State Mitigation Plan, in effect before the disaster declaration, which meets the requirements outlined in §201.5 of this subchapter will be eligible for assistance under the HMGP not to exceed 20 percent of such amounts, for amounts not more than \$35.333 billion.

(3) The estimates of Federal assistance under this paragraph (b) will be based on the Regional Administrator’s estimate of all eligible costs, actual grants, and appropriate mission assignments.

(c) *Cost sharing.* All mitigation measures approved under the State’s grant

will be subject to the cost sharing provisions established in the FEMA-State Agreement. FEMA may contribute up to 75 percent of the cost of measures approved for funding under the Hazard Mitigation Grant Program for major disasters declared on or after June 10, 1993. The non-Federal share may exceed the Federal share. FEMA will not contribute to costs above the Federally approved estimate.

[55 FR 35537, Aug. 30, 1990, as amended at 59 FR 24356, May 11, 1994; 67 FR 8853, Feb. 26, 2002; 67 FR 61515, Oct. 1, 2002; 69 FR 55097, Sept. 13, 2004; 72 FR 61750, Oct. 31, 2007; 74 FR 47482, Sept. 16, 2009; 86 FR 50677, Sept. 10, 2021]

**§ 206.433 State responsibilities.**

(a) *Recipient.* The State will be the recipient to which funds are awarded and will be accountable for the use of those funds. There may be subrecipients within the State government.

(b) *Priorities.* The State will determine priorities for funding. This determination must be made in conformance with § 206.435.

(c) *Hazard Mitigation Officer.* The State must appoint a Hazard Mitigation Officer who serves as the responsible individual for all matters related to the Hazard Mitigation Grant Program.

(d) *Administrative plan.* The State must have an approved administrative plan for the Hazard Mitigation Grant Program in conformance with § 206.437.

[55 FR 35537, Aug. 30, 1990, as amended at 72 FR 61750, Oct. 31, 2007; 86 FR 50677, Sept. 10, 2021]

**§ 206.434 Eligibility.**

(a) *Eligible entities.* The following are eligible to apply for the Hazard Mitigation Grant Program:

(1) Applicants—States and Indian Tribal governments;

(2) Subapplicants—(i) State agencies and local governments;

(ii) Private nonprofit organizations that own or operate a private nonprofit facility as defined in § 206.221(e). A qualified conservation organization as defined at § 80.3(h) of this chapter is the only private nonprofit organization eligible to apply for acquisition or relocation for open space projects;

(iii) Indian Tribal governments.

(b) *Plan requirement.* (1) Local and Indian Tribal government applicants for project subawards must have an approved local or Tribal Mitigation Plan in accordance with 44 CFR part 201 before receipt of HMGP subaward funding for projects.

(2) Regional Administrators may grant an exception to this requirement in extraordinary circumstances, such as in a small and impoverished community when justification is provided. In these cases, a plan will be completed within 12 months of the award of the project subaward. If a plan is not provided within this timeframe, the project subaward will be terminated, and any costs incurred after notice of subaward's termination will not be reimbursed by FEMA.

(c) *Minimum project criteria.* To be eligible for the Hazard Mitigation Grant Program, a project must:

(1) Be in conformance with the State Mitigation Plan and Local or Tribal Mitigation Plan approved under 44 CFR part 201; or for Indian Tribal governments acting as recipients, be in conformance with the Tribal Mitigation Plan approved under 44 CFR 201.7;

(2) Have a beneficial impact upon the designated disaster area, whether or not located in the designated area;

(3) Be in conformance with 44 CFR part 9, Floodplain Management and Protection of Wetlands, and other applicable environmental and historic preservation laws, regulations, Executive Orders, and agency policy;

(4) Solve a problem independently or constitute a functional portion of a solution where there is assurance that the project as a whole will be completed. Projects that merely identify or analyze hazards or problems are not eligible;

(5) Be cost-effective and substantially reduce the risk of future damage, hardship, loss, or suffering resulting from a major disaster. The recipient must demonstrate this by documenting that the project;

(i) Addresses a problem that has been repetitive, or a problem that poses a significant risk to public health and safety if left unsolved,

(ii) Will not cost more than the anticipated value of the reduction in both

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direct damages and subsequent negative impacts to the area if future disasters were to occur,

(iii) Has been determined to be the most practical, effective, and environmentally sound alternative after consideration of a range of options,

(iv) Contributes, to the extent practicable, to a long-term solution to the problem it is intended to address,

(v) Considers long-term changes to the areas and entities it protects, and has manageable future maintenance and modification requirements.

(d) *Eligible activities*—(1) *Planning*. Up to 7% of the State’s HMGP award may be used to develop State, Tribal and/or local mitigation plans to meet the planning criteria outlined in 44 CFR part 201.

(2) *Types of projects*. Projects may be of any nature that will result in protection to public or private property. Activities for which implementation has already been initiated or completed are not eligible for funding. Eligible projects include, but are not limited to:

(i) Structural hazard control or protection projects;

(ii) Construction activities that will result in protection from hazards;

(iii) Retrofitting of facilities;

(iv) Property acquisition or relocation, as defined in paragraph (e) of this section;

(v) Development of State or local mitigation standards;

(vi) Development of comprehensive mitigation programs with implementation as an essential component;

(vii) Development or improvement of warning systems.

(e) *Property acquisitions and relocation requirements*. Property acquisitions and relocation projects for open space proposed for funding pursuant to a major disaster declared on or after December 3, 2007 must be implemented in accordance with part 80 of this chapter.

(f) *Duplication of programs*. Section 404 funds cannot be used as a substitute or replacement to fund projects or programs that are available under other Federal authorities, except under limited circumstances in which there are extraordinary threats to lives, public health or safety or improved property.

(g) *Packaging of programs*. Section 404 funds may be packaged or used in combination with other Federal, State, local, or private funding sources when appropriate to develop a comprehensive mitigation solution, though section 404 funds cannot be used as a match for other Federal funds.

[55 FR 35537, Aug. 30, 1990, as amended at 59 FR 24356, May 11, 1994; 67 FR 8853, Feb. 26, 2002; 67 FR 61515, Oct. 1, 2002; 69 FR 55097, Sept. 13, 2004; 72 FR 61750, Oct. 31, 2007; 74 FR 47483, Sept. 16, 2009; 81 FR 56534, Aug. 22, 2016; 86 FR 50677, Sept. 10, 2021]

§ 206.435 Project identification and selection criteria.

(a) *Identification*. It is the State’s responsibility to identify and select eligible hazard mitigation projects. All funded projects must be consistent with the State Mitigation Plan. Hazard Mitigation projects will be identified and prioritized through the State, Indian tribal, and local planning process.

(b) *Selection*. The State will establish procedures and priorities for the selection of mitigation measures. At a minimum, the criteria must be consistent with the criteria stated in §206.434(c) and include:

(1) Measures that best fit within an overall plan for development and/or hazard mitigation in the community, disaster area, or State;

(2) Measures that, if not taken, will have a severe detrimental impact on the applicant, such as potential loss of life, loss of essential services, damage to critical facilities, or economic hardship on the community;

(3) Measures that have the greatest potential impact on reducing future disaster losses;

(c) *Other considerations*. In addition to the selection criteria noted above, consideration should be given to measures that are designed to accomplish multiple objectives including damage reduction, environmental enhancement, and economic recovery, when appropriate.

[55 FR 35537, Aug. 30, 1990, as amended at 66 FR 8853, Feb. 26, 2002; 68 FR 63738, Nov. 10, 2003; 86 FR 50678, Sept. 10, 2021]

§ 206.436 Application procedures.

(a) *General*. This section describes the procedures to be used by the recipient

in submitting an application for HMGP funding. Under the HMGP, the State or Indian Tribal government is the recipient and is responsible for processing subawards to applicants in accordance with 2 CFR parts 200 and 3002. Subrecipients are accountable to the recipient.

(b) *Governor's Authorized Representative.* The Governor's Authorized Representative serves as the grant administrator for all funds provided under the Hazard Mitigation Grant Program. The Governor's Authorized Representative's responsibilities as they pertain to procedures outlined in this section include providing technical advice and assistance to eligible subrecipients, and ensuring that all potential applicants are aware of assistance available and submission of those documents necessary for grant award.

(c) *Hazard mitigation application.* Upon identification of mitigation measures, the State (Governor's Authorized Representative) will submit its Hazard Mitigation Grant Program application to the FEMA Regional Administrator. The application will identify one or more mitigation measures for which funding is requested. The application must include a Standard Form (SF) 424, Application for Federal Assistance, SF 424D, Assurances for Construction Programs, if appropriate, and a narrative statement. The narrative statement will contain any pertinent project management information not included in the State's administrative plan for Hazard Mitigation. The narrative statement will also serve to identify the specific mitigation measures for which funding is requested. Information required for each mitigation measure must include the following:

- (1) Name of the subrecipient, if any;
- (2) State or local contact for the measure;
- (3) Location of the project;
- (4) Description of the measure;
- (5) Cost estimate for the measure;
- (6) Analysis of the measure's cost-effectiveness and substantial risk reduction, consistent with § 206.434(c);
- (7) Work schedule;
- (8) Justification for selection;
- (9) Alternatives considered;
- (10) Environmental information consistent with 44 CFR part 9, Floodplain

Management and Protection of Wetlands, and other applicable environmental and historic preservation laws, regulations, Executive Orders, and agency policy.

(d) *Application submission time limit.* The State's application may be amended as the State identifies and selects local project applications to be funded. The State must submit all local HMGP applications and funding requests for the purpose of identifying new projects to the Regional Administrator within 12 months of the date of disaster declaration.

(e) *Extensions.* The State may request the Regional Administrator to extend the application time limit by 30 to 90 day increments, not to exceed a total of 180 days. The recipient must include a justification in its request.

(f) *FEMA approval.* The application and supplement(s) will be submitted to the FEMA Regional Administrator for approval. FEMA has final approval authority for funding of all projects.

(g) *Indian Tribal recipients.* Indian Tribal governments may submit a SF 424 directly to the Regional Administrator.

[67 FR 8853, Feb. 26, 2002, as amended at 79 FR 76086, Dec. 19, 2014; 81 FR 56534, Aug. 22, 2016; 86 FR 50678, Sept. 10, 2021]

**§ 206.437 State administrative plan.**

(a) *General.* The State must develop a plan for the administration of the Hazard Mitigation Grant Program.

(b) *Minimum criteria.* At a minimum, the State administrative plan must include the items listed below:

- (1) Designation of the State agency will have responsibility for program administration;
- (2) Identification of the State Hazard Mitigation Officer responsible for all matters related to the Hazard Mitigation Grant Program.
- (3) Determination of staffing requirements and sources of staff necessary for administration of the program;
- (4) Establishment of procedures to:
  - (i) Identify and notify potential applicants (subrecipients) of the availability of the program;
  - (ii) Ensure that potential applicants are provided information on the application process, program eligibility and key deadlines;

- (iii) Determine applicant eligibility;
- (iv) Conduct environmental and floodplain management reviews;
- (v) Establish priorities for selection of mitigation projects;
- (vi) Process requests for advances of funds and reimbursement;
- (vii) Monitor and evaluate the progress and completion of the selected projects;
- (viii) Review and approve cost overruns;
- (ix) Process appeals;
- (x) Provide technical assistance as required to subrecipient(s);
- (xi) Comply with the administrative and audit requirements of 2 CFR parts 200 and 3002 and 44 CFR part 206.
- (xii) Provide quarterly progress reports to the Regional Administrator on approved projects.

(xiii) Determine the percentage or amount of pass-through funds for management costs provided under 44 CFR part 207 that the recipient will make available to subrecipients, and the basis, criteria, or formula for determining the subrecipient percentage or amount.

(c) *Format.* The administrative plan is intended to be a brief but substantive plan documenting the State's process for the administration of the Hazard Mitigation Grant Program and management of the section 404 funds. This administrative plan should become a part of the State's overall emergency response or operations plan as a separate annex or chapter.

(d) *Approval.* The State must submit the administrative plan to the Regional Administrator for approval. Following each major disaster declaration, the State must prepare any updates, amendments, or plan revisions required to meet current policy guidance or changes in the administration of the Hazard Mitigation Grant Program. Funds will not be awarded until the State Administrative Plan is approved by the FEMA Regional Administrator.

[55 FR 35537, Aug. 30, 1990, as amended at 55 FR 52172, Dec. 20, 1990; 72 FR 57875, Oct. 11, 2007; 74 FR 15352, Apr. 3, 2009; 79 FR 76086, Dec. 19, 2014; 86 FR 50678, Sept. 10, 2021]

**§ 206.438 Project management.**

(a) *General.* The State serving as recipient has primary responsibility for

project management and accountability of funds as indicated in 2 CFR parts 200 and 3002 and 44 CFR part 206. The State is responsible for ensuring that subrecipients meet all program and administrative requirements.

(b) *Cost overruns.* During the execution of work on an approved mitigation measure the Governor's Authorized Representative may find that actual project costs are exceeding the approved estimates. Cost overruns which can be met without additional Federal funds, or which can be met by offsetting cost underruns on other projects, need not be submitted to the Regional Administrator for approval, so long as the full scope of work on all affected projects can still be met. For cost overruns which exceed Federal obligated funds and which require additional Federal funds, the Governor's Authorized Representative will evaluate each cost overrun and submit a request with a recommendation to the Regional Administrator for a determination. The applicant's justification for additional costs and other pertinent material must accompany the request. The Regional Administrator will notify the Governor's Authorized Representative in writing of the determination and process a supplement, if necessary. All requests that are not justified must be denied by the Governor's Authorized Representative. In no case will the total amount obligated to the State exceed the funding limits set forth in § 206.432(b). Any such problems or circumstances affecting project costs must be identified through the quarterly progress reports required in paragraph (c) of this section.

(c) *Progress reports.* The recipient must submit a quarterly progress report to FEMA indicating the status and completion date for each measure funded. Any problems or circumstances affecting completion dates, scope of work, or project costs which are expected to result in noncompliance with the approved grant conditions must be described in the report.

(d) *Payment of claims.* The Governor's Authorized Representative will make a claim to the Regional Administrator for reimbursement of allowable costs

for each approved measure. In submitting such claims the Governor's Authorized Representative must certify that reported costs were incurred in the performance of eligible work, that the approved work was completed and that the mitigation measure is in compliance with the provisions of the FEMA-State Agreement. The Regional Administrator will determine the eligible amount of reimbursement for each claim and approve payment. If a mitigation measure is not completed, and there is not adequate justification for noncompletion, no Federal funding will be provided for that measure.

(e) *Audit requirements.* Uniform audit requirements as set forth in 2 CFR parts 200 and 3002 and 44 CFR part 206 apply to all grant assistance provided under this subpart. FEMA may elect to conduct a Federal audit on the disaster assistance award or on any of the sub-awards.

[86 FR 50678, Sept. 10, 2021]

#### § 206.439 Allowable costs.

(a) General requirements for determining allowable costs are established in 2 CFR part 200, Cost Principles. Exceptions to those requirements as allowed in 2 CFR 200.101 and 2 CFR 200.102 are explained in paragraph (b) of this section.

(b) Administrative and management costs for major disasters will be paid in accordance with 44 CFR part 207.

(c) *Pre-award costs.* FEMA may fund eligible pre-award planning or project costs at its discretion and as funds are available. Recipients and subrecipients may be reimbursed for eligible pre-award costs for activities directly related to the development of the project or planning proposal. These costs can only be incurred during the open application period of the grant program. Costs associated with implementation of the activity but incurred prior to grant award are not eligible. Therefore, activities where implementation is initiated or completed prior to award are not eligible and will not be reimbursed.

[72 FR 57875, Oct. 11, 2007, as amended at 72 FR 61750, Oct. 31, 2007; 79 FR 76086, Dec. 19, 2014; 86 FR 50679, Sept. 10, 2021]

#### § 206.440 Appeals.

An eligible applicant, subrecipient, or recipient may appeal any determination previously made related to an application for or the provision of Federal assistance according to the procedures in this section.

(a) *Format and content.* The applicant or recipient will make the appeal in writing through the recipient to the Regional Administrator. The recipient will review and evaluate all subrecipient appeals before submission to the Regional Administrator. The recipient may make recipient-related appeals to the Regional Administrator. The appeal must contain documented justification supporting the appellant's position, specifying the monetary figure in dispute and the provisions in Federal law, regulation, or policy with which the appellant believes the initial action was inconsistent.

(b) *Levels of appeal.* (1) The Regional Administrator will consider first appeals for hazard mitigation grant program-related decisions under subparts M and N of this part.

(2) The Assistant Administrator for the Mitigation Directorate will consider appeals of the Regional Administrator's decision on any first appeal under paragraph (b)(1) of this section.

(c) *Time limits.* (1) Appellants must make appeals within 60 days after receipt of a notice of the action that is being appealed.

(2) The recipient will review and forward appeals from an applicant or subrecipient, with a written recommendation, to the Regional Administrator within 60 days of receipt.

(3) Within 90 days following receipt of an appeal, the Regional Administrator (for first appeals) or Assistant Administrator for the Mitigation Directorate (for second appeals) will notify the recipient in writing of the disposition of the appeal or of the need for additional information. A request by the Regional Administrator or Assistant Administrator for the Mitigation Directorate for additional information will include a date by which the information must be provided. Within 90 days following the receipt of the requested additional information or following expiration of the period for providing the information, the Regional Administrator or

Assistant Administrator for the Mitigation Directorate will notify the recipient in writing of the disposition of the appeal. If the decision is to grant the appeal, the Regional Administrator will take appropriate implementing action.

(d) *Technical advice.* In appeals involving highly technical issues, the Regional Administrator or Assistant Administrator for the Mitigation Directorate may, at his or her discretion, submit the appeal to an independent scientific or technical person or group having expertise in the subject matter of the appeal for advice or recommendation. The period for this technical review may be in addition to other allotted time periods. Within 90 days of receipt of the report, the Regional Administrator or Assistant Administrator for the Mitigation Directorate will notify the recipient in writing of the disposition of the appeal.

(e) *Transition.* (1) This rule is effective for all appeals pending on and appeals from decisions issued on or after May 8, 1998, except as provided in paragraph (e)(2) of this section.

(2) Appeals pending from a decision of an Assistant Administrator for the Mitigation Directorate before May 8, 1998 may be appealed to the Administrator in accordance with 44 CFR 206.440 as it existed before May 8, 1998.

(3) The decision of the FEMA official at the next higher appeal level will be the final administrative decision of FEMA.

[63 FR 17111, Apr. 8, 1998, as amended at 86 FR 50679, Sept. 10, 2021]

## PART 207—MANAGEMENT COSTS

Sec.

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- 207.5 Determination of management cost funding.
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- 207.10 Review of management cost rates.

AUTHORITY: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5206; Reorganization

Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

SOURCE: 72 FR 57875, Oct. 11, 2007, unless otherwise noted.

### § 207.1 Purpose.

The purpose of this part is to implement section 324 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5165b.

### § 207.2 Definitions.

*Cap* means the maximum dollar amount that may be provided to a grantee for management cost funds for a single declaration pursuant to § 207.5(c) of this part.

*Chief Financial Officer (CFO)* is the Chief Financial Officer of FEMA, or his/her designated representative.

*Cognizant Agency* means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed on behalf of all Federal agencies. The Office of Management and Budget (OMB) publishes a listing of cognizant agencies.

*Grant* means an award of financial assistance making payment in cash, property, or in kind for a specified purpose, by the Federal Government to an eligible grantee.

*Grantee(alternatively, Recipient)* for purposes of this part means the government to which a Public Assistance (PA) or Hazard Mitigation Grant Program (HMGP) grant is awarded that is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. Generally, the State is the grantee. However, after a declaration, an Indian tribal government may choose to be a grantee, or may act as a subgrantee under the State for purposes of administering a grant under PA, HMGP, or both. When an Indian tribal government has chosen to act as grantee, it will also assume the responsibilities of

a “grantee” under this part for the purposes of administering management cost funding.

*Hazard Mitigation Grant Program (HMGP)* means the program implemented at part 206, subpart N of this chapter.

*HMGP lock-in ceiling* means the level of HMGP funding available to a grantee for a particular disaster declaration.

*HMGP project narrative* refers to the request submitted for HMGP funding.

*Indian tribal government* is a Federally recognized governing body of an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian tribe under the Federally Recognized Tribe List Act of 1994, 25 U.S.C. 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

*Indirect Costs* means costs that are incurred by a grantee for a common or joint purpose benefiting more than one cost objective that are not readily assignable to the cost objectives specifically benefited.

*Lock-in* means the amount of management cost funds available to a grantee for PA or HMGP, respectively, for a particular major disaster or emergency, as FEMA determines at 30 days, 6 months, and 12 months or upon calculation of the final HMGP lock-in ceiling, whichever is later.

*Management Costs* means any indirect costs, administrative expenses, and any other expenses not directly chargeable to a specific project that are reasonably incurred by a grantee or subgrantee in administering and managing a PA or HMGP grant award. For HMGP, management cost funding is provided outside of Federal assistance limits defined at §206.432(b) of this chapter.

*Project* refers to a project as defined at §206.201(i) of this chapter for PA or eligible activities as defined at §206.434(d) of this chapter for HMGP.

*Project Worksheet (PW)* refers to FEMA Form 90-91, or any successor form, on which the scope of work and cost estimate for a logical grouping of work required under the PA program as a result of a declared major disaster or emergency is documented.

*Public Assistance (PA)* means the program implemented at part 206, subparts G and H of this chapter.

*Regional Administrator* is the head of a FEMA regional office, or his/her designated representative, appointed under section 507 of the Post-Katrina Emergency Management Reform Act of 2006 (Pub. L. 109-295). The term also refers to Regional Directors as discussed in part 2 of this chapter.

*Stafford Act* refers to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121-5206).

*State* is any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

*Subgrantee (alternatively, Subrecipient)* means the government or other legal entity to which a grantee awards a subgrant and which is accountable to the grantee for the use of the funds provided. Subgrantees can be a State agency, local government, private nonprofit organization, or Indian tribal government.

[72 FR 57875, Oct. 11, 2007, as amended at 82 FR 44, Jan. 3, 2017]

**§ 207.3 Applicability and eligibility.**

Only PA and HMGP grantees with PA and HMGP grants awarded pursuant to major disasters and emergencies declared by the President on or after November 13, 2007 are eligible to apply to FEMA for management cost funding under this part.

**§ 207.4 Responsibilities.**

(a) *General.* This section identifies key responsibilities of FEMA and grantees in carrying out section 324 of the Stafford Act, 42 U.S.C. 5165b. These responsibilities are unique to the administration of this part and are in addition to common Federal Government requirements of grantees and subgrantees, consistent with OMB circulars and other applicable requirements, such as 2 CFR parts 200 and 3002.

(b) *FEMA.* FEMA is responsible for:

(1) Determining the lock-in amount for management costs in accordance with §207.5.



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(2) Obligating funds for management costs in accordance with § 207.5(b).

(3) Deobligating funds provided for management costs not disbursed in accordance with § 207.8(b).

(4) Reviewing management cost rates not later than 3 years after this rule is in effect and periodically thereafter.

(c) *Grantee.* The grantee must:

(1) Administer management cost funds to ensure that PA and HMGP, as applicable, are properly implemented and closed out in accordance with program timeframes and guidance.

(2) Determine the reasonable amount or percentage of management cost funding to be passed through to subgrantees for contributions to their costs for administering PA and HMGP projects and ensure that it provides such funds to subgrantees.

(3) Address procedures for subgrantee management costs amount or percentage determination, pass through, close-out, and audit in the State administrative plan required in § 206.207(b) of this chapter for PA and § 206.437 of this chapter for HMGP.

[72 FR 57875, Oct. 11, 2007, as amended at 79 FR 76086, Dec. 19, 2014]

### § 207.5 Determination of management cost funding.

(a) *General.* This section describes how FEMA determines the amount of funds that it will contribute under this part for management costs for PA and/or HMGP for a particular major disaster or emergency.

(b) *Lock-in.* FEMA will determine the amount of funds that it will make available for management costs by a lock-in, which will act as a ceiling for funds available to a grantee, including its subgrantees.

(1) Not earlier than 30 days and not later than 35 days from the date of declaration, FEMA will provide the grantee preliminary lock-in amount(s) for management costs based on the projections at that time of the Federal share for financial assistance for PA and HMGP, as applicable. In accordance with § 207.7(c), FEMA will obligate 25 percent of the estimated lock-in amount(s) to the grantee.

(2) For planning purposes, FEMA will revise the lock-in amount(s) at 6 months after the date of the declara-

tion. In accordance with § 207.7(e), FEMA may obligate interim amount(s) to the grantee.

(3) FEMA will determine the final lock-in amount(s) 12 months after date of declaration or after determination of the final HMGP lock-in ceiling, whichever is later. FEMA will obligate the remainder of the lock-in amount(s) to the grantee in accordance with § 207.7(f).

(4) Rates. (i) For major disaster declarations, FEMA will determine the lock-in for PA based on a flat percentage rate of the Federal share of projected eligible program costs for financial assistance pursuant to sections 403, 406, and 407 of the Stafford Act, 42 U.S.C. 5170b, 5172, and 5173, respectively, but not including direct Federal assistance. For major disaster declarations on or after November 13, 2007, the PA rate will be 3.34 percent.

(ii) For major disaster declarations, FEMA will determine the lock-in for HMGP based on a flat percentage rate of the Federal share of projected eligible program costs under section 404 of the Stafford Act, 42 U.S.C. 5170c. For major disaster declarations on or after November 13, 2007, the HMGP rate will be 4.89 percent.

(iii) For emergency declarations, FEMA will determine the lock-in for PA based on a flat percentage rate of the Federal share of projected eligible program costs for financial assistance (sections 502 and 503 of the Stafford Act, 42 U.S.C. 5192 and 5193, respectively), but not including direct Federal assistance. For emergency declarations on or after November 13, 2007 the rate will be 3.90 percent.

(c) The dollar amount provided to a grantee for management cost funds for a single declaration will not exceed 20,000,000, except as described in paragraphs (d) and (e) of this section.

(d) The grantee must justify in writing to the Regional Administrator any requests to change the amount of the lock-in or the cap, extend the time period before lock-in, or request an interim obligation of funding at the time of the 6-month lock-in adjustment. The Regional Administrator will recommend to the Chief Financial Officer whether to approve the extension,

change, or interim obligation. Extensions, changes to the lock-in, or interim obligations will not be made without the approval of the Chief Financial Officer.

(e) The Chief Financial Officer may change the amount of the lock-in or the cap, or extend the time before lock-in, if the Chief Financial Officer determines that the projections used to determine the lock-in were inaccurate to such a degree that the change to the lock-in would be material, or for other reasons in his or her discretion that may reasonably warrant such changes. The Chief Financial Officer will not make such changes without consultation with the grantee and the Regional Administrator.

**§ 207.6 Use of funds.**

(a) The grantee or subgrantee must use management cost funds provided under this part in accordance with 2 CFR part 200, subpart E—Cost Principles, and only for costs related to administration of PA or HMGP, respectively. All charges must be properly documented in accordance with § 207.8(f).

(b) Indirect costs may not be charged directly to a project or reimbursed separately, but rather are considered to be eligible management costs under this part.

(c) Activities and costs that can be directly charged to a project with proper documentation are not eligible for funding under this part.

[72 FR 57875, Oct. 11, 2007, as amended at 79 FR 76086, Dec. 19, 2014]

**§ 207.7 Procedures for requesting management cost funding.**

(a) *General.* This section describes the procedures to be used by the grantee in requesting management cost funding.

(b) *State administrative plan requirements.* State administrative plans, as required in § 206.207(b) of this chapter for PA and § 206.437 of this chapter for HMGP, must be amended to include procedures for subgrantee management costs amount or percentage determination, pass through, closeout, and audit, as required by § 207.4(c)(3) before management cost funds will be provided under this part.

(c) *Initial funding request submission.* Upon notification of the preliminary lock-in amount(s) for management costs based on the Federal share of the projected eligible program costs for financial assistance at that time for PA and HMGP, as applicable, the grantee must submit its initial management cost funding request to the Regional Administrator. FEMA must receive the initial funding request before it will provide any management cost funds under this part.

(1) For PA management costs, funding requests shall be submitted using a PW.

(2) For HMGP management costs, funding requests shall be submitted using an HMGP project narrative.

(d) *Request documentation.* The grantee is required to submit, no later than 120 days after the date of declaration, documentation to support costs and activities for which the projected lock-in for management cost funding will be used. In extraordinary circumstances, FEMA may approve a request by a grantee to submit support documentation after 120 days. FEMA will work with the grantee to approve or reject the request within 30 days of receipt of the request. If the request is rejected, the grantee will have 30 days to resubmit it for reconsideration and approval. FEMA will not obligate the balance of the management costs lock-in pursuant to a final funding request as described in paragraph (f) of this section or any interim amounts as allowed under paragraph (e) of this section unless the grantee's documentation is approved. The documentation must include:

(1) A description of activities, personnel requirements, and other costs for which the grantee will use management cost funding provided under this part;

(2) The grantee's plan for expending and monitoring the funds provided under this part and ensuring sufficient funds are budgeted for grant closeout; and

(3) An estimate of the percentage or amount of pass-through funds for management costs provided under this part that the grantee will make available to subgrantees, and the basis, criteria, or

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formula for determining the subgrantee percentage or amount (e.g., number of projects, complexity of projects, X percent to any subgrantee).

(e) *Interim funding request.* If the grantee can justify a bona fide need for an additional obligation of management cost funds at 6 months, the grantee may submit a request to the Regional Administrator. Any interim obligations by FEMA must be approved by the Chief Financial Officer and will not exceed an amount equal to 10 percent of the 6-month lock-in amount, except in extraordinary circumstances.

(f) *Final funding request.* Upon notification of the final lock-in amount(s), the grantee must submit a final management cost funding request to the Regional Administrator. Any necessary revisions to supporting documentation must be attached to the final funding request.

### § 207.8 Management cost funding oversight.

(a) *General.* The grantee has primary responsibility for grants management activities and accountability of funds provided for management costs as required by 2 CFR parts 200 and 3002, especially 2 CFR 200.301–200.304 and 200.317–200.326. The grantee is responsible for ensuring that subgrantees meet all program and administrative requirements.

(b) *Period of availability.* (1) For major disaster declarations, the grantee may expend management cost funds for allowable costs for a maximum of 8 years from the date of the major disaster declaration or 180 days after the latest performance period date of a non-management cost PA PW or HMGP project narrative, respectively, whichever is sooner.

(2) For emergency declarations, the grantee may expend management cost funds for allowable costs for a maximum of 2 years from the date of the emergency declaration or 180 days after the latest performance period of a non-management cost PA PW, whichever is sooner.

(3) The period of availability may be extended only at the written request of the grantee, with the recommendation of the Regional Administrator, and with the approval of the Chief Finan-

cial Officer. The grantee must include a justification in its request for an extension, and must demonstrate that there is work in progress that can be completed within the extended period of availability. In no case will an extended period of availability allow more than 180 days after the expiration of any performance period extensions granted under PA or HMGP for project completion. FEMA will deobligate any funds not liquidated by the grantee in accordance with 2 CFR 200.309 and 200.343(b).

(c) *Reporting requirements.* The grantee must provide quarterly progress reports on management cost funds to the Regional Administrator as required by the FEMA-State Agreement.

(d) *Closeout.* The grantee has primary responsibility for the closeout tasks associated with both the program and subgrantee requirements. Complying with each program's performance period requirement, the grantee must conduct final inspections for projects, reconcile subgrantee expenditures, resolve negative audit findings, obtain final reports from subgrantees and reconcile the closeout activities of subgrantees with PA and HMGP grant awards.

(e) *Audit requirements.* Uniform audit requirements in 2 CFR 200.500–200.520 apply to all assistance provided under this part.

(f) *Document retention.* In compliance with State law and procedures and with 2 CFR 200.333–200.337, grantees must retain records, including source documentation to support expenditures/costs incurred for management costs, for 3 years from the date of submission of the final Financial Status Report to FEMA that is required for PA and HMGP. The grantee is responsible for resolving questioned costs that may result from audit findings during the 3-year-record-retention period and returning any disallowed costs from ineligible activities.

[72 FR 57875, Oct. 11, 2007, as amended at 79 FR 76086, Dec. 19, 2014]

### § 207.9 Declarations before November 13, 2007.

(a) *General.* This section describes how FEMA provides administrative and management cost funding for PA

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and HMGP for major disasters or emergencies declared before November 13, 2007.

(b) *Eligible direct costs.* Eligible direct costs to complete approved activities are governed by 2 CFR parts 200 and 3002. The eligible direct costs for administration and management of the program are divided into two categories as follows:

(1) *Grantee—(i) Statutory administrative costs.* FEMA may provide funds to the grantee to cover the extraordinary costs incurred in preparing project worksheets or applications, final inspection reports, quarterly reports, final audits, and related field inspections by State employees, including overtime pay and per diem and travel expenses, but not including regular time for such employees. FEMA will base the funds on the following percentages of the total amount of assistance provided (Federal share) for all subgrantees in the State under sections 403, 404, 406, 407, 502, and 503 of the Stafford Act (42 U.S.C. 5170b, 5170c, 5172, 5173, 5192, and 5193, respectively):

(A) For the first 100,000 of total assistance provided (Federal share), 3 percent of such assistance.

(B) For the next 900,000, 2 percent of such assistance.

(C) For the next 4,000,000, 1 percent of such assistance.

(D) For assistance over \$5,000,000, one-half of 1 percent of such assistance.

(ii) *State management administrative costs.* Except for the items listed in paragraph (b)(1)(i) of this section, other administrative costs will be paid in accordance with 2 CFR part 200, subpart E—Cost Principles. The grantee and FEMA will share such costs under the cost share provisions of applicable PA and HMGP regulations.

(2) *Subgrantee.* The grantee may provide funds to the subgrantee to cover necessary costs of requesting, obtaining, and administering Federal disaster assistance subgrants, based on the following percentages of net eligible costs under sections 403, 404, 406, 407, 502, and 503 of the Stafford Act (42 U.S.C. 5170b, 5170c, 5172, 5173, 5192, and 5193, respectively), for an individual applicant (applicants in this context include State agencies):

(i) For the first \$100,000 of net eligible costs, 3 percent of such costs.

(ii) For the next \$900,000, 2 percent of such costs.

(iii) For the next \$4,000,000, 1 percent of such costs.

(iv) For those costs over \$5,000,000, one-half of 1 percent of such costs.

(c) *Eligible indirect costs:*

(1) *Grantee.* Indirect costs of administering the disaster program are eligible in accordance with the provisions of 2 CFR parts 200 and 3002 if the grantee provides FEMA with a current Indirect Cost Rate Agreement approved by its Cognizant Agency.

(2) *Subgrantee.* No indirect costs of a subgrantee are separately eligible because the percentage allowance in paragraph (b)(2) of this section covers necessary costs of requesting, obtaining and administering Federal assistance.

(d) *Availability.* (1) For major disaster declarations, FEMA will reimburse grantee eligible costs as described in this section at (b)(1)(ii) and (c)(1) for a maximum of 8 years from the date of the major disaster declaration or 180 days after the latest performance period date of a non-management cost PA PW or predecessor form or HMGP project narrative, respectively, whichever is sooner.

(2) For emergency declarations, FEMA will reimburse grantee eligible costs as described in this section at (b)(1)(ii) and (c)(1) for a maximum of 2 years from the date of the emergency declaration or 180 days after the latest performance period of a non-management cost PA PW or predecessor form, whichever is sooner.

(3) The reimbursement of grantee eligible costs as described in this section at (b)(1)(ii) and (c)(1) may be provided by FEMA after the periods of availability described in this section only at the written request of the grantee, with the recommendation of the Regional Administrator, and with the approval of the Chief Financial Officer. The grantee must include a justification in its request for further reimbursement, and must demonstrate that there is work in progress that can be completed within the extended period of reimbursement. In no case will reimbursement be provided after 180 days

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after the expiration of any performance period extensions granted under PA or HMGP for project completion.

[72 FR 57875, Oct. 11, 2007, as amended at 79 FR 76087, Dec. 19, 2014]

**§ 207.10 Review of management cost rates.**

(a) FEMA will review management cost rates not later than 3 years after this rule is in effect and periodically thereafter.

(b) In order for FEMA to review the management cost rates established, and in accordance with 2 CFR parts 200 and 3002, the grantee and subgrantee must document all costs expended for management costs (including cost overruns). After review of this documentation, FEMA will determine whether the established management cost rates are adequate for the administration and closeout of the PA and HMGP programs.

[72 FR 57875, Oct. 11, 2007, as amended at 79 FR 76087, Dec. 19, 2014]

**PART 208—NATIONAL URBAN SEARCH AND RESCUE RESPONSE SYSTEM**

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AUTHORITY: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

SOURCE: 70 FR 9194, Feb. 24, 2005, unless otherwise noted.

**Subpart A—General**

**§ 208.1 Purpose and scope of this part.**

(a) *Purpose.* The purpose of this part is to prescribe policies and procedures pertaining to the Department of Homeland Security’s (DHS) National Urban Search and Rescue Response System.

(b) *Scope.* This part applies to Sponsoring Agencies and other participants in the National Urban Search and Rescue Response System that have executed agreements governed by this part. Part 206 of this chapter does not apply to activities undertaken under this part, except as provided in §§ 208.5 and 208.10 of this part. This part does not apply to reimbursement under part 206, subpart H, of this chapter.

**§ 208.2 Definitions of terms used in this part.**

(a) *General.* Any capitalized word in this part is a defined term unless such capitalization results from the application of standard capitalization or style rules for Federal regulations. The following definitions have general applicability throughout this part:

*Activated* or *Activation* means the status of a System resource placed at the direction, control and funding of DHS in response to, or in anticipation of, a presidential declaration of a major disaster or emergency under the Stafford Act.

*Activation Order* means the DHS communication placing a System resource under the direction, control, and funding of DHS.

*Advisory* means a DHS communication to System resources indicating that an event has occurred or DHS anticipates will occur that may require Alert or Activation of System resources.

*Alert* means the status of a System resource’s readiness when triggered by an Alert Order indicating that DHS may Activate the System resource.

*Alert Order* means the DHS communication that places a System resource on Alert status.

*Assistant Administrator* means the Assistant Administrator for the Disaster Operations Directorate.

*Assistance Officer* means the DHS employee who has legal authority to bind

DHS by awarding and amending Cooperative Agreements.

*Backfill* means the personnel practice of temporarily replacing a person in his or her usual position with another person.

*Cooperating Agency* means a State or Local Government that has executed a Cooperative Agreement to provide Technical Specialists.

*Cooperative Agreement* means a legal instrument between DHS and a Sponsoring Agency or Cooperating Agency that provides funds to accomplish a public purpose and anticipates substantial Federal involvement during the performance of the contemplated activity.

*Daily Cost Estimate* means a Sponsoring Agency’s estimate of Task Force personnel compensation, itemized fringe benefit rates and amounts including calculations, and Backfill expenditures for a 24-hour period of Activation.

*Deputy Assistant Administrator* means the Deputy Assistant Administrator for the Disaster Operations Directorate, or other person the Assistant Administrator designates.

*DHS* means the Department of Homeland Security.

*Disaster Search Canine Team* means a disaster search canine and handler who have successfully completed the written examination and demonstrated the performance skills required by the Disaster Search Canine Readiness Evaluation Process. A disaster search canine is a dog that has successfully completed the DHS Disaster Search Canine Readiness Evaluation criteria for Type II or both Type II and Type I.

*Emergency* means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

*Equipment Cache List* means the DHS-issued list that defines:

- (1) The equipment and supplies that US & R will furnish to Sponsoring Agencies; and
- (2) The maximum quantities and types of equipment and supplies that a

Sponsoring Agency may purchase and maintain with DHS funds.

*Federal Excess Property* means any Federal personal property under the control of a Federal agency that the agency head or a designee determines is not required for its needs or for the discharge of its responsibilities.

*Federal Response Plan* means the signed agreement among various Federal departments and agencies that provides a mechanism for coordinating delivery of Federal assistance and resources to augment efforts of State and Local Governments overwhelmed by a Major Disaster or Emergency, supports implementation of the Stafford Act, as well as individual agency statutory authorities, and supplements other Federal emergency operations plans developed to address specific hazards.

*Joint Management Team* or *JMT* means a multi-disciplinary group of National Disaster Medical System (NDMS), Urban Search and Rescue (US&R), and other specialists combined to provide operations, planning, logistics, finance and administrative support for US&R and NDMS resources, and to provide technical advice and assistance to States and Local Governments.

*Local Government* means any county, city, village, town, district, or other political subdivision of any State; any federally recognized Indian tribe or authorized tribal organization; and any Alaska Native village or organization.

*Major Disaster* means any natural catastrophe (including any hurricane, tornado, storm, high water, wind driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or regardless of cause, any fire, flood, or explosion, in any part of the United States, that in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Stafford Act to supplement the efforts and available resources of States, Local Governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

*Memorandum of Agreement (MOA)* means the document signed by DHS, a Sponsoring Agency and its State that describes the relationship of the par-

ties with respect to the National Urban Search & Rescue Response System.

*Participating Agency* means a State or Local Government, non-profit organization, or private organization that has executed an agreement with a Sponsoring Agency to participate in the National US&R Response System.

*Personnel Rehabilitation Period* means the period allowed by DHS for a person's rehabilitation to normal conditions of living following an Activation.

*Preparedness Cooperative Agreement* means the agreement between DHS and a Sponsoring Agency for reimbursement of allowable expenditures incurred by the Sponsoring Agency to develop and maintain System capabilities and operational readiness.

*Program Directive* means guidance and direction for action to ensure consistency and standardization across the National US&R Response System.

*Program Manager* means the individual, or his or her designee, within DHS who is responsible for day-to-day administration of the National US&R Response System.

*Program Office* means the organizational entity within DHS that is responsible for day-to-day administration of the National US&R Response System.

*Response Cooperative Agreement* means an agreement between DHS and a Sponsoring Agency for reimbursement of allowable expenditures incurred by the Sponsoring Agency as a result of an Alert or Activation.

*Sponsoring Agency* means a State or Local Government that has executed an MOA with DHS to organize and administer a Task Force.

*Stafford Act* means the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5206.

*State* means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia or the Republic of the Marshall Islands.

*Support Specialist* means a person participating in the System who assists the Task Force with administrative or other support during mobilization,

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ground transportation and demobilization as directed.

*System* or *National US&R Response System* means the national US&R response capability administered by DHS.

*System Member* means any Task Force Member, JMT Member, Technical Specialist, Support Specialist or Disaster Search Canine Team.

*Task Force* means an integrated US&R organization of multi-disciplinary resources with common communications and a leader, organized and administered by a Sponsoring Agency and meeting DHS standards.

*Task Force Member* means a person occupying a position on a Task Force.

*Technical Specialist* means a person participating in the System contributing technical knowledge and skill who may be placed on Alert or Activated as a single resource and not as a part of a JMT or a Task Force.

*US&R* means urban search and rescue, the process of searching for, extricating, and providing for the immediate medical stabilization of victims who are entrapped in collapsed structures.

(b) *Additional definitions.* Definitions for certain terms that apply only to individual subparts of this part are located in those subparts.

[70 FR 9194, Feb. 24, 2005, as amended at 74 FR 15353, Apr. 3, 2009]

### § 208.3 Authority for the National US&R Response System.

(a) *Enabling legislation.* The Federal Emergency Management Agency established and operated the System under the authority of §§ 303, 306(a), 306(b), 403(a)(3)(B) and 621(c) of the Stafford Act, 42 U.S.C. 5144, 5149(a), 5149(b), 5170b(a)(3)(B) and 5197(c), respectively. Section 503 of the Homeland Security Act of 2002, 6 U.S.C. 313, transferred the functions of the Administrator of FEMA to the Secretary of Homeland Security. The President re delegated to the Secretary of Homeland Security in Executive Order 13286 those authorities of the President under the Stafford Act that had been delegated previously to the Administrator of FEMA under Executive Order 12148.

(b) *Implementing plan.* The National Response Plan identifies DHS as the

primary Federal agency with responsibility for Emergency Support Function 9, Urban Search and Rescue.

### § 208.4 Purpose for System.

It is DHS policy to develop and provide a national system of standardized US&R resources to respond to Emergencies and Major Disasters that are beyond the capabilities of affected State and Local Governments.

### § 208.5 Authority of the Assistant Administrator for the Disaster Operations Directorate.

(a) *Participation in activities of the System.* The Assistant Administrator is responsible for determining participation in the System and any activity thereof, including but not limited to whether a System resource is operationally ready for Activation.

(b) *Standards for and measurement of System efficiency and effectiveness.* In addition to the authority provided in § 206.13 of this chapter, the Assistant Administrator may establish performance standards and assess the efficiency and effectiveness of System resources.

### § 208.6 System resource reports.

(a) *Reports to Assistant Administrator.* The Assistant Administrator may request reports from any System resource relating to its activities as part of the System.

(b) *Reports to FEMA Regional Administrators.* Any FEMA Regional Administrator may request through the Assistant Administrator reports from any System resource used within or based within the Regional Administrator's jurisdiction.

(c) *Audits, investigations, studies and evaluations.* DHS and the General Accounting Office may conduct audits, investigations, studies, and evaluations as necessary. Sponsoring Agencies, Participating Agencies and System Members are expected to cooperate fully in such audits, investigations, studies and evaluations.

### § 208.7 Enforcement.

(a) *Remedies for noncompliance.* In accordance with the provisions of 2 CFR 200.338, 200.341, and 200.342, if a Sponsoring Agency, Participating Agency,



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Affiliated Personnel or other System Member materially fails to comply with a term of a Cooperative Agreement, Memorandum of Agreement, System directive or other Program Directive, the Assistant Administrator may take one or more of the actions provided in 2 CFR 200.338(a)–(f). Any such enforcement action taken by the Assistant Administrator will be subject to the hearings, appeals, and effects of suspension and termination provisions of 2 CFR 200.341 and 200.342.

(b) The enforcement remedies identified in this section, including suspension and termination, do not preclude a Sponsoring Agency, Participating Agency, Affiliated Personnel or other System Member from being subject to “Debarment and Suspension” under E.O. 12549, as amended, in accordance with 2 CFR 200.338(d).

(c) *Other authority for sanctions.* Nothing in this section limits or precludes the application of other authority to impose civil or criminal sanctions, including 42 U.S.C. 5156.

[70 FR 9194, Feb. 24, 2005, as amended at 79 FR 76087, Dec. 19, 2014]

## § 208.8 Code of conduct.

The Assistant Administrator will develop and implement a code of conduct for System Members acting under DHS’s direction and control. Nothing in this section or the DHS code of conduct will limit the authority of a Sponsoring Agency, Participating Agency or Cooperating Agency to apply its own code of conduct to its System Members or employees. If the DHS code is more restrictive, it controls.

## § 208.9 Agreements between Sponsoring Agencies and Participating Agencies.

Every agreement between a Sponsoring Agency and a Participating Agency regarding the System must include a provision making this part applicable to the Participating Agency and its employees who engage in System activities.

## § 208.10 Other regulations.

The following provisions of title 44 CFR, Chapter I also apply to the program in this part:

## 44 CFR Ch. I (10–1–23 Edition)

(a) Section 206.9, which deals with the non-liability of DHS in certain circumstances.

(b) Section 206.11, which prescribes nondiscrimination in the provision of disaster assistance.

(c) Section 206.14, which deals with criminal and civil penalties.

(d) Section 206.15, which permits recovery of assistance by DHS.

## § 208.11 Federal status of System Members.

The Assistant Administrator will appoint all Activated System Members as temporary excepted Federal volunteers. The Assistant Administrator may appoint a System Member who participates in Alert activities as such a Federal volunteer. The Assistant Administrator may also appoint each System Member who participates in DHS-sanctioned preparedness activities as a temporary excepted Federal volunteer. DHS intends these appointments to secure protection for such volunteers under the Federal Employees Compensation Act and the Federal Tort Claims Act and do not intend to interfere with any preexisting employment relationship between a System Member and a Sponsoring Agency, Cooperating Agency or Participating Agency. System Members whom DHS appoints as temporary excepted Federal volunteers will not receive any compensation or employee benefit directly from the United States of America for their service, but will be compensated through their Sponsoring Agency.

## § 208.12 Maximum Pay Rate Table.

(a) *Purpose.* This section establishes the process for creating and updating the Maximum Pay Rate Table (Table), and the Table’s use to reimburse Affiliated Personnel (Task Force Physicians, Task Force Engineers, and Canine Handlers) and Backfill for Activated System Members employed by or otherwise associated with a for-profit Participating Agency. Section 208.32 defines the “Maximum Pay Rate Table” as “the DHS-issued table that identifies the maximum pay rates for selected System positions that may be used for reimbursement of Affiliated Personnel compensation and Backfill

for Activated System Members employed by or otherwise associated with a for-profit Participating Agency.” In that same section, the term “Affiliated Personnel” is defined as “individuals not normally employed by a Sponsoring Agency or Participating Agency and individuals normally affiliated with a Sponsoring Agency or Participating Agency as volunteers.”

(b) *Scope of this section.* (1) The Maximum Pay Rate Table applies to those individuals who are not normally employed by a Sponsoring Agency or Participating Agency, or whose affiliation with a Sponsoring Agency or Participating Agency is as a volunteer; that is, an individual whom the Sponsoring Agency or Participating Agency does not normally compensate in any way, at any rate.

(2) The Table also applies to Backfill for Activated System Members employed by or otherwise associated with a for-profit Participating Agency.

(c) *Method for determining maximum pay rates.* (1) DHS uses the United States Office of Personnel Management’s salary rates, computed under 5 U.S.C. 5504, as the basis for the maximum pay rate schedule. DHS considers System members’ experience and sets maximum pay rates at the maximum grade, middle step for each position, which demonstrates an experience level of five years.

(2) The Office of Personnel Management (OPM) publishes salary and locality pay schedules each calendar year.

(i) *Physicians.* DHS uses the latest Special Salary Rate Table Number 0290 for Medical Officers (Clinical) Worldwide for physicians. The rates used in the initial Table can be found at [http://www.opm.gov/oca/03\\_tables/SSR/HTML/0290.asp](http://www.opm.gov/oca/03_tables/SSR/HTML/0290.asp).

(ii) *Engineers and Canine Handlers.* DHS uses the latest General Schedule pay scale for both positions. Both specialties are compared to the General Schedule pay scale to ensure parity with like specialties on a task force (canine handlers are equated with rescue specialists). The rates used in the initial Table can be found at <http://www.opm.gov/oca/03tables/html/gs.asp>.

(iii) *Locality Pay.* To determine adjustments for locality pay DHS uses the latest locality pay areas (including

the “Rest of U.S.” area) established by OPM. The rates used in the initial Table can be found at <http://www.opm.gov/oca/03tables/locdef.asp>.

(3) *Review and update.* DHS will review and update the Table periodically, at least annually. The comments of Sponsoring and Participating Agencies and their experience with the Table will be considered and evaluated in the course of the reviews.

(4) *Initial rates and subsequent revisions.* DHS will publish the initial maximum pay rate table in the FEDERAL REGISTER as a notice with request for comments. Subsequent revisions will be made to the pay rate table as OPM changes salary rates as described in this section. When subsequent revisions are made to the maximum pay rate table DHS will publish the new maximum pay rate table in the FEDERAL REGISTER. The rates will be effective for the latest year indicated by OPM.<sup>1</sup>

(d) *Application of the maximum pay rate table—(1) Applicability.* The Maximum Pay Rate Table sets forth maximum rates for which DHS will reimburse the Sponsoring Agency for compensation paid to Activated Affiliated Personnel and as Backfill for Activated System Members employed by or otherwise associated with a for-profit Participating Agency.

(2) *Higher rates.* The Sponsoring Agency may choose to pay Affiliated Personnel at a higher rate, but DHS will not reimburse the increment above the maximum rate specified in the Maximum Pay Rate Table. Likewise, the Sponsoring Agency may choose to enter into a Participating Agency agreement with the individual’s employer, rather than use the individual as an Affiliated Personnel, in which case the Maximum Pay Rate Table would not apply.

(3) *Compensation for Sponsoring Agency employees serving as Affiliated Personnel.* An employee of a Sponsoring Agency serving on a Task Force in a capacity other than his or her normal job, e.g., a fire department dispatcher

<sup>1</sup>In some years the latest year may not be the current calendar year. For instance, OPM did not change its pay rates for calendar year 2004, and the 2003 schedules apply.

affiliated with the Task Force as a canine search specialist, as an Affiliated Personnel, would not necessarily be subject to the Maximum Pay Rate Table for reimbursement for salary and benefits for that individual. However, Sponsoring Agencies may use the rates in the Maximum Pay Rate Table as a guide for establishing compensation levels for such individuals.

(4) *Backfill expenses for Affiliated Personnel under § 208.39(g).* (i) The only way that DHS can reimburse for Backfill costs incurred for Affiliated Personnel is through Participating Agencies. If reimbursement for Backfill expenses is needed for Affiliated Personnel, DHS encourages them to urge their employers or professional association to seek Participating Agency status.

(ii) *Private, for-profit organizations.* Participating Agency status is available to private, for-profit organizations, e.g., HMOs or medical or engineering professional associations, under the revised definition of “Participating Agency” set forth in this Interim rule. (See Definitions, § 208.2, *Participating Agency*, and § 208.32, *Maximum Pay Rate Table*). When a for-profit Participating Agency must backfill an Activated System Member’s position we will compensate that Participating Agency up to the maximum rate provided in the Table.

(iii) *Compensation costs.* DHS will reimburse for-profit organizations, for purposes of reimbursement and Backfill, for the System Member’s actual compensation or the actual compensation of the individual who Backfills a position (which includes salary and benefits, as described in §§ 208.39 and 208.40), but will not reimburse for billable or other rates that might be charged for services rendered to commercial clients or patients.

§§ 208.13–208.20 [Reserved]

**Subpart B—Preparedness Cooperative Agreements**

**§ 208.21 Purpose.**

Subpart B of this part provides guidance on the administration of Preparedness Cooperative Agreements.

**§ 208.22 Preparedness Cooperative Agreement process.**

(a) *Application.* To obtain DHS funding for an award or amendment of a Preparedness Cooperative Agreement, the Sponsoring Agency must submit an application. Standard form SF-424 “Application for Federal Assistance” generally will be used. However, the application must be in a form that the Assistance Officer specifies.

(b) *Award.* DHS will award a Preparedness Cooperative Agreement to each Sponsoring Agency to provide Federal funding to develop and maintain System resource capabilities and operational readiness. For the purposes of the Preparedness Cooperative Agreement, the Sponsoring Agency will be considered the “recipient.”

(c) *Amendment—(1) Procedure.* Absent special circumstances, DHS will fund and amend Preparedness Cooperative Agreements on an annual basis. Before amendment, the Assistance Officer will issue a call for Cooperative Agreement amendment applications. The Assistance Officer will specify required application forms and supporting documentation to be submitted with the application.

(2) *Period of performance.* Absent special circumstances, the period of performance for Preparedness Cooperative Agreements will be 1 year from the date of award. The Assistance Officer may allow for an alternate period of performance with the approval of the Assistant Administrator.

(3) *Assistance Officer.* The Assistance Officer is the only individual authorized to award or modify a Preparedness Cooperative Agreement.

(d) *Award amounts.* The Assistant Administrator will determine award amounts on an annual basis. A Task Force is eligible for an annual award only if the Program Manager receives and approves the Task Force’s current-year Daily Cost Estimate.

(e) *DHS priorities.* The Assistant Administrator will establish overall priorities for the use of Preparedness Cooperative Agreement funds taking into consideration the results of readiness evaluations and actual Activations, overall priorities of DHS, and other factors, as appropriate.

(f) *Cost sharing.* The Assistant Administrator may subject Preparedness Cooperative Agreement awards to cost sharing provisions. In the call for Preparedness Cooperative Agreement amendment applications, the Assistance Officer must inform Sponsoring Agencies about any cost sharing obligations.

(g) *Sponsoring Agency priorities.* The Sponsoring Agency should indicate its spending priorities in the application. The Program Manager will review these priorities and will make recommendations to the Assistance Officer for negotiating the final agreement.

(h) *Responsibility to maintain integrity of the equipment cache.* The Sponsoring Agency is responsible to maintain the integrity of the equipment cache, including but not limited to, maintenance of the cache, replacement of equipment or supplies expended in training, activations, or local use of the cache, and timely availability of the cache for Task Force Activations.

**§ 208.23 Allowable costs under Preparedness Cooperative Agreements.**

System Members may spend Federal funds that DHS provides under any Preparedness Cooperative Agreement and any required matching funds under 2 CFR part 200, subpart E—Cost Principles, and this section to pay reasonable, allowable, necessary and allocable costs that directly support System activities, including the following:

(a) Administration, including:

(1) Management and administration of day-to-day System activities such as personnel compensation and benefits relating to System maintenance and development, record keeping, inventory of equipment, and correspondence;

(2) Travel to and from System activities, meetings, conferences, training, drills and exercises;

(3) Tests and examinations, including vaccinations, immunizations and other tests that are not normally required or provided in the course of a System Member's employment, and that DHS requires to meet its standards.

(b) Training:

(1) Development and delivery of, and participation in, System-related training courses, exercises, and drills;

(2) Construction, maintenance, lease or purchase of System-related training facilities or materials;

(3) Personnel compensation expenses, including overtime and other related expenses associated with System-related training, exercises, or drills;

(4) System-required evaluations and certifications other than the certifications that DHS requires System Members to possess at the time of entry into the System. For instance, DHS will not pay for a medical school degree, paramedic certification or recertification, civil engineering license, etc.

(c) Equipment:

(1) Procurement of equipment and supplies specifically identified on the then-current DHS-approved Equipment Cache List;

(2) Maintenance and repair of equipment included on the current Equipment Cache List;

(3) Maintenance and repair of equipment acquired with DHS approval through the Federal Excess Property program, except as provided in § 208.25 of this part;

(4) Purchase, construction, maintenance or lease of storage facilities and associated equipment for System equipment and supplies.

(d) Disaster search canine expenses limited to:

(1) Procurement for use as a System resource;

(2) Training and certification expenses;

(3) Veterinary care.

(e) Management and administrative costs, actually incurred but not otherwise specified in this section that directly support the Sponsoring Agency's US&R capability, provided that such costs do not exceed 7.5 percent of the award/amendment amount.

[70 FR 9194, Feb. 24, 2005, as amended at 79 FR 76087, Dec. 19, 2014]

**§ 208.24 Purchase and maintenance of items not listed on Equipment Cache List.**

(a) Requests for purchase or maintenance of equipment and supplies not appearing on the Equipment Cache List, or that exceed the number specified in the Equipment Cache List, must be made in writing to the Program

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Manager. No Federal funds provided under any Preparedness Cooperative Agreement may be expended to purchase or maintain any equipment or supply item unless:

(1) The equipment and supplies directly support the Sponsoring Agency's US&R capability;

(2) The Program Manager approves the expenditure and gives written notice of his or her approval to the Sponsoring Agency before the Sponsoring Agency purchases the equipment or supply item.

(b) Maintenance of items approved for purchase under this section is eligible for reimbursement, except as provided in § 208.26 of this subpart.

**§ 208.25 Obsolete equipment.**

(a) The Assistant Administrator will periodically identify obsolete items on the Equipment Cache List and provide such information to Sponsoring Agencies.

(b) Neither funds that DHS provides nor matching funds required under a Preparedness Cooperative Agreement may be used to maintain or repair items that DHS has identified as obsolete.

**§ 208.26 Accountability for use of funds.**

The Sponsoring Agency is accountable for the use of funds as provided under the Preparedness Cooperative Agreement, including financial reporting and retention and access requirements according to 2 CFR 200.327 and 200.333–200.337.

[79 FR 76087, Dec. 19, 2014]

**§ 208.27 Title to equipment.**

Title to equipment purchased by a Sponsoring Agency with funds provided under a DHS Preparedness Cooperative Agreement vests in the Sponsoring Agency, provided that DHS reserves the right to transfer title to the Federal Government or a third party that DHS may name, under 2 CFR 200.313(e)(3), for example, when a Sponsoring Agency indicates or demonstrates that it cannot fulfill its obligations under the Memorandum of Agreement.

[79 FR 76087, Dec. 19, 2014]

§§ 208.28–208.30 [Reserved]

**Subpart C—Response Cooperative Agreements**

**§ 208.31 Purpose.**

Subpart C of this part provides guidance on the administration of Response Cooperative Agreements.

**§ 208.32 Definitions of terms used in this subpart.**

*Affiliated Personnel* means individuals not normally employed by a Sponsoring Agency or Participating Agency and individuals normally affiliated with a Sponsoring Agency or Participating Agency as volunteers.

*Demobilization Order* means a DHS communication that terminates an Alert or Activation and identifies cost and time allowances for rehabilitation.

*Exempt* means any System Member who is exempt from the requirements of the Fair Labor Standards Act, 29 U.S.C. 201 *et seq.*, pertaining to overtime compensation and other labor standards.

*Maximum Pay Rate Table* means the DHS-issued table that identifies the maximum pay rates for selected System positions that may be used for reimbursement of Affiliated Personnel compensation and Backfill for Activated System Members employed by or otherwise associated with a for-profit Participating Agency. The Maximum Pay Rate Table does not apply to a System member whom a Sponsoring Agency or Participating Agency employs.

*Mobilization* means the process of assembling equipment and personnel in response to an Alert or Activation.

*Non-Exempt* means any System Member who is covered by 29 U.S.C. 201 *et seq.*

*Rehabilitation* means the process of returning personnel and equipment to a pre-incident state of readiness after DHS terminates an Activation.

**§ 208.33 Allowable costs.**

(a) *Cost neutrality.* DHS policy is that an Alert or Activation should be as cost neutral as possible to Sponsoring Agencies and Participating Agencies. To make an Alert or Activation cost-neutral, DHS will reimburse under this

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subpart all reasonable, allowable, necessary and allocable costs that a Sponsoring Agency or Participating Agency incurs during the Alert or Activation.

(b) *Actual costs.* Notwithstanding any other provision of this chapter, DHS will not reimburse a Sponsoring Agency or Participating Agency for any costs greater than those that the Sponsoring Agency or Participating Agency actually incurs during an Alert, Activation.

(c) *Normal or predetermined practices.* Consistent with 2 CFR parts 200 and 3002, Sponsoring Agencies and Participating Agencies must adhere to their own normal and predetermined practices and policies of general application when requesting reimbursement from DHS except as it sets out in this subpart.

(d) *Indirect costs.* Indirect costs beyond the administrative and management costs allowance established by § 208.41 of this part are not allowable.

[70 FR 9194, Feb. 24, 2005, as amended at 79 FR 76087, Dec. 19, 2014]

### § 208.34 Agreements between Sponsoring Agencies and others.

Sponsoring Agencies are responsible for executing such agreements with Participating Agencies and Affiliated Personnel as may be necessary to implement the Sponsoring Agency's Response Cooperative Agreement with DHS. Those agreements must identify established hourly or daily rates of pay for System Members. The hourly or daily rates of pay for Affiliated Personnel must be in accordance with, and must not exceed, the maximum pay rates contained in the then-current Maximum Pay Rate Table.

### § 208.35 Reimbursement for Advisory.

DHS will not reimburse costs incurred during an Advisory.

### § 208.36 Reimbursement for Alert.

(a) *Allowable costs.* DHS will reimburse costs incurred during an Alert, up to the dollar limit specified in the Alert Order, for the following activities:

(1) Personnel costs, including Backfill, incurred to prepare for Activation.

(2) Transportation costs relating to hiring, leasing, or renting vehicles and drivers.

(3) The administrative allowance provided in § 208.41 of this part.

(4) Food and beverages for Task Force Members and Support Specialists when DHS does not provide meals during the Alert. DHS will limit food and beverage reimbursement to the amount of the then-current Federal meals daily allowance published in the FEDERAL REGISTER for the locality where such food and beverages were provided, multiplied by the number of personnel who received them.

(b) *Calculation of Alert Order dollar limit.* The Alert Order dollar limit will equal:

(1) An allowance of 10 percent of the Task Force's Daily Cost Estimate; and

(2) A supplemental allowance of 1 percent of the Task Force's Daily Cost Estimate for each 24-hour period beyond the first 72 hours of Alert.

(c) *Non-allowable costs.* DHS will not reimburse costs incurred or relating to the leasing, hiring or chartering of aircraft or the purchase of any equipment, aircraft, or vehicles.

### § 208.37 Reimbursement for equipment and supply costs incurred during Activation.

(a) *Allowable costs.* DHS will reimburse costs incurred for the emergency procurement of equipment and supplies in the number, type, and up to the cost specified in the current approved Equipment Cache List, and up to the aggregate dollar limit specified in the Activation Order. The Assistant Administrator may determine emergency procurement dollar limits, taking into account previous Activation history, available funding, the extent and nature of the incident, and the current state of Task Force readiness.

(b) *Non-Allowable costs.* DHS will not reimburse costs incurred for items that are not listed on the Equipment Cache List; for items purchased greater than the cost or quantity identified in the Equipment Cache List; or for any purchase of non-expendable items that duplicate a previous purchase under a Preparedness or Response Cooperative Agreement.

**§ 208.38 Reimbursement for re-supply and logistics costs incurred during Activation.**

With the exception of emergency procurement authorized in the Activation Order, and replacement of consumable items provided for in §208.43(a)(2) of this subpart, DHS will not reimburse costs incurred for re-supply and logistical support during Activation. Re-supply and logistical support of Task Forces needed during Activation are the responsibility of the Joint Management Team.

**§ 208.39 Reimbursement for personnel costs incurred during Activation.**

(a) *Compensation.* DHS will reimburse the Sponsoring Agency for costs incurred for the compensation of each Activated System Member during Activation. Reimbursement of compensation costs for Activated Support Specialists will be limited to periods of time during which they were actively supporting the Activation or traveling to or from locations at which they were actively supporting the Activation. The provisions of §208.40 of this part govern costs incurred for providing fringe benefits to System Members.

(b) *Public Safety Exemption not applicable.* DHS will reimburse Sponsoring Agencies for costs incurred by Non-Exempt System Members in accordance with 29 U.S.C. 207(a) of the Fair Labor Standards Act, without regard to the public safety exemption contained in 29 U.S.C. 207(k). In other words, DHS will reimburse Sponsoring Agencies on an overtime basis for any hours worked by

Non-Exempt System Members greater than 40 hours during a regular workweek.

(c) *Tour of duty.* The tour of duty for all Activated System Members will be 24 hours. DHS will reimburse the Sponsoring Agency for salary and overtime costs incurred in compensating System Members for meal periods and regularly scheduled sleep periods during Activation. Activated System Members are considered “on-duty” and must be available for immediate response at all times during Activation.

(d) *Regular rate.* The regular rate for purposes of calculating allowable salary and overtime costs is the amount determined in accordance with §208.39(e)(1) through (3) of this subpart.

(e) *Procedures for calculating compensation during Activation.* A Sponsoring Agency or Participating Agency must:

(1) Convert the base hourly wage of any Non-Exempt System Member regularly paid under 29 U.S.C. 207(k) to its equivalent for a 40-hour work week;

(2) Convert the annual salary of any salaried Non-Exempt System Member to its hourly equivalent for a 40-hour workweek;

(3) Calculate the daily compensation of Exempt System Members based on their current annual salary, exclusive of fringe benefits;

(4) Calculate the total number of hours worked by each System Member to be included in the Sponsoring Agency’s request for reimbursement; and

(5) Submit a request for reimbursement under §208.52 of this part according to the following table:

| If the Sponsoring Agency or Participating Agency * * *  | And the Sponsoring Agency or Participating Agency * * *   | Then the following compensation costs are allowable:  |
|---|---|---|
| (i) Customarily and usually compensates Exempt System Members by paying a salary, but not overtime, | Does not customarily and usually grant compensatory time or other form of overtime substitute to Exempt System members.   | The daily compensation equivalent calculated under §208.39(e)(3) of this part for each Activated Exempt System Member for each full or partial day during Activation.   |
| (ii) Customarily and usually compensates Exempt System Members by paying a salary but not overtime  | Customarily and usually awards compensatory time or other overtime substitute for Exempt System Members for hours worked above a predetermined hours threshold (for example, the Sponsoring Agency customarily and usually grants compensatory time for all hours worked above 60 in a given week). | The daily compensation equivalent calculated under §208.39(e)(3) of this part for each Activated Exempt System Member for each full or partial day during Activation AND the dollar value at the time of accrual of the compensatory time or other overtime substitute for each Activated Exempt System Member based on the duration of the Activation. |

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| If the Sponsoring Agency or Participating Agency * * *   | And the Sponsoring Agency or Participating Agency * * *   | Then the following compensation costs are allowable:  |
|--|---|---|
| (iii) Customarily and usually compensates Exempt System Members by paying a salary and overtime,   | Customarily and usually calculates overtime for Exempt System Members by paying a predetermined overtime payment for each hour worked above a predetermined hours threshold,. | The daily compensation equivalent calculated under §208.39(e)(3) of this part for each Activated Exempt System Member for each full or partial day during Activation AND the predetermined overtime payment for each hour during the Activation above the previously determined hours threshold for each Activated Exempt System Member.      |
| (iv) Customarily and usually compensates Non-Exempt System Members by paying overtime after 40 hours per week,                               | Does not customarily and usually grant compensatory time or other form of overtime substitute to Non-Exempt System members,.  | For each seven-day period during the Activation, the hourly wage of each Activated Non-Exempt System Member for the first 40 hours AND the overtime payment for each Activated Non-Exempt System Member for every hour over 40.   |
| (v) Customarily and usually compensates Non-Exempt System Members according to a compensation plan established under 29 U.S.C. 207(k),       | Does not customarily and usually grant compensatory time or other form of overtime substitute to Non-Exempt System Members,.  | For each seven-day period during the Activation, the hourly wage equivalent of each Activated Non-Exempt System Member calculated under §208.39(e)(1) of this part for the first 40 hours AND the overtime payment equivalent for each Activated Non-Exempt System Member calculated under §208.39(e)(1) of this part for every hour over 40. |
| (vi) Activates Personnel, who are customarily and usually paid an hourly wage according to the Maximum Pay Rate Table,                       | .....   | For each seven-day period during the Affiliated Activation, the hourly wage for each Activated Affiliated Personnel for the first 40 hours and one and one-half times the hourly wage for each Activated Affiliated Personnel for every hour over 40.   |
| (vii) Activates Affiliated Personnel who are customarily and usually paid a daily compensation rate according to the Maximum Pay Rate Table, | .....   | The daily compensation rate for each Activated Affiliated Personnel for each full or partial day during the Activation.   |

(f) *Reimbursement of additional salary and overtime costs.* DHS will reimburse any identified additional salary and overtime cost incurred by a Sponsoring Agency as a result of the temporary conversion of a Non-Exempt System Member normally compensated under 29 U.S.C. 207(k) to a 40-hour work week under 29 U.S.C. 207(a).

(g) *Reimbursement for Backfill costs upon Activation.* DHS will reimburse the cost to Backfill System Members. Backfill costs consist of the expenses generated by filling the position in which the Activated System Member should have been working. These costs are calculated by subtracting the non-overtime compensation, including fringe benefits, of Activated System Members from the total costs (non-overtime and overtime compensation,

including fringe benefits) paid to Backfill the Activated System Members. Backfill reimbursement is available only for those positions that are normally Backfilled by the Sponsoring Agency or Participating Agency during Activation. Employees exempt under the Fair Labor Standards Act (FLSA) not normally Backfilled by the Sponsoring Agency or Participating Agency are not eligible for Backfill during Activation.

**§ 208.40 Reimbursement of fringe benefit costs during Activation.**

(a) Except as specified in §208.40 (c) of this subpart, DHS will reimburse the Sponsoring Agency for fringe benefit costs incurred during Activation according to the following table:

| If the Sponsoring Agency or Participating Agency * * *  | Then the Sponsoring Agency or Participating Agency must * * *  | Example   |
|---|--|---|
| (1) Incurs a fringe benefit cost based on the number of base hours worked by a System Member, | Bill DHS for a pro-rata share of the premium based on the number of base hours worked during Activation. | The City Fire Department incurs a premium of 3 percent for dental coverage based on the number of base hours worked in a week (53 hours). The City should bill DHS an additional 3 percent of the firefighter's converted compensation for the first 40 hours Activation. |



| If the Sponsoring Agency or Participating Agency * * *   | Then the Sponsoring Agency or Participating Agency must * * *  | Example  |
|--|--|--|
| (2) Incurs a fringe benefit cost based on the number of hours a System Member actually worked (base hours and overtime), | Bill DHS for a pro-rata share of the premium based on the number of hours each System Member worked during Activation.   | The City Fire Department pays a premium of 12 percent for retirement based on the number of hours worked by a firefighter. The City should bill DHS an additional 12 percent of the firefighter's total compensation during Activation.  |
| (3) Incurs a fringe benefit cost on a yearly basis based on the number of people employed full-time during the year,     | Bill DHS for a pro-rata share of those fringe benefit costs based on the number of non-overtime hours worked during Activation by System Members employed full time. | The City Fire Department pays workers compensation premiums into the City risk fund for the following year, based on the number of full-time firefighters employed during the current year. The City should bill DHS for workers compensation premium costs by multiplying the hourly fringe benefit rate or amount by the number of non-overtime hours worked during Activation by full time firefighters who are System Members. |

(b) *Differential pay.* DHS will reimburse the Sponsoring Agency for direct costs incurred because of any separate differential compensation paid for work performed during an Activation including, but not limited to, differentials paid for holidays, night work, hazardous duty, or other paid fringe benefits, provided such differentials are not otherwise reimbursed under paragraph (a) of this section. A detailed explanation of the differential payment for which the Sponsoring Agency seeks reimbursement must accompany any request for reimbursement under this section together with identification of every fringe benefit sought under § 208.40(a) of this part and the method used to calculate each such payment and the reimbursement sought from DHS.

(c) DHS will not reimburse the Sponsoring Agency for fringe benefit costs for Affiliated Personnel.

**§ 208.41 Administrative allowance.**

(a) The administrative allowance is intended to defray costs of the following activities, to the extent provided in paragraph (b) of this section:

- (1) Collecting expenditure information from Sponsoring Agencies and Participating Agencies;
- (2) Compiling and summarizing cost records and reimbursement claims;
- (3) Duplicating cost records and reimbursement claims; and
- (4) Submitting reimbursement claims, including mailing, transmittal, and related costs.

(b) The administrative allowance will be equal to the following:

(1) If total allowable costs are less than \$100,000, 3 percent of total allowable costs included in the reimbursement claim;

(2) If total allowable costs are \$100,000 or more but less than \$1,000,000, \$3,000 plus 2 percent of costs included in the reimbursement claim greater than \$100,000;

(3) If total allowable costs are \$1,000,000 or more, \$21,000 plus 1 percent of costs included in the reimbursement claim greater than \$1,000,000.

**§ 208.42 Reimbursement for other administrative costs.**

Costs incurred for conducting after-action meetings and preparing after-action reports must be billed as direct costs in accordance with DHS administrative policy.

**§ 208.43 Rehabilitation.**

DHS will reimburse costs incurred to return System equipment and personnel to a state of readiness following Activation as provided in this section.

(a) *Costs for Equipment Cache List items*—(1) *Non-consumable items.* DHS will reimburse costs incurred to repair or replace any non-consumable item on the Equipment Cache List that was lost, damaged, destroyed, or donated at DHS direction to another entity, during Activation. For each such item, the Sponsoring Agency must document, in writing, the circumstances of the loss, damage, destruction, or donation.

(2) *Consumable items.* DHS will reimburse costs incurred to replace any consumable item on the Equipment Cache List that was consumed during Activation.

(3) *Personnel costs associated with equipment cache rehabilitation.* DHS will reimburse costs incurred for the compensation, including benefits, payable for actual time worked by each person engaged in rehabilitating the equipment cache following Activation, in accordance with the standard pay policy of the Sponsoring Agency or Participating Agency and without regard to the provisions of §208.39(e)(1) of this part, up to the number of hours specified in the Demobilization Order. Fringe benefits are reimbursed under the provisions of §208.40 of this part.

(b) *Costs for personnel rehabilitation.* DHS will reimburse costs incurred for the compensation, including benefits and Backfill, of each Activated System Member regularly scheduled to work during the rehabilitation period specified in the Demobilization Order, in accordance with the standard pay policy of the Sponsoring Agency or Participating Agency and without regard to the provisions of §208.39(e)(1) of this part.

(c) *Other allowable costs—(1) Local transportation.* DHS will reimburse costs incurred for transporting Task Force Members from the point of assembly to the point of departure and from the point of return to the location where they are released from duty. DHS will also reimburse transportation costs incurred for assembling and moving the equipment cache from its usual place(s) of storage to the point of departure, and from the point of return to its usual place(s) of storage. Such reimbursement will include costs to return the means of transportation to its point of origin.

(2) *Ground transportation.* When DHS orders a Sponsoring Agency to move its Task Force Members and equipment cache by ground transportation, DHS will reimburse costs incurred for such transportation, including but not limited to charges for contract carriers, rented vehicles, contract vehicle operators, fleet vehicles, fuel and associated transportation expenses. The Assistant Administrator has authority to issue schedules of maximum hourly or per mile reimbursement rates for fleet and contract vehicles.

(3) *Food and beverages.* DHS will reimburse expenditures for food and bev-

erages for Activated Task Force Members and Support Specialists when the Federal government does not provide meals during Activation. Reimbursement of food and beverage costs for Activated Support Specialists will be limited to periods of time during which they were actively supporting the Activation or traveling to or from locations at which they were actively supporting the Activation. Food and beverage reimbursement will be limited to the amount of the then-current Federal meals and incidental expenses daily allowance published in the FEDERAL REGISTER for the locality where such food and beverages were provided, multiplied by the number of personnel who received the same.

**§ 208.44 Reimbursement for other costs.**

(a) Except as allowed under paragraph (b) of this section, DHS will not reimburse other costs incurred preceding, during or upon the conclusion of an Activation unless, before making the expenditure, the Sponsoring Agency has requested, in writing, permission for a specific expenditure and has received written permission from the Program Manager or his or her designee to make such expenditure.

(b) At the discretion of the Program Manager or his or her designee, a request for approval of costs presented after the costs were incurred must be in writing and establish that:

- (1) The expenditure was essential to the Activation and was reasonable;
- (2) Advance written approval by the Program Manager was not feasible; and
- (3) Advance verbal approval by the Program Manager had been requested and was given.

**§ 208.45 Advance of funds.**

At the time of Activation of a Task Force, the Task Force will develop the documentation necessary to request an advance of funds be paid to such Task Force's Sponsoring Agency. Upon approval, DHS will submit the documentation to the Assistance Officer and will request an advance of funds up to 75 percent of the estimated personnel costs for the Activation. The estimated personnel costs will include the salaries, benefits, and Backfill

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costs for Task Force Members and an estimate of the salaries, benefits and Backfill costs required for equipment cache rehabilitation. The advance of funds will not include any costs for equipment purchase.

**§ 208.46 Title to equipment.**

Title to equipment purchased by a Sponsoring Agency with funds provided under a DHS Response Cooperative Agreement vests in the Sponsoring Agency, provided that DHS reserves the right to transfer title to the Federal Government or a third party that DHS may name, under 2 CFR 200.313(e)(3), when a Sponsoring Agency indicates or demonstrates that it cannot fulfill its obligations under the Memorandum of Agreement.

[79 FR 76087, Dec. 19, 2014]

**§§ 208.47–208.50 [Reserved]**

**Subpart D—Reimbursement Claims and Appeals**

**§ 208.51 General.**

(a) *Purpose.* This subpart identifies the procedures that Sponsoring Agencies must use to request reimbursement from DHS for costs incurred under Response Cooperative Agreements.

(b) *Policy.* It is DHS policy to reimburse Sponsoring Agencies as expeditiously as possible consistent with Federal laws and regulations.

**§ 208.52 Reimbursement procedures.**

(a) *General.* A Sponsoring Agency must present a claim for reimbursement to DHS in such manner as the Assistant Administrator specifies .

(b) *Time for submission.* (1) Claims for reimbursement must be submitted within 90 days after the end of the Personnel Rehabilitation Period specified in the Demobilization Order.

(2) The Assistant Administrator may extend and specify the time limitation in paragraph (b)(1) of this section when the Sponsoring Agency justifies and requests the extension in writing.

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**§§ 208.53–208.59 [Reserved]**

**§ 208.60 Determination of claims.**

When DHS receives a reviewable claim for reimbursement, DHS will review the claim to determine whether and to what extent reimbursement is allowable. Except as provided in §208.63 of this part, DHS will complete its review and give written notice to the Sponsoring Agency of its determination within 90 days after the date DHS receives the claim. If DHS determines that any item of cost is not eligible for reimbursement, its notice of determination will specify the grounds on which DHS disallowed reimbursement.

**§ 208.61 Payment of claims.**

DHS will reimburse all allowable costs for which a Sponsoring Agency requests reimbursement within 30 days after DHS determines that reimbursement is allowable, in whole or in part, at any stage of the reimbursement and appeal processes identified in this subpart.

**§ 208.62 Appeals.**

(a) *Initial appeal.* The Sponsoring Agency may appeal to the Program Manager any determination made under §208.60 of this part to disallow reimbursement of an item of cost:

(1) The appeal must be in writing and submitted within 60 days after receipt of DHS’s written notice of disallowance under §208.60 of this part.

(2) The appeal must contain legal and factual justification for the Sponsoring Agency’s contention that the cost is allowable.

(3) Within 90 days after DHS receives an appeal, the Program Manager will review the information submitted, make such additional investigations as necessary, make a determination on the appeal, and submit written notice of the determination of the appeal to the Sponsoring Agency.

(b) *Final appeal.* (1) If the Program Manager denies the initial appeal, in whole or in part, the Sponsoring Agency may submit a final appeal to the Deputy Assistant Administrator. The appeal must be made in writing and must be submitted not later than 60 days after receipt of written notice of

DHS's determination of the initial appeal.

(2) Within 90 days following the receipt of a final appeal, the Deputy Assistant Administrator will render a determination and notify the Sponsoring Agency, in writing, of the final disposition of the appeal.

(c) *Failure to file timely appeal.* If the Sponsoring Agency does not file an appeal within the time periods specified in this section, DHS will deem that the Sponsoring Agency has waived its right to appeal any decision that could have been the subject of an appeal.

**§ 208.63 Request by DHS for supplemental information.**

(a) At any stage of the reimbursement and appeal processes identified in this subpart, DHS may request the Sponsoring Agency to provide supplemental information that DHS considers necessary to determine either a claim for reimbursement or an appeal. The Sponsoring Agency must exercise its best efforts to provide the supplemental information and must submit to DHS a written response that includes such supplemental information as the Sponsoring Agency is able to provide within 30 days after receiving DHS's request.

(b) If DHS makes a request for supplemental information at any stage of the reimbursement and appeal processes, the applicable time within which its determination of the claim or appeal is to be made will be extended by 30 days. However, without the consent of the Sponsoring Agency, no more than one such time extension will be allowed for any stage of the reimbursement and appeal processes.

**§ 208.64 Administrative and audit requirements.**

(a) *Non-Federal audit.* For Sponsoring Agencies and States, requirements for non-Federal audit are contained in 44 CFR 13.26, in accordance with OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations.

(b) *Federal audit.* DHS or the Government Accountability Office may elect to conduct a Federal audit of any payment made to a Sponsoring Agency or State.

**§ 208.65 Mode of transmission.**

When sending all submissions, determinations, and requests for supplemental information under this subpart, all parties must use a means of delivery that permits both the sender and addressee to verify the dates of delivery.

**§ 208.66 Reopening of claims for retrospective or retroactive adjustment of costs.**

(a) Upon written request by the Sponsoring Agency DHS will reopen the time period for submission of a request for reimbursement after the Sponsoring Agency has submitted its request for reimbursement, if:

(1) The salary or wage rate applicable to the period of an Activation is retroactively changed due to the execution of a collective bargaining agreement, or due to the adoption of a generally applicable State or local law, ordinance or wage order or a cost-of-living adjustment;

(2) The Sponsoring Agency or any Participating Agency incurs an additional cost because of a legally-binding determination; or

(3) The Deputy Director determines that other extenuating circumstances existed that prevented the Sponsoring Agency from including the adjustment of costs in its original submission.

(c) The Sponsoring Agency must notify DHS as early as practicable that it anticipates such a request.

**§§ 208.67-208.70 [Reserved]**

**PART 209—SUPPLEMENTAL PROPERTY ACQUISITION AND ELEVATION ASSISTANCE**

- Sec.
- 209.1 Purpose.
- 209.2 Definitions.
- 209.3 Roles and responsibilities.
- 209.4 Allocation and availability of funds.
- 209.5 Applicant eligibility.
- 209.6 Project eligibility.
- 209.7 Priorities for project selection.
- 209.8 Application and review process.
- 209.9 Appeals.
- 209.10 Project implementation requirements.
- 209.11 Grant administration.
- 209.12 Oversight and results.

## § 209.1

AUTHORITY: Pub. L. 106-113, Div. B, sec. 1000(a)(5) (enacting H.R. 3425 by cross-reference), 113 Stat. 1501, 1536; Pub. L. 106-246, 114 Stat. 511, 568; Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412.

SOURCE: 66 FR 32669, June 15, 2001, unless otherwise noted.

### § 209.1 Purpose.

This part provides guidance on the administration of a program to provide supplemental property acquisition and elevation assistance made available by Congress to provide funds for the acquisition or elevation, for hazard mitigation purposes, of properties that have been made uninhabitable by floods in areas that were declared major disasters in federal fiscal years 1999 and 2000.

### § 209.2 Definitions.

Except as noted in this part, the definitions listed at §§ 206.2 and 206.431 apply to the implementation of this part.

*Allowable open space uses* means recreational and wetland management uses including: Parks for outdoor recreational activities; nature reserves; cultivation; grazing; camping (except where adequate warning time is not available to allow evacuation); temporary storage in the open of wheeled vehicles which are easily movable (except mobile homes); unimproved, permeable parking lots; and buffer zones. Allowable uses generally do not include walled buildings, flood reduction levees, highways or other uses that obstruct the natural and beneficial functions of the floodplain.

*Applicant* means a State agency, local government, or qualified private nonprofit organization that submits an application for acquisition or elevation assistance to the State or to FEMA.

*Cost-effective* means that the mitigation activity will not cost more than the anticipated value of the reduction in both direct damages and subsequent negative impacts to the area if future disasters were to occur. Both costs and benefits will be computed on a net present value basis. The State will

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complete an analysis of the cost effectiveness of the project, in accordance with FEMA guidance and using a FEMA-approved methodology. FEMA will review the State's analysis.

*Pre-event fair market value* means the value a willing buyer would have paid and a willing seller would have sold a property for had the disaster not occurred.

*Principal residence* means a residence that is occupied by the legal owner and is the dwelling where the legal owner normally lives during the major portion of the calendar year.

*Qualified alien* means an alien who meets one of the following criteria:

(1) An alien lawfully admitted for permanent residence under the Immigration and Nationality Act (INA);

(2) An alien granted asylum under section 208 of the INA;

(3) A refugee admitted to the United States under section 207 of the INA;

(4) An alien paroled into the United States under section 212(d)(5) of the INA for at least one year;

(5) An alien whose deportation is being withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or section 241(b)(3) of the INA;

(6) An alien granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980;

(7) An alien who is a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980); or

(8) An alien who (or whose child or parent) has been battered and meets the requirements of 8 U.S.C. 1641(c).

*Qualified private nonprofit organization* means an organization with a conservation mission as qualified under section 170(h) of the Internal Revenue Code of 1954, as amended, and the regulations applicable under that section.

*Repetitive Loss Structure* means a structure covered by a contract for flood insurance under the National Flood Insurance Program (NFIP) that has incurred flood-related damage on two occasions during a 10-year period, each resulting in at least a \$1000 claim payment;

*State Hazard Mitigation Plan* means the hazard mitigation plan that reflects the State's systematic evaluation of the nature and extent of vulnerability to the effects of natural hazards typically present in the State and includes a description of actions needed to minimize future vulnerability to hazards.

*Subgrantee* means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided. Subgrantees can be a State agency, local government, qualified private nonprofit organizations, or Indian tribes as outlined in 44 CFR 206.434;

*Substantial Damage* means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred;

*Uninhabitable* means that properties are certified by the appropriate State or local official normally empowered to make such certifications as meeting one or more of the following criteria:

(1) Determined by an authorized local government official to be substantially damaged, according to National Flood Insurance Program criteria contained in 44 CFR 59.1;

(2) Have been red- or yellow-tagged and declared uninhabitable due to environmental contamination by floodwaters, or otherwise determined to be uninhabitable by a State or local official in accordance with current codes or ordinances; or

(3) Have been demolished due to damage or environmental contamination by floodwaters.

*We, our, or us* means FEMA.

[66 FR 32669, June 15, 2001; 66 FR 49554, Sept. 28, 2001]

**§ 209.3 Roles and responsibilities.**

The following describes the general roles of FEMA, the State, local communities or other organizations that receive grant assistance, and participating homeowners.

(a) *Federal*. We will notify States about the availability of funds, and will allocate available funding to States that received major disaster

declarations during the period covered by the supplemental authority. Our Regional Administrators will verify project eligibility, provide technical assistance to States upon request, make grant awards, and oversee program implementation.

(b) *State*. The State will be the Grantee to which we award funds and will be accountable for the use of those funds. The State will determine priorities for funding within the State. This determination must be made in conformance with the HMGP project identification and selection criteria (44 CFR 206.435). The State also will provide technical assistance and oversight to applicants for project development and to subgrantees for project implementation. The State will report program progress and results to us. The States also will recover and return to us any funds made available from other sources for the same purposes. When Native American tribes apply directly to us, they will be the grantee and carry out "state" roles.

(c) *Applicant (pre-award) and subgrantee (post-award)*. The applicant (a State agency, local government, or qualified private nonprofit organization) will coordinate with interested homeowners to complete an application to the State. The subgrantee implements all approved projects, generally takes title to all property, and agrees to dedicate and maintain the property in perpetuity for uses compatible with open-space, recreational, or wetlands management practices. The subgrantee will receive, review and make final decisions about any appraisal disputes that are brought by participating homeowners. The subgrantee is accountable to the State, as well as to us, for the use of funds.

(d) *Participating homeowners*. The participating homeowners will notify the community of their interest to participate; provide necessary information to the community coordinator about property ownership, disaster damage, and other disaster benefits received or available; review the offer made from the community; and accept it or request a review appraisal.

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### § 209.4 Allocation and availability of funds.

(a) We will allocate available funds based on the number and value of properties that meet the eligibility criteria and whose owners want to participate in an acquisition or elevation project.

(b) We may reallocate funds for which we do not receive and approve adequate applications. We will obligate most available funds within 12 months following the deadline for submitting applications, unless extenuating circumstances exist.

### § 209.5 Applicant eligibility.

The following are eligible to apply to the State for a grant:

- (a) State and local governments;
- (b) Indian tribes or authorized tribal organizations. A tribe may apply either to the State or directly to us; and
- (c) Qualified private nonprofit organizations.

### § 209.6 Project eligibility.

(a) *Eligible types of project activities.* This grant authority is for projects to acquire floodprone properties and demolish or relocate structures per § 209.10(i), or to elevate floodprone structures. Approved projects must meet the following criteria and comply with all other program requirements described in this rule;

(b) *Eligibility criteria.* To be eligible, projects must:

(1) Be cost effective. The State will complete an analysis of the cost-effectiveness of the project, in accordance with our guidance and using a methodology that we approve. We will review the State's analysis;

(2) Include only properties that:

(i) For acquisition, the owner agrees to sell voluntarily;

(ii) Are within the 100-year floodplain based on best available data or as identified by a FIRM or FEMA-approved Disaster Recovery Map;

(iii) Were made uninhabitable (as certified by an appropriate State or local official) by the effects of a declared major disaster during federal fiscal years 1999 or 2000;

(iv) For acquisition, had a pre-event fair market value of less than \$300,000 just before the disaster event. Properties submitted for buyout under Pub.

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L. 106–113 (the original Hurricane Floyd supplemental buyout program) are exempt from this policy, with the limitation that in no case does the Federal share or offer for any such property exceed \$225,000; and

(v) Served as the principal residence for the owner. For multifamily units such as condominium buildings, all units within the structure should be principal residences of the owners and not sublet.

(3) Conform with 44 CFR part 9, Floodplain Management and Protection of Wetlands, and other applicable environmental and historic preservation laws, regulations, Executive Orders, and agency policy.

(c) For acquisition projects, an owner who is not a United States citizen or qualified alien may receive current fair market value for his or her property. He or she may not receive additional amounts for pre-event fair market value.

(d) Funds available under Pub. L. 106–113 (the original Floyd supplemental appropriation) are limited to use for acquisition purposes only.

[66 FR 32669, June 15, 2001, as amended at 81 FR 56534, Aug. 22, 2016]

### § 209.7 Priorities for project selection.

(a) It is the State's responsibility to identify and select eligible buyout projects for funding under the supplemental grant program. All funded projects must be consistent with the State Hazard Mitigation Plan. The mitigation planning process or any other appropriate means may identify buyout and elevation projects.

(b) States will set priorities in their State mitigation plan to use as the basis for selecting projects for funding. The State's priorities will address, at a minimum, substantially damaged properties, repetitive loss target properties, and such other criteria that the State deems necessary to comply with the law. States and subgrantees are to give priority consideration to projects for acquisition or elevations of repetitive loss properties, and must include all eligible repetitive loss properties in the projects submitted to us for funding.

[66 FR 32669, June 15, 2001; 66 FR 49554, Sept. 28, 2001, as amended at 74 FR 15353, Apr. 3, 2009]

**§ 209.8 Application and review process.**

(a) *General.* This section describes the procedures to be used by the State in submitting an application for funding under the Supplemental Property Acquisition and Elevation Assistance program. Under this program, the State is the grantee and is responsible for processing subgrants to applicants in accordance with 44 CFR part 13 and this part.

(b) *Timeframes.* We will establish deadlines for States to submit applications, and States will set local application deadlines. States may begin forwarding applications to us immediately upon Notice of Availability of Funds and must forward all applications not later than the date set by the Regional Administrator. States must provide to us the information described below in paragraph (c) of this section for each property proposed for acquisition or elevation in support of the supplemental allocation requested and within the timeframe that we establish. We will verify project eligibility estimates provided by States in order to assure that all projects meet the criteria for the supplemental grant awards. We will perform an independent verification of this information for not less than 50 percent of the properties submitted.

(c) *Format.* The State will forward its application to the Regional Administrator. The Application will include: a Standard Form (SF) 424, Application for Federal Assistance; FEMA form 20-15, Budget Information—Construction Programs; Project Narrative (section 209.8(c)—community project applications (buyout plans) selected by the State); FEMA form 20-16, 20-16b and 20-16c Assurances and Certifications; Standard Form LLL, Disclosure of Lobbying Activities; FEMA form 20-10, Financial Status Report; the Performance/Progress Report format; and the State's certification that the State has reviewed all applications and that they meet program eligibility criteria. The Project Narrative (community project applications) will include:

(1) Community applicant information, including contact names and numbers;

(2) Description of the problem addressed by the proposed project;

(3) Description of the applicant's decision-making process, including alternatives considered;

(4) Project description, including property locations/addresses and scope of activities;

(5) Project cost estimate and match source;

(6) For acquisition projects, open space use description and maintenance assurance;

(7) Risk and cost-effectiveness information, or State's benefit-cost analysis;

(8) Environmental and historic preservation information including

(i) Whether the property is now or ever has been used for commercial or industrial purposes, and

(ii) Any information regarding historic preservation that is readily available;

(9) Attachments for each property as follows:

(i) A photograph of the structure from the street;

(ii) Owner's name;

(iii) Complete address, including zip code;

(iv) Latitude and longitude;

(v) The date of construction;

(vi) Proximity to the 100-year floodplain;

(vii) Panel and date of the applicable Flood Insurance Rate Map, if any;

(viii) The elevation of the first habitable floor and an estimate of the depth of flooding in the structure;

(ix) The estimated pre-event fair market value of the home. Applicants will estimate the value of properties using the best available information, such as inspections, public records and market values of similar properties in similar neighborhoods to arrive at a pre-event fair market value that reflects what a willing buyer would have paid a willing seller had the disaster not occurred. If tax assessment data are used as the basis, the applicant should add the relevant adjustment percentage for that jurisdiction to adjust the tax assessment to the current fair market value. These adjustment data should be obtained from the jurisdiction's tax assessor's office. For any



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jurisdictions where the adjustment factor is over 25 percent, applicants should include a justification for the high adjustment factor. Applicants should not include any other project costs in the property values. These costs will be reflected elsewhere;

(x) Indication whether flood insurance was in force at the time of the loss, and policy number, if available.

(xi) Indications that the property will meet the definition of uninhabitable:

(A) Substantial damage determination, and name and title of determining official, or if not yet determined then:

(1) For manufactured homes (mobile homes), inundation of 1 foot or more of water above the first habitable floor or other evidence of substantial damage; or

(2) For permanent structures other than manufactured homes, inundation of 5 feet or more of water above the first above-ground habitable floor or other evidence of substantial damage. Habitable floors do not include basements.

(B) Were red- or yellow-tagged and declared uninhabitable due to environmental contamination by floodwaters, or otherwise determined to be uninhabitable by a State or local official under current codes or ordinances; or

(C) Were demolished due to damage or environmental contamination by floodwaters.

(xii) Information regarding whether the structure is on the NFIP repetitive loss list (provide NFIP Repetitive Loss Property Locator Number, if available); and

(xiii) Observations on whether acquisition or elevation of the structure may result in a mixture of vacant lots and lots with structures remaining on them; and

(10) *FEMA review and approval.* We will review and verify the State’s eligibility determination and either approve, deny, or request additional information within 60 days. The Regional Administrator may extend this timeframe if complicated issues arise. We have final approval authority for funding of all projects.

[66 FR 32669, June 15, 2001; 66 FR 49554, Sept. 28, 2001; 74 FR 15353, Apr. 3, 2009]

**§ 209.9 Appeals.**

The State may appeal any decision that we make regarding projects submitted for funding in the Supplemental Property Acquisition and Elevation Assistance program. The State must submit the appeal in writing to the Regional Administrator and must include documentation that justifies the request for reconsideration. The appeal must specify the monetary figure in dispute and the provisions in Federal law, regulation, or policy with which the appellant believes the initial action was inconsistent. The applicant must appeal within 60 days of the applicant’s receipt of our funding decision. The State must forward any appeal from an applicant or subgrantee with a written recommendation to the Regional Administrator within 60 days of receipt. Within 90 days following the receipt of an appeal, the Regional Administrator will notify the State in writing as to the new decision or the need for more information.

**§ 209.10 Project implementation requirements.**

Subgrantees must enter into an agreement with the State, with the written concurrence of the Regional Administrator, that provides the following assurances:

(a) The subgrantee will administer the grant and implement the project in accordance with program requirements, 44 CFR part 13, the grant agreement, and with applicable Federal, State, and local laws and regulations.

(b) The State and subgrantee will administer the grant in an equitable and impartial manner, without discrimination on the grounds or race, color, religion nationality, sex, age, or economic status in compliance with section 308 of the Stafford Act (42 U.S.C. 5151) and Title VI of the Civil Rights Act. In implementing the grant, the State and the subgrantee will ensure that no discrimination is practiced.

(c) The State and subgrantee will ensure that projects involving alterations to existing structures comply with all applicable State and local codes.

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(d) The State and subgrantee will ensure that projects comply with applicable State and local floodplain management requirements. Structures will be elevated to the Base Flood Elevation.

(e) Property owners participating in acquisition projects may receive assistance up to the pre-event fair market value of their real property, except as limited by the eligibility criteria.

(f) The subgrantee will establish a process, which we must approve, whereby property owners participating in acquisition projects may request a review of the appraisal for their property, or request a second appraisal.

(g) The State will reduce buyout assistance by any duplication of benefits from other sources. Such benefits include, but are not limited to, payments made to the homeowner for repair assistance; insurance settlements; legal settlements; Small Business Administration loans; and any other payments made by any source to address the property loss unless the property owner can provide receipts showing that the benefits were used for their intended purpose to make repairs to the property.

(h) Increased Cost of Compliance coverage benefits under the National Flood Insurance Program (NFIP) may be used to match elevation or acquisition and relocation projects. Increased Cost of Compliance claims can only be used for NFIP-approved costs; these can then be applied to the project grant match. This coverage does not pay for property acquisition, but can pay demolition or structure relocation.

(i) The following restrictive covenants must be conveyed in the deed to any property acquired, accepted, or from which structures are removed ("the property"):

(1) The property must be dedicated and maintained in perpetuity for uses compatible with open space, recreational, or wetlands management practices; and

(2) No new structure(s) will be built on the property except as indicated in this paragraph:

(A) A public facility that is open on all sides and functionally related to a designated open space or recreational use;

(B) A public rest room; or

(C) A structure that is compatible with open space, recreational, or wetlands management usage and proper floodplain management policies and practices, which the Administrator of FEMA approves in writing before the construction of the structure begins.

(D) In general, allowable open space, recreational, and wetland management uses include parks for outdoor recreational activities, nature reserves, cultivation, grazing, camping (except where adequate warning time is not available to allow evacuation), temporary storage in the open of wheeled vehicles that are easily movable (except mobile homes), unimproved, permeable parking lots and buffer zones. Allowable uses generally do not include walled buildings, flood reduction levees, highways or other uses that obstruct the natural and beneficial functions of the floodplain.

(3) After completing the acquisition project, no application for future disaster assistance will be made for any purpose with respect to the property to any Federal entity or source, and no Federal entity or source will provide such assistance, even for the allowable uses of the property described above.

(4) Any structures built on the property according to paragraph (i)(2) of this section, must be: Located to minimize the potential for flood damage; floodproofed; or elevated to the Base Flood Elevation plus one foot of freeboard.

(5) The subgrantee or other public property owner will seek the approval of the State grantee agency and our Regional Administrator before conveying any interest in the property to any other party. The subgrantee or other public entity or qualified private nonprofit organization must retain all development rights to the property. Our Regional Administrator will only approve the transfer of properties that meet the criteria identified in this paragraph.

(6) In order to carry out tasks associated with monitoring, we, the subgrantee, or the State have the right to enter the parcel, with notice to the parcel owner, to ensure compliance with land use restrictions. Subgrantees may identify the open space nature of

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the property on local tax maps to assist with monitoring. Whether the subgrantee obtains full title or a conservation easement on the parcel, the State must work with subgrantees to ensure that the parcel owner maintains the property in accordance with land use restrictions. Specifically, the State may:

(i) Monitor and inspect the parcel every two years and certify that the owner continues to use the inspected parcel for open space or agricultural purposes; and

(ii) Take measures to bring a non-compliant parcel back into compliance within 60 days of notice.

(7) Only as a last resort, we reserve the right to require the subgrantee to bring the property back into compliance and transfer the title and easement to a qualified third party for future maintenance.

(8) Every 2 years on October 1st, the subgrantee will report to the State, certifying that the property continues to be maintained consistent with the provisions of the agreement. The State will report the certification to us.

[66 FR 32669, June 15, 2001, as amended at 74 FR 15353, Apr. 3, 2009]

### § 209.11 Grant administration.

(a) *Cost share.* We may contribute up to 75 percent of the total eligible costs. The State must ensure that non-Federal sources contribute not less than 25 percent of the total eligible costs for the grant. The State or any subgrantee cannot use funds that we provide under this Act as the non-Federal match for other Federal funds nor can the State or any subgrantee use other Federal funds as the required non-Federal match for these funds, except as provided by statute.

(b) *Allowable costs.* A State may find guidance on allowable costs for States and subgrantees in Office of Management and Budget (OMB) Circulars A–87 and A–122 on Cost Principles. States may use up to 7 percent of the grant funds for management costs of the grant. The State should include management costs in its application. Subgrantees must include reasonable costs to administer the grant as a direct project cost in their budget.

(c) *Progress reports.* The State must provide a quarterly progress report to us under 44 CFR 13.40, indicating the status and completion date for each project funded. The report will include any problems or circumstances affecting completion dates, scope of work, or project costs that may result in non-compliance with the approved grant conditions.

(d) *Financial reports.* The State must provide a quarterly financial report to us under 44 CFR 13.41.

(e) *SMARTLINK Drawdowns.* The State will make SMARTLINK drawdowns to reimburse or advance allowable costs to subgrantees for approved projects.

(f) *Audit requirements.* Uniform audit requirements as set forth in 44 CFR part 13 apply to all grant assistance provided under this subpart. We may elect to conduct a Federal audit on the disaster assistance grant or on any of the subgrants.

(g) If a mitigation measure is not completed, and there is not adequate justification for non-completion, no Federal funding will be provided for that project.

[66 FR 32669, June 15, 2001, as amended at 74 FR 15353, Apr. 3, 2009]

### § 209.12 Oversight and results.

(a) *FEMA oversight.* Our Regional Administrators are responsible for overseeing this grant authority and for ensuring that States and subgrantees meet all program requirements. Regional Administrators will review program progress quarterly.

(b) *Monitoring and enforcement.* We, subgrantees, and States will monitor the properties purchased under this authority and ensure that the properties are maintained in open space use. We and the State may enforce the agreement by taking any measures that we or they deem appropriate.

(c) *Program results.* The State will review the effectiveness of approved projects after each future flood event in the affected area to monitor whether projects are resulting in expected savings. The State will report to us on program effectiveness after project completion and after each subsequent flood event.

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## SUBCHAPTER E—FIRE ASSISTANCE

### PART 295—CERRO GRANDE FIRE ASSISTANCE

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AUTHORITY: Pub. L. 106-246, 114 Stat. 511, 584; Reorganization Plan No. 3 of 1978, 43 FR 41493, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412.

SOURCE: 66 FR 15959, Mar. 21, 2001, unless otherwise noted.

#### Subpart A—General

##### § 295.1 Purpose.

This part implements the Cerro Grande Fire Assistance Act (CGFAA), Public Law 106-246, 114 Stat. 584, which requires that the Federal Emergency Management Agency (FEMA) establish a process to evaluate, process and pay claims injuries and property damage resulting from the Cerro Grande Fire.

##### § 295.2 Policy.

It is our policy to provide for the expeditious resolution of meritorious claims through a process that is administered with sensitivity to the burdens placed upon Claimants by the Cerro Grande Fire.

##### § 295.3 Information and assistance.

Information and assistance concerning the CGFAA is available from the Office of Cerro Grande Fire Claims (OCGFC), Federal Emergency Management Agency, P.O. Box 1480, Los Alamos, New Mexico, 87544-1480, or telephone 1-888-748-1853 (toll free). The Cerro Grande Fire Assistance site on the World Wide Web can be accessed at <http://www.fema.gov/cerrogrande>. In the interest of brevity, we do not restate the provisions of the CGFAA in most instances. Our website has a copy of the CGFAA and we will provide a copy upon request.

##### § 295.4 Organization of this part 295.

This part contains six subparts. Subpart A provides an overview of the CGFAA process. Subpart B describes the procedures for bringing a claim. Subpart C explains what compensation is available. Subpart D discusses the claims evaluation process. Subpart E explains the dispute resolution process. Subpart F contains a glossary in which various terms used in the rule are defined.

##### § 295.5 Overview of the claims process.

(a) The CGFAA is intended to provide persons who suffered losses from the Cerro Grande Fire with a simple, expeditious process to seek redress from the

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United States. This section provides a brief explanation of the claims process for claims other than subrogation claims. It is not intended to supersede the more specific regulations that follow and explain the claims process in greater detail. In order to obtain benefits under this legislation, a person must submit all Cerro Grande Fire related claims against the United States to FEMA. A person who elects to proceed under the CGFAA is barred from bringing a claim under the Federal Tort Claims Act or filing a civil action against the United States for damages resulting from the Cerro Grande Fire. Judicial review of our decisions under the CGFAA is available.

(b) The first step in the process is to file a Notice of Loss with OCGFC. OCGFC will provide the Claimant with a written acknowledgement that the claim has been filed and the claim number.

(c) Shortly thereafter, a Claims Reviewer will contact the Claimant to review the claim. The Claims Reviewer will help the Claimant formulate a strategy for obtaining any necessary documentation or other support. This assistance does not relieve the Claimant of his or her responsibility for establishing all elements of the Loss and the compensatory damages that are sought, including that the Cerro Grande Fire caused the Loss. After the Claimant has had an opportunity to discuss the claim with the Claims Reviewer, a Proof of Loss will be presented to the Claimant for signature. After any necessary documentation has been obtained and the claim has been fully evaluated, the Claims Reviewer will submit a report to the Authorized Official. The Claims Reviewer is responsible for providing an objective evaluation of the claim to the Authorized Official.

(d) The Authorized Official will review the report and determine whether compensation is due to the Claimant. The Claimant will be notified in writing of the Authorized Official's Determination. If the Claimant is satisfied with the decision payment will be made after the Claimant returns a completed Release and Certification Form. If the Claimant is dissatisfied with the Authorized Official's Deter-

mination an Administrative Appeal may be filed with the Director of OCGFC. If the Claimant remains dissatisfied after the appeal is decided, the dispute may be resolved through binding arbitration or heard in the United States District Court for the District of New Mexico.

### § 295.6 Partial payments.

OCGFC, on its own initiative, or in response to a request by a Claimant, may make one or more partial payments on the claim. A partial payment can be made if OCGFC has a reasonable basis to estimate the Claimant's damages. Acceptance of a partial payment in no way affects a Claimant's ability to pursue an Administrative Appeal of the Authorized Official's Determination or to pursue other rights afforded by the CGFAA. Partial payment decisions cannot be appealed.

### § 295.7 Authority to settle or compromise claims.

Notwithstanding any other provision of these regulations, the Director of OCGFC may extend an offer to settle or compromise a claim or any portion of a claim, which if accepted by the Claimant will be binding on the Claimant and on the United States, except that the United States may recover funds improperly paid to a Claimant due to fraud or misrepresentation on the part of the Claimant or the Claimant's representative, a material mistake on our part or the Claimant's failure to cooperate in an audit as required by § 295.35.

## Subpart B—Bringing a Claim Under the CGFAA

### § 295.10 Bringing a claim under the CGFAA.

(a) Any Injured Person may bring a claim under the CGFAA by filing a Notice of Loss. A claim submitted on any form other than a Notice of Loss will not be accepted. The Claimant must provide a brief description of each Loss on the Notice of Loss.

(b) A single Notice of Loss may be submitted on behalf of a Household containing Injured Persons provided

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that all Injured Persons on whose behalf the claim is presented are identified.

(c) The Notice of Loss must be signed by each Claimant, if the Claimant is an individual or by a duly authorized legal representative of each Claimant, if the Claimant is an entity or an individual who lacks the legal capacity to sign the Notice of Loss. If one is signing a Notice of Loss as the legal representative of a Claimant, the signer must disclose his or her relationship to the Claimant. FEMA may require a legal representative to submit evidence of authority.

(d) Notice of Loss forms are available from OCGFC by request. They may be obtained through the mail, in person at the OCGFC office or by telephone request. The Notice of Loss form can also be downloaded from the Internet at <http://www.fema.gov/cerrogrande>.

(e) Notices of Loss may be filed with OCGFC by mail to P.O. Box 1480, Los Alamos, NM 87544-1480. OCGFC is unable to accept Notices of Loss submitted by facsimile or e-mail.

(f) A Notice of Loss that is completely filled out and properly signed is deemed to be filed on the date it is received by OCGFC.

### § 295.11 Deadline for notifying FEMA of losses.

The deadline for filing a Notice of Loss is August 28, 2002. Except as provided in § 295.21(d) with respect to mitigation and in § 295.31(b) with respect to the lump sum payment described therein, a Loss that has not been described on a Notice of Loss, on a supplement to a Notice of Loss or a request to supplement a Notice of Loss under § 295.33, or a request to reopen a claim under § 295.34, received by OCGFC on or before August 28, 2002 cannot be compensated under the CGFAA. The CGFAA establishes this deadline and does not provide any extensions of the filing deadline.

### § 295.12 Election of remedies.

(a) By filing a Notice of Loss, an Injured Person waives the right to seek redress for Cerro Grande Fire related claims against the United States through the Federal Tort Claims Act

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or by filing a civil action authorized by any other provision of law.

(b) An Injured Person who files a Federal Tort Claims Act claim or who initiates a civil action against the United States or any officer, employee or agent of the United States relating to the Cerro Grande Fire on or after August 28, 2000 is not eligible under the CGFAA to file a Notice of Loss.

(c) An Injured Person who filed before August 28, 2000 a Federal Tort Claims Act claim or a civil action against the United States for injuries, losses or damages relating to the Cerro Grande Fire may file a Notice of Loss provided that the Federal Tort Claims Act claim is withdrawn or the Injured Person is dismissed as a party to the civil action with prejudice not later than October 27, 2000. The withdrawal of a Federal Tort Claims Act claim must be in the form of a signed, written statement on a form provided by OCGFC that is filed with OCGFC not later than October 27, 2000. OCGFC will promptly forward the original notice of withdrawal to the applicable federal agency and retain a copy in the Claimant's file.

### § 295.13 Subrogation.

An insurer or other third party with the rights of a subrogee, who has compensated an Injured Person for Cerro Grande Fire related losses, may file a Subrogation Notice of Loss under the CGFAA for the subrogated claim. An insurer or other third party with the rights of a subrogee may file a Subrogation Notice of Loss without regard to whether the Injured Party who received payment from the insurer or third party filed a Notice of Loss. A Subrogation Notice of Loss may not be filed until the insurer or other party with the rights of a subrogee has made all payments that it believes the Injured Person is entitled to receive for Cerro Grande Fire related losses under the terms of the insurance policy or other agreement between the insurer or other party with the rights of a subrogee and the Injured Person. By filing a Subrogation Notice of Loss for any subrogated claim, the insurer or third party elects the CGFAA as its exclusive remedy against the United States for all subrogated claims arising

out of the Cerro Grande Fire. Subrogation claims must be made on a Subrogation Notice of Loss form furnished by OCGFC. FEMA will evaluate subrogation claims on their merits. FEMA may reimburse insurers and other third parties with the rights of a subrogee for reasonable payments made to an Injured Party on or before October 25, 2000, which exceeded or were not required by the terms of the insurance policy or other agreement creating a right of subrogation. FEMA will not reimburse insurers and other third parties with the rights of a subrogee for payments made to an Injured Party after October 25, 2000 that exceeded or are not required by the terms of the insurance policy or other agreement creating a right of subrogation.

**§ 295.14 Assignments.**

Assignment of claims and the right to receive compensation for claims under the CGFAA is prohibited and will not be recognized by FEMA.

**Subpart C—Compensation Available Under the CGFAA**

**§ 295.20 Prerequisite to compensation.**

In order to receive compensation under the CGFAA a Claimant must be an Injured Person who suffered a Loss as a result of the Cerro Grande Fire and sustained damages.

**§ 295.21 Allowable compensation.**

(a) *Allowable compensation.* The CGFAA provides for the payment of compensatory damages. Compensatory damages are “real, substantial and just money damages established by the Claimant in compensation for actual or real injury or loss.” In general, an Injured Person will be compensated for Losses to the same extent that the plaintiff in a successful tort action brought against a private party under the laws of the State of New Mexico would be compensated. In addition the CGFAA permits FEMA to compensate Injured Parties for certain categories of “loss of property,” “business loss,” and “financial loss,” which are enumerated in the CGFAA. Damages must be reasonable in amount. Claimants must take reasonable steps to mitigate

(reduce) their damages, if possible, as required by New Mexico tort law.

(b) *Exclusions.* Except as otherwise provided in the CGFAA, a Claimant will not receive compensation for any injury or damage that is not compensable under the Federal Tort Claims Act and New Mexico law. Punitive damages, statutory damages under §30-32-4 of the New Mexico Statutes Annotated (1978), interest on claims, attorney’s fees and agents’ fees incurred in prosecuting a claim under the CGFAA or an insurance policy, adjusting costs incurred by an insurer or other third party with the rights of a subrogee, and taxes that may be owed by a Claimant as a consequence of receiving an award are not recoverable from FEMA. The cost to a Claimant of prosecuting a claim under the CGFAA does not constitute compensatory damages and is not recoverable from FEMA, except as provided in §295.31(b).

(c) *Damages arising in the future.* In the event that a lump sum payment is awarded to a Claimant for future damages the amount of the payment will be Discounted to Present Value.

(d) *Destruction of home—(1) Home and contents.* Compensatory damages for the Destruction of a Home may include the reasonable cost of reconstructing a home comparable in design, construction materials, size and improvements to the home that was lost taking into account post-fire construction costs in the community in which the home existed before the fire and current building codes and standards. Compensatory damages may also include the cost of removing debris and burned trees, stabilizing the land, replacing household contents, and compensation for any decrease in the value of land on which the structure sat pursuant to paragraph (e) of this section. (2) *Trees and landscaping.* Compensation for the Replacement Cost of destroyed trees and landscaping will be limited to 25% of the pre-fire value of the structure and lot.

(3) *Mitigation.* If requested by a Claimant, FEMA may compensate a Claimant for the reasonable cost of mitigation measures that will reduce the property’s vulnerability to the future risk of wildfire, flood or other natural hazards related to the Cerro



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Grande Fire. Mitigation compensation made available under this section may not exceed fifteen percent of payments from all sources (i.e., CGFAA, insurance proceeds, FEMA assistance under the Stafford Act) for damage to the structure and lot. The Claimant must obtain all government permits, approvals and clearances required by applicable law, ordinance or regulation before constructing the mitigation measures. The mitigation measures must be reviewed by FEMA under applicable environmental and historic preservation laws. Claimants must construct the mitigation measures for which they have received compensation.

(e) *Reduction in the value of real property.* Compensatory damages may be awarded for reduction in the value of real property that a Claimant owned before the fire if:

(1) The Claimant sells the real property in a good faith arm's length transaction that is closed no later than August 28, 2002 and realizes a loss in the pre-fire value; or

(2) The Claimant can establish that the value of the real property was permanently diminished as a result of the Cerro Grande Fire.

(f) *Destruction of unique items of personal property.* Compensatory damages may be awarded for unique items of personal property that were destroyed as a result of the Cerro Grande Fire. If the item can be replaced in the current market, the cost to replace the item will be awarded. If the item cannot be replaced in the current market, its fair market value on the date it was destroyed will be awarded.

(g) *Disaster recovery loans.* FEMA will reimburse Claimants awarded compensation under the CGFAA for interest paid on Small Business Administration disaster loans and similar loans obtained after May 4, 2000. Interest will be reimbursed for the period beginning on the date that the loan was taken out and ending on the date when the Claimant receives a compensation award (other than a partial payment). Claimants are required to use the proceeds of their compensation awards to repay Small Business Administration disaster loans. FEMA will cooperate with the Small Business Administration to formulate procedures for assuring

that Claimants repay Small Business Administration disaster loans contemporaneously with the receipt of CGFAA compensation awards.

(h) *Mitigation.* FEMA may compensate Claimants for the cost of reasonable and cost-effective efforts incurred on or before August 28, 2003 to mitigate the heightened risks of wild-fire, flood or other natural disaster resulting from the Cerro Grande Fire that are consistent with a OCGFC-approved Mitigation Compensation Plan. No more than 15% of the total amount appropriated by Congress for the payment of Cerro Grande fire related claims may be allocated for mitigation compensation under this subsection. Claimants seeking compensation under this provision must file a Notice of Loss under § 295.10 or amend a Notice of Loss previously filed under § 295.33 or § 295.34. The Notice of Loss or amendment must specify that compensation for mitigation is sought. The Notice of Loss must be filed or a proposed amendment under § 295.33 or § 295.34 submitted no later than August 28, 2002. A separate request for mitigation assistance must be filed with OCGFC no later than August 28, 2003. Claimants must construct the mitigation measures for which they have received compensation.

(i) *Subsistence—(1) Allowable damages.* FEMA may reimburse an Indian tribe, a Tribal Member or a Household Including Tribal Members for the reasonable cost of replacing Subsistence Resources customarily and traditionally used by the Claimant on or before May 4, 2000, but no longer available to the Claimant as a result of the Cerro Grande Fire. For each category of Subsistence Resources, the Claimant must elect to receive compensatory damages either for the increased cost of obtaining Subsistence Resources from lands not damaged by the Cerro Grande Fire or for the cost of procuring substitute resources in the cash economy. Long-term damage awards will be made in the form of lump sum cash payments to eligible Claimants.

(2) *Proof of subsistence use.* FEMA may consider evidence submitted by Claimants, Indian Tribes and other knowledgeable sources in determining

the nature and extent of a Claimant's subsistence uses.

(3) *Duration of damages.* Compensatory damages for subsistence losses will be paid for the period between May 4, 2000 and the date when Subsistence Resources can reasonably be expected to return to the level of availability that existed before the Cerro Grande Fire. FEMA may rely upon the advice of experts in making this determination.

(j) *Flood insurance.* A Claimant that owned or leased real property in the counties of Los Alamos, Rio Arriba, Sandoval or Santa Fe at the time of the Cerro Grande Fire who was not required by law to maintain flood insurance before the fire and who did not maintain flood insurance before the fire may be reimbursed by FEMA for reasonable flood insurance premiums incurred during the period beginning May 12, 2000 and ending May 12, 2002 on the owned or leased real property. Alternatively, FEMA may provide flood insurance to such Claimants directly through a group or blanket policy.

(k) *Out of pocket expenses for treatment of mental health conditions.* FEMA may reimburse an individual Claimant for reasonable out of pocket expenses incurred for treatment of a mental health condition rendered by a licensed mental health professional, which condition resulted from the Cerro Grande Fire and which could not be effectively addressed through no-cost crisis counseling services available in the community. FEMA will not reimburse for treatment rendered after December 31, 2001.

(l) *Donations.* FEMA will compensate individual or business Claimants in the counties of Los Alamos, Rio Arriba, Sandoval and Santa Fe (including those located on pueblos and Indian reservations) for the cost of merchandise, use of equipment or other non-personal services, directly or indirectly donated to survivors of the Cerro Grande Fire not later than June 19, 2000. Donations will be valued at cost. FEMA will also compensate businesses located in the counties of Los Alamos, Rio Arriba, Sandoval and Santa Fe (including those located on pueblos and Indian reservations) for discounts offered to fire survivors on goods and

services not later than June 19, 2000 provided that actual revenues earned by the business during the period May 1–June 30, 2000 did not exceed reasonable projections for the period and the shortfall between actual revenues and reasonable projections resulted from the Cerro Grande Fire. Compensation will be the difference between the Claimant's established post-fire price for the good or service actually charged to the general public and the post-fire discounted price charged to fire survivors.

(m) *Duplication of benefits.* The CGFAA allows FEMA to compensate Injured Parties only if their damages have not been paid or will not be paid by insurance or a third party.

(1) *Insurance.* Claimants who carry insurance will be required to disclose the name of the insurer(s) and the nature of the insurance and provide OCGFC with such insurance documentation as OCGFC reasonably requests.

(2) *Coordination with our Public Assistance Program.* Injured Parties eligible for disaster assistance under our Public Assistance Program are expected to apply for all available assistance. Compensation will not be awarded under the CGFAA for:

(i) Emergency costs that are eligible for reimbursement under the Public Assistance Program; or

(ii) Losses that are eligible for repair, restoration or replacement under the Public Assistance Program; or

(iii) Costs or charges determined excessive under the Public Assistance Program.

(3) *Benefits provided by non-governmental organizations and individuals.* Unless otherwise provided by these regulations, disaster relief payments made to a Claimant by a non-governmental organization or an individual, other than wages paid by the Claimant's employer or insurance payments, will be disregarded in evaluating claims and need not be disclosed to OCGFC by Claimants.

(4) *Benefits provided by our Individual Assistance program.* Compensation under the CGFAA will not be awarded

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for losses or costs that have been reimbursed under the Individual and Family Grant Program or any other FEMA Individual Assistance Program.

(5) *Worker’s compensation claims.* Individuals who have suffered injuries that are compensable under State or Federal worker’s compensation laws must apply for all benefits available under such laws.

**Subpart D—Claims Evaluation**

**§ 295.30 Establishing losses and damages.**

(a) *Burden of proof.* The burden of proving Losses and damages rests with the Claimant. A Claimant may submit for the Administrative Record a statement explaining why the Claimant believes that the Losses and damages are compensable and any documentary evidence supporting the claim. Claimants will provide documentation, which is reasonably available, to corroborate the nature, extent and value of their losses and/or to execute affidavits in a form established by OCGFC. FEMA may compensate a Claimant for a Loss in the absence of supporting documentation, in its discretion, on the strength of an affidavit or Proof of Loss executed by the Claimant, if documentary evidence substantiating the loss is not reasonably available. FEMA may request that a business Claimant execute an affidavit, which states that the Claimant will provide documentary evidence, including but not limited to income tax returns, if requested by our DHS Office of the Inspector General or the Government Accountability Office during an audit of the claim.

(b) *Proof of Loss.* All Claimants are required to attest to the nature and extent of each Loss for which compensation is sought in the Proof of Loss. The Proof of Loss, which will be in a form specified by OCGFC, must be signed by the Claimant or the Claimant’s legal representative if the Claimant is a not an individual or is an individual who lacks the legal capacity to execute the Proof of Loss. The Proof of Loss must be signed under penalty of perjury and subject to the provisions of 18 U.S.C.1001, which establishes penalties for false statements. Non-subrogation Claimants who filed a Notice of Loss

before January 1, 2001 should submit a signed Proof of Loss to OCGFC not later than June 19, 2001. Non-subrogation Claimants who file a Notice of Loss on or after January 1, 2001 should submit a signed Proof of Loss to OCGFC not later than 150 days after the date when the Notice of Loss was submitted. These deadlines may be extended at the discretion of the Director of OCGFC for good cause. If a non-subrogation Claimant fails to submit a signed Proof of Loss within the timeframes set forth in this section and does not obtain an extension from the Director of OCGFC, OCGFC may administratively close the claim and require the Claimant to repay any partial payments made on the claim. Subrogation Claimants will submit the Proof of Loss contemporaneously with filing the Notice of Loss.

(c) *Release and Certification Form.* All Claimants who receive compensation under the CGFAA are required to sign a Release and Certification Form. The Release and Certification Form must be executed by the Claimant or the Claimant’s legal representative if the Claimant is an entity or lacks the legal capacity to execute the Release and Certification Form. The Release and Certification Form must be received by OCGFC within 120 days of the date when the Authorized Official’s Determination is rendered under § 295.32, or if subsequent proceedings occur under Subpart E of these regulations, not later than 60 days after the date when further review of the decision (if available) is precluded. The United States will not attempt to recover compensatory damages paid to a Claimant who has executed and returned a Release and Certification Form within the periods provided above, except in the case of fraud or misrepresentation by the Claimant or the Claimant’s representative, failure of the Claimant to cooperate with an audit as required by § 295.35 or a material mistake by FEMA.

**§ 295.31 Reimbursement of claim expenses.**

(a) FEMA will reimburse Claimants for the reasonable costs they incur in copying documentation requested by OCGFC. FEMA will also reimburse Claimants for the reasonable costs

they incur in providing appraisals, or other third-party opinions, requested by OCGFC. FEMA will not reimburse Claimant for the cost of appraisals, or other third party opinions, not requested by OCGFC.

(b) FEMA will provide a lump sum payment for incidental expenses incurred in claims preparation to individual and business Claimants that are awarded compensatory damages under the CGFAA after a properly executed Release and Certification Form has been returned to OCGFC. The amount of the lump sum payment will be the greater of \$100 or 5% of CGFAA compensatory damages and insurance proceeds recovered by the Claimant for Cerro Grande Fire related losses (not including the lump sum payment or monies reimbursed under the CGFAA for the purchase of flood insurance), but will not exceed \$15,000. No more than one lump sum payment will be made to all Claimants in a Household, regardless of whether the Household filed separate or combined Notices of Loss. The following Claimants will not be eligible to receive the lump sum payment: subrogation Claimants and Claimants whose only Cerro Grande Fire related loss is for flood insurance premiums.

**§ 295.32 Determination of compensation due to claimant.**

(a) *Authorized Official's report.* After OCGFC has evaluated all elements of a claim as stated in the Proof of Loss, the Authorized Official will issue, and provide the Claimant with a copy of, the Authorized Official's Determination.

(b) *Claimant's options upon issuance of the Authorized Official's determination.* Not later than 120 days after the date that appears on the Authorized Official's Determination, the Claimant must either accept the findings by submitting a Release and Certification Form to FEMA or initiate an Administrative Appeal in accordance with § 295.41. The CGFAA requires that Claimants sign the Release and Certification Form to receive payment on their claims (except for partial payments). The Claimant will receive payment of compensation awarded by the Authorized Official after FEMA re-

ceives the completed Release and Certification Form. If the Claimant does not either submit a Release and Certification Form to FEMA or initiate an Administrative Appeal no later than 120 Days after the date that appears on the Authorized Official's Determination, he or she will be conclusively presumed to have accepted the Authorized Official's Determination. The Director of OCGFC may modify the deadlines set forth in this subsection at the request of a Claimant for good cause shown.

**§ 295.33 Supplementing claims.**

A Claimant may amend the Notice of Loss to include additional claims at any time before signing a Proof of Loss. After the Claimant has submitted a Proof of Loss and before submission of the Release and Certification Form, a Claimant may request that the Director of OCGFC consider one or more Losses not addressed in the Proof of Loss. The request must be submitted in writing to the Director of OCGFC and received not later than the deadline for filing an Administrative Appeal under § 295.32 or August 28, 2002, whichever is earlier. It must be supported by the Claimant's explanation of why the Loss was not previously reported. If good cause is found to consider the additional loss, the Director will determine whether compensation is due to the Claimant for the Loss under the Administrative Appeal procedures described in § 295.41.

**§ 295.34 Reopening a claim.**

(a) The Director of OCGFC may reopen a claim if requested to do so by the Claimant, notwithstanding the submission of the Release and Certification Form, for the limited purpose of considering issues raised by the request to reopen if:

(1) The Claimant desires mitigation compensation and the request to reopen is filed not later than August 28, 2003 in accordance with § 295.21(d) or (h); or

(2) The Claimant closed the sale of real property not later than August 28, 2002 and wishes to present a claim for reduction in the value of the real property under § 295.21(e) and the request to

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reopen is filed not later than August 28, 2002; or

(3) The Claimant has incurred Replacement Costs under § 295.21(d) in excess of those previously awarded and is not prohibited by the terms of an agreement pertaining to home replacement with OCGFC from requesting that the case be reopened; or

(4) The Director of OCGFC otherwise determines that Claimant has demonstrated good cause.

(b) The Director of OCGFC may establish a deadline by which requests to reopen under paragraphs (a)(3) or (4) of this section must be submitted. The deadline will be published as a notice in the FEDERAL REGISTER and broadly disseminated throughout the communities, pueblos and Indian reservations in Los Alamos, Rio Arriba, Sandoval, and Santa Fe Counties.

## § 295.35 Access to records.

For purpose of audit and investigation, a Claimant will grant the FEMA DHS Office of the Inspector General and the Comptroller General of the United States access to any property that is the subject of a claim and to any and all books, documents, papers, and records maintained by a Claimant or under the Claimant's control pertaining or relevant to the claim.

## § 295.36 Confidentiality of information.

Confidential information submitted by individual Claimants is protected from disclosure to the extent permitted by the Privacy Act. These protections are described in the Privacy Act Notice provided with the Notice of Loss. Other Claimants should consult with FEMA concerning the availability of confidentiality protection under exemptions to the Freedom of Information Act and other applicable laws before submitting confidential, proprietary or trade secret information.

## Subpart E—Dispute Resolution

### § 295.40 Scope.

This subpart describes a Claimant's right to bring an Administrative Appeal in response to the Authorized Official's Determination. It also describes the Claimant's right to pursue arbitra-

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tion or seek judicial review following an Administrative Appeal.

### § 295.41 Administrative appeal.

(a) *Notice of appeal.* A Claimant may request that the Director of OCGFC review the Authorized Official's Determination by written request to the Appeals Docket, Office of Cerro Grande Claims, P.O. Box 1480, Los Alamos, NM 87544-1480, postmarked or delivered within 120 Days after the date that appears on the Authorized Official's Determination. The Claimant will submit along with the notice of appeal a statement explaining why the Authorized Official's Determination was incorrect.

(b) *Acknowledgement of appeal.* OCGFC will acknowledge the receipt of appeals that are timely filed. Following the receipt of a timely filed appeal, the Director of OCGFC will obtain the Administrative Record from the Authorized Official and transmit a copy to the Claimant.

(c) *Supplemental filings.* The Claimant may supplement the statement of reasons and provide any additional documentary evidence supporting the appeal within 60 Days after the date when the appeal is filed. The Director of OCGFC may extend these timeframes or authorize additional filings either on his or her own initiative or in response to a request by the Claimant for good cause shown.

(d) *Admissible evidence.* The Claimant may rely upon any relevant evidence to support the appeal, regardless of whether the evidence was previously submitted to the Claims Reviewer for consideration by the Authorized Official.

(e) *Obtaining evidence.* The Director of OCGFC may request from the Claimant or from the Authorized Official any additional information that is relevant to the issues posed by the appeal in his or her discretion.

(f) *Conferences.* The Director of OCGFC may schedule a conference to gain a better understanding of the issues or to explore settlement possibilities.

(g) *Hearings.* The Director of OCGFC may exercise the discretion to convene an informal hearing to receive oral testimony from witnesses or experts. The

rules under which hearings will be conducted will be established by the Director of OCGFC. Formal rules of evidence applicable to court proceedings will not be used in hearings under this subsection. Hearings will be transcribed and the transcript will be entered in the Administrative Record.

(h) *Decision on appeal.* After the allotted time for submission of evidence has passed, the Director of OCGFC will close the Administrative Record and render a written decision on the Administrative Appeal. The Director of OCGFC's decision on the Administrative Appeal will constitute the final decision of the Administrator of FEMA under §§ 104(d)(2)(B) and 104(i)(1) of the CGFAA.

(i) *Claimant's options following appeal.* The Claimant's concurrence with the decision in the Administrative Appeal will be conclusively presumed unless the Claimant initiates arbitration in accordance with § 295.42 or seeks judicial review in accordance with § 295.43. If the Claimant concurs with the Director's determination, payment of any additional damages awarded by the Director will be made to the Claimant upon receipt of a properly executed Release and Certification Form.

**§ 295.42 Arbitration.**

(a) *Initiating arbitration.* A Claimant who is dissatisfied with the outcome of the Administrative Appeal may initiate binding arbitration by submitting a written request for arbitration to the Arbitration Administrator for Cerro Grande Claims, Alternate Dispute Resolution Office, Federal Emergency Management Agency, 500 C Street, SW., room 214, Washington, DC 20472 on a form provided by OCGFC. The written request for arbitration must be received not later than 60 days after the date that appears on the Administrative Appeal decision.

(b) *Permissible claims.* A Claimant may not arbitrate an issue unless it was raised and decided in the Administrative Appeal. Arbitration will be conducted on the evidence in the Administrative Record. Evidence not previously entered into the Administrative Record will not be considered.

(c) *Settlement and mediation alternatives.* At any time after a request for

arbitration is filed and before the time a decision is rendered, either party may request in writing that the Alternate Dispute Resolution Office stay further proceedings in the arbitration to facilitate settlement discussions. A mediator may be appointed (if requested by the parties) to facilitate settlement discussions. If both parties concur in the request, the Alternate Dispute Resolution Office will stay the arbitration and appoint a mediator at our expense. The stay may be terminated and the arbitration resumed upon written request of either party to the Alternate Dispute Resolution Office. If the dispute is settled, the Alternate Dispute Resolution Office will issue an order terminating the arbitration and provide the Claimant with a Release and Certification Form.

(d) *Selection of arbitrator.* Arbitrators will be selected from a list of qualified arbitrators who have agreed to serve provided by the Alternate Dispute Resolution Office. If the amount in dispute is \$300,000 or less, the arbitration will be decided by one arbitrator selected by the Claimant from the list. If the amount in dispute exceeds \$300,000, a panel of three arbitrators selected at random by the Alternate Dispute Resolution Office will decide the arbitration.

(e) *Conduct of arbitration.* The arbitration will be conducted in a manner determined by the arbitrator consistent with guidelines established by the Alternate Dispute Resolution Office. The Alternate Dispute Resolution Office will provide these guidelines upon request.

(f) *Hearings.* The arbitrator may convene a hearing at a location designated by the Alternate Dispute Resolution Office. Whenever possible hearings will be held in Los Alamos, New Mexico unless the parties jointly agree to a different location.

(g) *Decision.* After reviewing the evidence, the arbitrator(s) will render a decision in writing to the Alternate Dispute Resolution Office. The Alternate Dispute Resolution Office will transmit the decision to the Claimant and the Director of OCGFC. If a panel

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of three arbitrators conducts the arbitration, at least two of the three arbitrators must sign the decision. The decision will be rendered no later than 10 Days after a hearing is concluded or 60 Days after the arbitration is initiated, whichever is earlier. The Alternate Dispute Resolution Office may extend the time for a decision. The decision will establish the compensation due to the Claimant, if any, and the reasons therefore.

(h) *Action on arbitration decision.* The Alternate Dispute Resolution Office will forward the arbitration decision and a Release and Certification Form to the Claimant. A Claimant who has received or who has been awarded any compensation under the CGFAA must sign and return the Release and Certification Form, regardless of whether any additional compensation is awarded by the arbitration. Additional compensation awarded in the arbitration will be paid to the Claimant after the signed Release and Certification Form is received.

(i) *Final decision.* The decision of the arbitrator will be final and binding on all parties and will not be subject to any administrative or judicial review. The arbitrator may correct clerical, typographical or computational errors as requested by the Alternate Dispute Resolution Office.

(j) *Administration of arbitration.* The Alternate Dispute Resolution Office will serve as arbitration administrator and will conclusively resolve any procedural disputes arising in the course of the arbitration. The Alternate Dispute Resolution Office will pay the fees of the arbitrator and reimburse the arbitrator for arbitration related expenses unless the parties jointly agree otherwise.

## § 295.43 Judicial review.

As an alternative to arbitration, a Claimant dissatisfied with the outcome of an Administrative Appeal may seek judicial review of the decision by bringing a civil lawsuit against FEMA in the United States District Court for the District of New Mexico. This lawsuit must be brought within 60 Days of the date that appears on the Administrative Appeal decision. The court may only consider evidence in the Adminis-

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trative Record. The court will uphold our decision if it is supported by substantial evidence on the record considered as a whole. If the judge has awarded damages over and above those previously paid, FEMA will cause the damages to be paid to the Claimant upon receipt of the Release and Certification Form or as otherwise specified by order of the court. Claimants who have received any compensation under the CGFAA must return a Release and Certification Form as provided in § 295.30(c), regardless of whether the court awards additional compensation.

## Subpart F—Glossary

### § 295.50 Definitions.

*Administrative Appeal* means an appeal of the Authorized Official's Determination to the Director of OCGFC in accordance with the provisions of Subpart E of these regulations.

*Administrative Record* means all information submitted by the Claimant and all information collected by FEMA concerning the claim, which is used to evaluate the claim and to formulate the Authorized Official's Determination. It also means all information that is submitted by the Claimant or FEMA in an Administrative Appeal and the decision of the Administrative Appeal. It excludes the opinions, memoranda and work papers of our attorneys and drafts of documents prepared by OCGFC personnel and contractors.

*Alternate Dispute Resolution Office* means the Office established by FEMA to promote use of Alternative Dispute Resolution as a means of resolving disputes. The address of the Alternate Dispute Resolution Office is Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

*Authorized Official* means an employee of the United States who is delegated with authority by the Director of OCGFC to render binding determinations on claims and to determine compensation due to Claimants under the CGFAA.

*Authorized Official's Determination* means a report signed by an Authorized Official and mailed to the Claimant evaluating each element of the claim as stated in the Proof of Loss

and determining the compensation, if any, due to the Claimant.

*Claimant* means a person who has filed a Notice of Loss under the CGFAA.

*Claims Reviewer* means an employee of the United States or an OCGFC contractor or subcontractor who is authorized by the Director of OCGFC to review and evaluate claims submitted under the CGFAA.

*Days* means calendar days, including weekends and holidays.

*Destruction of a Home* means destruction or physical damage to a residence or the land upon which it sat, resulting from the Cerro Grande Fire.

*Discount to Net Present Value* means a reduction of an award for damages arising in the future by making allowance for the fact that such award, if properly invested would earn interest.

*Household* means a group of people, related or unrelated, who live together on a continuous basis and does not include members of an extended family who do not regularly and continuously cohabit.

*Household Including Tribal Members* means a Household that existed on May 4, 2000, which included one or more Tribal Members as continuous residents.

*Indian tribe* means an entity listed on the most recent list of federally recognized tribes published in the FEDERAL REGISTER by the Secretary of the Interior pursuant to the Federally Recognized Indian Tribe List Act, 25 U.S.C. 479a, or successor legislation.

*Injured Person* means an individual, regardless of citizenship or alien status, an Indian tribe, corporation, tribal corporation, partnership, company, association, cooperative, joint venture, limited liability company, estate, trust, county, city, State, school district, special district or other non-Federal entity that suffered Loss resulting from the Cerro Grande Fire and any entity that provided insurance to an Injured Person. The term Injured Person includes an Indian tribe with respect to any claim relating to property or natural resources held in trust for the Indian tribe by the United States. Lenders holding mortgages or security interests on property affected by the Cerro Grande fire and lien holders are

not "Injured Persons" for purposes of the CGFAA.

*Loss* means "injury or loss of property, or personal injury or death," as that phrase appears in the Federal Tort Claims Act, 28 U.S.C. 1346(b)(1), and the several categories of "property loss," "business loss" or "financial loss" set out in the §104(d) of the CGFAA.

*Mitigation Compensation Plan* means a written mitigation plan submitted by a local government with land use regulatory authority or by an Indian tribe that recommends specific mitigation measures to reduce the heightened risks of wildfire, flood or other natural hazards resulting from the Cerro Grande Fire or seeks compensation for the cost of such measures expended before August 28, 2000, or both. The Mitigation Compensation Plan may address property specific mitigation measures and community level mitigation measures.

*Notice of Loss* means a form supplied by OCGFC through which an Injured Person makes a binding, conclusive and irrevocable election to have all Losses resulting from the Cerro Grande Fire reviewed by FEMA for possible compensation under the CGFAA.

*Proof of Loss* means a statement, signed by a Claimant under penalty of perjury and subject to the provisions of 18 U.S.C.1001 that the claim is true and correct, attesting to the nature and extent of the Claimant's injuries.

*Public Assistance Program* means the FEMA program established under Subchapter IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. 5121, *et seq.*, which provides grants to States, local governments, Indian tribes and private nonprofit organizations for emergency measures and repair, restoration and replacement of damaged facilities.

*Replacement Cost* means the cost of replacing an item that is damaged or destroyed with an item that is comparable in quality and utility.

*Release and Certification Form* means a document in the manner prescribed by §104(e) of the CGFAA that all Claimants who have received or are awarded compensatory damages under the CGFAA must execute and return to OCGFC as required by §295.30(c).



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*Subsistence Resources* means food and other items obtained through hunting, fishing, firewood and other resource gathering, timbering, grazing or agricultural activities undertaken by the Claimant without financial remuneration.

*Tribal Member* means an enrolled member of an Indian Tribe.

**AUTHORITY:** Pub. L. 117–180, 136 Stat. 2114, 2168; Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.*

**SOURCE:** 88 FR 59777, Aug. 29, 2023, unless otherwise noted.

**PART 296—HERMIT’S PEAK/CALF CANYON FIRE ASSISTANCE**

**Subpart A—General**

**Subpart A—General**

- Sec.
- 296.1 Purpose.
- 296.2 Policy.
- 296.3 Information and assistance.
- 296.4 Definitions.
- 296.5 Overview of the claims process.
- 296.6–296.9 [Reserved]

**§ 296.1 Purpose.**

This part implements the Hermit’s Peak/Calf Canyon Fire Assistance Act (Act), Division G of Public Law 117–180, 136 Stat. 2114, 2168, which requires the Federal Emergency Management Agency (FEMA) to establish the Office of Hermit’s Peak/Calf Canyon Fire Claims (“Claims Office”) to receive, evaluate, process, and pay actual compensatory damages for injuries resulting from the Hermit’s Peak/Calf Canyon Fire.

**Subpart B—Bringing a Claim Under the Hermit’s Peak/Calf Canyon Fire Assistance Act**

**§ 296.2 Policy.**

It is our policy to provide for the expeditious resolution of damage claims through a process that is administered with sensitivity to the burdens placed upon claimants by the Hermit’s Peak/Calf Canyon Fire.

- 296.10 Filing a claim under the Hermit’s Peak/Calf Canyon Fire Assistance Act.
- 296.11 Deadline for notifying FEMA of injuries.
- 296.12 Election of remedies.
- 296.13 Subrogation.
- 296.14 Assignments.
- 296.15–296.19 [Reserved]

**Subpart C—Compensation Available under the Hermit’s Peak/Calf Canyon Fire Assistance Act**

**§ 296.3 Information and assistance.**

Information and assistance concerning the Act is available from the Claims Office, Federal Emergency Management Agency online at <https://www.fema.gov/hermits-peak>.

- 296.20 Prerequisite to compensation.
- 296.21 Allowable damages.
- 296.22–296.29 [Reserved]

**Subpart D—Claims Evaluation**

**§ 296.4 Definitions.**

*Administrative Appeal* means an appeal of the Authorized Official’s Determination to the Director of the Claims Office in accordance with the provisions of Subpart E of this part.

- 296.30 Establishing injuries and damages.
- 296.31 Reimbursement of claim expenses.
- 296.32 Determination of compensation due to claimant.
- 296.33 Partial payments.
- 296.34 Supplementing claims.
- 296.35 Reopening a claim.
- 296.36 Access to records.
- 296.37 Confidentiality of information.
- 296.38–296.39 [Reserved]

*Administrative Record* means all information submitted by the claimant and all information collected by FEMA concerning the claim, which is used to evaluate the claim and to formulate the Authorized Official’s Determination. It also means all information that is submitted by the claimant or FEMA in an Administrative Appeal and the decision of the Administrative Appeal. It excludes the opinions, memoranda and work papers of FEMA attorneys and drafts of documents prepared by Claims Office personnel and contractors.

**Subpart E—Dispute Resolution**

- 296.40 Scope.
- 296.41 Administrative appeal.
- 296.42 Arbitration.
- 296.43 Judicial review.

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*Administrator* means the Administrator of the Federal Emergency Management Agency.

*Arbitration Administrator* means the FEMA official responsible for administering arbitration procedures to resolve disputes regarding a claim. Contact information for the Arbitration Administrator can be found online at <https://www.fema.gov/hermits-peak>.

*Authorized Official* means an employee of the United States who is delegated with authority by the Director of the Claims Office to render binding determinations on claims and to determine compensation due to claimants under the Act.

*Authorized Official's Determination* means a report signed by an Authorized Official and mailed to the claimant evaluating each element of the claim as stated in the Proof of Loss and determining the compensation, if any, due to the claimant.

*Claimant* means a person who has filed a Notice of Loss under the Act.

*Claims Office* means the Office of Hermit's Peak/Calf Canyon Fire Claims.

*Claims Reviewer* means an employee of the United States or a Claims Office contractor or subcontractor who is authorized by the Director of the Claims Office to review and evaluate claims submitted under the Act.

*Days* means calendar days, including weekends and holidays.

*Director* means an Independent Claims Manager appointed by the Administrator who will serve as the Director of the Claims Office.

*Good Cause*, for purposes of extending the deadline for filing, supplementing a claim, or reopening a claim includes, but is not limited to: instances where a claimant, through no fault of their own, may not be able to access needed documentation in time to submit a claim or transmit relevant information or data; or where damage is found after a claim has been submitted; or other instances in which the Director of the Claims Office, in their discretion, determines that an undue hardship or change in circumstances on the claimant warrants an extension of a deadline or the supplementation or reopening of existing claims.

*Hermit's Peak/Calf Canyon Fire* means:

(1) The fire resulting from the initiation by the U.S. Forest Service of a prescribed burn in the Santa Fe National Forest in San Miguel County, New Mexico on April 6, 2022;

(2) The pile burn holdover resulting from the prescribed burn by the U.S. Forest Services which reemerged on April 19, 2022; and

(3) The merger of the two fires described in paragraphs (1) and (2) of this definition, reported as the Hermit's Peak Fire or the Hermit's Peak Fire/Calf Canyon Fire.

*Household* means a group of people, related or unrelated, who live together on a continuous basis and does not include members of an extended family who do not regularly and continuously cohabit.

*Household Including Tribal Members* means a Household that existed on April 6, 2022, which included one or more Tribal Members as continuous residents.

*Indian Tribe* means the recognized governing body of any Indian or Alaska Native Tribe, band, nation, pueblo, village, community, component band, or components reservation individually identified (including parenthetically) in the list published most recently as of September 30, 2022, pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994.

*Individual Assistance* means the FEMA program established under subchapter IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. 5121, *et seq.*, which provides assistance to individuals and families adversely affected by a major disaster or an emergency.

*Injured Person* means an individual, regardless of citizenship or alien status; or an Indian Tribe, Tribal corporation, corporation, partnership, company, association, county, township, city, State, school district, or other non-Federal entity that suffered injury resulting from the Hermit's Peak/Calf Canyon Fire. The term Injured Person includes an Indian Tribe with respect to any claim relating to property or natural resources held in trust for the Indian Tribe by the United States. Lenders holding mortgages or security interests on property affected by the Hermit's Peak/Calf Canyon Fire and

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lien holders are not an “Injured Person” for purposes of the Act.

*Injury* means “injury or loss of property, or personal injury or death,” as used in the Federal Tort Claims Act, 28 U.S.C. 1346(b)(1).

*Notice of Loss* means a form supplied by the Claims Office through which an Injured Person or Subrogee makes a claim for possible compensation under the Act.

*Proof of Loss* means a statement attesting to the nature and extent of the claimant’s injuries.

*Public Assistance Program* means the FEMA program established under Subchapter IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. 5121, *et seq.*, which provides grants to States, local governments, Indian Tribes and private nonprofit organizations for emergency measures and repair, restoration, and replacement of damaged facilities.

*Release and Certification Form* means a document in the manner prescribed by section 104(e) of the Act that all claimants who have received or are awarded compensatory damages under the Act must execute and return to the Claims Office as required by § 296.30(c).

*Subrogee* means an insurer or other third party that has paid to a claimant compensation for Injury and is subrogated to any right that the claimant has to receive payment under the Act.

*Subsistence Resources* means food and other items obtained through hunting, fishing, firewood and other natural resource gathering, timbering, grazing or agricultural activities undertaken by the claimant without financial remuneration, on land damaged by the Hermit’s Peak/Calf Canyon Fire.

*Tribal Member* means an enrolled member of an Indian Tribe.

### § 296.5 Overview of the claims process.

(a) The Act is intended to provide persons who suffered Injury from the Hermit’s Peak/Calf Canyon Fire with a simple, expedited process to seek compensation from the United States. This section provides a brief explanation of the claims process for claims other than subrogation claims. It is not intended to supersede the more specific regulations that follow and explain the

claims process in greater detail. To obtain compensation under the Act, an Injured Person must submit all Hermit’s Peak/Calf Canyon Fire related claims against the United States or any employee, officer, or agency of the United States to the FEMA Claims Office. An Injured Person who elects to accept an award under the Act is barred from accepting an award pursuant to a claim under the Federal Tort Claims Act or a civil action against the United States or any employee, officer, or agency of the United States arising out of or relating to the same subject matter. Judicial review of FEMA decisions under the Act is available.

(b) The first step in the process is to file a Notice of Loss with the Claims Office. The Claims Office will provide the claimant with a written acknowledgment that the claim has been filed and a claim number.

(c) Shortly thereafter, a Claims Reviewer will contact the claimant to review the claim. Claims Reviewer will help the claimant formulate a strategy for obtaining any necessary documentation or other support. This assistance does not relieve the claimant of their responsibility for establishing all elements of the injuries and the compensatory damages that are sought, including that the Hermit’s Peak/Calf Canyon Fire caused the injuries. After the claimant has had an opportunity to discuss the claim with the Claims Reviewer, a Proof of Loss will be presented to the claimant for signature. After any necessary documentation has been obtained and the claim has been fully evaluated, the Claims Reviewer will submit a report to the Authorized Official. The Claims Reviewer is responsible for providing an objective evaluation of the claim to the Authorized Official.

(d) The Authorized Official will review the report and determine whether compensation is due to the claimant. The claimant will be notified in writing of the Authorized Official’s determination. If the claimant is satisfied with the decision, payment will be made after the claimant returns a completed Release and Certification Form. If the claimant is dissatisfied with the Authorized Official’s determination, an administrative appeal may be filed

with the Director of the Claims Office. If the claimant remains dissatisfied after the appeal is decided, the dispute may be resolved through binding arbitration or heard in the United States District Court for the District of New Mexico.

§§ 296.6–296.9 [Reserved]

**Subpart B—Bringing a Claim Under the Hermit’s Peak/Calf Canyon Fire Assistance Act**

**§ 296.10 Filing a claim under the Hermit’s Peak/Calf Canyon Fire Assistance Act.**

(a) Any Injured Person may bring a claim under the Act by filing a Notice of Loss. A claim submitted on any form other than a Notice of Loss will not be accepted. The claimant must provide a brief description of each injury on the Notice of Loss.

(b) A single Notice of Loss may be submitted on behalf of a household containing Injured Persons provided that all Injured Persons on whose behalf the claim is presented are identified.

(c) The Notice of Loss must be signed by each claimant, if the claimant is an individual, or by a duly authorized legal representative of each claimant, if the claimant is an entity or an individual who lacks the legal capacity to sign the Notice of Loss. If one is signing a Notice of Loss as the legal representative of a claimant, the signer must disclose their relationship to the claimant. FEMA may require a legal representative to submit evidence of their authority to act.

(d) The Claims Office will provide Notice of Loss forms through the mail, electronically, in person at the Claims Office or by telephone request. The Notice of Loss form can also be downloaded from the internet at <https://www.fema.gov/hermits-peak>.

(e) A Notice of Loss may be filed with the Claims Office by mail, electronically, or in person. Details regarding the filing process can be found at <https://www.fema.gov/hermits-peak>.

(f) A Notice of Loss that is completed and properly signed is deemed to be filed on the date it is received and acknowledged by the Claims Office.

**§ 296.11 Deadline for notifying FEMA of injuries.**

The deadline for filing a Notice of Loss is November 14, 2024. Except as provided in § 296.35 with respect to a request to reopen a claim, an injury that has not been described: on a Notice of Loss, on a supplement to a Notice of Loss or a request to supplement a Notice of Loss under § 296.34 received by the Claims Office on or before November 14, 2024 cannot be compensated under the Act. The Act establishes this deadline and does not provide any extensions of the filing deadline.

**§ 296.12 Election of remedies.**

(a) An Injured Person who accepts a final award under the Act waives the right to pursue all claims for injuries arising out of or relating to the same subject matter against the United States or any employee, officer, or agency of the United States through the Federal Tort Claims Act or a civil action authorized by any other provision of law.

(b) An Injured Person who accepts a final award through a Federal Tort Claims Act claim or a civil action against the United States or any employee, officer, or agency of the United States relating to the Hermit’s Peak/Calf Canyon Fire waives the right to pursue any claim arising out of or relating to the same subject matter under the Act.

**§ 296.13 Subrogation.**

An insurer or other third party with the rights of a subrogee, who has compensated an injured person for Hermit’s Peak/Calf Canyon Fire related injuries, may file a Notice of Loss under the Act for the subrogated claim. A subrogee may file a Notice of Loss without regard to whether the Injured Person who received payment from the subrogee filed a Notice of Loss. A Subrogation Notice of Loss should be filed after the subrogee has made all payments that it believes the Injured Person is entitled to receive for Hermit’s Peak/Calf Canyon Fire related injuries under the terms of the insurance policy or other agreement between the subrogee and the Injured Person, but not later than November 14, 2024. By

**§ 296.14**

filing a Notice of Loss for any subrogated claim, the subrogee elects the Act as its exclusive remedy against the United States or any employee, officer, or agency of the United States for all subrogated claims arising out of the Hermit’s Peak/Calf Canyon Fire. Subrogation claims must be made on a Notice of Loss form furnished by the Claims Office and such claims will be paid only after paying claims submitted by injured persons that are not insurance companies seeking payment as subrogees.

**§ 296.14 Assignments.**

Assignment of claims and the right to receive compensation for claims under the Act is prohibited and will not be recognized by FEMA.

**§§ 296.15–296.19 [Reserved]**

**Subpart C—Compensation Available Under the Hermit’s Peak/Calf Canyon Fire Assistance Act**

**§ 296.20 Prerequisite to compensation.**

In order to receive compensation under the Act, a claimant must be an Injured Person who suffered an injury as a result of the Hermit’s Peak/Calf Canyon Fire and sustained damages.

**§ 296.21 Allowable damages.**

(a) *Allowable damages.* The Act provides for the payment of actual compensatory damages for injury or loss of property, business loss, and financial loss. The laws of the State of New Mexico will apply to the calculation of damages. Damages must be reasonable in amount.

(b) *Exclusions.* Punitive damages, statutory damages under section 30–32–4 of the New Mexico Statutes Annotated (2019), interest on claims, attorney’s fees and agents’ fees incurred in prosecuting a claim under the Act or an insurance policy, and adjusting costs incurred by an insurer or other third party with the rights of a subrogee that may be owed by a claimant as a consequence of receiving an award are not recoverable from FEMA. The cost to a claimant of prosecuting a claim under the Act does not constitute compensatory damages and is

not recoverable from FEMA, except as provided in § 296.31(b).

(c) *Loss of property.* Compensatory damages may be awarded for an uninsured or underinsured property loss, a decrease in the value of real property, damage to physical infrastructure, cost resulting from lost subsistence, cost of reforestation or revegetation not covered by any other Federal program, and any other loss that the Administrator determines to be appropriate for inclusion as a loss of property.

(1) *Real property and contents.* Compensatory damages for the damage or destruction of real property and its contents may include the reasonable cost of reconstruction of a structure comparable in design, construction materials, size, and improvements, taking into account post-fire construction costs in the community in which the structure existed before the fire and current building codes and standards. Compensatory damages may also include the cost of removing debris and burned trees, including hazardous materials or soils, stabilizing the land, replacing contents, and compensation for any decrease in the value of land on which the structure sat pursuant to paragraph (c)(3) of this section.

(2) *Reforestation and revegetation.* Compensatory damages may be awarded for the cost of replacement of destroyed trees and landscaping.

(3) *Decrease in the value of real property.* Compensatory damages may be awarded for a decrease in the value of real property that a claimant owned before the Hermit’s Peak/Calf Canyon Fire if:

(i) The claimant sells the real property in a good faith, arm’s length transaction that is closed no later than November 14, 2024 and realizes a loss in the pre-fire value; or

(ii) The claimant can establish that the value of the real property was significantly diminished long-term as a result of the Hermit’s Peak/Calf Canyon Fire.

(4) *Subsistence.* Compensatory damages will be awarded for lost Subsistence Resources.

(i) FEMA may reimburse an injured party for the reasonable cost of replacing Subsistence Resources customarily and traditionally used by the claimant

on or before April 6, 2022, but no longer available to the claimant as a result of the Hermit's Peak/Calf Canyon Fire. For each category of Subsistence Resources, the claimant must elect to receive compensatory damages either for the increased cost of obtaining Subsistence Resources from lands not damaged by the Hermit's Peak/Calf Canyon Fire or for the cost of procuring substitute resources in the cash economy.

(ii) FEMA may consider evidence submitted by claimants, Indian Tribes, and other knowledgeable sources in determining the nature and extent of a claimant's subsistence uses.

(iii) Compensatory damages for subsistence losses will be paid for the period between April 6, 2022 and the date when Subsistence Resources can reasonably be expected to return to the level of availability that existed before the Hermit's Peak/Calf Canyon Fire. FEMA may rely upon the advice of experts in making this determination.

(iv) Long-term damage awards for subsistence resources will be made to claimants in the form of lump sum cash payments.

(5) *Physical infrastructure.* Compensatory damages may be awarded for the damage to physical infrastructure, including damages to irrigation infrastructure such as acequia systems.

(d) *Business loss.* Compensatory damages may be awarded for damage to tangible assets or inventory, including timber, crops, and other natural resources; business interruption losses; overhead costs; employee wages for work not performed; loss of business net income; and any other loss that the Administrator determines to be appropriate for inclusion as a business loss.

(e) *Financial loss.* Compensatory damages may be awarded for increased mortgage interest costs, insurance deductibles, temporary living or relocation expenses, lost wages or personal income, emergency staffing expenses, debris removal and other cleanup costs, costs of reasonable heightened risk reduction, premiums for flood insurance, and any other loss that the Administrator determines to be appropriate for inclusion as financial loss.

(1) *Recovery loans.* FEMA will reimburse claimants awarded compensation under the Act for interest paid on

loans, including Small Business Administration disaster loans obtained after April 6, 2022 for damages resulting from the Fire. Interest will be reimbursed for the period beginning on the date that the loan was taken out and ending on the date when the claimant receives a compensation award (other than a partial payment). Claimants are required to use the proceeds of their compensation award to repay Small Business Administration disaster loans. FEMA will cooperate with the Small Business Administration to formulate procedures for assuring that claimants repay Small Business Administration disaster loans contemporaneously with the receipt of their compensation award.

(2) *Flood insurance.* FEMA will reimburse claimants for flood insurance premiums to be paid on or before May 31, 2024 if, as a result of the Hermit's Peak/Calf Canyon Fire, a claimant who was not required to purchase flood insurance before the Hermit's Peak/Calf Canyon Fire is required to purchase flood insurance or the claimant did not maintain flood insurance before the Fire but purchased flood insurance after the Fire due to fear of heightened flood risk. Alternatively, FEMA may provide flood insurance to such claimants directly through a group or blanket policy.

(3) *Out of pocket expenses for treatment of mental health conditions.* FEMA may reimburse an individual claimant for reasonable out of pocket expenses incurred for treatment of a mental health condition rendered by a licensed mental health professional, which condition resulted from or was worsened by the Hermit's Peak/Calf Canyon Fire. FEMA will not reimburse for treatment identified after November 14, 2024.

(4) *Donations.* FEMA will compensate claimants for the cost of merchandise, use of equipment or other non-personal services, directly or indirectly donated to survivors of the Hermit's Peak/Calf Canyon Fire not later than November 14, 2022. Donations will be valued at cost.

(5) *Heightened risk reduction.* FEMA will reimburse claimants for the costs incurred to implement reasonable measures necessary to reduce risks

from natural hazards heightened by the Hermit’s Peak/Calf Canyon Fire to the level of risk prevailing before the Hermit’s Peak/Calf Canyon Fire. Such measures may include, for example, risk reduction projects that reduce an increased risk from flooding, mudslides, and landslides in and around burn scars. Claimants seeking compensation for heightened risk reduction must include the claim in their Notice of Loss by November 14, 2024 or an amended Notice of Loss filed no later than November 14, 2025. Claimants should take into account current building codes and standards and must complete the risk reduction project for which they receive compensation.

(f) *Insurance and other benefits.* The Act allows FEMA to compensate Injured Persons only for damages not paid, and that will not be paid, by insurance or other third-party payments or settlements.

(1) *Insurance.* Claimants who carry insurance will be required to disclose the name of the insurer(s) and the nature of the insurance and provide the Claims Office with such insurance documentation as the Claims Office reasonably requests.

(2) *Coordination with FEMA’s Public Assistance Program.* Injured Persons eligible for disaster assistance under FEMA’s Public Assistance Program are expected to apply for all available assistance. Pursuant to the Act, the Federal share of the costs for Public Assistance projects is 100 percent. Compensation will not be awarded under the Act for injuries or costs that are eligible under the Public Assistance Program.

(3) *Benefits provided by FEMA’s Individual Assistance program.* Compensation under the Act will not be awarded for injuries or costs that have been reimbursed under the Federal Assistance to Individual and Households Program or any other FEMA Individual Assistance Program.

(4) *Worker’s compensation claims.* Individuals who have suffered injuries that are compensable under State or Federal worker’s compensation laws must apply for all benefits available under such laws.

(5) *Benefits provided by non-governmental organizations and individuals.*

Gifts or donations made to a claimant by a non-governmental organization or an individual, other than wages paid by the claimant’s employer or insurance payments, will be disregarded in evaluating claims and need not be disclosed to the Claims Office by claimants.

§ 296.22–296.29 [Reserved]

**Subpart D—Claims Evaluation**

**§ 296.30 Establishing injuries and damages.**

(a) *Burden of proof.* The burden of proving injuries and damages rests with the claimant. A claimant may submit for the Administrative Record a statement explaining why the claimant believes that the injuries and damages are compensable and any documentary evidence supporting the claim. Claimants will provide documentation, which is reasonably available, including photographs and video, to corroborate the nature, extent, and value of their injuries and/or to execute affidavits in a form established by the Claims Office. FEMA may compensate a claimant for an injury in the absence of supporting documentation, in its discretion, on the strength of an affidavit or Proof of Loss executed by the claimant, if documentary evidence substantiating the injury is not reasonably available. FEMA may also require an inspection of real property. FEMA may request that a business claimant execute an affidavit, which states that the claimant will provide documentary evidence, including but not limited to income tax returns, if requested by the DHS Office of the Inspector General or the Government Accountability Office during an audit of the claim.

(b) *Proof of Loss.* All claimants are required to attest to the nature and extent of each injury for which compensation is sought in the Proof of Loss. The Proof of Loss, which will be in a form specified by the Claims Office, must be signed by the claimant or the claimant’s legal representative if the claimant is not an individual or is an individual who lacks the legal capacity to execute the Proof of Loss. The Proof of Loss must be signed under penalty of perjury. Non-subrogation claimants should submit a signed Proof

of Loss to the Claims Office not later than 150 days after the date when the Notice of Loss was submitted. This deadline may be extended at the discretion of the Director of the Claims Office for good cause. If a non-subrogation claimant fails to submit a signed Proof of Loss within the timeframes set forth in this section and does not obtain an extension from the Director of the Claims Office, the Claims Office may administratively close the claim and require the claimant to repay any partial payments made on the claim. Subrogation claimants will submit the Proof of Loss contemporaneously with filing the Notice of Loss.

(c) *Release and Certification Form.* All claimants who receive compensation under the Act are required to sign a Release and Certification Form, including for partial payments under § 296.33. The Release and Certification Form must be executed by the claimant or the claimant's legal representative if the claimant is an entity or lacks the legal capacity to execute the Release and Certification Form. A Release and Certification Form must be received by the Claims Office before the Claims Office provides payment on the claim. The United States will not attempt to recover compensatory damages paid to a claimant who has executed and returned a Release and Certification Form within the periods provided above, except in the case of fraud or misrepresentation by the claimant or the claimant's representative, failure of the claimant to cooperate with an audit as required by § 296.36 or a material mistake by FEMA.

(d) *Authority to settle or compromise claims.* Notwithstanding any other provision of this part, the Director of the Claims Office may extend an offer to settle or compromise a claim or any portion of a claim at any time during the process outlined in this part, which if accepted by the claimant will be binding on the claimant and on the United States, except that the United States may recover funds improperly paid to a claimant due to fraud or misrepresentation on the part of the claimant or the claimant's representative, a material mistake on FEMA's part or the claimant's failure to co-

operate in an audit as required by § 296.36.

**§ 296.31 Reimbursement of claim expenses.**

(a) FEMA will reimburse claimants for the reasonable costs they incur in providing documentation requested by the Claims Office. FEMA will also reimburse claimants for the reasonable costs they incur in providing appraisals, or other third-party opinions that the Claims Office deems necessary to determine the amount of the claim. FEMA will not reimburse claimants for the cost of appraisals or other third-party opinions not deemed necessary by the Claims Office.

(b) FEMA will provide a lump sum payment for incidental expenses incurred in claims preparation to claimants that are awarded compensatory damages under the Act after a properly executed Release and Certification Form has been returned to the Claims Office. The amount of the lump sum payment will be the greater of \$150 or 5% of the Act's compensatory damages and insurance proceeds recovered by the claimant for Hermit's Peak/Calf Canyon Fire related injuries (not including the lump sum payment or monies reimbursed under the Act for the purchase of flood insurance) but will not exceed \$25,000. Subrogation claimants and claimants whose only Hermit's Peak/Calf Canyon Fire related loss is for flood insurance premiums will not be eligible.

**§ 296.32 Determination of compensation due to claimant.**

(a) *Authorized Official's report.* After the Claims Office has evaluated all elements of a claim as stated in the Proof of Loss, the Authorized Official will issue, and provide the claimant with a copy of, the Authorized Official's determination.

(b) *Claimant's options upon issuance of the Authorized Official's determination.* Not later than 120 days after the date that appears on the Authorized Official's determination, the claimant must either accept the determination by submitting a Release and Certification Form to FEMA and/or initiate an Administrative Appeal in accordance with § 296.41. Claimants must sign



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the Release and Certification Form to receive payment on their claims (including for partial payments). The claimant will receive payment of compensation awarded by the Authorized Official after FEMA receives the completed Release and Certification Form. If the claimant does not either submit a Release and Certification Form to FEMA or initiate an Administrative Appeal no later than 120 days after the date that appears on the Authorized Official's determination, the claimant will be conclusively presumed to have accepted the Authorized Official's determination. The Director of the Claims Office may modify the deadlines set forth in this subsection at the request of a claimant for good cause shown.

### § 296.33 Partial payments.

The Claims Office at the request of a claimant may make one or more partial payments on any aspect of a claim that is severable. Receipt by a claimant of a partial payment is contingent on the claimant signing a Release and Certification Form for the severable part of the claim for which partial payment is being made. Acceptance of a partial payment in no way affects a claimant's ability to pursue an Administrative Appeal of the Authorized Official's determination or to pursue other rights afforded by the Act with respect to any portion of a claim for which a Release and Certification Form has not been executed. The Claims Office decision on whether to provide a partial payment cannot be appealed.

### § 296.34 Supplementing claims.

A claimant may amend the Notice of Loss to include additional claims at any time before signing a Proof of Loss. After the claimant has submitted a Proof of Loss and before submission of a Release and Certification Form, a claimant may request that the Director of the Claims Office consider one or more injuries not addressed in the Proof of Loss. The request must be submitted in writing to the Director of the Claims Office and received not later than the deadline for filing an Administrative Appeal under §296.32 or November 14, 2024, whichever is earlier. It must be supported by the claimant's

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explanation of why the injury was not previously reported. If good cause is found to consider the additional injury, the Director will determine whether compensation is due to the claimant for the Loss under the Administrative Appeal procedures described in §296.41.

### § 296.35 Reopening a claim.

The Director of the Claims Office may reopen a claim if requested to do so by the claimant, notwithstanding the submission of the Release and Certification Form, for the limited purpose of considering issues raised by the request to reopen if, not later than November 14, 2025, the claimant desires heightened risk reduction compensation in accordance with §296.21(e)(5) or the claimant closed the sale of real property and wishes to present a claim for decrease in the value of the real property under §296.21(c)(3). Claimants may request to reopen claims where the claimant has incurred additional losses under §296.21(c)(1) as part of a reconstruction in excess of those previously awarded or the Director of the Claims Office otherwise determines that claimant has demonstrated good cause no later than the deadline established by the Director of the Claims Office as published in the FEDERAL REGISTER and at <https://www.fema.gov/hermits-peak>.

### § 296.36 Access to records.

For purpose of audit and investigation, a claimant will grant the DHS Office of the Inspector General and the Comptroller General of the United States access to any property that is the subject of a claim and to any and all books, documents, papers, and records (including any relevant tax records) maintained by a claimant or under the claimant's control pertaining or relevant to the claim.

### § 296.37 Confidentiality of information.

Confidential information submitted by individual claimants is protected from disclosure to the extent permitted by the Privacy Act. These protections are described in the Privacy Act Notice provided with the Notice of Loss. Other claimants should consult with FEMA concerning the availability of confidentiality protection under exemptions to

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the Freedom of Information Act and other applicable laws before submitting confidential, proprietary or trade secret information.

### § 296.38–296.39 [Reserved]

#### Subpart E—Dispute Resolution

##### § 296.40 Scope.

This subpart describes a claimant's right to bring an Administrative Appeal in response to the Authorized Official's Determination. It also describes the claimant's right to pursue arbitration or seek judicial review following an Administrative Appeal.

##### § 296.41 Administrative appeal.

(a) *Notice of appeal.* A claimant may request that the Director of the Claims Office review the Authorized Official's determination by written request to the Appeals Docket, Office of Hermit's Peak/Calf Canyon Claims, postmarked or delivered within 120 days after the date that appears on the Authorized Official's determination pursuant to § 296.32. The claimant will submit along with the notice of appeal a statement explaining why the Authorized Official's determination was incorrect. Information regarding where to file can be found at <http://www.fema.gov/hermits-peak>.

(b) *Acknowledgement of appeal.* The Claims Office will acknowledge receipt of an appeal. Following the receipt of a timely filed appeal, the Director of the Claims Office will obtain the Administrative Record from the Authorized Official and transmit a copy to the claimant.

(c) *Supplemental filings.* The claimant may supplement their statement accompanying the appeal and provide any additional documentary evidence supporting the appeal within 60 days after the date when the appeal is filed. The Director of the Claims Office may extend these timeframes or authorize additional filings either on their own initiative or in response to a request by the claimant for good cause shown.

(d) *Admissible evidence.* The claimant may rely upon any relevant evidence to support the appeal, regardless of whether the evidence was previously submitted to the Claims Reviewer for

consideration by the Authorized Official.

(e) *Obtaining evidence.* The Director of the Claims Office may request from the claimant or from the Authorized Official any additional information that is relevant to the issues posed by the appeal in their discretion.

(f) *Conferences.* The Director of the Claims Office may schedule a conference to gain a better understanding of the issues or to explore settlement or compromise possibilities. The claimant may also request a conference. Conferences will generally be conducted virtually. In limited circumstances, the Director may convene an in-person conference at a location in New Mexico designated by the Director. A claimant may request that the Director of the Claims Office appoint a mediator at FEMA's expense to facilitate such conferences.

(g) *Hearings.* The Director of the Claims Office may exercise the discretion to convene an informal hearing to receive oral testimony from witnesses or experts. The rules under which hearings will be conducted will be established by the Director of the Claims Office and provided to the claimant. Formal rules of evidence applicable to court proceedings will not be used in hearings under this subsection. Hearings will generally be conducted virtually, be transcribed, and the transcript will be entered in the Administrative Record. In limited circumstances, the Director may convene an in-person hearing at a location in New Mexico designated by the Director.

(h) *Decision on appeal.* After the allotted time for submission of evidence has passed, the Director of the Claims Office will close the Administrative Record and render a written decision on the Administrative Appeal. The Director of the Claims Office's decision on the Administrative Appeal will constitute the final decision of the Administrator of FEMA under sections 104(d)(2)(B) and 104(i)(1) of the Act.

(i) *Claimant's options following appeal.* The claimant's concurrence with the decision in the Administrative Appeal will be conclusively presumed unless the claimant initiates arbitration in

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accordance with § 296.42 or seeks judicial review in accordance with § 296.43. If the claimant concurs with the Director's determination, payment of any additional damages awarded by the Director will be made to the claimant upon receipt of a properly executed Release and Certification Form.

### § 296.42 Arbitration.

(a) *Initiating arbitration.* A claimant who is dissatisfied with the outcome of the Administrative Appeal may elect to submit the dispute to a binding arbitration process. A claimant may initiate arbitration by submitting a written request to the Arbitration Administrator for Hermit's Peak/Calf Canyon Claims. Additional information regarding how to submit a written arbitration request can be found at <http://www.fema.gov/hermits-peak>. The written request for arbitration must be electronically stamped or postmarked no later than 60 days after the date that appears on the Administrative Appeal decision.

(b) *Permissible claims.* A claimant may not arbitrate an issue unless it was raised and decided in the Administrative Appeal. Arbitration will be conducted on the evidence in the Administrative Record. Evidence not previously entered into the Administrative Record will not be considered.

(c) *Selection of arbitrator.* The Arbitration Administrator will maintain a list of qualified arbitrators who have agreed to serve. The arbitration will be decided by one arbitrator if the amount in dispute is \$500,000 or less and a panel of three arbitrators if the amount in dispute exceeds \$500,000. Arbitrators will be assigned by the Arbitration Administrator through a random drawing.

(d) *Conduct of arbitration.* Pursuant to guidelines from the Arbitration Administrator, which will be provided directly to claimants who have filed a request for arbitration, the arbitration process will include an arbitration hearing with consideration of the claimant's written request for arbitration, the Administrative Record, and oral testimony. Hearings will generally be conducted virtually. In limited circumstances, the arbitrator may convene an in-person hearing at a location

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in New Mexico designated by the Arbitration Administrator.

(e) *Decision.* After a hearing and reviewing the evidence, the arbitrator(s) will render a written decision and will transmit the decision to the Arbitration Administrator, the claimant, and the Director of the Claims Office. If a panel of three arbitrators conducts the arbitration, at least two of the three arbitrators must sign the decision. The arbitrator(s) should render a decision no later than 10 Days after a hearing is concluded. The Arbitration Administrator may extend the time for a decision with notice to the claimant and the Director of the Claims Office. The decision will establish the compensation due to the claimant, if any, and the reasons therefor.

(f) *Action on arbitration decision.* The Arbitration Administrator will forward the arbitration decision to the claimant and, if additional compensation is awarded to the claimant, a Release and Certification Form. Additional compensation awarded in the arbitration will be paid to the claimant after the signed Release and Certification Form is received by the Arbitration Administrator.

(g) *Final decision.* The decision of the arbitrator(s) will be final and binding on all parties and will not be subject to any administrative or judicial review. The arbitrator(s) may correct clerical, typographical or computational errors as requested by the Arbitration Administrator.

(h) *Administration of arbitration.* The Arbitration Administrator oversees arbitration procedures and will resolve any procedural disputes arising in the course of the arbitration.

(i) *Expenses.* The Arbitration Administrator will pay all fees and expenses of the arbitrator(s). The claimant is responsible for any expenses they incur, including travel costs.

### § 296.43 Judicial review.

As an alternative to arbitration, a claimant dissatisfied with the outcome of an Administrative Appeal may seek judicial review of the decision by bringing a civil lawsuit against FEMA in the United States District Court for the District of New Mexico. This lawsuit must be brought within 60 Days of

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the date that appears on the Administrative Appeal decision. Pursuant to section 104(i) of the Act, the court may only consider evidence in the Administrative Record. The court will uphold

FEMA's decision if it is supported by substantial evidence on the record considered as a whole.

**PARTS 297–299 [RESERVED]**

## SUBCHAPTER F—PREPAREDNESS

### PART 300—DISASTER PREPAREDNESS ASSISTANCE

Sec.

300.1 Definitions.

300.2 Technical assistance.

300.3 Financial assistance.

AUTHORITY: 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12148.

SOURCE: 45 FR 13464, Feb. 29, 1980, unless otherwise noted.

#### § 300.1 Definitions.

As used in this part:

(a) *The Act* means the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*

(b) *Disaster assistance plans* means those plans which identify tasks needed to deliver disaster assistance and to avoid, reduce, or mitigate natural hazards; make assignments to execute those tasks; reflect State authorities for executing disaster assignments; and provide for adequate training of personnel in their disaster or mitigation assignments.

(c) *Mitigation* means the process of systematically evaluating the nature and extent of vulnerability to the effects of natural hazards present in society and planning and carrying out actions to minimize future vulnerability to those hazards to the greatest extent practicable.

(d) *State* means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, the Federated States of Micronesia, or the Republic of the Marshall Islands.

[54 FR 2128, Jan. 19, 1989]

#### § 300.2 Technical assistance.

Requests for technical assistance under section 201(b) of the Act shall be made by the Governor or his/her designated representative to the Regional Director.

(a) The request for technical assistance shall indicate as specifically as possible the objectives, nature, and du-

ration of the requested assistance; the recipient agency or organization within the State; the State official responsible for utilizing such assistance; the manner in which such assistance is to be utilized; and any other information needed for a full understanding of the need for such requested assistance.

(b) The request for assistance requires participation by the State in the technical assistance process. As part of its request for such assistance, the State shall agree to facilitate coordination among FEMA, local governments, State agencies and the businesses and industries in need of assistance in the areas of disaster preparedness and mitigation.

[54 FR 2129, Jan. 19, 1989]

#### § 300.3 Financial assistance.

(a) The Regional Administrator may provide to States upon written request by the State Governor or an authorized representative, an annual improvement grant up to \$50,000, but not to exceed 50 percent of eligible costs, except where separate legislation requires or permits a waiver of the State's matching share, e.g., with respect to "insular areas", as that term is defined at 48 U.S.C. 1469a(d). The nonFederal share in all cases may exceed the Federal share.

(b) The improvement grant shall be product-oriented; that is, it must produce something measurable in a way that determines specific results, to substantiate compliance with the grant workplan objectives and to evidence contribution to the State's disaster capability. The following list, *which is neither exhaustive nor ranked in priority order*, offers examples of eligible products under the Disaster Preparedness Improvement Grant Program:

(1) Evaluations of natural hazards and development of the programs and actions required to mitigate such hazards;

(2) Hazard mitigation activities, including development of predisaster natural hazard mitigation plans, policies, programs and strategies for State-level multi-hazard mitigation;

(3) Updates to State disaster assistance plans, including plans for the Individual and Family Grant (IFG) Program, Public Assistance Program, Hazard Mitigation Grant Program, Disaster Application Center operations, damage assessment, etc.;

(4) Handbooks to implement State disaster assistance program activities;

(5) Exercise materials (EXPLAN, scenario, injects, etc.) to test and exercise procedures for State efforts in disaster response, including provision of individual and public assistance;

(6) Standard operating procedures for individual State agencies to execute disaster responsibilities for IFG, crisis counseling, mass care or other functional responsibilities;

(7) Training for State employees in their responsibilities under the State's disaster assistance plan;

(8) Report of formal analysis of State enabling legislation and other authorities to ensure efficient processing by the State of applications by governmental entities and individuals for Federal disaster relief;

(9) An inventory of updated inventory of State/local critical facilities (including State/local emergency operations centers) and their proximity to identified hazard areas;

(10) A tracking system of critical actions (identified in postdisaster critiques) to be executed by State or local governments to improve disaster assistance capabilities or reduce vulnerability to natural hazards.

(11) Plans or procedures for dealing with disasters not receiving supplementary Federal assistance;

(12) Damage assessment plans or procedures;

(13) Procedures for search and rescue operations; and,

(14) Disaster accounting procedures.

(c) The State shall provide quarterly financial and performance reports to the Regional Administrator. Reporting shall be by program quarter unless otherwise agreed to by the Regional Administrator.

[54 FR 2129, Jan. 19, 1989]

**PART 301 [RESERVED]**

**PART 302—CIVIL DEFENSE-STATE AND LOCAL EMERGENCY MANAGEMENT ASSISTANCE PROGRAM (EMA)**

Sec.

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AUTHORITY: 50 U.S.C. app. 2251 *et seq.*, Reorganization Plan No. 3 of 1978; E.O. 12148.

SOURCE: 48 FR 44211, Sept. 28, 1983, unless otherwise noted.

**§ 302.1 Purpose.**

(a) The regulations in this part prescribe the requirements applicable to the Emergency Management Assistance (EMA) program for Federal financial contributions to the States, and through the States to their political subdivisions, for up to one half of the necessary and essential State and local civil defense personnel and administrative expenses, under section 205 of the Federal Civil Defense Act of 1950, as amended, and set forth the conditions under which such contributions will be made.

(b) The intent of this program is to increase civil defense operational capability at the State and local levels of government by providing Federal financial assistance so that personnel and other resources can be made available for essential planning and other administrative functions and activities required in order to accomplish this objective.

**§ 302.2 Definitions.**

Except as otherwise stated or clearly apparent by context, the definitions ascribed in this section to each of the listed terms shall constitute their meaning when used in the regulations in this part. Terms not defined in this part shall have the meaning set forth in their definition, if any, in the Federal Civil Defense Act of 1950, as amended.

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(a) *Act.* The Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 *et seq.* ).

(b) *Administrative expenses.* Necessary and essential expenses, other than personnel expenses as defined in this section, of a grantee and its subgrantees incurred in the administration of their civil defense programs, as detailed in CPG 1–3, Federal Assistance Handbook, and in CPG 1–32, FEMA Financial Assistance Guidelines.

(c) *Annual submission.* The State’s annual request for participation in the contributions program authorized by section 205 of the Act. As specified in CPG 1–3, it includes staffing patterns (including job description changes), budget requirements, and any amendments to the State administrative plan, a request for funds covering the State and its subgrantees and program statements of work for the grantee and subgrantees under the Comprehensive Cooperative Agreement.

(d) *Approval.* All approvals by the Federal Emergency Management Agency (FEMA) as grantor agency required under the regulations in this part mean prior approval in writing signed by an authorized FEMA official. When failure to obtain prior approval of an action has not resulted and is not expected to result in any failure of compliance with a substantive requirement, and approval after the fact is not contrary to law (or regulation having the effect of law), written approval after the fact may be granted at the discretion of the authorized official.

(e) *CPG 1–3.* Civil Preparedness Guide entitled “Federal Assistance Handbook,” which sets forth detailed guidance on procedures that a State and, where applicable, its political subdivisions must follow in order to request financial assistance from the grantor agency. It also sets forth detailed requirements, terms, and conditions upon which financial assistance is granted under these regulations. Included are amendments by numbered changes. References to CPG 1–3 include provisions of any other volumes of the CPG series specifically referenced in CPG 1–3. Copies of the Civil Preparedness Guides and the Civil Preparedness Circulars may be ordered by FEMA Regional Offices using FEMA Form 60–8

transmitted to FEMA, P.O. Box 8181, Washington, DC, 20024. One or more copies of CPG 1–3 have been distributed to each State and to each local government participating in the program under the regulations in this part. Copies of revisions and amendments are distributed to participating governments (addressed to the Emergency Management Coordinator) upon issuance.

(f) *Comprehensive Cooperative Agreement (CCA).* Provides for each State a single vehicle for applying for and receiving financial assistance for several discrete FEMA programs and for organizing and reporting on emergency management objectives and accomplishments, particularly under the funded programs.

(g) *Emergency management.* Refers to the activities and measures undertaken by a State, or one of its political subdivisions, to manage a “civil defense program” as defined and provided for by the Federal Civil Defense Act of 1950, as amended, including without limitation Title V, added by Public Law 96–342, and section 207, added by Public Law 97–86. Title V calls for an improved civil defense program that includes:

(1) A program structure for the resources to be used for attack-related civil defense; (2) a program structure for the resources to be used for disaster-related civil defense; and (3) criteria and procedures under which those resources planned for attack-related civil defense and those planned for disaster-related civil defense can be used interchangeably. Thus, emergency management includes “civil defense” for and operations in either attack-related or disaster-related emergencies. Section 207 allows Federal Civil Defense Act funds to be used for disaster preparedness and response if such use “is consistent with, contributes to, and does not detract from attack-related civil defense preparedness.” Also 44 CFR part 312, Use of Civil Defense Personnel, Materials, and Facilities for Natural Disaster Purposes, provides terms and conditions for such use.

(h) *Administrator.* The head of the grantor agency or another official of the Agency authorized in writing by

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the Administrator to act officially on behalf of the Administrator.

(i) *Forms prescribed by the grantor agency.* Forms prescribed by the grantor agency are identified in CPG 1-3 and may be ordered by FEMA Regional Offices using FEMA Form 60-8 transmitted to FEMA, P.O. Box 8181, Washington, DC, 20024.

(j) *Grantee.* A State that has received EMA funds as a result of having a State administrative plan, a statement of work, and an annual submission, all approved by the grantor agency as meeting the requirements prescribed in this part and in CPG 1-3 for necessary and essential State and local civil defense personnel and administrative expenses for a current Federal fiscal year.

(k) *Grantor agency.* The Federal Emergency Management Agency (FEMA).

(l) *Interstate civil defense authority.* Any civil defense authority established by interstate compact pursuant to section 201(g) of the Act.

(m) *Necessary and essential civil defense expenses.* Necessary and essential civil defense expenses are those required for the proper and efficient administration of the civil defense program of a grantee or a subgrantee as described in a State administrative plan and statement of work approved by the Regional Administrator as being consistent with the national plan (i.e., program) for civil defense and as meeting other requirements for civil defense prescribed by or under provisions of the Act.

(n) *OMB Circular A-87.* "Cost Principles Applicable to Grants and Contracts with State and Local Governments," promulgated by the Office of Management and Budget, Executive Office of the President, as published in the FEDERAL REGISTER (46 FR 9548) and subsequent amendments or revisions. (See CPG 1-32, Financial Assistance Guidelines).

(o) *OMB Circular A-102.* "Uniform Administrative Requirements for Grants-in-aid to State and Local Governments," promulgated by the Office of Management and Budget, Executive Office of the President (42 FR 45828) including amendments or revisions as published in the FEDERAL REGISTER.

(See CPG 1-32, Financial Assistance Guidelines).

(p) *Emergency Operations Plan (EOP).* State or local government Emergency Operations Plans identify the available personnel, equipment, facilities, supplies, and other resources in the jurisdiction and states the method or scheme for coordinated actions to be taken by individuals and government services in the event of natural, man-made and attack-related disasters.

(q) *Personnel expenses.* Necessary and essential civil defense expenses for personnel on the approved staffing pattern of a grantee or subgrantee (including but not necessarily limited to salaries, wages, and supplementary compensation and fringe benefits) for such employees appointed in accordance with State and local government laws and regulations under a system which meets Federal merit system and other applicable Federal requirements. Such expenses must be supported by job descriptions, payrolls, time distribution records, and other documentation as detailed in CPG 1-3. Personnel compensation and other costs incurred with regard to employees who are not on the civil defense staff but whose work serves the civil defense agency (e.g., State's budget and accounting office) may be charged as civil defense expense to the extent covered therefore in a federally approved indirect cost allocation plan.

(r) *Political subdivisions.* Local governments, including but not limited to cities, towns, incorporated communities, counties or parishes, and townships.

(s) *Regional Administrator.* A FEMA official delegated authority to exercise specified functions as they apply to grantees and subgrantees, within the geographical area of a particular region as identified (including address) in 44 CFR part 2.

(t) *State.* Any of the actual States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the territories of American Samoa, Guam, and the Virgin Islands.

(u) *State administrative plan.* A one-time submission with amendments as necessary to keep it current, the plan



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is a formal description of each participating State's total civil defense program and of related State and local laws, executive directives, rules, and plans and procedures, including personnel standards administered on a merit basis, updated emergency operations plans, travel regulations, indirect cost allocation plans and other information necessary to reflect the total civil defense program throughout the State. The plan also includes without limitation documentation as to administrative and financial systems to assure compliance with uniform grant-in-aid administrative requirements for States and subgrantees as required under OMB Circular A-102 and with other requirements relevant to the eligibility of the State and its political subdivisions for participation in financial assistance programs for civil defense purposes. Detailed requirements are prescribed in CPG 1-3. (Also see § 302.3.)

(v) *Statement of work.* Formal identification of specific actions to be accomplished by a State and its political subdivisions during the fiscal year for which Federal funds are being requested by the State. Submission is made to the FEMA Regional Administrator as part of the CCA Program Narrative.

(w) *Subgrantee.* A political subdivision of a State listed in the State's annual submission (or amendments thereto) as approved by the grantor agency (including any grantor agency-approved amendments thereto) as eligible to receive a portion of the Federal financial contribution provided for use within the State. The term includes Indian tribes when the State has assumed jurisdiction pursuant to State law and tribal regulations.

[48 FR 44211 Sept. 28, 1983, as amended at 51 FR 12520, Apr. 11, 1986; 74 FR 15354, Apr. 3, 2009]

#### § 302.3 Documentation of eligibility.

In order to remain eligible for Federal financial contributions under the regulations in this part, each State must have on file with FEMA a current State administrative plan, an emergency operations plan for civil defense, and an annual submission (including a statement of work) which have been

approved by the Regional Administrator as being consistent with the national plan (i.e., program) for civil defense and as meeting the requirements of the regulations in this part and CPG 1-3. A State may allocate a portion of its EMA funds to an Indian tribe as a subgrantee where the State has assumed jurisdiction pursuant to State law and tribal regulations.

(a) *State administrative plans.* Every State has a State administrative plan file with FEMA and is required to keep the plan current through amendments as necessary. Such plans and amendments shall be reviewed by the Regional Administrator, who will advise the State in writing as to the effect, if any, changes will have on the continued eligibility of the State and its subgrantees. The Regional Administrator shall not, however, approve any amendments that would result in failure of the plan to meet these criteria:

(1) Provides for and is, pursuant to State law, in effect in all political subdivision of the State, mandatory on them, and, unless waived by the Administrator under section 204 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4214), administered or supervised by a single State administrative agency. In demonstrating that the State administrative plan for civil defense is in effect in all political subdivisions of the State and mandatory on them, the plan shall contain references to the applicable State statutes and local ordinances, executive orders and directives, and rules and regulations at the State and local level that establish the civil defense authority, structure, plans, and procedures, including those relating to emergency operations, throughout the State.

(2) Provides assurance of non-Federal contributions at least equal to Federal funding for necessary and essential costs eligible under this program from any source consistent with State law, but not from another Federal source unless Federal law specifically authorizes the use of funds from such Federal source as part of the State's share.

(3) Provides for the development of State and local government civil defense emergency operations plans pursuant to the standards approved by the Administrator.

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(4) Provides for the employment by the State of full-time civil defense director or deputy director.

(5) Provides for the establishment and maintenance of methods of personnel administration in public agencies administering or supervising the civil defense program, at both the State and local government levels, in conformity with the Standards for a Merit System of Personnel Administration (5 CFR part 900), which incorporate the Intergovernmental Personnel Act Merit Principles (Pub. L. 91-648, section 2, 84 Stat. 1908) prescribed by the Office of Personnel Management pursuant to section 208 of the Intergovernmental Personnel Act of 1970, as amended.

(6) Provides for the establishment of safeguards to prohibit State and local government employees from using their positions for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

(7) Provides that the State shall make such reports (including without limitation financial reports) in such form and content as the Administrator may require.

(8) Provides that the State and all subgrantees shall retain, in accordance with OMB Circular A-102, and make available to duly authorized representatives of the Administrator and the U.S. Comptroller General all books, records, and papers pertinent to the grant program for the purpose of making audits, examinations, excerpts, and transcripts necessary to conduct audits.

(9) Provides for establishment and maintenance of a financial management system of grant-supported activities of the State and all subgrantees which meets the federally prescribed standards promulgated in "Standards for Grantee Financial Management Systems," Attachment G of OMB Circular A-102.

(10) Provides for establishment and maintenance of procedures for monitoring and reporting grant program and project performance of the State and its subgrantees which meet the federally prescribed standards promul-

gated in Attachment I of OMB Circular A-102.

(11) Provides for the establishment and maintenance at the State level and by subgrantees of property management systems in accordance with the federally prescribed standards set forth in Attachment N of OMB Circular A-102.

(12) Provides for the establishment and maintenance at the State level and by subgrantees of systems for the procurement of supplies, equipment, construction, and other services, with the assistance of grant funds, in accordance with federally prescribed standards set forth in Attachment O of OMB Circular A-102.

(13) Provides for disbursement of the appropriate share of the Federal grant to the State's subgrantees in accordance with requirements detailed in CPG 1-3.

(14) Provides for the State's supervision and review of the civil defense plans, programs, and operations of its subgrantees to obtain conformity and compliance with Federal requirements and goals set forth or referenced in the regulations in this part and as detailed in CPG 1-3.

(15) Contains a Statement of Compliance with grantor agency regulations relating to nondiscrimination in FEMA programs (see 44 CFR part 7).

(16) Provides for timely submission to the appropriate Regional Administrator of amendments to the administrative plan as necessary to reflect the current laws, regulation, criteria, plans, methods, practices, and procedures for administration of the State's civil defense program and those of its subgrantees.

(17) Conforms to other Federal standards and requirements set forth or referenced in the regulations in this part and as detailed in CPG 1-3.

(18) Provides for performance of independent organizationwide audits by State and local governments that receive EMA funds of their financial operations, including compliance with certain provisions of Federal law and regulation.

(b) *Emergency Operations Plans (EOP's)*. (1) Each participating State shall have an EOP approved by the Regional Administrator and conforming

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with the requirements for plan content set forth in this part and in CPG 1–3, and in CPG 1–8 “Guide for the Development of State and Local Emergency Operations Plans” and in CPG 1–8A, “Guide for the Review of State and Local Emergency Operations Plans,” which plan must provide for coordinated actions to be undertaken throughout the State in the event of attack and in the event of other disasters.

(2) Each subgrantee jurisdiction shall have a local EOP which conforms with the requirements for plan content as set forth in CPG 1–3 and CPG 1–8 and CPG 1–8A, and which has been approved by the local chief executive or other authorized official and accepted by the Governor or other authorized State official as being consistent with the State’s EOP.

(c) *Annual submission.* Each State should include in its annual CCA application the amount of EMA funding requested (see §302.5(c)). In order to participate for a particular Federal fiscal year, however, each State must also, within 60 days of receipt or notice of a formal allocation made pursuant to the criteria set forth in §302.5 and in accordance with procedures and criteria specified in CPG 1–3, submit to the Regional Administrator an approvable annual submission which includes:

(1) A request or amended request for a financial contribution from FEMA in a specified amount for civil defense personnel and administrative expenses; (see §302.5 (d) through (h)).

(2) Unless previously submitted for the particular Federal fiscal year, a statement of work for the State and proposed subgrantees or amendments to a statement of work previously submitted under the CCA.

(3) Staffing patterns (including new or revised job descriptions not previously submitted) on forms prescribed by FEMA for the civil defense organizations of the State and proposed subgrantees; and

(4) Any amendments to the State administrative plan required to reflect current status.

(d) *Approval of State administrative plan and annual submission.* If the State administrative plan and the annual submission are determined to be ap-

provable, the Regional Administrator will so notify the State in writing. The State administrative plan is a one-time submission. Unless amendments are necessary to meet Federal standards prescribed in the regulations in this part or in CPG 1–3 or to reflect changes in the State’s administrative structure, procedures, criteria, or activities, or unless a portion were conditionally approved by the Regional Administrator as provided for in paragraph (e) of this section, no approval regarding the State administrative plan will be required for a State which participated for the preceding Federal fiscal year.

(e) *Agreement for contribution.* Approval pursuant to procedures and criteria described in this part and in CPG 1–3 of an annual submission of a State whose administrative plan is approved and current shall constitute agreement between FEMA and the State as grantee for its participation and that of its subgrantees in this program during the Federal fiscal year covered by the approved annual submission on the basis of the requirements and conditions prescribed in this part, in CPG 1–3, and in other federally promulgated criteria referenced in this part. Refusal or failure to comply with such requirements and conditions may result in the grant or agency cancelling, terminating, or suspending the grant, in whole or in part, and refraining from extending any further assistance to the grantee or subgrantee until satisfactory assurance of future compliance has been received.

(f) *Disapproval or conditional approval.* If a State’s administrative plan or annual submission is disapproved, the Regional Administrator will advise the State in writing, including the reasons for such disapproval and the revisions required for approval. The State shall have 30 days from date of such notification in which to submit its revisions. In the event more time is required in which to place the revisions into effect, the Regional Administrator may conditionally approve the State administrative plan or annual submission subject to the specified conditions to be met within a specified time, as agreed by the State and FEMA.

(g) *Appeals.* (1) Appeal from a Regional Administrator’s disapproval of a

State administrative plan or an annual submission or other final action as unjustified under the criteria in CPG 1-3 may be made by letter to the Deputy Administrator for the National Preparedness Directorate, signed by an authorized State official and submitted through the Regional Administrator. Such appeal letter shall be mailed or otherwise transmitted so as to reach the Regional Administrator within 30 days after receipt of the notification of disapproval. Failure to file its appeal on time may result in withdrawal of the State's allocation and the proposed funding being reallocated by the Administrator.

(2) A local jurisdiction that regards the final action on its subgrant made by a State as unjustified under the criteria in CPG 1-3 may submit an appeal through the State to the Regional Administrator. Upon receipt of such an appeal, the Regional Administrator shall forward the letter, together with all available pertinent documentation from the Regional Administrator's files and any additional documentation submitted by the local jurisdiction in support of its appeal, to the Deputy Administrator for the National Preparedness Directorate, for review and determination. The appeal shall contain all of the exceptions being taken by the State or local jurisdiction, and no exceptions will be determined piecemeal.

(3) No portion of the appellant State's allocation shall be reallocated by FEMA, and no portion of a local jurisdiction's allocation shall be reallocated by the State, pending determination of its appeal by the Administrator. The State and local jurisdiction (if applicable) will be notified in writing of the Administrator's decision, including a statement of the reasons therefor.

[48 FR 44211 Sept. 28, 1983, as amended at 51 FR 12520, Apr. 11, 1986; 74 FR 15354, Apr. 3, 2009]

**§302.4 Merit personnel systems.**

(a) *Background.* Section 208 of the Intergovernmental Personnel Act, as amended (42 U.S.C. 4728) authorizes Federal agencies to require, as a condition of participation in Federal assistance programs, systems of a personnel administration consistent with personnel standards prescribed by the Of-

fice of Personnel Management (OPM). OPM has promulgated Standards for a System of Personnel Administration (5 CFR part 900) which prescribe intergovernmental personnel standards on a merit basis as a condition of eligibility in the administration of grant programs. OPM has approved FEMA adoption of these standards by the regulations in this part.

(b) *Standard.* Participation by each grantee and each subgrantee under the program covered in this part is subject to compliance with the following conditions regarding merit personnel systems:

Methods of personnel administration will be established and maintained in public agencies administering or supervising the administration of the civil defense program in conformity with the Standards for a Merit System of Personnel Administration 5 CFR part 900, which incorporate the Intergovernmental Personnel Act Merit Principles (Pub. L. 91-648, section 2, 84 Stat. 1909) prescribed by the Office of Personnel Management pursuant to section 208 of the Intergovernmental Personnel Act of 1970 as amended.

Section 302.3(a)(5) of this part provides, in part, that State administrative plans that fail to provide for fulfilling this condition are not approvable.

**§ 302.5 Allocations and reallocations.**

(a) The Administrator shall allocate the entire amount of funds available for the purposes of this program from the appropriation for each fiscal year. The allocation made to each State represents the total amount of funds available to pay the Federal share of necessary and essential civil defense personnel and administrative expenses of the State and its participating subdivisions during the fiscal year.

(b) The first calculation for developing the allocation for each State will be a formula distribution in accordance with section 205(d) of the Act, made by applying the following percentages to the total sum of Emergency Management Assistance in the President's budget request to Congress:

(1) Fifty (50) percent will be allocated on the basis of the prior-year State allocations, in fulfillment of the statutory requirement to give due regard to "the relative state of development of

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civil defense readiness of the State” (State and local levels).

(2) Thirty-three (33) percent will be allocated on the basis of the ratio of the State’s population to the national population (50 States, District of Columbia, and Puerto Rico), in fulfillment of the statutory requirements to give due regard to “population” and to “the criticality of target and support areas and the areas which may be affected by natural disasters with respect to the development of the total civil defense readiness of the Nation.”

(3) Fifteen (15) percent will be divided equally among the 50 States, the District of Columbia, and Puerto Rico.

(4) In consonance with the statutory provision allowing the Administrator to prescribe other factors concerning the State allocations, the remaining two (2) percent will be held temporarily in reserve, to be used first to fund the four territories of the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands. Conditions peculiar to those areas make strict application of the mathematical formula in §302.5(b) inequitable. Therefore, the Administrator will consider prior-year allocations, percentage of total United States population, and the factors set out in §302.5(e) (1), (2), (4), and (5) in determining their allocations. The remaining balance of the reserve fund will then be used to restore any State which would receive less by formula share than its formula share for the previous fiscal year, provided that the reserve balance is sufficient to do this for all such States. Any remaining balance after this has been done will constitute a supplemental fund from which the Administrator will consider State requests for additional funding and the needs of any interstate civil defense authorities.

(c) For initial planning purposes only, each State will then be informed of the figure by the Regional Administrator. The State will base its initial EMA application upon that figure but may request a smaller amount or with appropriate justification a larger amount.

(d) The amount requested by the State shall not exceed 50 percent of its estimate of necessary and essential

State and local personnel and administrative expenses for the fiscal year.

(e) The formula distribution shall be reviewed and evaluated, and adjusted as appropriate, by the Administrator, based on the current situation in each State, the requests of all States, and recommendations by the Regional Administrators. The Administrator will consider the following five factors:

(1) The ability of the State and its subgrantees to effectively expend such an amount for necessary and essential civil defense personnel and administrative purposes. Past performance is a factor in this determination.

(2) Special circumstances existing in the State at the time of allocating which require unusual expenditures for civil defense.

(3) Conditions peculiar to the State which make strict application of mathematical formula inequitable either to that State or other States.

(4) The relative cost of civil defense personnel and administrative services in that State; that is, whether such costs are considerably above or below the national average for similar services and expenses.

(5) Substantial changes in the civil defense readiness of the State not reflected by its recent civil defense expenditures.

(f) In September of each year, based on applications received and recommendations by the Regional Administrators, the Administrator will make a tentative allocation to the States. This will include adjustments for States that have indicated they will not be using the total of the formula distribution amount. States can then revise their earlier plans and applications to more nearly reflect the level of funding expected to become available.

(g) A State may provide to the Regional Administrator a preliminary annual submission in an amount not to exceed its tentative allocation.

(h) By September 30 (or as soon thereafter as feasible), the Administrator will make a formal allocation based on, or subject to, appropriation by Congress and allotment of the funds. This allocation for each State may include any additional amounts from the reserve portion of the EMA funds, and shall be in accordance with

the regulations in this part and CPG 1-3.

(i) Upon the appropriation becoming available, and if requested by a State, the Regional Administrator may approve such State's preliminary annual submission (if found to meet all requirements in this part and CPG 1-3) in an appropriate amount which does not exceed the amount of the State's share of the Administrator's formal allocation of the Federal appropriation. An award document obligating Federal funds on the basis of the approved preliminary annual submission may be executed in accordance with the provisions of CPG 1-3.

(j) Based on and within 60 days after notification of its formal allocation, each State must provide to the Regional Administrator a final annual submission which meets all requirements in this part and CPG 1-3. If no changes are necessary, a State and the Regional Administrator may adopt in writing the State's preliminary annual submission as its final annual submission. If no award document was executed based on a State's preliminary annual submission, such document will be executed on the basis of that State's approved final annual submission.

(k) With regard to any State whose award document was executed pursuant to a preliminary annual submission covering only part of its formal allocation, upon approval (by the Regional Administrator) of the final annual submission (including a revised statement of work supporting the additional funding request) the Regional Administrator shall execute an amended award document obligating the balance of such State's formal allocation.

(l) After being advised of its annual formal allocation, if a State fails to submit, within 60 days, an approvable annual submission in the amount of its allocation, the Regional Administrator may reallocate the unused portion to other States in the region in such amounts as in his/her judgment will best assure adequate development of the civil defense capability of the Nation. The exception to this authority is in the event a State, or local jurisdiction, refuses to participate in attack preparedness activities. EMA funds withheld or returned for that reason

are to be released to headquarters for reallocation on a national basis. In addition, the Regional Administrator may from time to time reallocate the amounts released by a State from its allocation as no longer being required for utilization in accordance with an approved annual submission and award document.

(m) Immediate notice to the headquarters EMA Program Manager of State reallocations is required in the form of copies of EMA-approved Annual Submission amendment documents, accompanied by copies of assistance award/amendment documents signed by regional and State authorized officials of both the releasing and recipient States.

(n) There is no dollar ceiling on the amount of funds that may be reallocated among States in a region. However, at any time that there are funds surplus to the eligible needs of the States within a region, those funds should be promptly released to headquarters for reallocation to other States with unfunded additional requirements.

(o) On July 1 of each fiscal year, the authority to reallocate EMA funds shall revert to the Administrator. In addition, any excess EMA funds available on that date, or that become available during the remainder of the fiscal year, are to be promptly released to headquarters for reallocation by the Administrator.

[48 FR 44211 Sept. 28, 1983, as amended at 51 FR 12521, Apr. 11, 1986; 51 FR 43924, Dec. 5, 1986; 56 FR 29905, July 1, 1991]

**§302.6 Fiscal year limitation.**

Federal appropriations for the program covered by the regulations in this part are limited for obligation on a Federal fiscal year basis. Each annual submission (or amendment thereto) which results in a change in scope (e.g., an increase in the amount of funds other than a cost overrun) must be approved during the Federal Fiscal year for which the funds to be charged were appropriated. Valid expenses incurred by a State or its subgrantee during the fiscal year but before obligation by FEMA of funds under this program may qualify for payment of a Federal financial contribution out of the funds

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subsequently appropriated for that fiscal year.

### § 302.7 Use of funds, materials, supplies, equipment, and personnel.

Financial contributions provided under the authority of section 205 of the Act are provided for necessary and essential State and local civil defense personnel and administrative expenses as prescribed by the regulations in this part and the provisions of CPG 1-3, and are obligated only on the basis of documentation justifying such need.

(a) *Emergencies.* In addition to such civil defense use, Federal funds obligated under a grantee's approved annual submission may be used, to the extent and under such terms and conditions as prescribed by the Administrator in CPG 1-3, for providing emergency assistance, including the use of civil defense personnel, organizational equipment, materials, and facilities, in preparation for and response to actual attack-related events or natural disasters (including manmade catastrophies).

(b) *Limitations.* Section 207 of the Act allows use of funds under the Act, including those for this program, for natural (including manmade) disaster preparedness and response purposes only to the extent that such use is consistent with, contributes to, and does not detract from attack-related preparedness (reference 44 CFR part 312).

### § 302.8 Waiver of "single" State agency requirements.

Section 205 of the Act requires that plans for civil defense of the United States be administered or supervised by a single State agency (50 U.S.C. App. 2286). Notwithstanding such law, section 204 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4214) provides authority for the Administrator as head of the grantor agency, upon the State's request, to waive the single State agency requirement and to approve other State administrative structure or arrangements, upon adequate showing that the requirement prevents the establishment of the most effective and efficient organizational arrangements within the State government. First, however, the Administrator must have found that the objec-

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tives of the Act (50 U.S.C. app. 2251 *et seq.*) will not be endangered by the use of such other State structure or arrangements. Attachment D of OMB Circular A-102 requires that such requests be given expeditious handling by the grantor agency and that, whenever possible, an affirmative response be made.

[48 FR 44211 Sept. 28, 1983, as amended at 51 FR 12521, Apr. 11, 1986]

## PART 303 [RESERVED]

## PART 304—CONSOLIDATED GRANTS TO INSULAR AREAS

Sec.

- 304.1 Purpose.
- 304.2 Definitions.
- 304.3 Conditions for a consolidated grant.
- 304.4 Allocations.
- 304.5 Audits and records.

AUTHORITY: 50 U.S.C. app. 2251 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12148.

SOURCE: 43 FR 39776, Sept. 7, 1978, unless otherwise noted. Redesignated at 44 FR 56173, Sept. 28, 1979.

### § 304.1 Purpose.

The purpose of the regulations in this part is to prescribe the basis under which the Federal Emergency Management Agency (FEMA) contributes Federal funds to an insular area through a consolidated grant.

### § 304.2 Definitions.

Except as otherwise stated when used in the regulations of this part, the meaning of the listed terms are as follows:

(a) *Insular areas.* The Virgin Islands, Guam, American Samoa, and the Government of the Northern Mariana Islands.

(b) *Consolidated grant.* A grant by FEMA to any insular area through an allocation which combines funds for the State and local management program and the State and local maintenance and services program for a single Federal fiscal year.

(c) *FEMA guidance material.* FEMA regulations (44 CFR chapter I), Civil Preparedness Guide (CPG) 1-3, and Civil Preparedness Circulars (CPC) as

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presently providing or hereafter amended or revised.

[43 FR 39776, Sept. 7, 1978. Redesignated at 44 FR 56173, Sept. 28, 1979, as amended at 48 FR 44554, Sept. 29, 1983]

### § 304.3 Conditions for a consolidated grant.

(a) In order to participate, an insular area must submit a (one-time) administrative plan as provided for in FEMA guidance material (to be maintained in current status) and must sign a (one-time) civil rights assurance and a (one-time) grant agreement agreeing to comply with Federal requirements.

(b) An insular area need not submit an application for a consolidated grant, but must submit an annual program paper which meets the requirements prescribed in FEMA guidance material.

(c) Funds made available under a consolidated grant must be expended for State and local management program expenses and/or State and local maintenance and services program expenses as defined and described in FEMA guidance material. Each participating insular area will determine the proportion in which funds granted to it will be allocated between the two programs.

(d) Participating insular areas need not provide matching funds for consolidated grants.

[43 FR 39776, Sept. 7, 1978. Redesignated at 44 FR 56173, Sept. 28, 1979, as amended at 50 FR 40007, Oct. 1, 1985]

### § 304.4 Allocations.

For each Federal fiscal year concerned, the Administrator, FEMA, shall allocate to each participating insular area an amount not less than the sum of grants for the two programs which the Administrator, FEMA, has determined such insular area would otherwise be entitled to receive for such fiscal year.

### § 304.5 Audits and records.

(a) *Audits.* FEMA will maintain adequate auditing, accounting and review procedures as outlined in FEMA guidance material and 2 CFR parts 200 and 3002.

(b) *Records.* Financial records, supporting documents, statistical records, and all other records pertinent to a

consolidated grant shall be retained for a period of three years from submission of final billing and shall be available to the Administrator, FEMA, and the Comptroller General of the United States, all as prescribed in FEMA guidance material and in accordance with 2 CFR parts 200 and 3002.

[79 FR 76088, Dec. 19, 2014]

## PARTS 305–311 [RESERVED]

## PART 312—USE OF CIVIL DEFENSE PERSONNEL, MATERIALS, AND FACILITIES FOR NATURAL DISASTER PURPOSES

Sec.

- 312.1 Purpose.
- 312.2 Definitions.
- 312.3 Policy.
- 312.4 General.
- 312.5 Personnel.
- 312.6 Materials and facilities.

AUTHORITY: Sec. 803(a)(3) Pub. L. 97–86; sec. 401, Federal Civil Defense Act of 1950, as amended, 50 U.S.C. app. 2253; Reorganization Plan No. 3 of 1978; 3 CFR, 1978 Comp., p. 329; and E.O. 12148 of July 20, 1979, 44 FR 43239.

SOURCE: 47 FR 43381, Oct. 1, 1982, unless otherwise noted.

### § 312.1 Purpose.

The purpose of the regulations in this part is to prescribe the terms and conditions under which civil defense personnel, materials, and facilities, supported in whole or in part through contributions under the Federal Civil Defense Act of 1950, as amended, 50 U.S.C. App. 2251, *et seq.*, hereinafter referred to as “the Act”, may be used for natural disasters, to the extent that such usage is consistent with, contributes to, and does not detract from attack-related civil defense preparedness.

### § 312.2 Definitions.

Except as otherwise stated, when used in the regulations in this part, the meaning of the listed terms are as follows:

(a) The term *attack* means any attack or series of attacks by an enemy of the United States causing, or which may cause, substantial damage or injury to civilian property or persons in the



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United States in any manner by sabotage or by use of bombs, shellfire, or atomic-radiological, chemical, bacteriological, or biological means or other weapons or processes;

(b) The term *natural disaster* means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, or other catastrophe in any part of the United States which causes, or which may cause, substantial damage or injury to civilian property or persons and, for the purposes of the Act, any explosion, civil disturbance, or any other manmade catastrophe shall be deemed to be a natural disaster;

(c) The term *civil defense* means all those activities and measures designed or undertaken (1) to minimize the effects upon the civilian population caused, or which would be caused, by an attack upon the United States, or by natural disaster, (2) to deal with the immediate emergency conditions which would be created by any such attack, or natural disaster, and (3) to effectuate emergency repairs to, or the emergency restoration of vital utilities and facilities destroyed or damaged by any such attack or natural disaster. Such term shall include, but shall not be limited to, (i) measures to be taken in preparation for anticipated attack or natural disaster (including the establishment of appropriate organizations, operational plans, and supporting agreements; the recruitment and training of personnel; the conduct of research; the procurement and stockpiling of necessary materials and supplies; the provision of suitable warning systems; the construction or preparation of shelter areas, and control centers; and, when appropriate, the non-military evacuation of civil population); (ii) measures to be taken during attack or natural disaster (including the enforcement of passive defense regulations prescribed by duly established military or civil authorities; the evacuation of personnel to shelter areas; the control of traffic and panic; and the control and use of lighting and civil communications); and (iii) measures to be taken following attack or natural disaster (including activities

for firefighting; rescue, emergency medical, health and sanitation services; monitoring for specific hazards of special weapons; unexploded bomb reconnaissance; essential debris clearance; emergency welfare measures; and immediately essential emergency repair or restoration of damaged vital facilities);

(d) The word *materials* shall include raw materials, supplies, medicines, equipment, component parts and technical information and processes necessary for civil defense;

(e) The word *facilities*, except as otherwise provided herein, shall include buildings, shelters, utilities, and land;

(f) The term *United States* or *States* shall include the several States, the District of Columbia, the Territories, and the possessions of the United States;

(g) The term *political subdivisions* shall include local governments, including but not limited to cities, towns, incorporated communities, counties, parishes, and townships; and

(h) The term *CPG 1-3* refers to FEMA's "Federal Assistance Handbook" promulgated as Civil Preparedness Guide (CPG) 1-3, as amended, by numbered changes thereto and by Civil Preparedness Circulars (CPC). CPG 1-3 sets forth detailed guidance on procedures which a State and, where applicable, its political subdivisions must follow in order to request financial assistance from FEMA. It also sets forth detailed requirements, terms, and conditions upon which financial assistance is granted.

(Reorganization Plan No. 3 of 1978, E.O. 12127 and E.O. 12148)

[47 FR 43381, Oct. 1, 1982, as amended at 48 FR 44545, Sept. 29, 1983]

#### §312.3 Policy.

(a) It is the policy of FEMA to provide a means of assistance to States and their political subdivisions in their carrying out responsibilities to alleviate the suffering and damage from attack-related or natural disasters by:

(1) Providing contributions for personnel, equipment, materials and facilities that may be used in preparing for or responding to disasters, provided that the use of such funds for natural

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disasters is consistent with, contributes to, and does not detract from attack-related civil defense preparedness.

(2) Encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the State and its political subdivisions.

(3) Assisting in achieving greater coordination of disaster preparation and response programs.

(4) Providing technical advice and guidance to States and their political subdivisions for organizing and preparing to meet the effects of disasters.

(b) These regulations are not to be interpreted as authorizing States and their political subdivisions to request or receive additional assistance relating to particular disaster incidents.

### § 312.4 General.

(a) The Administrator, FEMA, will provide statements to States and their political subdivisions concerning Agency mission and goals, Annual Program Emphasis, and other directions, instructions, and technical guidance which together specify preparedness and response activities for both attack-related and natural disasters.

(b) States and their political subdivisions may apply to FEMA for financial assistance under the Act in a manner prescribed by Federal Regulations governing grants and cooperative agreements. Such applications must be compatible with FEMA's goals and requirements described in paragraph (a) of this section.

(c) Financial contributions to States and their political subdivisions are made by FEMA based on approval of the activities and projects described in the Annual Program Paper, and/or Comprehensive Cooperative Agreement, and which are in conformance with provisions of CPG 1-3, and applicable FEMA regulations set forth in chapter 1 of this title 44, chapter 1, subchapter E, of the Code of Federal Regulations. Financial contributions will not be made unless substantive activities and projects in preparation for and response to attack-related disasters are identified, and progress is indicated in the submissions, and recorded in program reporting systems. The presence of unavoidable circumstances, and the

good faith effort of the applicant, will be considered if certain objectives are not met.

(d) State and local officials may use personnel, equipment, and facilities for natural disasters outside the physical boundaries of the jurisdiction and under the conditions stated within this regulation.

(e) Specific criteria relating to the preparedness and response activities are given in §§ 312.5 and 312.6 of this part.

### § 312.5 Personnel.

FEMA contributes to the development and support of emergency management organizations in the States and their political subdivisions, and to the development, operation, and maintenance of specific programs, through payment of salaries and benefits of State and local civil defense staff, and the payment of administrative expenses and travel, not to exceed 50 percent. FEMA also provides contributions for training and education expenses. The following use of such personnel for natural disaster purposes is allowable provided that such usage is consistent with, contributes to, and does not detract from attack-related civil defense preparedness:

(a) In developing, maintaining, testing and exercising plans, systems, and procedures for the protection of people and property from the effects of attack-related disasters, States and their political subdivisions may include and provide for natural disasters.

(b) Personnel supported in part through contributions under the Act may be assigned responsibilities for preparation for and response to natural disasters in any specific emergency occurring in a State or its political subdivisions as determined by the responsible State or local officials, respectively.

(c) Personnel supported in whole under the Act, may be assigned to emergency response operations for 15 days at the discretion of State officials; approval of the FEMA Regional Administrator is required for the use of these personnel in excess of 15 days. An

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assignment to emergency response operations does not preclude the accomplishment of program work and objectives. Failure to accomplish such work may subject the State to the withholding of funds contributed under the Act, or to collection of funds already obligated, not to exceed the estimated cost of the work not performed, as determined by the Regional Administrator.

(d) In the event of an emergency or major disaster declared under the Disaster Relief Act of 1974, as amended, personnel will not be provided overtime compensation and expenses under the Act.

### § 312.6 Materials and facilities.

FEMA also contributes to the development and support of emergency management in the States and their political subdivisions, and to the development, operation, and maintenance of specific programs, through providing certain materials and facilities. The following may be used for natural disaster purposes provided that such usage is consistent with, contributes to, and does not detract from attack-related civil defense preparedness:

(a) Materials provided and maintained through contributions under the Act.

(b) Technical information, guidance through which technical assistance is provided, and training courses, may contain examples, illustrations, discussion, suggested applications and uses of material.

(c) Equipment loaned under provisions of the Contributions Project Loan Program.

(d) Facilities, such as Emergency Operating Centers, provided and maintained through contributions under the Act.

(e) Equipment loaned or granted to the States for civil defense purposes (e.g., radiological instruments, shelter supplies).

## PARTS 313–320 [RESERVED]

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### PART 321—MAINTENANCE OF THE MOBILIZATION BASE (DEPARTMENT OF DEFENSE, DEPARTMENT OF ENERGY, MARITIME ADMINISTRATION)

Sec.

- 321.1 General.
- 321.2 Selection of the mobilization base.
- 321.3 Maintaining the mobilization base.
- 321.4 Achieving production readiness.
- 321.5 Retention of industrial facilities.
- 321.6 Participation of small business.
- 321.7 [Reserved]
- 321.8 Reports.

AUTHORITY: National Security Act of 1947, as amended 50 U.S.C. 404; Defense Production Act of 1950, as amended; 50 U.S.C. app. 2061 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12148 (44 FR 43239).

SOURCE: 45 FR 44576, July 1, 1980, unless otherwise noted.

#### § 321.1 General.

A sustained state of mobilization production readiness is necessary to place the United States in a defense posture which will enable the nation to defend itself against aggression in peripheral conflicts or general war involving nuclear attacks on this country. Therefore, the facilities, machine tools, production equipment, and skilled workers necessary to produce the wartime requirements of the Department of Defense, Department of Energy, and the Maritime Administration shall be maintained in a state of readiness which will facilitate their immediate use or conversion in time of emergency, with especial emphasis on measures to maximize the probability of continued post-attack production of those items judged to be vital to survival and victory.

#### § 321.2 Selection of the mobilization base.

(a) The Department of Defense shall select, for its mobilization base, facilities which produce or are capable of producing critically important military items or components (military class A components used entirely in the production, maintenance, or repair of military items) which meet one of the following:

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(1) Those items which would be so urgent to the defense of this country that utmost effort must be exerted to produce them even in case of general war involving severe damage to the facilities necessary to produce these items and the components thereof.

(2) Those items essential to survival and retaliation, maintenance of health, or combat efficiency required to support peripheral war and which meet one or more of the following criteria:

(i) Items requiring a long lead-time or long manufacturing cycle.

(ii) Items currently not in production or which are required in quantities far in excess of peacetime production.

(iii) Items requiring the conversion of an industry or a number of plants within an industry.

(iv) Items requiring materials or manufacturing processes essentially different from those in current use.

(v) Items for which industry does not have production experience.

Paragraph (a)(2) of this section is inclusive of the Department of Defense Preferential Planning List of End Items.

(b) In selecting facilities for the Department of Defense mobilization base, consideration shall be given to their vulnerability to nuclear attack, with particular attention to the possibility of (1) minimizing vulnerability of facilities producing "urgent" items under paragraph (a)(1) of this section, including the need for dispersal, protective construction, and special security measures to safeguard against sabotage of clandestine attack, and (2) reducing concentration of uncommon critical production facilities so that a productive segment of each critical industry would be likely to survive a nuclear attack.

(c) The Department of Energy and the Maritime Administration, in cooperation with the Federal Emergency Management Agency, shall determine the items and facilities which meet the above criteria for their respective programs for maintaining the mobilization base.

**§ 321.3 Maintaining the mobilization base.**

(a) Facilities selected to produce "urgent" items shall be maintained

within limits of existing procurement authority and funds available by the Department of Defense, the Department of Energy, and the Maritime Administration in the following manners to the maximum practical degree:

(1) Current procurement shall be placed in these facilities to the extent which will maintain them in a state of readiness compatible with the plans of the procuring agency.

(2) Machine tools and production equipment will be installed in these facilities to the extent found necessary by the procuring agency.

(3) Develop and maintain plans for alternate production capacity in case disaster destroys current facilities, such capacity to be located to the maximum extent possible away from highly concentrated industrial areas and major military installations.

(b) Other facilities selected as part of the mobilization base, shall be maintained to the fullest extent possible.

(1) Procurement agencies shall integrate current procurement with their industrial mobilization plans to the greatest possible extent with the objective of supporting the mobilization base within authorities and funds available.

(2) Data assembled on essential mobilization suppliers by the industrial mobilization planning of these agencies shall be used in planning current procurement. The policy of using contractors and facilities essential to the mobilization base is considered to be in the best interest of the Government.

(3) Planned producers that are deemed to be a part of the mobilization base will be invited to participate in appropriate current procurement.

(4) Upon expiration of current procurement contracts in a facility, the procuring agency shall take such of the following actions as are compatible with its plans for maintaining a state of readiness:

(i) *Government-owned facilities and tools.* Within the limitations that may be imposed by Congressional appropriations, place government-owned facilities and tools in standby status and establish provisions for their adequate maintenance. This does not preclude

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the use of government-owned production equipment, on a loan basis, to enable the military departments to meet current production schedules, as provided in DMO-VII-4, Amendment 1.

(ii) *Privately-owned facilities and government-owned tools.* (A) Arrange with management of privately-owned facilities, wherever possible, to place government-owned tools and production equipment in the status provided by DMO-VII-4, as amended, taking into account the desirability of safe location.

(B) Arrange with management, on a voluntary basis, to keep a group of key managers, engineers, and skilled workers familiar with the items planned for mobilization production.

(C) Determine the gaps which exist in government-owned packages of tools and production equipment needed to produce mobilization requirements in privately-owned plants. Within the limit of fund availability, plan the procurement of such tools and equipment with priority being given to long lead-time tools and equipment or those not used in general manufacturing. These tools and equipment, when procured, should be placed in the status provided by DMO-VII-4, as amended, taking into account the desirability of safe locations.

(D) Determine which government-owned tools and equipment have become obsolete, or which would not be used in event of mobilization, and plan for their disposal in accordance with the provisions of DMO-VII-4, as amended.

#### § 321.4 Achieving production readiness.

(a) In order to achieve a capability for maximum production of "urgent" items during the initial phase of war, the following readiness measures shall be taken where advisable for facilities producing such items:

(1) Establishment of emergency production schedules.

(2) Development of a production capability which would function under widespread disruption and damage imposed by enemy attack, including, where necessary:

(i) Maintenance of an increased inventory of finished components and re-

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lated production supplies at assembly plants, or arrangements for alternative supply lines where increased inventories are not feasible.

(ii) A capability to carry on urgent production without dependence on additional personnel, external sources of power, fuel, and water, or on long-distance communications; with spare replacements for highly vulnerable or unreliable parts of production equipment.

(iii) Protection of production facilities from enemy sabotage through adequate physical security measures.

(iv) Protection of personnel from widespread radiological fallout through provisions for decontamination and shelter.

#### § 321.5 Retention of industrial facilities.

(a) Industrial properties, owned by the Department of Defense, the Department of Energy, and the Maritime Administration, shall be retained in the Industrial reserves (National Industrial Reserve, Departmental Industrial Reserve for the Department of Defense) of the department and agencies to the extent the capacity of said reserves is necessary for the production of defense or defense-supporting end items, materials or components in a mobilization period.

(b) Each idle plant in the reserves shall be reviewed annually by the heads of the respective agencies to determine if the capacity of the plant continues necessary for mobilization purposes.

(c) Upon the determination by the head of the agency that the capacity of a plant is excess to the mobilization requirements of the agency immediate steps will be taken to dispose of the plant through existing government channels for surplus disposal. The Federal Emergency Management Agency shall be informed by General Services Administration of each proposed surplus action prior to final determination.

#### § 321.6 Participation of small business.

The agencies concerned with the order shall, in all of their programs for maintaining the mobilization base, be mindful of the national policy to protect the interests of small business,

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and to assure the maximum participation of small business in the mobilization base, including current procurement.

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**§ 321.8 Reports.**

The Department of Defense, Department of Energy, and Maritime Administration shall furnish the Administrator of the Federal Emergency Management Agency with reports on items and facilities for programs under §321.2 (a) and (b) of this part, and with such other periodic and special reports as he may require affecting the maintenance of the mobilization base.

**PART 322 [RESERVED]**

**PART 323—GUIDANCE ON PRIORITY USE OF RESOURCES IN IMMEDIATE POST ATTACK PERIOD (DMO-4)**

- Sec.
- 323.1 Purpose.
- 323.2 General policy.
- 323.3 Responsibilities.
- 323.4 Priority activities in immediate post-attack period.
- 323.5 Assignment of resources.

**APPENDIX 1 TO PART 323—LIST OF ESSENTIAL SURVIVAL ITEMS**

AUTHORITY: National Security Act of 1947, as amended, 50 U.S.C. 404; Defense Production Act of 1950, as amended, 50 U.S.C. app. 2061 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12148 of July 20, 1979, 44 FR 43239.

SOURCE: 45 FR 44579, July 1, 1980, unless otherwise noted.

**§ 323.1 Purpose.**

This part:

(a) States the policy of the Federal Government on use of resources in the period immediately following a nuclear attack on the United States;

(b) Provides general guidance for Federal, State, and local government officials on activities to be accorded priority in the use of postattack resources; and

(c) Lists those items essential to national survival in the immediate postattack period.

**§ 323.2 General policy.**

(a) In an immediate postattack period all decisions regarding the use of resources will be directed to the objective of national survival and recovery. In order to achieve this objective, postattack resources will be assigned to activities concerned with the maintenance and saving of lives, immediate military defense and retaliatory operations, economic activities essential to continued survival and recovery.

(b) This guidance is designed to achieve a degree of national equity in the use of resources and to assign and conserve resources effectively in the immediate postattack period. Until more specific instructions are available, these are the general guidelines within which managerial judgment and common sense must be used to achieve national objectives under widely differing emergency conditions.

**§ 323.3 Responsibilities.**

(a) As stated in The National Plan for Emergency Preparedness, the direction of resources mobilization is a Federal responsibility. However, in the period immediately following an attack, certain geographical areas may be temporarily isolated, and State and local governments will assume responsibility for the use of resources remaining in such areas until effective Federal authority can be restored. State and local governments will not assume responsibility for resources under the jurisdiction of a Federal agency where the Federal agency is able to function.

(b) As soon as possible after an attack and until specific national direction and guidance on the use of resources is provided, Federal, State, and local officials will determine what resources are available, to what needs they can be applied, how they are to be used, and the extent to which resources are deficient or in excess of survival needs. They will base determinations as to the relative urgency for use of resources primarily upon the importance of specific needs of defense, survival, and recovery.

**§ 323.4 Priority activities in immediate postattack period.**

The following activities are to be accorded priority over all other claims

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for resources. There is no significance in the order of the listing—all are important. The order in which and the extent to which they are supported locally may vary with local conditions and circumstances. If local conditions necessitate the establishment of an order of priority among these activities, that order shall be based on determinations of relative urgency among the activities listed, the availability of resources for achieving the actions required, and the feasibility and timeliness of the activities in making the most rapid and effective contribution to national survival.

(a) The immediate defense and retaliatory combat operations of the Armed Forces of the United States and its Allies: This includes support of military personnel and the production and distribution of military and atomic weapons, materials and equipment required to carry out these immediate defense and retaliatory combat operations.

(b) Maintenance or reestablishment of Government authority and control to restore and preserve order and to assure direction of emergency operations essential for the safety and protection of the people. This includes:

- (1) Police protection and movement direction;
- (2) Fire defense, rescue and debris clearance;
- (3) Warnings;
- (4) Emergency information and instructions;
- (5) Radiological detection, monitoring and decontamination.

(c) Production and distribution of survival items and provision of services essential to continued survival and rapid recovery. (For list of survival items, see appendix 1 to this part.) These include:

- (1) Expedient shelter;
- (2) Food, including necessary processing and storage;
- (3) Feeding, clothing, lodging, and other welfare services;
- (4) Emergency housing and community services;
- (5) Emergency health services, including medical care, public health and sanitation;
- (6) Water, fuel, and power supply;
- (7) Emergency repair and restoration of damaged vital facilities.

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(d) Essential communications and transportation services needed to carry out the above activities.

(e) Provision of supplies, equipment, and repair parts to produce and distribute goods needed for the above activities.

**§ 323.5 Assignment of resources.**

Resources required for essential uses, including manpower, will be assigned to meet the emergency requirements of the priority activities indicated above. The principal objectives are to use available resources to serve essential needs promptly and effectively, and to:

(a) Protect and to prevent waste or dissipation of resources prior to their assignment to priority activities;

(b) Support production of essential goods. Other production will be permitted to continue only from inventories on hand and when there is no emergency requirement for the resources vital to this production.

(c) Support construction for emergency repair and restoration, construction of facilities needed for survival, or the conversion of facilities to survival use, where this can be accomplished quickly. Other construction already under way should be stopped, and no new construction started unless it can be used immediately for essential purposes upon completion.

**APPENDIX 1 TO PART 323—LIST OF ESSENTIAL SURVIVAL ITEMS**

This document contains a list of items considered essential to sustain life at a productive level to assure national survival in an emergency. The list identifies items to which major attention should be given in all phases of preattack planning to insure the availability of basic essentials for a productive economy in the event of a nuclear attack. Supply-requirements studies and assessments for these items will be made to disclose critical deficiencies or other problems that can be anticipated. Revisions will be made as necessary to keep the items as up-to-date as possible.

The items are arranged by seven major groups:

- (1) Health Supplies and Equipment,
- (2) Food,
- (3) Body Protection and Household Operations,
- (4) Electric Power and Fuels,
- (5) Sanitation and Water Supply,

- (6) Emergency Housing and Construction Materials and Equipment, and
- (7) General Use Items.

Survival items are defined as "those items without which large segments of the population would die or have their health so seriously impaired as to render them both burdensome and non-productive." The items have been classified into Group A or Group B, with Group A representing end products consumed or used directly by the population, and Group B consisting of those items essential to the effective production and utilization of the Group A items, which are consumed or used directly by the people.

There are no Group B items in the categories of Health Supplies and Equipment, Body Production and Household Operations, and Emergency Housing and Construction Materials and Equipment. All of these items are considered to be consumed directly and any attempt to separate them in to A and B groupings would be too arbitrary to be meaningful.

It is important to keep in mind the fact that while the items listed are the basic essentials necessary for maintaining a viable economy during the first six months following an attack, not all of them would create problems that would require government action preattack to insure adequate supplies. The aforementioned supply-requirements studies will be undertaken to identify the problem areas. In developing supply data, all available production capacity, existing inventories, and possible substitutions will be considered. For example, in analyzing clothing items, all available supplies would be considered from sport to dress shirts, from overalls to dress suits. However, new production would be limited to the simplest form of the basic item which can be produced. The final determination as to which of the items are most critical and which may require preattack actions by the Government, as well as the type of actions which must be taken, can be made only after a comprehensive supply-requirements analysis is completed.

LIST OF ESSENTIAL SURVIVAL ITEMS

I. HEALTH SUPPLIES AND EQUIPMENT

Group A

1. *Pharmaceuticals:*

- Alcohol.
- Analgesics, non-narcotic.
- Antibiotics and antibacterials.
- Antidiabetic agents, oral.
- Antihistamines.
- Antimalarials.
- Atropine.
- Blood derivatives.
- Carbon dioxide absorbent.
- Cardiovascular depressants.
- Cardiovascular stimulants.

- Corticosteroids.
- Diuretics.
- General anesthetics.
- Hypnotics.
- Insulin.
- Intravenous solutions for replacement therapy.
- Local anesthetics.
- Lubricant, surgical.
- Morphine and substitutes.
- Oral electrolytes.
- Oxygen.
- Surgical antiseptics.
- Sulfa drugs.
- Synthetic plasma volume expanders.
- Vitamin preparations, pediatric.
- Water for injection.

2. *Blood Collecting and Dispensing Supplies:*

- Blood collecting and dispensing containers.
- Blood donor sets.
- Blood grouping and typing sera.
- Blood recipient sets.
- Blood shipping containers.

3. *Biologicals:*

- Diphtheria toxoid.
- Diphtheria antitoxin.
- Diphtheria and tetanus toxoids and pertussis vaccine.
- Gas gangrene antitoxin.
- Poliomyelitis vaccine, oral.
- Rabies vaccine.
- Smallpox vaccine.
- Tetanus antitoxin.
- Tetanus toxoid, absorbed.
- Typhoid vaccine.
- Typhus vaccine, epidemic.
- Yellow fever vaccine.

4. *Surgical Textiles:*

- Adhesive plaster.
- Bandage, gauze.
- Bandage, muslin.
- Bandage, plaster of paris.
- Cotton, USP.
- Surgical pads.
- Stockinette, surgical.
- Wadding, cotton sheet.

5. *Emergency Surgical Instruments and Supplies:*

- Airway, pharyngeal.
- Anesthesia apparatus.
- Basin, wash, solution.
- Blade, surgical knife.
- Brush, scrub, surgical.
- Catheter, urethral.
- Containers for sterilization.
- Chisel, bone.
- Drain, Penrose.
- Dusting powder.
- Forceps, dressing.
- Forceps, hemostatic.
- Forceps, obstetrical.
- Forceps, tissue.
- Gloves, surgeon's.
- Handles, surgical knife.
- Holder, suture needle.
- Inhaler, anesthesia, Yankauer (ether mask).



Intravenous injection sets.  
 Knife, cast cutting.  
 Lamps, for diagnostic instruments.  
 Lamps, for surgical lights.  
 Laryngoscope.  
 Light, surgical, portable.  
 Litter.  
 Mallet, bone surgery.  
 Needles, hypodermic, reusable.  
 Needles, suture, eyed.  
 Oscope and ophthalmoscope set.  
 Probe, general operating.  
 Razor and blades (for surgical preparation).  
 Retractor, rib.  
 Retractor set, general operating.  
 Rongeur, bone.  
 Saw, amputating.  
 Saw, bone cutting, wire (Gigli).  
 Scissors, bandage.  
 Scissors, general surgical.  
 Sigmoidoscope.  
 Speculum, vaginal.  
 Sphygmomanometer.  
 Splint, leg, Thomas.  
 Splint, wire, ladder.  
 Sterilizer, pressure, portable.  
 Stethoscope.  
 Sutures, absorbable.  
 Sutures, absorbable, with attached needle.  
 Sutures, nonabsorbable.  
 Sutures, nonabsorbable, with attached needle.  
 Syringes, Luer, reusable (hypodermic syringes).  
 Thermometers, clinical.  
 Tracheotomy tube.  
 Tube, nasogastric.  
 Tubing, rubber or plastic, and connectors.  
 Vascular prostheses.  
 Webbing, textile, with buckle.

6. *Laboratory Equipment and Supplies:*  
 Bacteriological culture media and apparatus.  
 Balance, laboratory with weights.  
 Blood and urine analysis instruments, equipment and supplies.  
 Chemical reagents, stains and apparatus.  
 Glassware cleaning equipment.  
 Laboratory glassware.  
 Microscope and slides.  
 Water purification apparatus.

## Group B

None.

## II. FOOD

## Group A

1. *Milk group.* Milk in all forms, milk products. Important for calcium, riboflavin, protein, and other nutrients.  
 2. *Meat and meat alternate group.* Meat, poultry, fish, eggs; also dry beans, peas, nuts. Important for protein, iron, and B-vitamins.  
 3. *Vegetable-fruit group.* Including 1. Dark Green and yellow vegetables. Important for Vitamin A. 2. Citrus fruit or other fruit or

vegetables. Important for Vitamin C. 3. Other fruits and vegetables, including potatoes.

4. *Grain products.* Especially enriched, restored, cereal and cereal products, and bread, flours, and meals. Important for energy, protein, iron, and B-vitamins.

5. *Fats and oils.* Including butter, margarine, lard, and other shortening oils. Important for palatability and food energy; some for Vitamin A and essential fatty acids.

6. *Sugars and syrups.* Important for palatability and food energy.

7. *Food adjuncts.* Certain food adjuncts should be provided to make effective use of available foods. These include antioxidants and other food preservatives, yeast, baking powder, salt, soda, seasonings and other condiments. In addition, coffee, tea, and cocoa are important for morale support.

## Group B

Food containers.  
 Nitrogenous fertilizers.  
 Seed and livestock feed.  
 Salt for livestock.

*Veterinary Medical Items:*

Anthrax vaccine.  
 Black leg vaccine.  
 Hog cholera vaccine.  
 Newcastle vaccine.

## III. BODY PROTECTION AND HOUSEHOLD OPERATIONS

## Group A

1. *Clothing:*

Gloves and mittens.  
 Headwear.  
 Hosiery.  
 Outerwear.  
 Shoes and other footwear.  
 Underwear.  
 Waterproof outer garments.

2. *Personal Hygiene Items:*

Diapers, all types.  
 Disposable tissues.  
 First aid items (included on Health Supplies and Equipment List).  
 Nipples.  
 Nursing bottles, all types.  
 Pins.  
 Sanitary napkins.  
 Soaps, detergents, and disinfectants.  
 Toilet tissue.

3. *Household Equipment:*

Bedding.  
 Canned heat.  
 Cots.  
 Hand sewing equipment.  
 Heating and cooking stoves.  
 Incandescent hand portable lighting equipment (including flashlights, lamps, batteries).  
 Kitchen, cooking, and eating utensils.

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Lamps (incandescent medium base) and lamp holders.  
Matches.  
Nonelectric lighting equipment.  
Sleeping bags.

Group A

Coal and coke.

Group B

None.

Conveyor belting.  
Insulated trail cables.  
Trolley feeder wire.  
Roof bolts.

IV. ELECTRIC POWER AND FUELS

V. SANITATION AND WATER SUPPLY

1. *Electric Power.*

Group A

Electricity.

1. *Water.*

Group A

2. *Water Supply Materials:*

Group B

a. *Coagulation:*

Conductors (copper and/or aluminum), including bare cable for high voltage lines and insulated wire or cable for lower voltage distribution circuits.

Ferric chloride.  
Ferrous sulfate.  
Ferric sulfate.  
Chlorinated copperas.  
Filter alum.  
Hydrated lime.  
Pulverized limestone.  
Soda ash.

Switches and circuit breakers.

b. *Disinfection Chemicals:*

Insulators.

High-test hypochlorites (70 percent) in drums, cans, ampules.

Pole line hardware.

Iodine tablets.

Poles and crossarms.

Liquid chlorine, including containers.

Transformers (distribution, transmission, and mobile).

Chlorine compounds (not gas).

Tools for live-circuit operations, including rubber protective equipment, and linemen's tools.

c. *Miscellaneous Materials:*

Utility repair trucks, fully equipped.

Diatomaceous earth.

Prime mover generator sets up to 501 kilowatts and 2400 volts, including portable and mobile sets up to 150 kilowatts and 110/220/440 volts, 3-phase, 60-cycle complete with fuel tank and switchgear in self-contained units.

Activated carbon.

2. *Petroleum Products.*

3. *Chemical Biological, and Radiological CBR Detection, Protection, and Decontamination Items:*

Group A

Calibrators.

Gasoline.

Chemical agent detection kits, air, food, and water.

Kerosene.

Dosimeters and chargers.

Distillate fuel oil.

Protective masks, clothing, helmets.

Residual fuel oil.  
Liquefied petroleum oil.

Survey meters (Alpha, Beta, Gamma).

Lubricating oil.

Warning signs—biological, chemical, and radiological contamination.

Grease.

4. *Insect and Rodent Control Items:*

Group B

a. *Insecticides:*

Storage tanks.

DDT, water dispersible powder (75 percent).

Pumps for loading and unloading.

Lindane powder, dusting (1 percent).

Pressure containers and fittings for liquefied petroleum gas.

Malathion, liquid, emulsifiable concentrate (57 percent).

3. *Gas.*

Group A

Deet (diethyltoluamide) 75 percent in denatured alcohol.

Natural gas.

Pyrethrum.

Manufactured gas.

b. *Rodenticides:*

Group B

Anticoagulant type, ready-mixed bait.  
"1080" (sodium monofluoroacetate) (for controlled use only).

Various sizes of pipe (mostly steel).

5. *General Sanitation:*

Various sizes of valves, fittings, and pressure regulators.

Lye.

Specialized repair trucks and equipment.

Group B

4. *Solid Fuels.*

1. *General Supplies and Equipment:*

Chemical feeders.  
Mobile and portable pressure filters.  
Chlorinators (gas and hypochlorites).

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Pumps and appurtenances, Hand—Electric—Gasoline—Diesel.  
 Well-drilling equipment, including well casing, drive pipe and drive points.  
 2. *Storage and Transport Equipment:*  
 Lyster bags.  
 Storage tanks, collapsible and portable.  
 Storage tanks, rigid, transportable.  
 Storage tanks, wood stave, knock-down.  
 3. *Laboratory Equipment and Supplies:*  
 Membrane filter kits with filters and media.  
 Chlorine and pH determination equipment.  
 4. *Sanitation Equipment:*  
 Hand sprayer, continuous type.  
 Hand sprayer, compression type.  
 Hand duster, plunger type.  
 Spraying equipment for use with helicopter, fixed-wing light aircraft, high-speed fixed-wing attack aircraft, and cargo-type aircraft.

VI. EMERGENCY HOUSING AND CONSTRUCTION MATERIALS AND EQUIPMENT

Group A

Asphalt and tar roofing and siding products.  
 Builders hardware—hinges, locks, handles, etc.  
 Building board, including insulating board, laminated fiberboard, hardpressed fiberboard, gypsum board, and asbestos cement (flat sheets and wallboard).  
 Building papers.  
 Plastic patching, couplings, clamps, etc. for emergency repairs.  
 Plumbing fixtures and fittings.  
 Prefabricated emergency housing.  
 Rough hardware—nails, bolts, screws, etc.  
 Sewer pipe and fittings.  
 Tents and tarpaulins; canvas, plastics, and other similar materials.  
 Lumber and allied products; Lumber, principally 1-inch and 2-inch, minor quantities of small and large timbers; siding and flooring; plywood; millwork, doors, and windows.  
 Masonry products—brick, cement, lime, concrete block, hollow tile, etc.  
 Translucent window coverings.  
 Water pipe and hose, plus fittings—all types including fire hose.

Group B

None.

VII. GENERAL USE ITEMS

Group A

None.

Group B

Batteries, wet and dry cell.  
 Bulldozers.  
 Fire fighting equipment.

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Light equipment and hand tools (including electric powered) for carpentry, masonry, plumbing, and excavation.  
 Pipe installation materials and equipment.  
 Refrigerators, mechanical.  
 Rigging tools—cables, ropes, tackles, hoists, etc.  
 Tank railroad cars.  
 Tank Trucks and trailers.  
 Tires.  
 Trenching equipment.  
 Truck tractors and trailers, including low bed.  
 Trucks up to five tons (25 percent equipped with power takeoff).  
 Welding equipment and supplies (electric and acetylene).

**PARTS 324–326 [RESERVED]**

**PART 327—POLICY ON USE OF GOVERNMENT-OWNED INDUSTRIAL PLANT EQUIPMENT BY PRIVATE INDUSTRY (DMO–10A)**

Sec.  
 327.1 Purpose.  
 327.2 Scope and applicability.  
 327.3 Policy.  
 327.4 Disputes.  
 327.5 Reports.

AUTHORITY: National Security Act of 1947, as amended, 50 U.S.C. 404; Defense Production Act of 1950, as amended, 50 U.S.C. app. 2061 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12148 of July 20, 1979, 44 FR 43239.

SOURCE: 45 FR 44583, July 1, 1980, unless otherwise noted.

**§ 327.1 Purpose.**

This part establishes policy on the use by private industry of Government-owned industrial plant equipment. This policy is necessary to maintain a highly effective and immediately available reserve of such equipment for the emergency preparedness programs of the U.S. Government.

**§ 327.2 Scope and applicability.**

(a) This part applies to all Federal departments and agencies having, for purposes of mobilization readiness, Government-owned industrial plant equipment under their jurisdiction or control and having emergency preparedness functions assigned by Executive orders concerning use of that equipment.

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(b) As used herein, *industrial plant equipment* means those items of equipment, each with an acquisition cost of \$1,000 or more, that fall within specified classes of equipment listed in DOD regulations. Classes of equipment may from time to time be added to or deleted from this list.

### § 327.3 Policy.

(a) *General.* (1) Primary reliance for defense production shall be placed upon private industry.

(2) When it is determined by an agency that, because of the lack of specific industrial plant equipment, private industry of the United States cannot be relied upon for needed Government production, that agency may provide to private industry such Government-owned industrial plant equipment as is deemed necessary to ensure required production capability. Requirements for such equipment should be reviewed at least annually to ascertain the continuing need, particularly with a view toward private industry furnishing the equipment for long term requirements.

(3) When it is necessary for Federal agencies to supply Government-owned industrial plant equipment to private industry, these agencies will maintain uniformity and fairness in the arrangements for the use of this equipment by following regulations for the use of such equipment as developed and published by the Secretary of Defense pursuant to section 809 of Public Law 93-155. The regulations to be developed by the Secretary of Defense shall be in consonance with this order. These regulations will attempt to ensure that no Government contractor is afforded an advantage over his competitors and that Government-owned industrial plant equipment is maintained properly and kept immediately available for the emergency preparedness needs of the United States.

(b) *Interagency use of idle equipment.* In any instances in which a Government contractor cannot meet Government production schedules because necessary industrial plant equipment is not available from private industry or from the contracting Federal department or agency, idle industrial plant equipment under the control of other Federal agencies may be made avail-

able for this purpose through existing authorities on a transfer, loan, or replacement basis by interagency agreement.

(c) *Availability of equipment for emergency use.* Government-owned industrial plant equipment may be provided by controlling agencies for emergency use by essential Government contractors whose facilities have been damaged or destroyed.

(d) *Uniform rental rates.* All new agreements entered into by any agency of the Federal Government under which private business establishments are provided with Government-owned industrial plant equipment shall be subject to rental rates established by the Secretary of Defense pursuant to section 809 of Public Law 93-155. The rental rates shall ensure a fair and equitable return to the U.S. Government and be generally competitive with commercial rates for like equipment.

(e) *Use of Government-owned industrial plant equipment for commercial (non-Government) purposes.* Subject to adequate controls being established under DOD regulations pursuant to Public Law 93-155, and statutory authority for leasing, Government-owned industrial plant equipment may be authorized for commercial use by contractors performing contracts or subcontracts for the Government agency if it is necessary to keep the equipment in a high state of operational readiness through regular usage to support the emergency preparedness programs of the U.S. Government.

### § 327.4 Disputes.

In the event of an interagency dispute about the regulations developed by the Department of Defense in accordance with this order, the Administrator, Federal Emergency Management Agency, shall adjudicate.

### § 327.5 Reports.

Such reports of operations under this order as may be required by the Federal Emergency Management Agency, shall be submitted to the Administrator.

## PART 328 [RESERVED]

**PART 329—USE OF PRIORITIES AND ALLOCATION AUTHORITY FOR FEDERAL SUPPLY CLASSIFICATION (FSC) COMMON USE ITEMS (DMO–12)**

Sec.

329.1 Purpose.

329.2 Policies.

329.3 Procedures.

329.4 Implementation.

AUTHORITY: Defense Production Act of 1950, as amended, 50 U.S.C. app. 2061 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12148 of July 20, 1979, 44 FR 43239; E.O. 10480 of Aug. 14, 1953, (18 FR 4939) as amended.

SOURCE: 45 FR 44585, July 1, 1980, unless otherwise noted.

**§ 329.1 Purpose.**

This part provides policy guidance concerning the use of priorities and allocation authority under title I of the Defense Production Act of 1950, as amended, for the procurement of common use items in the Federal Supply Classification (FSC).

**§ 329.2 Policies.**

The following guidance is provided pursuant to the Defense Production Act of 1950, as amended; section 201 of Executive Order 10480, and § 322.2 of this chapter (DMO–3).

(a) Priority ratings under title I of the Defense Production Act of 1950, as amended, are not authorized for certain FSC Groups, Classes, and Items:

(1) Which are of the types commonly available in commercial markets for general consumption,

(2) Which do not require major modification when purchased for military or other ratable government use, and

(3) Which are in sufficient supply as to cause no hindrance to the accomplishment of military or other national defense objectives.

Such Groups, Classes, and Items will be as specified from time to time by the Department of Commerce with the approval of the Federal Emergency Management Agency. Procurement in these Groups, Classes, and Items is to be made without priority assistance, including single service procurement that may include defense and defense-supporting needs. In the event procure-

ment difficulties are encountered which threaten timely delivery, application for special assistance may be made for those categories of supply authorized special assistance in existing lists, and must be accompanied by full justification to support the need for such assistance.

(b) Priority ratings may be used for the procurement of other authorized FSC Groups, Classes, and Items only in quantities required to meet the needs of approved programs of ratable agencies. The quantities of current procurement of each Group, Class, and Item shall be based on and shall not exceed the ratio of rated purchases to total purchases for that Group, Class, and Item that was consummated in the 6-month period preceding the first day of January and July in each year. Any other periodic cycle considered suitable and agreed to by the Domestic and International Business Administration, Department of Commerce, and the procuring agency may be substituted.

(c) In the interest of minimizing administrative costs, where rated procurement under paragraph (b)(2) of this section, constitutes 97 percent or more of the total procurement of a Group, Class, or Item, all of the Group, Class, or Item may be bought on ratings.

**§ 329.3 Procedures.**

Requests for additional authorizations of Classes, Groups, or Items should be presented to General Services Administration (AP), Washington, DC, 20405, accompanied by a statement of justification indicating why the Class, Group, or Item should be regarded as necessary or appropriate to promote the national defense and why defense-related requirements cannot be met without the use of priorities.

**§ 329.4 Implementation.**

Departments and agencies involved with this program shall issue implementing instructions and directives no later than 30 work days from the effective date of this order. Copies of such instructions, directives, and related documents shall be furnished to the General Services Administration (AP) on a routine basis as issued.

**PART 330—POLICY GUIDANCE AND DELEGATION OF AUTHORITIES FOR USE OF PRIORITIES AND ALLOCATIONS TO MAXIMIZE DOMESTIC ENERGY SUPPLIES IN ACCORDANCE WITH SUBSECTION 101(c) OF THE DEFENSE PRODUCTION ACT OF 1950, AS AMENDED (DMO-13)**

- Sec.
- 330.1 Purpose.
- 330.2 Policies.
- 330.3 Delegation of authority.

AUTHORITY: Defense Production Act of 1950, as amended, including amendment to sec. 101(c) by sec. 104 of the Energy Policy and Conservation Act (Pub. L. 94-163) 50 U.S.C. app. 2061 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12148 of July 20, 1979, 44 FR 43239; E.O. 11912 of April 13, 1976.

SOURCE: 45 FR 44586, July 1, 1980, unless otherwise noted.

**§ 330.1 Purpose.**

This part:

(a) Establishes policy guidance on determination and use of priorities and allocations for materials and equipment to maximize domestic energy supplies pursuant to section 104 of the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 878), which added subsection 101(c) to the Defense Production Act of 1950, as amended (the Act); and

(b) Delegates authority and assigns responsibility related thereto pursuant to sections 7 and 8 of Executive Order 11912, dated April 13, 1976.

**§ 330.2 Policies.**

(a) The authority of subsection 101(c) of the Act to require the allocation of, or priority performance under contracts or orders relating to, supplies of materials and equipment to maximize domestic energy supplies shall be limited to those exceptional circumstances when it is found that:

(1) Such supplies of material and equipment are scarce, critical, and essential; and

(2) The maintenance or furtherance of exploration, production, refining, transportation, or conservation of energy supplies, or the construction and

maintenance of energy facilities, cannot reasonably be accomplished without exercising this authority.

(b) The authority contained in subsection 101(c) shall not be used to require priority performance under contracts or orders relating to, or the allocation of, any supplies of materials and equipment except for programs or projects to maximize domestic energy supplies as specifically determined by the Secretary of Energy, after coordination with the Administrator, Federal Emergency Management Agency.

(c) The allocation of, or priority performance under contracts or orders relating to, supplies of materials and equipment in support of authorized programs or projects shall be so undertaken as to ensure that:

(1) Supplies of the specified materials and equipment are available to the extent practicable on time and in proper quantity to authorized programs or projects.

(2) The demands of these authorized programs or projects are distributed among suppliers on a fair and equitable basis.

(3) Allotments of supplies of materials and equipment are not made in excess of actual current requirements of these authorized programs or projects.

(4) Fulfillment of the needs of these authorized programs and projects are achieved in such manner and to such degree as to minimize hardship in the market place.

(d) The authority of subsection 101(c) of the Act will not be used to control the general distribution of any supplies of material and equipment in the civilian market, as that phrase is used in subsection 101(b) of the Act, except after Presidential approval as required by subsection 7(d) of Executive Order 11912.

**§ 330.3 Delegation of authority.**

(a) The functions of the Administrator of the Federal Management Agency under subsection 101(c) of the Act are hereby delegated to the Secretary of Commerce with respect to the areas of responsibility designated and subject to the limitations prescribed and section 7 of Executive Order 11912. Specifically:

(1) The Secretary of Commerce is delegated the function, provided in subsection 101(c)(1) of the Act, of requiring the allocation of, or priority performance under contracts or orders (other than contracts of employment) relating to, supplies of materials and equipment to maximize domestic energy supplies, if the findings specified in subsection 101(c)(3) of the Act are made.

(2) The Secretary of Commerce is delegated those functions provided in subsection 101(c)(3) of the Act, but shall redelegate to the Secretary of Energy the function of making the findings that supplies of materials and equipment are critical and essential to maximize domestic energy supplies. The Secretary of Commerce shall retain the functions of finding that supplies of materials and equipment are scarce, and that the purposes described in subsection 101(c)(3)(B) of the Act cannot reasonably be accomplished without exercising the authority specified in subsection 101(c)(1). This finding will include, to the extent practicable, an assessment of the effects of using the authority for the project in question on other significantly impacted projects.

(b) The Administrator of the Federal Emergency Management Agency shall be responsible for the overall coordination and direction of the functions provided by subsection 101(c) of the Act in a manner similar to the exercise of functions under subsections 101(a) and 101(b) of the Act. In line with these functions, the Administrator is also responsible for resolving any conflicts between claimant agencies regarding particular supplies of materials and equipment. In addition, the Federal Emergency Management Agency will monitor the impact of the implementation of the authorities of subsection 101(c) and other authorities under section 101 of the Defense Production Act on each other and on the national economy.

(c) The functions assigned, delegated, or required to be redelegated by this order to the Secretary of Commerce and the Secretary of Energy may not be redelegated to other agencies without first being coordinated with the

Administrator, Federal Emergency Management Agency.

(d) Procedures to execute the above delegations will be carried out in accordance with guidance provided by the Administrator, Federal Emergency Management Agency, pursuant to this order and Executive Order 11912.

### PART 331—PRESERVATION OF THE MOBILIZATION BASE THROUGH THE PLACEMENT OF PROCUREMENT AND FACILITIES IN LABOR SURPLUS AREAS

Sec.

331.1 Purpose.

331.2 Policy.

331.3 Scope and applicability.

331.4 Special consideration.

331.5 Production facilities.

**AUTHORITY:** Reorganization Plan No. 3 of 1978, E.O. 10480, as amended, E.O. 12148.

**SOURCE:** 45 FR 34885, May 23, 1980, unless otherwise noted. Redesignated at 45 FR 44575, July 1, 1980.

#### §331.1 Purpose.

Success of the national defense program depends upon efficient use of all of our resources, including the labor force and production facilities, which are preserved through utilizing the skills of both management and labor. A primary aim of Federal manpower policy is to encourage full utilization of existing production facilities and workers in preference to creating new plants or moving workers, thus assisting in the maintenance of economic balance and employment stability. When large numbers of new workers move to labor surplus areas, heavy burdens are placed on community facilities, such as schools, hospitals, housing, transportation, and utilities. On the other hand, when unemployment develops in certain areas, unemployment costs increase the total cost to the Government, and plants, tools, and workers' skills remain idle and unable to contribute to our national defense program. Consequently, it is the purpose of Defense Manpower Policy No. 4B to direct attention to the potential of labor surplus areas when awarding appropriate procurement contracts and when locating new plants or facilities.

**§ 331.2 Policy.**

(a) It is the policy of the Federal Government to award appropriate contracts to eligible labor surplus area concerns, to place production facilities in labor surplus areas, and to make the best use of our natural, industrial and labor resources in order to achieve the following objectives:

- (1) To preserve management and employee skills necessary to the fulfillment of Government contracts and purchases;
- (2) To maintain productive facilities;
- (3) To improve utilization of the Nation's total economic potential by making use of the labor force resources of each area; and
- (4) To help ensure timely delivery of required goods and services and to promote readiness for mobilization by locating procurement where the needed labor force and facilities are fully available.

(b) This policy is consonant with the intent of Public Law 95-89 and Public Law 95-507 as implemented by E.O. 12073. In carrying out this policy, Federal departments and agencies shall be guided by E.O. 12073, the policy direction of the Office of Federal Procurement Policy and implementing regulations.

**§ 331.3 Scope and applicability.**

The provisions of this policy apply to all Federal departments and agencies, except as otherwise prohibited by law. In addition to these normal duties;

- (a) The Secretary of Commerce shall:
  - (1) In cooperation with State economic development agencies, the Secretary of Defense, the Administrator of General Services, and the Administrator of Small Business Administration, assist concerns which have agreed to perform contracts in labor surplus areas in obtaining Government procurement business by providing such concerns with timely information on proposed Government procurements.
  - (2) Urge concerns planning new production facilities to consider the advantages of locating in labor surplus areas.
  - (3) Provide technical advice and counsel to groups and organizations in labor surplus areas on planning industrial parks, industrial development or-

ganizations, expanding tourist business, and available Federal aids.

(b) The Administrator of the Small Business Administration shall make available to small business concerns in labor surplus areas all of its services, endeavor to ensure opportunity for maximum participation by such concerns in Government procurement, and give consideration to the needs of these concerns in the making of joint small business set-asides with Government procurement agencies.

(c) OFPP shall coordinate the maintenance by Federal agencies of current information on the manufacturing capabilities of labor surplus area concerns with respect to Government procurement and disseminate such information to Federal departments and agencies.

**§ 331.4 Special consideration.**

When an entire industry that sells a significant proportion of its production to the Government is generally depressed or has a significant proportion of its production, manufacturing and service facilities located in a labor surplus area, the Administrator, Federal Emergency Management Agency, or successor in function, after notice to and hearing of interested parties, will give consideration to appropriate measures applicable to the entire industry.

**§ 331.5 Production facilities.**

All Federal departments and agencies shall give consideration to labor surplus areas in the selection of sites for Government-financed production facilities, including expansion, to the extent that such selection is consistent with existing law and essential economic and strategic factors.

**PART 332—VOLUNTARY AGREEMENTS UNDER SECTION 708 OF THE DEFENSE PRODUCTION ACT OF 1950, AS AMENDED**

- Sec.
- 332.1 General provisions.
- 332.2 Developing voluntary agreements.
- 332.3 Carrying out voluntary agreements.
- 332.4 Termination or modifying voluntary agreements.
- 332.5 Public access to records and meetings.



## § 332.1

AUTHORITY: Sec. 708, Defense Production Act of 1950, as amended (50 U.S.C. app. 2158); E.O. 10480, 3 CFR, 1949-1953 Comp., p. 961, as amended; E.O. 12148, 44 FR 43239.

SOURCE: 46 FR 2350, Jan. 9, 1981, unless otherwise noted.

### § 332.1 General provisions.

(a) Pursuant to section 708 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2158), the President may consult with representatives of industry, business, financing, agriculture, labor, or other interests, and may approve the making of voluntary agreements to help provide for the defense of the United States by developing preparedness programs and expanding productive capacity and supply beyond levels needed to meet essential civilian demand.

(b) *Sponsor.* (1) As used in this part, "sponsor" of a voluntary agreement is an officer of the Government who, pursuant to a delegation or redelegation of the functions given to the President by section 708 of the Defense Production Act (DPA) of 1950, as amended, proposes or otherwise provides for the development or carrying out of a voluntary agreement.

(2) The use of voluntary agreements, as authorized by section 708 of the DPA to help provide for the defense of the United States through the development of preparedness programs, is an activity coordinated by the Administrator of the Federal Emergency Management Agency, as provided by sections 101 and 501(a) of Executive Order 10480, as amended.

(3) The sponsor of a voluntary agreement shall carry out sponsorship functions subject to the direction and control of the Administrator of the Federal Emergency Management Agency.

(c) This part applies to the development and carrying out under section 708 of the DPA, as amended, of all voluntary agreements, and the carrying out of any voluntary agreement which was entered into under former section 708 of the DPA and in effect immediately prior to April 14, 1976, and which is in a period of extension as authorized by subsection 708(f)(2) of the DPA.

(d) The rules in the part void any provision of a voluntary agreement to

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which they apply, if that provision is contrary to or inconsistent with them. Each voluntary agreement shall be construed as containing every substantive provision that these rules require, whether or not a particular provision is included in the agreement.

(e) Pursuant to subsection 708(d) of the DPA, the sponsor may establish such advisory committees as he deems to be necessary for developing or carrying out voluntary agreements. Such advisory committees shall comply with this part as well as with the requirements and procedures of the Federal Advisory Committee Act (Pub. L. 92-463, as amended).

### § 332.2 Developing voluntary agreements.

(a) *Purpose and scope.* This section establishes the standards and procedures by which voluntary agreements may be developed through consultation, pursuant to subsection 708(c) of the DPA.

(b) *Proposal to develop an agreement.*

(1) A sponsor who wishes to develop a voluntary agreement shall submit to the Attorney General and the Administrator of the Federal Emergency Management Agency a document proposing the agreement. The proposal will include statements as to: The purpose of the agreement; the factual basis for making the finding required in subsection 708(c)(1) of the DPA; the proposed participants in the agreement; and any coordination with other Federal agencies accomplished in connection with the proposal.

(2) If the Attorney General, after consultation with the Chairman of the Federal Trade Commission, approves this proposal, the sponsor shall then initiate one or more meetings of interested persons to develop the agreement.

(c) *Conduct of meetings held to develop the agreement.* (1) The sponsor shall give to the Attorney General, the Chairman of the Federal Trade Commission, and the Administrator of the Federal Emergency Management Agency adequate written notice of each meeting to develop a voluntary agreement. The sponsor shall also publish in the FEDERAL REGISTER notice of the time, place, and nature of each meeting at least seven days prior to the meeting.

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(2) The sponsor shall chair each meeting held to develop a voluntary agreement. Both the Attorney General and the Chairman of the Federal Trade Commission, or their delegates, shall attend each of these meetings.

(3) Any interested person may attend a meeting held to develop a voluntary agreement, unless the sponsor of the agreement limits attendance pursuant to §332.5 of this part.

(4) Any interested person may, as set out in the FEDERAL REGISTER meeting notice, submit written data and views concerning the proposed voluntary agreement, and at the discretion of the Chairman of the meeting, may be given the opportunity for oral presentation.

(d) *Maintenance of records.* (1) The sponsor is responsible for the making of a full and verbatim transcript of each meeting. The Chairman shall send this transcript, and any voluntary agreement resulting from the meeting, to the Attorney General, the Chairman of the Federal Trade Commission, the Administrator of the Federal Emergency Management Agency, and any other party or repository required by law.

(2) The sponsor of a voluntary agreement shall maintain each meeting transcript and voluntary agreement, and make them available for public inspection and copying the extent required by §332.5 of this part.

(e) *Effectiveness of agreements.* The following steps must occur before a new voluntary agreement or an extension of an existing agreement may become effective:

(1) The sponsor must approve the agreement and certify in writing that it is necessary to carry out the purposes of subsection 708(c)(1) of the DPA;

(2) The Administrator of the Federal Emergency Management Agency must approve this certification, and submit it to the Attorney General with a request for a written finding; and

(3) The Attorney General, after consulting with the Chairman of the Federal Trade Commission, must issue a written finding that the purposes of subsection 708(c)(1) can not reasonably be achieved through a voluntary agreement having less anti-competitive ef-

fects or without any voluntary agreement.

**§332.3 Carrying out voluntary agreements.**

(a) *Purpose and scope.* This section establishes the standards and procedures by which the participants in each approved voluntary agreement shall carry out the agreement.

(b) *Participants.* The participants in each voluntary agreement shall be reasonably representative of the appropriate industry or segment of that industry.

(c) *Conduct of meetings held to carry out an agreement.* (1) The sponsor of a voluntary agreement shall initiate, or approve in advance, each meeting of the participants in the agreement held to discuss problems, determine policies, recommend actions, and make decisions necessary to carry out the agreement.

(2) The sponsor shall provide to the Attorney General, the Chairman of the Federal Trade Commission, and the Administrator of the Federal Emergency Management Agency adequate prior notice of the time, place, and nature of each meeting, and a proposed agenda of each meeting. The sponsor shall also publish in the FEDERAL REGISTER, reasonably in advance of each meeting, a notice of time, place, and nature of the meeting. If the sponsor has determined, pursuant to §332.5 of this part, to limit attendance at the meeting, the sponsor shall publish this FEDERAL REGISTER notice within ten days of the meeting.

(3) Any interested person may attend a meeting held to carry out a voluntary agreement unless the sponsor has restricted attendance pursuant to §332.5 of this part. A person attending a meeting under this section may present oral or written data, views, and arguments to any limitations on the manner of presentation that the sponsor may impose.

(4) No meeting shall be held to carry out any voluntary agreement unless a Federal employee, other than an individual employed pursuant to 5 U.S.C. 3109, is in attendance. Any meeting to carry out a voluntary agreement may be attended by the sponsor of the agreement, the Attorney General, the

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Chairman of the Federal Trade Commission, the Administrator of the Federal Emergency Management Agency, or their delegates.

(5) Notwithstanding any other provision of this section, a meeting between a single participant and the sponsor solely to deliver or exchange information is not subject to the requirements and procedures of this section, provided that a copy of the information is promptly delivered to the Attorney General, the Chairman of the Federal Trade Commission, and the Administrator of the Federal Emergency Management Agency.

(d) *Maintenance of records.* (1) The participants in any voluntary agreement shall maintain for five years all minutes of meetings, transcripts, records, documents, and other data, including any communications among themselves or with any other member of their industry, related to the carrying out of the voluntary agreement. The participants shall agree, in writing, to make available to the sponsor, the Attorney General, the Chairman of the Federal Trade Commission and the Administrator of the Federal Emergency Management Agency for inspection and copying at reasonable times and upon reasonable notice any item that this section requires them to maintain.

(2) Any person required by this paragraph to maintain records shall indicate specific portions, if any, that such person believes should not be disclosed to the public pursuant to § 332.5 of this part, and the reasons therefor. Any item made available to a Government official named in this paragraph shall be available from that official for public inspection and copying to the extent set forth in § 332.5 of this part.

#### § 332.4 Termination or modifying voluntary agreements.

The Attorney General may terminate or modify a voluntary agreement, in writing, after consultation with the Chairman of the Federal Trade Commission and the sponsor of the agreement. The sponsor of the agreement, with the concurrence of or at the direction of the Administrator of the Federal Emergency Management Agency, may terminate or modify a voluntary

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agreement, in writing, after consultation with the Attorney General and the Chairman of the Federal Trade Commission. Any person who is a party to a voluntary agreement may terminate his participation in the agreement upon written notice to the sponsor. Any antitrust immunity conferred upon the participants in that agreement by subsection 708(j) of the DPA shall not apply to any act or omission occurring after the termination of the voluntary agreement. Immediately upon modification of a voluntary agreement, no antitrust immunity shall apply to any subsequent act or omission that is beyond the scope of the modified agreement.

#### § 332.5 Public access to records and meetings.

(a) Interested persons may, pursuant to 5 U.S.C. 552, inspect or copy any voluntary agreement, minutes of meetings, transcripts, records, or other data maintained pursuant to these rules.

(b) Except as provided by paragraph (c) of this section, interested persons may attend any part of a meeting held to develop or carry out a voluntary agreement pursuant to these rules.

(c) The sponsor of a voluntary agreement may withhold material described in this section from disclosure and restrict attendance at meetings only on the grounds specified in:

(1) Section 552(b)(1) of 5 U.S.C., which applies to matter specifically required by Executive Order to be kept secret in the interest of the national defense or foreign policy. This section shall be interpreted to include matter protected under Executive Order 12065, dated June 28, 1978 (3 CFR 1979–1975 Comp. p. 678), establishing categories and criteria for classification; and

(2) Section 552(b)(3) of 5 U.S.C., which applies to matter specifically exempted from disclosure by statute; and

(3) Section 552(b)(4) of 5 U.S.C., which applies to trade secrets and commercial or financial information obtained from a person as privileged and confidential.

**PART 333—EMERGENCY MANAGEMENT PRIORITIES AND ALLOCATIONS SYSTEM**

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AUTHORITY: 6 U.S.C. 313, 314; 50 U.S.C. 4511, *et seq.*; E.O. 13603, 77 FR 16651; E.O. 13909, 85 FR 16227; E.O. 13911, 85 FR 18403; DHS Delegation 09052, Rev. 00 (Jan. 3, 2017); DHS Delegation 09052 Rev 00.1 (Apr. 1, 2020).

SOURCE: 85 FR 28510, May 13, 2020, unless otherwise noted.

**Subpart A—Purpose**

**§ 333.1 Purpose of this part.**

The Federal Emergency Management Agency (FEMA) refers to this part as the Emergency Management Priorities and Allocations System (EMPAS). The EMPAS implements those priorities and allocations authorities under the Defense Production Act that are the subject of a delegation from the President to the Secretary of DHS and re-delegated to the FEMA Administrator, or to the FEMA Administrator directly, as described in §333.10 of this part. This includes the use of authority to support critical infrastructure restoration and protection, stockpiling, and emergency preparedness activities pursuant to Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), and related statutes, with respect to health and medical resources needed to respond to the spread of COVID-19 within the United States.

**Subpart B—Overview**

**§ 333.2 Program eligibility.**

(a) Certain programs to promote the national defense are eligible for priorities and allocations support. These include programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, deployment and sustainment of military forces, homeland security, stockpiling, space, and any directly related activity. Other eligible programs include emergency preparedness activities conducted pursuant to Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*) and critical infrastructure protection and restoration. For a current and complete list reflecting the latest changes to approved programs, please visit FEMA’s website at *www.FEMA.gov*.

(b) FEMA may delegate authority to place priority ratings on contracts or orders necessary to promote the national defense to appropriate officials in certain Federal Government agencies that issue such contracts or orders, to the extent consistent with the delegation of Presidential authority under which FEMA is operating. Such delegations may include authority to authorize recipients of rated orders to place ratings on contracts or orders to contractors, subcontractors, and suppliers.

**§ 333.3 Priority ratings and rated orders.**

(a) Rated orders are identified by a priority rating and a program identification symbol. Rated orders take precedence over all unrated orders as necessary to meet required delivery dates. Among rated orders, DX rated orders take precedence over DO rated orders.

(b) Persons receiving rated orders must give them preferential treatment as required by this part.

(c) All rated orders must be scheduled to the extent possible to ensure delivery by the required delivery date.

(d) Persons who receive rated orders must in turn place rated orders with their suppliers for the items they need to fill the orders. This provision ensures that suppliers will give priority

treatment to rated orders from contractor to subcontractor to suppliers throughout the procurement chain.

(e) Persons may place a priority rating on orders only when they are in receipt of a rated order, have been explicitly authorized to do so by FEMA or a Delegate Agency, or are otherwise permitted to do so by this part.

**§§ 333.4–333.7 [Reserved]**

**Subpart C—Definitions**

**§ 333.8 Definitions.**

The definitions in this section apply throughout this part:

*Act or DPA* means the Defense Production Act of 1950, as amended (50 U.S.C. 4501, *et seq.*).

*Administrator* means the Administrator of the Federal Emergency Management Agency.

*Allocation* means the control of the distribution of materials, services or facilities for a purpose deemed necessary or appropriate to promote the national defense.

*Allocation order* means an official action to control the distribution of materials, services, or facilities for a purpose deemed necessary or appropriate to promote the national defense.

*Allotment* means an official action that specifies the maximum quantity of a material, service, or facility authorized for a specific use to promote the national defense.

*Approved program* means a program determined as necessary or appropriate for priorities and allocations support to promote the national defense by the Secretary of Defense, the Secretary of Energy, or the Secretary of Homeland Security, under the authority of the Defense Production Act and Executive Order 13603.

*Construction* means the erection, addition, extension, or alteration of any building, structure, or project, using materials or products which are to be an integral and permanent part of the building, structure, or project. Construction does not include maintenance and repair.

*Critical infrastructure* means any systems and assets, whether physical or cyber-based, so vital to the United

States that the degradation or destruction of such systems and assets would have a debilitating impact on national security, including, but not limited to, national economic security and national public health or safety.

*Delegate Agency* means a Federal Government agency authorized by delegation from FEMA to place priority ratings on contracts or orders needed to support approved programs.

*Directive* means an official action which requires a person to take or refrain from taking certain actions in accordance with its provisions.

*Emergency preparedness* means all those activities and measures designed or undertaken to prepare for or minimize the effects of a hazard upon the civilian population, to deal with the immediate emergency conditions which would be created by the hazard, and to effectuate emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by the hazard. "Emergency preparedness" includes the following:

(1) Measures to be undertaken in preparation for anticipated hazards (including the establishment of appropriate organizations, operational plans, and supporting agreements, the recruitment and training of personnel, the conduct of research, the procurement and stockpiling of necessary materials and supplies, the provision of suitable warning systems, the construction or preparation of shelters, shelter areas, and control centers, and, when appropriate, the nonmilitary evacuation of the civilian population).

(2) Measures to be undertaken during a hazard (including the enforcement of passive defense regulations prescribed by duly established military or civil authorities, the evacuation of personnel to shelter areas, the control of traffic and panic, and the control and use of lighting and civil communications).

(3) Measures to be undertaken following a hazard (including activities for firefighting, rescue, emergency medical, health and sanitation services, monitoring for specific dangers of special weapons, unexploded bomb reconnaissance, essential debris clearance, emergency welfare measures, and immediately essential emergency re-

pair or restoration of damaged vital facilities).

*Facilities* includes all types of buildings, structures, or other improvements to real property (but excluding farms, churches or other places of worship, and private dwelling houses), and services related to the use of any such building, structure, or other improvement.

*Hazard* means an emergency or disaster resulting from:

- (1) A natural disaster, or
- (2) An accidental or man-caused event.

*Health and medical resources* means drugs, biological products, medical devices, materials, facilities, health supplies, services, and equipment required to diagnose, mitigate, prevent the impairment of, improve, treat, cure, or restore the physical or mental health conditions of the population.

*Homeland security* includes efforts:

- (1) To prevent terrorist attacks within the United States;
- (2) To reduce the vulnerability of the United States to terrorism;
- (3) To minimize damage from a terrorist attack in the United States; and
- (4) To recover from a terrorist attack in the United States.

*Industrial resources* means all materials, services, and facilities, including construction materials, but not including: food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer; all forms of health resources; all forms of civil transportation; and water resources. This term also includes the term "item" as defined and used in this part.

*Item* means any raw, in process, or manufactured material, article, commodity, supply, equipment, component, accessory, part, assembly, or product of any kind, technical information, process, or service.

Maintenance and repair and/or operating supplies (MRO).

(1) *Maintenance* is the upkeep necessary to continue any plant, facility, or equipment in working condition.

(2) *Repair* is the restoration of any plant, facility, or equipment to working condition when it has been rendered unsafe or unfit for service by

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wear and tear, damage, or failure of parts.

(3) *Operating supplies* are any items carried as operating supplies according to a person's established accounting practice. Operating supplies may include hand tools and expendable tools, jigs, dies, fixtures used on production equipment, lubricants, cleaners, chemicals, and other expendable items.

(4) MRO does not include items produced or obtained for sale to other persons or for installation upon or attachment to the property of another person, or items required for the production of such items; items needed for the replacement of any plant, facility, or equipment; or items for the improvement of any plant, facility, or equipment by replacing items which are still in working condition with items of a new or different kind, quality, or design.

*Materials* includes:

(1) Any raw materials (including minerals, metals, and advanced processed materials), commodities, articles, components (including critical components), products, and items of supply; and

(2) Any technical information or services ancillary to the use of any such materials, commodities, articles, components, products, or items.

*National defense* means programs for military and energy production, or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any directly related activity. Such term includes emergency preparedness activities conducted pursuant to Title VI of The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*) and critical infrastructure protection and restoration.

*Official action* means an action taken by FEMA under the authority of the Defense Production Act, the Robert T. Stafford Disaster Relief and Emergency Assistance Act and related statutes, or this part. Such actions include the issuance of rating authorizations, directives, letters and memoranda of understanding, demands for information, inspection authorizations, administrative subpoenas, and allocation orders.

*Person* includes any individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof; or any State or local government or agency thereof; and for purposes of administration of this part, includes the Federal Government and any authorized foreign government or international organization or agency thereof, delegated authority as provided in this part.

*Priorities authority* means the authority of FEMA, pursuant to Section 101 of the Defense Production Act, to require acceptance and priority performance of contracts and orders for health and medical resource items and other resources as further delegated by the President to the Secretary of Homeland Security or Administrator for use in approved programs.

*Priority rating* means an identifying code assigned by a Delegate Agency, FEMA, or authorized person placed on all rated orders and consisting of the rating symbol and the program identification symbol.

*Production equipment* means any item of capital equipment used in producing materials or furnishing services that has a unit acquisition cost of \$2,500 or more, an anticipated service life in excess of one year, and the potential for maintaining its integrity as a capital item.

*Program identification symbols* means abbreviations used to indicate which approved program is supported by a rated order.

*Rated order* means a prime contract, a subcontract, or a purchase order in support of an approved program issued in accordance with the provisions of this part.

*Services* includes any effort that is needed for or incidental to:

- (1) The development, production, processing, distribution, delivery, or use of an industrial resource or a critical technology item;
- (2) The construction of facilities;
- (3) The movement of individuals and property by all modes of civil transportation; or
- (4) Other national defense programs and activities.

*Set-aside* means an official action that requires a person to reserve materials, services, or facilities capacity in anticipation of the receipt of rated orders.

*Written* and *in writing* mean documented via printing, typewriting, handwriting, or similar means, whether in tangible or electronic form.

*Written electronic* means written and in electronic form, except that when electronic form is impracticable under the circumstances, FEMA may construe this term to allow for a tangible format.

**Subpart D—Priorities and Placement of Rated Orders**

**§ 333.10 Authority.**

(a) The priorities and allocations authorities of the President under Title I of the Act that have been delegated to the Secretary of Homeland Security have been redelegated to the Administrator. These rules are issued pursuant to Title I of the Act, and implementing authorities, including such authorities as are contained in subchapter III of chapter 55 of title 50, United States Code (50 U.S.C. 4554, 4555, 4556, and 4560), which have been delegated to FEMA.

(b) *Delegations by FEMA.* FEMA may authorize Delegate Agencies to assign priority ratings to orders under these regulations as authorized.

(c) *Jurisdictional limitations.* Unless delegated by the President to DHS or FEMA, the provisions of this part are not applicable to the following resource categories, as defined in Executive Order 13603, a successor executive order, or implementing regulations issued thereunder:

(1) Food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer (Resource department with jurisdiction—Department of Agriculture);

(2) Energy supplies (Resources agency with jurisdiction—Department of Energy);

(3) All forms of civil transportation (Resource department with jurisdiction—Department of Transportation);

(4) Health resources (Resource department with jurisdiction—Department of Health and Human Services),

except that pursuant to Executive Order 13911, the provisions of this part are applicable to health and medical resources needed to respond to the spread of COVID-19;

(5) Water resources (Resource department with jurisdiction—Department of Defense); and

(6) All other materials, services, and facilities, including construction materials (“industrial resources”) (Resource department with jurisdiction—Department of Commerce).

**§ 333.11 Priority ratings.**

(a) *Levels of priority.* (1) There are two levels of priority established by Federal Priorities and Allocations System regulations, identified by the rating symbols “DO” and “DX.”

(2) All DO rated orders have equal priority with each other and take preference over unrated orders. All DX rated orders have equal priority with each other and take preference over DO rated orders and unrated orders. (For resolution of conflicts among rated orders of equal priority, see § 333.14(c)).

(3) In addition, a Directive issued by FEMA regarding priority treatment for a given item takes preference over any DX rated order, DO rated order, or unrated order, as stipulated in the Directive. (For a full discussion of Directives, see § 333.52).

(b) *Program identification symbols.* Program identification symbols indicate which approved program is being supported by a rated order. Program identification symbols, in themselves, do not connote any priority.

(c) *Priority ratings.* A priority rating consists of the rating symbol—DO or DX—and the program identification symbol.

**§ 333.12 Elements of a rated order.**

(a) *Elements required for all rated orders.* (1) The appropriate priority rating and program identification symbol;

(2) A required delivery date or dates. The words “immediately” or “as soon as possible” do not constitute a delivery date. When a “requirements contract,” “basic ordering agreement,” “prime vendor contract,” or similar



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procurement document bearing a priority rating contains no specific delivery date or dates, but provides for the furnishing of items from time-to-time or within a stated period against specific purchase orders, such as “calls,” “requisitions,” and “delivery orders,” the purchase orders under such contracts or agreements must specify a required delivery date or dates and are to be considered as rated as of the date of their receipt by the supplier and not as of the date of the original procurement document.

(3) The written signature on a manually placed order, or the digital signature or name on an electronically placed order, of an individual authorized to sign rated orders for the person placing the order. The signature, manual or digital, certifies that the rated order is authorized under this part and that the requirements of this part are being followed; and

(4) A statement that reads in substance: “This is a rated order certified for national defense use and you are required to follow all the provisions of the Emergency Management Priorities and Allocations System regulations (44 CFR part 333).”

(b) *Additional element required for certain emergency preparedness rated orders.* If a rated order is placed for the purpose of emergency preparedness requirements and expedited action is necessary or appropriate to meet these requirements, the following statement must be included in the order: “This rated order is placed for the purpose of emergency preparedness. It must be accepted or rejected pursuant to the mandatory acceptance and mandatory rejection requirements found in 44 CFR 333.13 within [Insert a time limit no less than the minimum applicable time limit specified in § 333.13(d)(2)].”

(c) *Additional elements required for rated orders issued by FEMA or a Delegate Agency to facilitate sales to third parties.* If a rated order is placed by FEMA or the Delegate Agency to facilitate a sale to a third party who desires to order the materials, the following statement must also be included in the order: “This rated order is placed for the purpose of facilitating a sale to [Insert third party] to promote the national defense. It must be

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accepted or rejected pursuant to the mandatory acceptance and mandatory rejection requirements found in 44 CFR 333.13 within [Insert the applicable time limit consistent with § 333.13(d)], and it is subject to the additional requirements of 44 CFR 333.19. [Third party] is responsible for satisfying the applicable terms of sale and payment. The Federal Government is not be liable for any failure to meet the terms of sale or payment. For purposes of these and any other notification requirements set forth in FEMA’s Emergency Management Priorities and Allocations System regulations (44 CFR part 333), both [Insert FEMA or Delegate Agency] and [Insert third party] are the ‘customer.’”

#### § 333.13 Acceptance and rejection of rated orders.

(a) *Mandatory acceptance.* (1) Except as otherwise specified in this section, a person must accept every rated order received and must fill such orders regardless of any other rated or unrated orders that have been accepted.

(2) A person must not discriminate against rated orders in any manner such as by charging higher prices or by imposing different terms and conditions than for comparable unrated orders.

(b) *Mandatory rejection.* Unless otherwise directed by FEMA:

(1) A person must not accept a rated order for delivery on a specific date if unable to fill the order by that date. However, the person must inform the customer of the earliest date on which delivery can be made and offer to accept the order on the basis of that date. Scheduling conflicts with previously accepted lower rated or unrated orders are not sufficient reason for rejection under this section.

(2) A person must not accept a DO rated order for delivery on a date which would interfere with delivery of any previously accepted DO or DX rated orders. However, the person must offer to accept the order based on the earliest delivery date otherwise possible.

(3) A person must not accept a DX rated order for delivery on a date which would interfere with delivery of

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any previously accepted DX rated orders, but must offer to accept the order based on the earliest delivery date otherwise possible.

(4) If a person is unable to fill all the rated orders of equal priority status received on the same day, the person must accept, based upon the earliest delivery dates, only those orders which can be filled, and reject the other orders. For example, a person must accept order A requiring delivery on December 15 before accepting order B requiring delivery on December 31. However, the person must offer to accept the rejected orders based on the earliest delivery dates otherwise possible.

(c) *Optional rejection.* Unless otherwise directed by FEMA, rated orders may be rejected in any of the following cases as long as a supplier does not discriminate among customers:

(1) If the person placing the order is unwilling or unable to meet regularly established terms of sale or payment;

(2) If the order is for an item not supplied or for a service not performed;

(3) If the order is for an item produced, acquired, or provided only for the supplier's own use for which no orders have been filled for two years prior to the date of receipt of the rated order. If, however, a supplier has sold some of these items, the supplier is obligated to accept rated orders up to that quantity or portion of production, whichever is greater, sold within the past two years;

(4) If the person placing the rated order, other than the Federal Government, makes the item or performs the service being ordered;

(5) If acceptance of a rated order or performance against a rated order would violate any other regulation, official action, or order of FEMA issued under the authority of the Defense Production Act or another relevant statute.

(d) *Customer notification requirements.*

(1) Except as provided in paragraph (d)(2) of this section, a person must accept or reject a rated order in written electronic format within 15 working days after receipt of a DO rated order and within 10 working days after receipt of a DX rated order. If the order is rejected, the person must give rea-

sons in written electronic format for the rejection.

(2) If a rated order is placed for the purpose of emergency preparedness requirements and expedited action is necessary or appropriate to meet these requirements and the order includes the statement set forth in §333.12(b), a person must accept or reject the rated order and transmit the acceptance or rejection in written electronic format within the time specified in the rated order. The minimum times for acceptance or rejection that such orders may specify are 6 hours after receipt of the order if the order is issued by an authorized person in response to a hazard that has occurred, or 12 hours after receipt if the order is issued by an authorized person to prepare for an imminent hazard.

(3) If a person has accepted a rated order and subsequently finds that shipment or performance will be delayed, the person must notify the customer immediately, give the reasons for the delay, and advise of a new shipment or performance date. If notification is given verbally, written electronic confirmation must be provided within 24 hours of the verbal notice.

**§333.14 Preferential scheduling.**

(a) A person must schedule operations, including the acquisition of all needed production items, in a timely manner to satisfy the delivery requirements of each rated order. Modifying production or delivery schedules is necessary only when required delivery dates for rated orders cannot otherwise be met.

(b) DO rated orders must be given production preference over unrated orders, if necessary, to meet required delivery dates, even if this requires the diversion of items being processed or ready for delivery against unrated orders. Similarly, DX rated orders must be given preference over DO rated orders and unrated orders.

(1) *Examples:* If a person receives a DO rated order with a delivery date of June 3 and if meeting that date would mean delaying production or delivery of an item for an unrated order, the unrated order must be delayed. If a DX rated order is received calling for delivery on July 15 and a person has a DO

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rated order requiring delivery on June 2 and operations can be scheduled to meet both deliveries, there is no need to alter production schedules to give any additional preference to the DX rated order. However, if business operations cannot be altered to meet both the June 3 and July 15 delivery dates, then the DX rated order must be given priority over the DO rated order.

(2) [Reserved]

(c) *Conflicting rated orders.* (1) If a person finds that delivery or performance against any accepted rated orders conflicts with the delivery or performance against other accepted rated orders of equal priority status, the person must give preference to the conflicting orders in the sequence in which they are to be delivered or performed (not to the receipt dates). If the conflicting rated orders are scheduled to be delivered or performed on the same day, the person must give preference to those orders which have the earliest receipt dates.

(2) If a person is unable to resolve rated order delivery or performance conflicts under this section, the person should promptly seek special priorities assistance as provided in subpart E of this part. If the person's customer objects to the rescheduling of delivery or performance of a rated order, the customer should promptly seek special priorities assistance as provided in subpart E of this part. For any rated order against which delivery or performance will be delayed, the person must notify the customer as provided in § 333.13(d)(3).

(d) If a person is unable to purchase needed production items in time to fill a rated order by its required delivery date, the person must fill the rated order by using inventoried production items. A person who uses inventoried items to fill a rated order may replace those items with the use of a rated order as provided in § 333.17(b).

### § 333.15 Extension of priority ratings.

(a) A person must use rated orders with suppliers to obtain items needed to fill a rated order. The person must use the priority rating indicated on the customer's rated order, except as otherwise provided in this part or as directed by FEMA.

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(b) The priority rating must be included on each successive order placed to obtain items needed to fill a customer's rated order. Therefore, the inclusion of the rating will continue from contractor to subcontractor to supplier throughout the entire supply chain.

(c) A person must use rated orders with suppliers to obtain items needed to fill an emergency preparedness rated order. That person must require acceptance or rejection, and transmission of that acceptance or rejection by the supplier within the time limit stated in the rated order that is being filled.

### § 333.16 Changes or cancellations of priority ratings and rated orders.

(a) The priority rating on a rated order may be changed or cancelled by:

(1) An official action of FEMA; or

(2) Written electronic notification from the person who placed the rated order (including a Delegate Agency).

(b) If an unrated order is amended so as to make it a rated order, or a DO rating is changed to a DX rating, the supplier must give the appropriate preferential treatment to the order as of the date the change is received by the supplier.

(c) An amendment to a rated order that significantly alters a supplier's original production or delivery schedule shall constitute a new rated order as of the date of its receipt. The supplier must accept or reject the amended order according to the provisions of § 333.13.

(d) The following amendments do not constitute a new rated order: A change in shipping destination; A reduction in the total amount of the order; an increase in the total amount of the order which has negligible impact upon deliveries; a minor variation in size or design (prior to the start of production); or a change which is agreed upon between the supplier and the customer.

(e) A person must cancel any rated orders that the person (or a predecessor in interest) has placed with suppliers or cancel the priority ratings on those orders if the person no longer needs the items in those orders to fill a rated order.

(f) A person adding a rating to an unrated order, or changing or cancelling a priority rating must promptly

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provide written electronic notification to all suppliers to whom the order was sent of the addition, change, or cancellation.

### § 333.17 Use of rated orders.

(a) A person must use rated orders to obtain:

(1) Items which will be physically incorporated into other items to fill rated orders, including that portion of such items normally consumed, or converted into scrap or by-products, in the course of processing;

(2) Containers or other packaging materials required to make delivery of the finished items against rated orders;

(3) Services, other than contracts of employment, needed to fill rated orders; and

(4) MRO needed to produce the finished items to fill rated orders.

(b) A person may use a rated order to replace inventoried items (including finished items) if such items were used to fill rated orders, as follows:

(1) The order must be placed within 90 days of the date of use of the inventory.

(2) A DO rating symbol and the program identification symbol indicated on the customer's rated order must be used on the order. A DX rating symbol may not be used even if the inventory was used to fill a DX rated order.

(3) If the priority ratings on rated orders from one customer or several customers contain different program identification symbols, the rated orders may be combined.

(c) A person may combine DX and DO rated orders from one customer or several customers if the items covered by each level of priority are identified separately and clearly.

(d) *Combining rated and unrated orders.* (1) A person may combine rated and unrated order quantities on one purchase order provided that:

(i) The rated quantities are separately and clearly identified; and

(ii) The elements of a rated order, as required by § 333.12, are included on the order with the statement required in § 333.12(d) modified to read in substance: "This purchase order contains rated order quantities certified for national defense use, and you are required to follow all the provisions of

the Emergency Management Priorities and Allocations System regulations (44 CFR part 333) as it pertains to the rated quantities."

(2) A supplier must accept or reject the rated portion of the purchase order as provided in § 333.13 and give preferential treatment only to the rated quantities as required by this part. This part may not be used to give preferential treatment to the unrated portion of the order.

(3) Any supplier who believes that rated and unrated orders are being combined in a manner contrary to the intent of this part or in a fashion that causes undue or exceptional hardship may submit a request for adjustment or exception under § 333.70.

(e) A person may place a rated order for the minimum commercially procurable quantity even if the quantity needed to fill a rated order is less than that minimum. However, a person must combine rated orders as provided in paragraph (c) of this section, if possible, to obtain minimum procurable quantities.

(f) A person is not required to place a priority rating on an order for less than one half of the Simplified Acquisition Threshold (as established in the Federal Acquisition Regulation (FAR)) (see 48 CFR 2.101) or in other authorized acquisition regulatory or management systems, provided that delivery can be obtained in a timely fashion without the use of the priority rating.

### § 333.18 Limitations on placing rated orders.

(a) *General limitations on placing rated orders.* A person may not place a DO or DX rated order pursuant to this part unless the person is in receipt of a rated order, has been explicitly authorized to do so by FEMA or a Delegate Agency or is otherwise permitted to do so by this part.

(b) *Specific limitations on placing rated orders.* Rated orders may not be used to obtain:

(1) Delivery on a date earlier than needed;

(2) A greater quantity of the item than needed, except to obtain a minimum procurable quantity. Separate rated orders may not be placed solely for the purpose of obtaining minimum

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procurable quantities on each order if the minimum procurable quantity would be sufficient to cover more than one rated order;

(3) Items in advance of the receipt of a rated order, except as specifically authorized by FEMA (see § 333.21(c) for information on obtaining authorization for a priority rating in advance of a rated order); or

(4) Any of the following items unless specific priority rating authority has been obtained from FEMA, a Delegate Agency, or the Department of Commerce:

(i) Items for plant improvement, expansion, or construction, unless they will be physically incorporated into a construction project covered by a rated order; or

(ii) Production or construction equipment or items to be used for the manufacture of production equipment (for information on requesting priority rating authority, see § 333.21).

(5) Any items related to the development of chemical or biological warfare capabilities or the production of chemical or biological weapons, unless such development or production has been authorized by the President or the Secretary of Defense.

**§ 333.19 Special provisions applicable to rated orders for third parties.**

(a) The provisions of this part apply to rated orders placed by FEMA or a Delegate Agency to facilitate sales to third parties, regardless of the nature of their relationship to the Federal Government, unless otherwise specified.

(b) Where FEMA or a Delegate Agency has placed a rated order to facilitate a sale to a third party, the third party is responsible for satisfying the applicable terms of sale and payment. The Federal Government shall not be liable for any failure to meet the terms of sale or payment.

(c) If a third party is unable to satisfy the applicable terms of sale or payment, FEMA or the Delegate Agency may amend or cancel the rated order pursuant to § 333.16 of this part. If FEMA or the Delegate Agency amend the rated order to provide that delivery shall be made to FEMA, the Delegate Agency, or another third party instead

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of the original third party, and the amendment shall not constitute a new rated order.

**Subpart E—Special Priorities Assistance**

**§ 333.20 General provisions.**

(a) EMPAS is designed to be largely self-executing. However, if production or delivery problems arise, a person should immediately contact FEMA (or the Delegate Agency, as appropriate) for special priorities assistance pursuant to §§ 333.20 through 333.24 and as directed by § 333.83. If FEMA (or the Delegate Agency, as appropriate) is unable to resolve the problem or to authorize the use of a priority rating and believes additional assistance is warranted, FEMA (or the Delegate Agency, as appropriate) may forward the request to another resource agency, as appropriate, for action. Special priorities assistance is a service provided to alleviate problems.

(b) Special priorities assistance can be provided for any reason consistent with this part, such as assisting in obtaining timely deliveries of items needed to satisfy rated orders or authorizing the use of priority ratings on orders to obtain items not otherwise ratable under this part. Special priorities assistance may also be used to request rating authority for items that are not normally eligible for priority treatment.

(c) A request for special priorities assistance or priority rating authority may be submitted on FEMA Form 009–0–142 (OMB control number 1660–0149) to FEMA. Form 009–0–142 may be obtained from the Delegate Agency or from FEMA.

[85 FR 28510, May 13, 2020, as amended at 86 FR 1292, Jan. 8, 2021]

**§ 333.21 Requests for priority rating authority.**

(a) If a rated order is likely to be delayed because a person is unable to obtain items not normally rated under this part, the person may request the authority to use a priority rating in ordering the needed items.

(b) *Rating authority for production or construction equipment.* (1) A request for

priority rating authority for production or construction equipment, if needed, must be submitted to the U.S. Department of Commerce on Form BIS-999.

(2) When the use of a priority rating is authorized for the procurement of production or construction equipment, a rated order may be used either to purchase or to lease such equipment. However, in the latter case, the equipment may be leased only from a person engaged in the business of leasing such equipment or from a person willing to lease rather than sell.

(c) *Rating authority in advance of a rated prime contract.* (1) In certain cases, and upon specific request, FEMA, in order to promote the national defense, may authorize a person to place a priority rating on an order to a supplier in advance of the issuance of a rated prime contract. In these instances, the person requesting advance rating authority must obtain sponsorship of the request from FEMA or the appropriate Delegate Agency. The person shall also assume any business risk associated with the placing of rated orders if these orders have to be cancelled in the event the rated prime contract is not issued.

(2) The person must state the following in the request: "It is understood that the authorization of a priority rating in advance of our receiving a rated prime contract from FEMA (or a Delegate Agency) and our use of that priority rating with our suppliers in no way commits the Delegate Agency, FEMA, or any other Federal Government agency to enter into a contract or order or to expend funds. Further, we understand that the Federal Government shall not be liable for any cancellation charges, termination costs, or other damages that may accrue if a rated prime contract is not eventually placed and, as a result, we must subsequently cancel orders placed with the use of the priority rating authorized as a result of this request."

(3) In reviewing requests for rating authority in advance of a rated prime contract, FEMA will consider, among other things, the following criteria:

(i) The probability that the prime contract will be awarded;

(ii) The impact of the resulting rated orders on suppliers and on other authorized programs;

(iii) Whether the contractor is the sole source;

(iv) Whether the item being produced has a long lead time; and

(v) The time period for which the rating is being requested.

(4) FEMA may require periodic reports on the use of the rating authority granted under paragraph (c) of this section.

(5) If a rated prime contract is not issued, the person must promptly notify all suppliers who have received rated orders pursuant to the advance rating authority that the priority rating on those orders is cancelled.

**§ 333.22 Examples of assistance.**

(a) While special priorities assistance may be provided for any reason in support of this part, it is usually provided in situations where:

(1) A person is experiencing difficulty in obtaining delivery against a rated order by the required delivery date; or

(2) A person cannot locate a supplier for an item needed to fill a rated order.

(b) Other examples of special priorities assistance include:

(1) Ensuring that rated orders receive preferential treatment by suppliers;

(2) Resolving production or delivery conflicts between various rated orders;

(3) Assisting in placing rated orders with suppliers;

(4) Verifying the urgency of rated orders; and

(5) Determining the validity of rated orders.

**§ 333.23 Criteria for assistance.**

Requests for special priorities assistance should be timely, *i.e.*, the request must be submitted promptly and in enough time for FEMA or the Delegate Agency to effect a meaningful resolution to the problem, and must establish that:

(a) There is an urgent need for the item; and

(b) The applicant has made a reasonable effort to resolve the problem.

**§ 333.24 Instances where assistance will not be provided.**

Special priorities assistance is provided at the discretion of FEMA or the Delegate Agency when it is determined that such assistance is warranted to meet the objectives of this part. Examples where assistance may not be provided include situations when a person is attempting to:

- (a) Secure a price advantage;
- (b) Obtain delivery prior to the time required to fill a rated order;
- (c) Gain competitive advantage;
- (d) Disrupt an industry apportionment program in a manner designed to provide a person with an unwarranted share of scarce items; or
- (e) Overcome a supplier's regularly established terms of sale or conditions of doing business.

**Subpart F—Allocation Actions**

**§ 333.30 Policy.**

(a) Allocation orders will:

(1) Be used only when there is insufficient supply of a material, service, or facility to satisfy national defense requirements through the use of the priorities authority or when the use of the priorities authority would cause a severe and prolonged disruption in the supply of materials, services, or facilities available to support normal U.S. economic activities; and

(2) Not be used to ration materials or services at the retail level.

(b) Allocation orders, when used, will be distributed equitably among the suppliers of the materials, services, or facilities being allocated and not require any person to relinquish a disproportionate share of the civilian market.

(c) When a hazard has occurred or is imminent, an allocation order may be used without regard to paragraphs (a) and (b) of this section whenever it is deemed by the Administrator to be necessary or appropriate to promote the national defense.

**§ 333.31 General procedures.**

Before FEMA uses its allocations authority to address a supply problem within its resource jurisdiction, it will develop a plan that includes:

(a) A copy of the written determination that the program or programs that would be supported by the allocation action are necessary or appropriate to promote the national defense;

(b) A detailed description of the situation to include any unusual events or circumstances that have created the requirement for an allocation action;

(c) A statement of the specific objective(s) of the allocation action;

(d) A list of the materials, services, or facilities to be allocated;

(e) A list or description of the sources of the materials, services, or facilities that will be subject to the allocation action;

(f) A detailed description of the provisions that will be included in the allocation orders, including the type(s) of allocation orders, the percentages or quantity of capacity or output to be allocated for each purpose, and the duration of the allocation action (*e.g.*, anticipated start and end dates);

(g) An evaluation of the impact of the proposed allocation action on the civilian market; and

(h) Proposed actions, if any, to mitigate disruptions to civilian market operations.

**§ 333.32 Controlling the general distribution of a material in the civilian market.**

No allocation action by FEMA may be used to control the general distribution of a material in the civilian market unless the President, the Administrator, or another official with lawful authority under section 101(b) of the Act has made a written finding that:

(a) Such material is a scarce and critical material essential to the national defense, and

(b) The requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship.

**§ 333.33 Types of allocation orders.**

There are three types of allocation orders available for communicating allocation actions.

(a) *Set-aside*. A set-aside is an official action that requires a person to reserve

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materials, services, or facilities capacity in anticipation of the receipt of rated orders.

(b) *Directive*. A directive is an official action that requires a person to take or refrain from taking certain actions in accordance with its provisions. For example, a directive can require a person to: Stop or reduce production of an item; prohibit the use of selected materials, services, or facilities; or divert the use of materials, services, or facilities from one purpose to another.

(c) *Allotment*. An allotment is an official action that specifies the maximum quantity of a material, service, or facility authorized for a specific use to promote the national defense.

### § 333.34 Elements of an allocation order.

Allocation orders may be issued directly to the affected persons or by constructive notice through publication in the FEDERAL REGISTER. This section describes the elements that each order must include.

(a) *Elements to be included in all allocation orders*. (1) A detailed description of the required allocation action(s), including its relationship to previously or subsequently received DX rated orders, DO rated orders, and unrated orders.

(2) Specific start and end calendar dates for each required allocation action.

(b) *Elements to be included in orders issued directly to affected persons*. (1) A statement that reads in substance: “This is an allocation order certified for national defense use. [Insert the name of the person receiving the order] is required to comply with this order, in accordance with the provisions of the Emergency Management Priorities and Allocations System regulations (44 CFR part 333), which is part of the Federal Priorities and Allocations System.”

(2) The written signature on a manually placed order, or the digital signature or name on an electronically placed order, of the FEMA Administrator.

(c) *Elements to be included in an allocation order that gives constructive notice through publication in the FEDERAL REGISTER*. (1) A statement that reads in

substance: “This is an allocation order certified for national defense use. [Insert the name(s) of the person(s) to whom the order applies or a description of the class of persons to whom the order applies] is (are) required to comply with this order, in accordance with the provisions of the Emergency Management Priorities and Allocations System regulations (44 CFR part 333), which is part of the Federal Priorities and Allocations System.”

(2) The order must be signed by the FEMA Administrator.

### § 333.35 Mandatory acceptance of an allocation order.

(a) Except as otherwise specified in this section, a person must accept and comply with every allocation order received.

(b) A person must not discriminate against an allocation order in any manner such as by charging higher prices for materials, services, or facilities covered by the order or by imposing terms and conditions for contracts and orders involving allocated materials, services, or facilities that differ from the person’s terms and conditions for contracts and orders for the materials, services, or facilities prior to receiving the allocation order.

(c) If a person is unable to comply fully with the required action(s) specified in an allocation order, the person must notify FEMA immediately, explain the extent to which compliance is possible, and give the reasons why full compliance is not possible. If notification is given verbally, written, electronic confirmation must be provided within 24 hours. Such notification does not release the person from complying with the order to the fullest extent possible, until the person is notified by FEMA that the order has been changed or cancelled.

### § 333.36 Changes or cancellations of allocation orders.

An allocation order may be changed or cancelled by an official action from FEMA. Notice of such changes or cancellations may be provided directly to persons to whom the order being cancelled or modified applies or constructive notice may be provided by publication in the FEDERAL REGISTER.



**Subpart G [Reserved]**

**Subpart H—Official Actions**

**§ 333.50 General provisions.**

(a) FEMA may, from time-to-time, take specific official actions to implement or enforce the provisions of this part.

(b) Some of these official actions (rating authorizations and letters and memoranda of understanding) are discussed in this subpart. Official actions that pertain to compliance (administrative subpoenas, demands for information, and inspection authorizations) are discussed in § 333.61(c). Directives are discussed in § 333.52.

**§ 333.51 Rating authorizations.**

(a) A rating authorization is an official action granting specific priority rating authority that:

- (1) Permits a person to place a priority rating on an order for an item not normally ratable under this part; or
- (2) Authorizes a person to modify a priority rating on a specific order or series of contracts or orders.

(b) To request priority rating authority, see § 333.21.

**§ 333.52 Directives.**

(a) A directive is an official action which requires a person to take or refrain from taking certain actions in accordance with its provisions.

(b) A person must comply with each directive issued. However, a person may not use or extend a directive to obtain any items from a supplier, unless expressly authorized to do so in the directive.

(c) A priorities directive takes precedence over all DX-rated orders, DO-rated orders, and unrated orders previously or subsequently received, unless a contrary instruction appears in the directive.

(d) An allocations directive takes precedence over all priorities directives, DX-rated orders, DO-rated orders, and unrated orders previously or subsequently received, unless a contrary instruction appears in the directive.

**§ 333.53 Letters and memoranda of understanding.**

(a) A letter or memorandum of understanding is an official action, which may be issued electronically, to resolve special priorities assistance cases to reflect an agreement reached by all parties (FEMA, the Department of Commerce (if applicable), a Delegate Agency (if applicable), the supplier, and the customer).

(b) A letter or memorandum of understanding is not used to alter scheduling between rated orders, to authorize the use of priority ratings, to impose restrictions under this part, or to take other official actions. Rather, letters or memoranda of understanding are used to confirm production or shipping schedules which do not require modifications to other rated orders.

**Subpart I—Compliance**

**§ 333.60 General provisions.**

(a) Compliance actions may be taken for any reason necessary or appropriate to the enforcement or the administration of the Defense Production Act and related statutes, this part, or an official action. Compliance actions include audits, investigations, or other inquiries and FEMA may utilize other official actions, such as administrative subpoenas, demands for information, and inspection authorizations as part of the compliance actions under this part.

(b) Any person who places or receives a rated order or an allocation order must comply with the provisions of this part.

(c) Willful violation of any of the provisions of Title I or section 705 of the Defense Production Act and other applicable statutes, this part, or an official action of FEMA, is a criminal act, punishable as provided in the Defense Production Act and other applicable statutes, and as set forth in § 333.64 of this part.

**§ 333.61 Audits and investigations.**

(a) Audits and investigations are official actions involving the examination of books, records, documents, other writings and information to ensure

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that the provisions of the Defense Production Act and other applicable statutes, this part, and official actions have been properly followed. An audit or investigation may also include interviews and a systems evaluation to detect problems or failures in the implementation of this part.

(b) When undertaking an audit, investigation, or other inquiry, FEMA must:

(1) Define the scope and purpose in the official action given to the person under investigation, and

(2) Have ascertained that the information sought, or other adequate and authoritative data are not available from any Federal or other responsible agency.

(c) In administering this part, FEMA may issue the following documents, which constitute official actions:

(1) *Administrative subpoenas.* An administrative subpoena requires a person to appear as a witness before an official designated by FEMA to testify under oath on matters of which that person has knowledge relating to the enforcement or the administration of the Defense Production Act and other applicable statutes, this part, or official actions. An administrative subpoena may also require the production of books, papers, records, documents and physical objects or property.

(2) *Demand for information.* A demand for information requires a person to furnish to a duly authorized representative of FEMA any information necessary or appropriate to the enforcement or the administration of the Defense Production Act and other applicable statutes, this part, or official actions.

(3) *Inspection authorizations.* An inspection authorization requires a person to permit a duly authorized representative of FEMA to interview the person's employees or agents; to inspect books, records, documents, other writings and information, including electronically-stored information, in the person's possession or control at the place where that person usually keeps them or otherwise; and to inspect a person's property when such interviews and inspections are necessary or appropriate to the enforcement or the administration of the De-

fense Production Act and related statutes, this part, or official actions.

(d) The production of books, records, documents, other writings and information will not be required at any place other than where they are usually kept if, prior to the return date specified in the administrative subpoena or demand for information, a duly authorized official of FEMA is furnished with copies of such material that are certified under oath to be true copies. As an alternative, a person may enter into a stipulation with a duly authorized official of FEMA as to the content of the material.

(e) An administrative subpoena, demand for information, or inspection authorization must include the name, title, or official position of the person to be served, the evidence sought to be adduced, and its general relevance to the scope and purpose of the audit, investigation, or other inquiry. If employees or agents are to be interviewed; if books, records, documents, other writings, or information are to be produced; or if property is to be inspected; the administrative subpoena, demand for information, or inspection authorization will describe them with particularity.

(f) Service of documents must be made in the following manner:

(1) Service of a demand for information or inspection authorization must be made personally, or by certified mail—return receipt requested at the person's last known address. Service of an administrative subpoena must be made personally. Personal service may also be made by leaving a copy of the document with someone at least 18 years of age at the person's last known dwelling or place of business. When a hazard has occurred or is imminent, service of a demand for information or inspection authorization may additionally be made by written electronic communication.

(2) Service upon other than an individual may be made by serving a partner, corporate officer, or a managing or general agent authorized by appointment or by law to accept service of process. If an agent is served, a copy of the document must be mailed to the person named in the document.

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(3) Any individual 18 years of age or older may serve an administrative subpoena, demand for information, or inspection authorization. When personal service is made, the individual making the service shall prepare an affidavit as to the manner in which service was made and the identity of the person served, and return the affidavit, and in the case of subpoenas, the original document, to the issuing officer. In case of failure to make service, the reasons for the failure must be stated on the original document.

### § 333.62 Compulsory process.

(a) If a person refuses to permit a duly authorized representative of FEMA to have access to any premises or source of information necessary to the administration or enforcement of the Defense Production Act and other applicable statutes, this part, or official actions, FEMA may seek compulsory process. Compulsory process means the institution of appropriate legal action, including *ex parte* application for an inspection warrant or its equivalent, in any forum of appropriate jurisdiction.

(b) Compulsory process may be sought in advance of an audit, investigation, or other inquiry, if, in the judgment of the Administrator, in consultation with the FEMA Chief Counsel, there is reason to believe that a person will refuse to permit an audit, investigation, or other inquiry, or that other circumstances exist which make such process desirable or necessary.

### § 333.63 Notification of failure to comply.

(a) At the conclusion of an audit, investigation, or other inquiry, or at any other time, FEMA may inform the person in writing where compliance with the requirements of the Defense Production Act and other applicable statutes, this part, or an official action were not met.

(b) In cases where FEMA determines that a person, either willingly or inadvertently, has failed to comply with the provisions of the Defense Production Act and other applicable statutes, this part, or an official action, the person may be informed in writing of the particulars involved and the corrective

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action to be taken. Failure to take corrective action may then be construed as a willful violation of the Defense Production Act and other applicable statutes, this part, or an official action.

### § 333.64 Violations, penalties, and remedies.

(a) Willful violation of the provisions of Title I or Sections 705 or 707 of the Defense Production Act, this part, or an official action, is a crime and upon conviction, a person may be punished by fine or imprisonment, or both. The maximum penalty provided by the Defense Production Act is a \$10,000 fine, or one year in prison, or both.

(b) The government may also seek an injunction from a court of appropriate jurisdiction to prohibit the continuance of any violation of, or to enforce compliance with, the Defense Production Act and other applicable statutes, this part, or an official action.

(c) In order to secure the effective enforcement of the Defense Production Act and other applicable statutes, this part, and official actions, the following are prohibited (see section 705 of the Defense Production Act; see also, for example, sections 2 and 371 of Title 18 United States Code):

(1) No person may solicit, influence, or permit another person to perform any act prohibited by, or to omit any act required by, the Defense Production Act and other applicable statutes, this part, or an official action.

(2) No person may conspire or act in concert with any other person to perform any act prohibited by, or to omit any act required by, the Defense Production Act and other applicable statutes, this part, or an official action.

(3) No person shall deliver any item if the person knows or has reason to believe that the item will be accepted, re-delivered, held, or used in violation of the Defense Production Act and other applicable statutes, this part, or an official action. In such instances, the person must immediately notify FEMA that, in accordance with this section, delivery has not been made.

### § 333.65 Compliance conflicts.

If compliance with any provision of the Defense Production Act and other

applicable statutes, this part, or an official action would prevent a person from filling a rated order or from complying with another provision of the Defense Production Act, this part, or an official action, the person must immediately notify FEMA for resolution of the conflict.

**Subpart J—Adjustments, Exceptions, and Appeals**

**§ 333.70 Adjustments or exceptions.**

(a) A person may submit a request to FEMA for an adjustment or exception on the ground that:

(1) A provision of this part or an official action results in an undue or exceptional hardship on that person not suffered generally by others in similar situations and circumstances; or

(2) The consequence of following a provision of this part or an official action is contrary to the intent of the Defense Production Act, other applicable statutes, or this part.

(b) Each request for adjustment or exception must be in writing and contain a complete statement of all the facts and circumstances related to the provision of this part or official action from which adjustment is sought and a full and precise statement of the reasons why relief should be provided.

(c) The submission of a request for adjustment or exception shall not relieve any person from the obligation of complying with the provisions of this part or official action in question while the request is being considered unless such interim relief is granted in writing by FEMA.

(d) A decision of FEMA under this section may be appealed to the Administrator. (For information on the appeal procedure, see § 333.71.)

**§ 333.71 Appeals.**

(a) Any person who has had a request for adjustment or exception denied by FEMA under § 333.70 may appeal to the Administrator, who shall review and reconsider the denial. Such appeals should be submitted to the Office of Policy and Programs at *FEMA-DPA@fema.dhs.gov*, Ref: EMPAS Appeals.

(b)(1) Appeals of denied requests for exceptions from or adjustments to

compliance with the provisions of this part or an official action must be received by FEMA no later than 45 days after receipt of a written notice of denial from FEMA. After this 45-day period, an appeal may be accepted at the discretion of the Administrator.

(2) For requests for adjustment or exception involving rated orders placed for the purpose of emergency preparedness in response to a hazard that has occurred or is imminent, an appeal must be received by FEMA no later than 15 days after receipt of a written notice of denial.

(c) Each appeal must be in writing and contain a complete statement of all the facts and circumstances related to the action appealed from and a full and precise statement of the reasons the decision should be modified or reversed.

(d) In addition to the written materials submitted in support of an appeal, an appellant may request, in writing, an opportunity for an informal hearing. This request may be granted or denied at the discretion of the Administrator.

(e) When a hearing is granted, the Administrator may designate an employee of FEMA to conduct the hearing and to prepare a report. The hearing officer shall determine all procedural questions and impose such time or other limitations deemed reasonable. In the event that the hearing officer decides that a printed transcript is necessary, all expenses shall be borne by the appellant.

(f) When determining an appeal, the Administrator may consider all information submitted during the appeal as well as any recommendations, reports, or other relevant information and documents available to FEMA, or consult with any other persons or groups.

(g) The submission of an appeal under this section shall not relieve any person from the obligation of complying with the provisions of this part or official action in question while the appeal is being considered, unless such relief is granted in writing by the Administrator.

(h) The decision of the Administrator shall be made within a reasonable time after receipt of the appeal and shall be the final administrative action. It shall

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be issued to the appellant in writing with a statement of the reasons for the decision.

**Subpart K—Miscellaneous Provisions**

**§ 333.80 Protection against claims.**

A person shall not be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with any provision of this part, or an official action, notwithstanding that such provision or action shall subsequently be declared invalid by judicial or other competent authority.

**§ 333.81 Records and reports.**

(a) Persons are required to make and preserve for at least three years, accurate and complete records of any transaction covered by this part or an official action.

(b) Records must be maintained in sufficient detail to permit the determination, upon examination, of whether each transaction complies with the provisions of this part or any official action. However, this part does not specify any particular method or system to be used.

(c) Records required to be maintained by this part must be made available for examination on demand by duly authorized representatives of FEMA as provided in § 333.61.

(d) In addition, persons must develop, maintain, and submit any other records and reports to FEMA that may be required for the administration of the Defense Production Act and other applicable statutes, and this part.

(e) Under section 705(d) of the Act and the ultimate delegation of that authority to the FEMA Administrator, information obtained under section 705 of the Act which the Administrator deems confidential, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall not be published or disclosed unless the Administrator determines that the withholding of this information is contrary to the interest of the national defense. Information required to be submitted to FEMA in connection with the enforcement or administration of the

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Act, this part, or an official action, is deemed to be confidential under section 705(d) of the Act and shall not be published or disclosed except as required by applicable Federal law.

**§ 333.82 Applicability of this part and official actions.**

(a) This part and all official actions, unless specifically stated otherwise, apply to transactions in any state, territory, or possession of the United States and the District of Columbia.

(b) This part and all official actions apply not only to deliveries to other persons but also include deliveries to affiliates and subsidiaries of a person and deliveries from one branch, division, or section of a single entity to another branch, division, or section under common ownership or control.

(c) This part shall not be construed to affect any administrative actions taken by FEMA, or any outstanding contracts or orders placed pursuant to any of the regulations, orders, schedules, or delegations of authority issued by FEMA prior to May 13, 2020. Such actions, contracts, or orders shall continue in full force and effect under this part unless modified or terminated by proper authority.

**§ 333.83 Communications.**

General communications concerning this part, including how to obtain copies of this part and explanatory information, requests for guidance or clarification, may be addressed to FEMA’s Office of Policy and Program Analysis at *FEMA-DPA@fema.dhs.gov*.

**§ 333.84 Severability.**

FEMA intends the various provisions of this part to be severable from each other to the extent practicable, such that if a court of competent jurisdiction were to vacate or enjoin any one provision, the other provisions are intended to remain in effect unless they are dependent upon the vacated or enjoined provision.

**PART 334—GRADUATED MOBILIZATION RESPONSE**

Sec.  
334.1 Purpose.  
334.2 Policy.

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- 334.3 Background.
- 334.4 Definitions.
- 334.5 GMR system description.
- 334.6 Department and agency responsibilities.
- 334.7 Reporting.

AUTHORITY: National Security Act of 1947, as amended, 50 U.S.C. 404; Defense Production Act of 1950, as amended, 50 U.S.C. app. 2061 *et seq.*; E.O. 12148 of July 20, 1979, 3 CFR, 1979 Comp., p. 412; E.O. 10480 of Aug. 14, 1953, 3 CFR, 1949-53 Comp., p. 962; E.O. 12472 of Apr. 3, 1984; 3 CFR, 1984 Comp., p. 193; E.O. 12656 of Nov. 18, 1988, 53 FR 47491.

SOURCE: 55 FR 1821, Jan. 19, 1990, unless otherwise noted.

### § 334.1 Purpose.

(a) Provides policy guidance pursuant to the Defense Production Act of 1950, as amended; section 1-103 of Executive Order 12148, as amended, which includes functions continued from E.O. 11051; section 104(f) of Executive Order 12656; and part 2 of Executive Order 10480.

(b) Establishes a Graduated Mobilization Response (GMR) system for developing and implementing mobilization actions that are responsive to a wide range of national security threats and ambiguous or specific warning indicators. GMR provides for a coherent decision making process with which to proceed with specific responses to an identified crisis or emergency.

(c) Provides guidance to the Federal departments and agencies for developing plans that are responsive to a GMR system and for preparing costed option packages, as appropriate, to implement the plans.

### § 334.2 Policy.

(a) As established in Executive Order 12656, the policy of the United States is to have sufficient emergency response capabilities at all levels of government to meet essential defense and civilian needs during any national security emergency. Accordingly, each Federal department and agency shall prepare its national security emergency preparedness plans and programs to respond adequately and in a timely manner to all national security emergencies.

(b) As part of emergency response, the GMR system should be incorporated in each department's and agen-

cy's emergency preparedness plans and programs to provide appropriate and effective response options for consideration in reacting to ambiguous and specific warnings.

(c) Departments and agencies will be provided early warning information developed by the intelligence community and policy statements of the President.

(d) Emergency resource preparedness planning is essential to ensure that the nation is adequately prepared to respond to potential national emergencies. Such emergency resource preparedness planning requires an exchange of information and planning factors among the various departments and agencies responsible for different resource preparedness activities.

(e) To carry out their emergency planning activities, civilian departments and agencies require the Department of Defense's (DOD) assessment of potential military demands that would be made on the economy in a full range of possible national security emergencies. Similarly, DOD planning should be conducted using planning regimes consistent with the policies and plans of the civilian resource departments and agencies.

(f) Under section 104(c) of Executive Order 12656, FEMA is responsible for coordinating the implementation of national emergency preparedness policy with Federal departments and agencies and with state and local governments and, therefore, is responsible for developing a system of planning procedures for integrating the emergency preparedness actions of federal, state and local governments.

(g) Federal departments and agencies shall design their preparedness measures to permit a rapid and effective transition from routine to emergency operations, and to make effective use of the period following initial indication of a probable national security emergency. This will include:

(1) Development of a system of emergency actions that defines alternatives, processes, and issues to be considered during various stages of national security emergencies; and

(2) Identification of actions that could be taken at the Federal and local levels of government in the early

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stages of a national security emergency or pending national security emergency to mitigate the impact of or reduce significantly the leadtime associated with full emergency action implementation.

#### § 334.3 Background.

(a) The GMR system is designed to take into account the need to mobilize the Nation's resources in response to a wide range of crisis or emergency situations. GMR is a flexible decision making process of preparedness and response actions which are appropriate to warning indicators or an event. Thus, GMR allows the government, as a whole, to take small or large, often reversible, steps to increase its national security emergency preparedness posture.

(b) Crises, especially those resulting in major military activities, always have some political or economic context. As the risks of military action increase, nations undertake more extensive preparations over a longer period of time to increase their military power. Such preparations by potential adversaries shape the nature and gravity of the threat as well as its likelihood and timing of occurrence. These measures permit the development of reliable indicators of threat at an early time in the evolution of a crisis. Depending on the nature of the situation or event and the nation involved, these early warning indicators may emanate from the political, socio-economic and/or industrial sectors.

(c) The GMR system enables the nation to approach mobilization planning and actions as part of the deterrent response capability and to use it to reduce the probability of conflict. Alternatively, if deterrence should fail, the GMR system would enable the nation to undertake a series of phased actions intended to increase its ability to meet defense and essential civilian requirements. The GMR system integrates the potential strength of the national economy into U.S. national security strategy.

#### § 334.4 Definitions.

(a) *Graduated Mobilization Response* (GMR) is a system for integrating mobilization actions designed to respond

to ambiguous and/or specific warnings. These actions are designed to mitigate the impact of an event or crisis and reduce significantly the lead time associated with a full national emergency action implementation.

(b) *National security emergency* is any occurrence, including natural disaster, military attack, technological emergency, or other emergency, that seriously degrades or threatens the national security of the United States.

(c) *Mobilization* is the process of marshalling resources, both civil and military, to respond to and manage a national security emergency.

(d) *GMR Plans* are those agency documents that describe, in general, the actions that an agency could take in the early stages of a national security emergency, or upon receipt of warning information about a possible national security emergency. These actions would be designed to mitigate the impact of, or reduce significantly, the lead times associated with full emergency action implementation. Such plans are required by section 201(4)(b) of Executive Order 12656.

(e) *A Costed Option Package* is a document that describes in detail a particular action that an agency could take in the early stages of a national security emergency. The general content of a GMR costed option package includes alternative response options; the resource implications of each option; shortfalls, costs, timeframes and political feasibility.

#### § 334.5 GMR system description.

The GMR system contains three stages of mobilization activity (additional intermediate GMR stages may be developed). For example, a Federal department or agency might divide "Crisis Management" into two, three, or more levels as suits its needs.

(a) *Stage 3, Planning and Preparation.* During the planning and preparation stage, Federal departments and agencies develop their GMR plans and maintain capability to carry out their mobilization-related responsibilities in accordance with section 201 of Executive Order 12656. General types of problems likely to arise in a crisis situation are identified along with possible

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methods for dealing with them. Investment programs can be undertaken to overcome identified problems.

(b) *Stage 2, Crisis Management.* During the crisis management stage, GMR plans are reviewed and capabilities will be re-examined in light of an actual event or crisis perceived to be emerging.

(1) Federal departments and agencies may need to gather additional data on selected resources or increase their preparedness activities. Costed Option Packages may need to be updated or new ones prepared for the response option measures in each of the department's and agency's area of responsibility. For example, when it appears likely that increased national resources may be required, resource readiness could be improved through the procurement of essential long lead time items, especially those that can be used even if the situation does not escalate. In general, long lead time preparedness actions would be considered for implementation at this time.

(2) Many preparedness actions at this stage would be handled through re-programming, but the Costed Option Packages may also require new funding.

(3) If the crisis worsens, and prior to the declaration of national emergency, it may be necessary to surge certain production and stockpile items for future use.

(c) *Stage 1, National Emergency/War.* During a national emergency or declaration of war, mobilization of all national resources escalates and GMR will be subsumed into the overall mobilization effort. As military requirements increase, the national resources would increasingly be focused on the national security emergency. This would involve diverting non-essential demand for scarce resources from peacetime to defense uses, and converting industry from commercial to military production. Both surge production and expansion of the nation's productive capacity may also be necessary. Supplemental appropriations may be required for most Federal departments and agencies having national security emergency responsibilities.

### § 334.6 Department and agency responsibilities.

(a) During Stage 3, each Federal department and agency with mobilization responsibilities will develop GMR plans as part of its emergency preparedness planning process in order to meet possible future crisis. Costed Option Packages will be developed for actions that may be necessary in the early warning period. Option packages will be reviewed, focused and refined during Stage 2 to meet the particular emergency.

(b) Each department and agency should identify response actions appropriate for the early stage of any crisis or emergency situation, which then will be reviewed, focused and refined in Stage 2 for execution, as appropriate. GMR plans should contain a menu of costed option packages that provide details of alternative measures that may be used in an emergency situation.

(c) FEMA will provide guidance pursuant to Executive Order 12656 and will coordinate GMR plans and option packages of DOD and the civilian departments and agencies to ensure consistency and to identify areas where additional planning or investment is needed.

(d) During State 2, FEMA will coordinate department and agency recommendations for action and forward them to the National Security Advisor to make certain that consistency with the overall national strategy planning is achieved.

(e) Departments and agencies will refine their GMR plans to focus on the specific crisis situation. Costed option packages should be refined to identify the resources necessary for the current crisis, action taken to obtain those resources, and GMR plans implemented consistent with the seriousness of the crisis.

(f) At Stage 1, declaration of national emergency or war, the crisis is under the control of NSC or other central authority, with GMR being integrated into partial, full or total mobilization. At this point the more traditional mechanisms of resource mobilization are pursued, focusing on resource allocation and adjudication with cognizance of the essential civilian demand.



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(g) Programs and plans developed by the departments and agencies under this guidance should be shared, as appropriate, with States, local governments and the private sector to provide a baseline for their development of supporting programs and plans.

§ 334.7 Reporting.

The Administrator of FEMA shall provide the President with periodic assessments of the Federal departments and agencies capabilities to respond to national security emergencies and periodic reports to the National Security Council on the implementation of the national security emergency preparedness policy. Pursuant to section 201(15) of Executive Order 12656, departments and agencies, as appropriate, shall consult and coordinate with the Administrator of FEMA to ensure that their activities and plans are consistent with current National Security Council guidelines and policies. An evaluation of the Federal departments and agencies participation in the graduated mobilization response program may be included in these reports.

PARTS 335-349 [RESERVED]

PART 350-REVIEW AND APPROVAL OF STATE AND LOCAL RADIOLOGICAL EMERGENCY PLANS AND PREPAREDNESS

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350.5 Criteria for review and approval of State and local radiological emergency plans and preparedness.
350.6 Assistance in development of State and local plans.
350.7 Application by State for review and approval.
350.8 Initial FEMA action on State plan.
350.9 Exercises.
350.10 Public meeting in advance of FEMA approval.
350.11 Action by FEMA Regional Administrator.
350.12 FEMA Headquarters review and approval.
350.13 Withdrawal of approval.
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AUTHORITY: 42 U.S.C. 5131, 5201, 50 U.S.C. app. 2253(g); Sec. 109 Pub. L. 96-295; Reorganization Plan No. 3 of 1978; E.O. 12127; E.O. 12148.

SOURCE: 48 FR 44335, Sept. 28, 1983, unless otherwise noted.

§ 350.1 Purpose.

The purpose of the regulation in this part is to establish policy and procedures for review and approval by the Federal Emergency Management Agency (FEMA) of State and local emergency plans and preparedness for the offsite effects of a radiological emergency which may occur at a commercial nuclear power facility. Review and approval of these plans and preparedness involves preparation of findings and determinations of the adequacy of the plans and capabilities of State and local governments to effectively implement the plans.

§ 350.2 Definitions.

As used in this part, the following terms are defined:

- (a) Administrator means the Administrator, FEMA, or designee;
(b) Regional Administrator means a Regional Administrator of FEMA, or designee;
(c) Deputy Administrator means the , National Preparedness Directorate, FEMA, or designee;
(d) FEMA means the Federal Emergency Management Agency;
(e) NRC means the Nuclear Regulatory Commission;
(f) EPZ means Emergency Planning Zone.
(g) Emergency Planning Zone (EPZ) is a generic area around a commercial nuclear facility used to assist in offsite emergency planning and the development of a significant response base. For commercial nuclear power plants, EPZs of about 10 and 50 miles are delineated for the plume and ingestion exposure pathways respectively.
(h) Plume Exposure Pathway refers to whole body external exposure to gamma radiation from the plume and from deposited materials and inhalation exposure from the passing radioactive plume. The duration of primary exposures could range in length from hours to days.

(i) *Ingestion Exposure Pathway* refers to exposure primarily from ingestion of water or foods such as milk and fresh vegetables that have been contaminated with radiation. The duration of primary exposure could range from hours to months.

(j) *Full participation* refers to an exercise in which: (1) State and local government emergency personnel are engaged in sufficient numbers to verify the capability to respond to the actions required by the accident scenario; (2) the integrated capability to adequately assess and respond to an accident at a commercial nuclear power plant is tested; and (3) the implementation of the observable portions of State and/or local plans is tested.

(k) *Partial participation* refers to the engagement of State and local government emergency personnel in an exercise sufficient to adequately test direction and control functions for protective action decisionmaking related to emergency action levels and communication capabilities among affected State and local governments and the licensee.

(l) *Remedial exercise* is one that tests deficiencies of previous joint exercise that are considered significant enough to impact on the public health and safety.

(m) *Local government* refers to boroughs, cities, counties, municipalities, parishes, towns, townships and other local jurisdictions within the plume exposure pathway EPZ when any of these entities has specific roles in emergency planning and preparedness in the EPZ.

(n) *Site* refers to the location at which there is one or more commercial nuclear power plants. A nuclear power plant is synonymous with a nuclear power facility.

**§ 350.3 Background.**

(a) On December 7, 1979, the President directed the Administrator of FEMA to take the lead in State and local emergency planning and preparedness activities with respect to nuclear power facilities. This included a review of the existing emergency plans both in States with operating reactors and those with plants scheduled for operation in the near future.

(b) This assignment was given to FEMA because of its responsibilities under Executive Order 12148 to establish Federal policies for and coordinate civil emergency planning, management and assistance functions and to represent the President in working with State and local governments and the private sector to stimulate vigorous participation in civil emergency preparedness programs. Under section 201 of the Disaster Relief Act of 1974 (42 U.S.C. 5131), and other statutory functions, the Administrator of FEMA is charged with the responsibility to develop and implement plans and programs of disaster preparedness.

(c) There are two sections in the NRC's fiscal year 1982/1983 Appropriation Authorization (Pub. L. 97-415) that pertain to the scope of this rule.

(1) Section 5 provides for the issuance of an operating license for a commercial nuclear power plant by the NRC if it is determined that there exists a State, local or utility plan which provides assurance that public health and safety is not endangered by the operation of the facility. This section would allow the NRC to issue an operating license for such plants without FEMA-approved State and local government plans.

(2) Section 11 provides for the issuance of temporary licenses for operating a utilization facility at a specific power level to be determined by the Commission, pending final action by the Commission on the application. Also, this section authorizes the NRC to issue temporary operating licenses for these facilities without the completion of the required (NRC) Commission hearing process. A petition for such a temporary license may not be filed until certain actions are completed including the submission of a State, local or utility emergency response plan for the facility.

(d) To carry out these responsibilities, FEMA is engaged in a cooperative effort with State and local governments and other Federal agencies in the development of State and local plans and preparedness to cope with the offsite effects resulting from radiological emergencies at commercial nuclear power facilities. FEMA developed and published the Federal Radiological

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Emergency Response Plan 50 FR 46542 Nov. 8, 1985, to provide the overall support to State and local governments, for all types of radiological incidents including those occurring at nuclear power plants.

(e) FEMA has entered into a Memorandum of Understanding (MOU) with the NRC to which it will furnish assessments, findings and determinations as to whether State and local emergency plans and preparedness are adequate and continue to be capable of implementation (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualification and equipment adequacy). These findings and determinations will be used by NRC under its own rules in connection with its licensing and regulatory requirements and FEMA will support its findings in the NRC licensing process and related court proceedings.

(f) Notwithstanding the procedures set forth in these rules for requesting and reaching a FEMA administrative approval of State and local plans, findings and determinations on the current status of emergency preparedness around particular sites may be requested by the NRC and provided by FEMA for use as needed in the NRC licensing process. These findings and determinations may be based upon plans currently available to FEMA or furnished to FEMA by the NRC through the NRC/FEMA Steering Committee.

(g) An environmental assessment has been prepared on which FEMA has determined that this rule will not have a significant impact on the quality of the human environment.

[48 FR 44335, Sept. 28, 1983, as amended at 51 FR 34606, Sept. 30, 1986]

#### § 350.4 Exclusions.

The regulation in this part does not apply to, nor will FEMA apply any criteria with respect to, any evaluation, assessment or determination regarding the NRC licensee's emergency plans or preparedness, nor shall FEMA make any similar determination with respect to the integration of offsite and NRC licensee emergency preparedness except as these assessments and determinations affect the emergency preparedness of State and local govern-

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ments. The regulation in this part applies only to State and local planning and preparedness with respect to emergencies at commercial nuclear power facilities and does not apply to other facilities which may be licensed by NRC, nor to United States Government-owned, non-licensed facilities nor the jurisdictions surrounding them.

#### § 350.5 Criteria for review and approval of State and local radiological emergency plans and preparedness.

(a) Section 50.47 of NRC's Emergency Planning Rule (10 CFR parts 50 (appendix E) and 70 as amended) and the joint FEMA-NRC *Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants* (NUREG-0654/FEMA-REP-1, Rev. 1, November 1980) which apply insofar as FEMA is concerned to State and local governments, are to be used in reviewing, evaluating and approving State and local radiological emergency plans and preparedness and in making any findings and determinations with respect to the adequacy of the plans and the capabilities of State and local governments to implement them. Both the planning and preparedness standards and related criteria contained in NUREG-0654/ FEMA-REP-1, Rev. 1 are to be used by FEMA and the NRC in reviewing and evaluating State and local government radiological emergency plans and preparedness. For brevity, only the planning standards contained in NUREG-0654/ FEMA-REP-1, Rev. 1 are presented below.

(1) Primary responsibilities for emergency response by the nuclear facility licensee, and by State and local organizations within the Emergency Planning Zones have been assigned, the emergency responsibilities of the various supporting organizations have been specifically established and each principal response organization has staff to respond to and augment its initial response on a continuous basis.

(2) On-shift facility licensee responsibilities for emergency response are unambiguously defined, adequate staffing to provide initial facility accident response in key functional areas is

maintained at all times, timely augmentation of response capabilities is available and the interfaces among various onsite response activities and offsite support and response activities are specified. (This standard applies only to NRC licensees but is included here for completeness.)

(3) Arrangements for requesting and effectively using assistance resources have been made, arrangements to accommodate State and local staff at the licensee's near-site Emergency Operations Facility have been made and other organizations capable of augmenting the planned response have been identified.

(4) A standard emergency classification and action level scheme, the bases of which include facility system and effluent parameters, is in use by the nuclear facility licensee, and State and local response plans call for reliance on information provided by facility licensees for determinations of minimum initial offsite response measures.

(5) Procedures have been established for notification, by the licensee, of State and local response organizations and for the notification of emergency personnel by all response organizations; the content of initial and followup messages to response organizations and the public has been established; and means to provide early notification and clear instruction to the populace within the plume exposure pathway Emergency Planning Zone have been established.

(6) Provisions exist for prompt communications among principal response organizations to emergency personnel and to the public.

(7) Information is made available to the public on a periodic basis on how they will be notified and what their initial actions should be in an emergency (e.g., listening to a local broadcast station and remaining indoors), the principal points of contact with the news media for dissemination of information during an emergency (including the physical location or locations) are established in advance and procedures for coordinated dissemination of information to the public are established.

(8) Adequate emergency facilities and equipment to support the emergency response are provided and maintained.

(9) Adequate methods, systems and equipment for assessing and monitoring actual or potential offsite consequences of a radiological emergency condition are in use.

(10) A range of protective actions has been developed for the plume exposure pathway EPZ for emergency workers and the public. Guidelines for the choice of protective actions during an emergency, consistent with Federal guidance, are developed and in place and protective actions for the ingestion exposure pathway EPZ appropriate to the locale have been developed.

(11) Means for controlling radiological exposures, in an emergency, are established for emergency workers. The means for controlling radiological exposures shall include exposure guidelines consistent with EPA Emergency Worker and Lifesaving Activity Protective Action Guides.

(12) Arrangements are made for medical services for contaminated injured individuals.

(13) General plans for recovery and reentry are developed.

(14) Periodic exercises are (will be) conducted to evaluate major portions of emergency response capabilities, periodic drills are (will be) conducted to develop and maintain key skills and deficiencies identified as a result of exercises or drills are (will be) corrected.

(15) Radiological emergency response training is provided to those who may be called upon to assist in an emergency.

(16) Responsibilities for plan development and review and for distribution of emergency plans are established, and planners are properly trained.

(b) In order for State of local plans and preparedness to be approved, such plans and preparedness must be determined to adequately protect the public health and safety by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency.

**§350.6 Assistance in development of State and local plans.**

(a) An integrated approach to the development of offsite radiological emergency plans by States, localities and the licensees of NRC with the assistance of the Federal Government is the

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approach most likely to provide the best protection to the public. Hence, Federal agencies, including FEMA Regional staff, will be made available upon request to assist States and localities in the development of plans.

(b) There now exists in each of the ten standard Federal Regions a Regional Assistance Committee (RAC) (formerly the Regional Advisory Committee) chaired by a FEMA Regional official and having members from the Nuclear Regulatory Commission, Department of Health and Human Services, Department of Energy, Department of Transportation, Environmental Protection Agency, the United States Department of Agriculture and Department of Commerce. Whereas in 44 CFR part 351, the Department of Defense is listed as a potential member of the RACs, it is not listed in this rule because military nuclear facilities are not the subject of concern. The RACs will assist State and local government officials in the development of their radiological emergency response plans, and will review plans and observe exercises to evaluate the adequacy of these plans and related preparedness. This assistance does not include the actual writing of State and local government plans by RAC members.

(c) In accomplishing the foregoing, the RACs will use the standards and criteria in NUREG-0654/FEMA-REP-1, Rev. 1, and will render such technical assistance as may be required, appropriate to their agency mission and expertise. In observing and evaluating exercises, the RACs will identify, soon after an exercise, any deficiencies observed in the planning and preparedness effort including deficiencies in resources, training of staff, equipment, staffing levels and deficiencies in the qualifications of personnel.

**§ 350.7 Application by State for review and approval.**

(a) A State which seeks formal review and approval by FEMA of the State's radiological emergency plan shall submit an application for such review and approval to the FEMA Regional Administrator of the Region in which the State is located. The application, in the form of a letter from the Governor or from such other State offi-

cial as the Governor may designate, shall contain one copy of the completed State plan, including coverage of response in the ingestion exposure pathway EPZ. The application will also include plans of all appropriate local governments. The application shall specify the site or sites for which plan approval is sought. For guidance on the local government plans that should be included with an application, refer to Part I.E. NUREG-0654/FEMA-REP-1, Rev. 1, entitled Contiguous Jurisdiction Governmental Emergency Planning (see (e)). Only a State may request formal review of State or local radiological emergency plans.

(b) Generally, the plume exposure pathway EPZ for nuclear power facilities shall consist of an area about 10 miles (16 Km) in radius and the ingestion exposure pathway EPZ shall consist of an area about 50 miles (80 Km) in radius. The exact size and configuration of the EPZs surrounding a particular nuclear power facility shall be determined by State and local governments in consultation with FEMA and NRC taking into account such local conditions as demography, topography, land characteristics, access routes and local jurisdiction boundaries. The size of the EPZs may be determined by NRC in consultation with FEMA on a case-by-case basis for gas cooled reactors and for reactors with an authorized power level less than 250 Mw thermal. The plans for the ingestion exposure pathway shall focus on such actions as are appropriate to protect the public from ingesting contaminated food and water.

(c) A State may submit separately its plans for the EPZs and the local government plans related to individual nuclear power facilities. The purpose of separate submissions is to allow approval of a State plan, and of the plans necessary for specific nuclear power facilities in a multiple-facility State, while not approving or acting on the plans necessary for other nuclear power facilities within the State. If separate submissions are made, appropriate adjustments in the State plan may be necessary. In any event, FEMA approval of State plans and appropriate local government plans shall be site specific.

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(d) The applications shall contain a statement that the State plan, together with the appropriate local plans, is, in the opinion of the State, adequate to protect the public health and safety of its citizens living within the emergency planning zones for the nuclear power facilities included in the submission by providing reasonable assurance that State and local governments can and intend to effect appropriate protective measures offsite in the event of a radiological emergency.

(e) FEMA and the States will make suitable arrangements in the case of overlapping or adjacent jurisdictions to permit an orderly assessment and approval of interstate or interregional plans.

### § 350.8 Initial FEMA action on State plan.

(a) The Regional Administrator shall acknowledge in writing within ten days the receipt of the State application.

(b) FEMA shall publish a notice signed by the Regional Administrator or designee in the FEDERAL REGISTER within 30 days after receipt of the application, that an application from a State has been received and that copies are available at the Regional Office for review and copying in accordance with 44 CFR 5.26.

(c) The Regional Administrator shall furnish copies of the plan to members of the RAC for their analysis and evaluation.

(d) The Regional Administrator shall make a detailed review of the State plan, including those of local governments, and assess the capability of State and local governments to effectively implement the plan (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualification and equipment adequacy). Evaluation and comments of the RAC members will be used as part of the review process.

(e) In connection with the review, the Regional Administrator may make suggestions to States concerning perceived gaps or deficiencies in the plans, and the State may amend the plan at any time prior to forwarding to the Deputy Administrator for the National Preparedness Directorate.

(f) Two conditions for FEMA approval of State plans (including local government plans) are the requirements for an exercise (see § 350.9), and for public participation (see §§ 350.9 and 350.10.). These activities occur during the Regional review and prior to the forwarding of the plan to the Deputy Administrator for the National Preparedness Directorate.

### § 350.9 Exercises.

(a) Before a Regional Administrator can forward a State plan to the Deputy Administrator for the National Preparedness Directorate for approval, the State, together with all appropriate local governments, must conduct a joint exercise of that State plan, involving full participation<sup>1</sup> of appropriate local government entities, the State and the appropriate licensee of the NRC. To the extent achievable, this exercise shall include participation by appropriate Federal agencies. This exercise shall be observed and evaluated by FEMA and by representatives of other Federal agencies with membership on the RACs and by NRC with respect to licensee response. Within 48 hours of the completion of the exercise, a briefing involving the exercise participants and Federal observers shall be conducted by the Regional Administrator to discuss the preliminary results of the exercise. If the exercise discloses any deficiencies in the State and local plans, or the ability of the State and local governments to implement the plans, the FEMA representatives shall make them known promptly in writing to appropriate State officials. To the extent necessary, the State shall amend the plan to incorporate recommended changes or improvements or take other corrective measures, such as remedial exercises,<sup>1</sup> to demonstrate to the Regional Administrator that identified weaknesses have been corrected.

(b) The Regional Administrator shall be the FEMA official responsible for certifying to the Deputy Administrator for the National Preparedness Directorate that an exercise of the State plan has been conducted, and that

<sup>1</sup>See § 350.2 for definitions of "full participation" and "remedial exercises".

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changes and corrective measures in accordance with paragraph (a) of this section have been made.

(c) State and local governments that have fully participated in a joint exercise within one year prior to the effective date of this final rule will have continuing approval of their radiological emergency plans and preparedness by following the frequency indicated in paragraphs (c) (1) through (4) of this section. State and local governments that have not fully participated in a joint exercise within one year prior to the effective date of this final rule will follow the frequency indicated in paragraphs (c) (1) through (4) of this section after completion of a joint exercise in which they have fully participated. If, in developing exercise schedules with State and local governments to implement the requirements in paragraphs (c) (1) through (4) of this section, the Regional Administrator finds that unusual hardships would result, he may seek relief from the Deputy Administrator for the National Preparedness Directorate.

(1) Each State which has a commercial nuclear power site within its boundaries or is within the 10-mile plume exposure pathway Emergency Planning Zone of such site shall fully participate in an exercise jointly with the nuclear power plant licensee and appropriate local governments at least every two years.

(2) Each State with multiple sites within its boundaries shall fully participate in a joint exercise at some site on a rotational basis at least every 2 years. When not fully participating in an exercise at a site, the State shall partially participate<sup>2</sup> at that site to support the full participation of appropriate local governments. Priority shall be given to new facilities seeking an operating license from the NRC and which have not fully participated in a joint exercise involving the State, local governments and the licensee at that site. State and local governments will coordinate the scheduling of these exercises with the appropriate FEMA and NRC Regional Offices and the affected licensees.

<sup>2</sup>See §350.2 for definition of “partial exercise”.

(3) Each appropriate local government which has a site within its boundaries or is within the 10-mile emergency planning zone shall fully participate in a joint exercise with the licensee and the State at least every two years. For those local governments that have planning and preparedness responsibilities for more than one facility, the Regional Administrator may seek an exemption from this requirement by recommending alternative arrangements for approval by the Deputy Administrator for the National Preparedness Directorate.

(4) States within the 50-mile emergency planning zone of a site shall exercise their plans and preparedness related to ingestion exposure pathway measures at least once every five years in conjunction with a plume exposure pathway exercise for that site.

(5) Remedial exercises may be required to correct deficiencies observed in exercises conducted for continued FEMA approval. Should this occur, the FEMA Regional Administrator will determine the participation required from the States and/or local governments.

(d) Within 48 hours of the completion of an exercise conducted for continued FEMA approval, a briefing involving the exercise participants and Federal observers shall be conducted by the Regional Administrator to discuss the preliminary results of the exercise. If the exercise discloses any deficiencies in the State and local plans, or the ability of the State and local governments to implement the plans, the FEMA representatives shall make them known promptly in writing to appropriate State officials. To the extent necessary, the State shall amend the plan to incorporate recommended changes or improvements or take other corrective measures, such as remedial exercises, to demonstrate to the Regional Administrator that identified weaknesses have been corrected. The Regional Administrator shall forward his or her evaluation of the exercise conducted for continued FEMA approval to the Deputy Administrator for the National Preparedness Directorate including the certification that changes and corrective measures have been made.

(e) Following the exercise conducted for continued FEMA approval, the Regional Administrator shall conduct a meeting in the vicinity of the nuclear power facility which will include the exercise participants, representatives from the NRC and other appropriate Federal agencies and the public and media as observers. The purpose of this meeting is to discuss the evaluation of the exercise. At the discretion of the Regional Administrator, written comments from the public and media may be submitted at or after the meeting. These comments will be taken into consideration by the Regional Administrator in his or her evaluation.

(f) After FEMA approval of a State and local plan has been granted, failure to exercise the State and local plans at the frequency and participation described in this section shall be grounds for withdrawing FEMA approval. (See §350.13.)

**§350.10 Public meeting in advance of FEMA approval.**

(a) During the FEMA Regional Office review of a State plan and prior to the submission by the Regional Administrator of the evaluation of the plan and exercise to the Deputy Administrator for the National Preparedness Directorate, the FEMA Regional Administrator shall assure that there is at least one public meeting conducted in the vicinity of the nuclear power facility. The purpose of such a meeting, which may be conducted by the State or by the Regional Administrator, shall be to:

- (1) Acquaint the members of the public in the vicinity of each facility with the content of the State and related local plans, and with the conduct of the joint exercise which tested the plans;
- (2) Answer any questions about FEMA review of the plan and the exercise;
- (3) Receive suggestions from the public concerning improvements or changes that may be necessary; and
- (4) Describe to the public the way in which the plan is expected to function in the event of an actual emergency.

(b) The Regional Administrator should assure that representatives from appropriate State and local government agencies, and the affected

utility appear at such meetings to make presentations and to answer questions from the public. The public meeting should be held after the first joint (utility, State and local governments) exercise at a time mutually agreed to by State and local authorities, licensee and FEMA and NRC Regional officials. This meeting shall be noticed in the local newspaper with the largest circulation in the area, or other such media as the Regional Administrator may select, on at least two occasions, one of which is at least two weeks before the meeting takes place and the other is within a few days of the meeting date. Local radio and television stations should be notified of the scheduled meeting at least one week in advance. Representatives from NRC and other appropriate Federal agencies should also be invited to participate in these meetings. If, in the judgment of the FEMA Regional Administrator, the public meeting or meetings reveal deficiencies in the State plan and/or the joint exercise, the Regional Administrator shall inform the State of the fact together with recommendations for improvement. No FEMA approval of State and local plans and preparedness shall be made until a meeting described in this paragraph shall have been held at or near the nuclear power facility site for which the State is seeking approval.

**§350.11 Action by FEMA Regional Administrator.**

(a) Upon completion of his or her review, including conduct of the exercise required by §350.9 and after the public meeting required by §350.10, the Regional Administrator shall prepare an evaluation of the State plan, including plans for local governments. Such evaluation shall be specific with respect to the plans applicable to each nuclear facility so that findings and determinations can be made by the Deputy Administrator for the National Preparedness Directorate on a site-specific basis.

(b) The Regional Administrator shall evaluate the adequacy of State and local plans and preparedness on the basis of the criteria set forth in §350.5, and shall report the evaluation with respect to each of the planning standards



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mentioned therein as such apply to State and local plans and preparedness.

(c) The Regional Administrator shall forward the State plan together with his or her evaluation and other relevant record material to the Deputy Administrator for the National Preparedness Directorate. Relevant record material will include the results of the exercise (i.e., deficiencies noted and corrections made), a summary of the deficiencies identified during the public meeting, recommendations made to the State and commitments made by the State for effecting improvements in its plans and preparedness and actions taken by the State.

**§ 350.12 FEMA Headquarters review and approval.**

(a) Upon receipt from a Regional Administrator of a State plan, the Deputy Administrator for the National Preparedness Directorate shall conduct such review of the State plan as he or she shall deem necessary. The Deputy Administrator for the National Preparedness Directorate shall arrange for copies of the plan, together with the Regional Administrator's evaluation, to be made available to the members of the Federal Radiological Preparedness Coordinating Committee (FRPCC) and to other offices of FEMA with appropriate guidance relative to any assistance that may be needed in the FEMA review and approval process.

(b) If, after formal submission of the State plan and the Regional Administrator's evaluation, the Deputy Administrator for the National Preparedness Directorate determines that the State plans and preparedness:

(1) Are adequate to protect the health and safety of the public living in the vicinity of the nuclear power facility by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency; and

(2) Are capable of being implemented (e.g. adequacy and maintenance of procedures, training, resources, staffing levels and qualification and equipment adequacy); the Deputy Administrator for the National Preparedness Directorate shall approve in writing the State plan. The Deputy Administrator for the National Preparedness Direc-

torate shall concurrently communicate this FEMA approval to the Governor of the State(s) in question, the NRC and the pertinent Regional Administrator(s) and immediately shall publish in the FEDERAL REGISTER a notice of this effect.

(c) If, after formal submission of the State plan, the Deputy Administrator for the National Preparedness Directorate is not satisfied with the adequacy of the plan or preparedness with respect to a particular site, he or she shall concurrently communicate that decision to the Governor(s) of the State(s), the NRC and the pertinent Regional Administrator(s), together with a statement in writing explaining the reasons for the decision and requesting appropriate plan or preparedness revision. Such statement shall be transmitted to the Governor(s) through the appropriate Regional Administrator(s). The Deputy Administrator for the National Preparedness Directorate shall immediately publish a notice to this effect in the FEDERAL REGISTER.

(d) The approval shall be of the State plan together with the local plans for each nuclear power facility (including out-of-State facilities) for which approval has been requested. FEMA may withhold approval of plans applicable to a specific nuclear power facility in a multi-facility State, but nevertheless approve the State plan and associated local plans applicable to other facilities in a State. Approval may be withheld for a specific site until plans for all jurisdictions within the emergency planning zones of that site have been reviewed and found adequate.

(e) Within 30 days after the date of notification of approval for a particular nuclear power facility or within 30 days of any statement of disapproval of a State plan, any interested person may appeal the decision of the Deputy Administrator for the National Preparedness Directorate to the Administrator; however, such an appeal must be made solely upon the ground that the Deputy Administrator for the National Preparedness Directorate's decision, based on the available record, was unsupported by substantial evidence. (See § 350.15 for appeal procedures.)

**§ 350.13 Withdrawal of approval.**

(a) If, at any time after granting approval of a State plan, the Deputy Administrator for the National Preparedness Directorate determines, on his or her own initiative, motion or on the basis of information another person supplied, that the State or local plan is no longer adequate to protect public health and safety by providing reasonable assurance that appropriate protective measures can be taken, or is no longer capable of being implemented, he or she shall immediately advise the Governor of the affected State, through the appropriate Regional Administrator and the NRC of that initial determination in writing. FEMA shall spell out in detail the reasons for its initial determination, and shall describe the deficiencies in the plan or the preparedness of the State. If, after four months from the date of such an initial determination, the State in question has not either:

(1) Corrected the deficiencies noted, or (2) submitted an acceptable plan for correcting those deficiencies, the Deputy Administrator for the National Preparedness Directorate shall withdraw approval and shall immediately inform the NRC and the Governor of the affected State, of the determination to withdraw approval and shall publish in the FEDERAL REGISTER and the local newspaper having the largest daily circulation in the affected State notice of its withdrawal or approval. The basis upon which the Deputy Administrator for the National Preparedness Directorate makes the determination for withdrawal of approval is the same basis used for reviewing plans and exercises, i.e., the planning standards and related criteria in NUREGO654/FEMA/REP-1, Rev. 1.

(b) In the event that the State in question shall submit a plan for correcting the deficiencies, the Deputy Administrator for the National Preparedness Directorate shall negotiate a schedule and a timetable under which the State shall correct the deficiencies. If, on the agreed upon date, the deficiencies have been corrected, the Deputy Administrator for the National Preparedness Directorate shall withdraw the initial determination and the approval previously granted shall re-

main valid. He or she shall inform the Governor(s), the NRC, the pertinent Regional Administrator(s) and notify the public as stated in paragraph (a) of this section. If, however, on the agreed upon date, the deficiencies are not corrected, FEMA shall withdraw its approval and shall communicate its decision to the Governor of the State whose plan is in question, the NRC, the appropriate Federal agencies and notify the public as indicated above.

(c) Within 30 days after the date of notification of withdrawal of approval of a State or local plan, any interested person may appeal the decision of the Deputy Administrator for the National Preparedness Directorate to the Administrator; however, such an appeal must be made solely upon the ground that the Deputy Administrator for the National Preparedness Directorate's decision, based on the available record, was unsupported by substantial evidence. (See § 350.15 for appeal procedures.)

**§ 350.14 Amendments to State plans.**

(a) The State may amend a plan submitted to FEMA for review and approval under § 350.7 at any time during the review process or may amend a plan at any time after FEMA approval has been granted under § 350.12. A State must amend its plan in order to extend the coverage of the plan to any new nuclear power facility which becomes operational after a FEMA approval or in case of any other significant change. The State plan shall remain in effect as approved while any significant change is under review.

(b) A significant change is one which involves the evaluation and assessment of a planning standard or which involves a matter which, if presented with the plan, would need to have been considered by the Deputy Administrator for the National Preparedness Directorate in making a decision that State or local plans and preparedness are:

(1) Adequate to protect the health and safety of the public living in the vicinity of the nuclear power facility by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency; and

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(2) Capable of being implemented.

(c) A significant change will be processed in the same manner as if it were an initial plan submission. However, the Regional Administrator may determine that certain procedures, such as holding a public meeting or a complete exercise, would be unnecessary. The existing FEMA approval shall remain in effect while any significant changes are under review.

(d) Changes, such as a change in a telephone number, that are not significant as defined in paragraphs (b) and (c) of this section, but are necessary to maintain currency of the plan, should be forwarded to the Regional Administrator.

### § 350.15 Appeal procedures.

(a) Any interested person may appeal a decision made under §§ 350.12 and 350.13 of this part, by submitting to the Administrator, FEMA, a written notice of appeal, within 30 days after the appearance in the FEDERAL REGISTER, of the notice of decision relating to the matter being appealed. The appeal must be addressed to the Administrator, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC, 20472. The appeal letter shall state specific reasons for the appeal and include an offer to provide documentation supporting appellate arguments.

(b) Upon receipt of an appeal, the Administrator or the Administrator's designee shall review the file, as submitted to the Deputy Administrator for the National Preparedness Directorate, by the Regional Administrator of the FEMA Region concerned, based on the information contained in the file and the appeal letter, with supporting documentation. The Administrator or the Administrator's designee shall decide whether or not the Associate Director's initial decision was supported by substantial evidence in the file and is consistent with FEMA policy.

(c) The decision of the Administrator or the Administrator's designee shall be published in the FEDERAL REGISTER as the final agency decision on the matter and shall not be reviewable within FEMA, except upon a showing that it was procured by fraud or mis-

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representation. In addition to publication in the FEDERAL REGISTER, copies of the decision shall be forwarded to the appellant, the Governor(s) of the State(s) affected, the NRC and the affected licensee of the involved power facility.

## PART 351—RADIOLOGICAL EMERGENCY PLANNING AND PREPAREDNESS

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AUTHORITY: 5 U.S.C. 552, Reorganization Plan No. 3 of 1978, E.O. 12127, E.O. 12148, E.O. 12241; Presidential Directive of Dec. 7, 1979.

SOURCE: 47 FR 10759, Mar. 11, 1982, unless otherwise noted.

### Subpart A—General

#### § 351.1 Purpose.

This part sets out Federal agency roles and assigns tasks regarding Federal assistance to State and local governments in their radiological emergency planning and preparedness activities. Assignments in this part are applicable to radiological accidents at fixed nuclear facilities and transportation accidents involving radioactive materials.

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**§ 351.2 Scope.**

The emergency planning and preparedness responsibilities covered by this part relate to consequences and activities which extend beyond the boundaries of any fixed nuclear facility with a potential for serious consequences and the area affected by a transportation accident involving radioactive materials.

**§ 351.3 Limitation of scope.**

(a) This part covers Federal agency assignments and responsibilities in connection with State and local emergency plans and preparedness measures. It does not set forth criteria used in the review and approval of these plans and does not include any of the requirements associated with FEMA findings and determinations on the adequacy of State and local government radiological emergency preparedness. FEMA has published a separate rule on procedures and criteria for reviewing and approving these plans and preparedness capabilities. Furthermore, this part does not set forth Federal agency responsibilities or capabilities for *responding to an accident at a fixed nuclear facility or a transportation accident involving radioactive materials*. These responsibilities are addressed in the "Federal Radiological Emergency Response Plan" (50 FR 46542, November 8, 1985).

(b) Nothing in this part authorizes access to or disclosure of classified information required to be protected in accordance with Federal law or regulation in the interest of national security.

[47 FR 10759, Mar. 11, 1982, as amended at 51 FR 34606, Sept. 30, 1986]

**Subpart B—Federal Radiological Preparedness Coordinating Committee and Regional Assistance Committees**

**§ 351.10 Establishment of committees.**

(a) The Federal Radiological Preparedness Coordinating Committee (FRPCC) consists of the Federal Emergency Management Agency, which chairs the Committee, Nuclear Regulatory Commission, Environmental Protection Agency, Department of

Health and Human Services, Department of Energy, Department of Transportation, Department of Defense, United States Department of Agriculture, Department of Commerce and, where appropriate and on an ad hoc basis, other Federal departments and agencies. In chairing the committee, FEMA will be responsible for assuring that all agency assignments described in this rule are coordinated through the Committee and carried out with or on behalf of State and local governments.

(b) The Regional Assistance Committees (RACs), one in each of 10 standard Federal regions,<sup>1</sup> consist of a FEMA Regional Representative who chairs the Committee and representatives from the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Energy, Department of Transportation, United States Department of Agriculture, Department of Commerce and other Federal departments and agencies such as the Department of Defense, as appropriate. The FEMA Chairperson of the RACs will provide guidance and orientation to other agency members to assist them in carrying out their functions.

**§ 351.11 Functions of committees.**

(a) The FRPCC shall assist FEMA in providing policy direction for the program of Federal assistance to State and local governments in their radiological emergency planning and preparedness activities. The FRPCC will establish subcommittees to aid in carrying out its functions; e.g., research, training, emergency instrumentation, transportation, information, education and Federal response. The FRPCC will assist FEMA in resolving issues relating to granting of final FEMA approval of a State plan. The FRPCC will coordinate research and study efforts of its member agencies related to State and local government radiological

<sup>1</sup>I (Boston); II (New York); III (Philadelphia); IV (Atlanta); V (Chicago); VI (Dallas); VII (Kansas City); VIII (Denver); IX (San Francisco) and X (Seattle).

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emergency preparedness to assure minimum duplication and maximum benefits to State and local governments. The FRPCC will also assure that the research efforts of its member agencies are coordinated with the Interagency Radiation Research Committee.

(b) The RACs will assist State and local government officials in the development of their radiological emergency plans and will review these plans and observe exercises to evaluate adequacy of the plans. Each Federal agency member of the RACs will support the functions of these committees by becoming knowledgeable of Federal planning and guidance related to State and local radiological emergency plans, of their counterpart State organizations and personnel, where their agency can assist in improving the preparedness and by participating in RAC meetings.

**Subpart C—Interagency Assignments**

**§ 351.20 The Federal Emergency Management Agency.**

(a) Establish policy and provide leadership via the FRPCC in the coordination of all Federal assistance and guidance to State and local governments for developing, reviewing, assessing and testing the State and local radiological emergency plans.

(b) Issue guidance in cooperation with other Federal agencies concerning their responsibilities for providing radiological emergency planning and preparedness assistance to State and local governments.

(c) Foster cooperation of industry, technical societies, Federal agencies and other constituencies in the radiological emergency planning and preparedness of State and local governments.

(d) Develop and promulgate preparedness criteria and guidance to State and local governments, in coordination with other Federal agencies, for the preparation, review and testing of State and local radiological emergency plans.

(e) Provide assistance to State and local governments in the preparation, review and testing of radiological emergency plans.

(f) Assess, with the assistance of other Federal agencies, the adequacy of State and local government emergency plans and the capability of the State and local government officials to implement them (e.g., adequacy and maintenance of equipment, procedures, training, resources, staffing levels and qualifications) and report the findings and determinations to NRC.

(g) Review and approve State radiological emergency plans and preparedness in accordance with FEMA procedures in 44 CFR part 350.

(h) Develop, implement and maintain a program of public education and information to support State and local radiological emergency plans and preparedness.

(i) Develop and manage a radiological emergency response training program to meet State and local needs, using technical expertise and resources of other involved agencies. Develop and field test exercise materials and coordinate the Federal assistance required by States and localities in conducting exercises, including guidance for Federal observers.

(j) Develop, with NRC and other Federal Agencies, representative scenarios from which NRC licensed facility operators and State and local governments may select for use in testing and exercising radiological emergency plans.

(k) Issue guidance for establishment of State and local emergency instrumentation systems for radiation detection and measurement.

(l) Provide guidance and assistance, in coordination with NRC and HHS, to State and local governments concerning the storage and distribution of radioprotective substances and prophylactic use of drugs (e.g., potassium iodide) to reduce the radiation dose to specific organs as a result of radiological emergencies.

**§ 351.21 The Nuclear Regulatory Commission.**

(a) Assess NRC nuclear facility (e.g., commercial power plants, fuel processing centers and research reactors) licensee emergency plans for adequacy to protect the health and safety of the public.

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(b) Verify that nuclear facility licensee emergency plans can be adequately implemented (e.g., adequacy and maintenance of equipment, procedures, training, resources, staffing levels and qualifications).

(c) Review FEMA’s findings and determinations of State and local radiological emergency plans for areas surrounding NRC licensed nuclear facilities.

(d) Take into account the overall state of emergency preparedness in making decisions to issue operating licenses or shut down licensed operating reactors, including the integration of assessments of emergency preparedness onsite by the NRC and offsite by FEMA.

(e) Where not already established, determine, in cooperation with other Federal agencies, the appropriate planning bases for NRC licensed nuclear facilities including distances, times and radiological characteristics.

(f) Assist FEMA in developing and promulgating guidance to State and local governments for the preparation of radiological emergency plans.

(g) Participate with FEMA in assisting State and local governments in developing their radiological emergency plans, evaluating exercises to test plans and evaluating the plans and preparedness.

(h) Assist FEMA and DOT in the preparation and promulgation of guidance to State and local governments for their use in developing the transportation portions of radiological emergency plans.

(i) Provide representation to and support for the FRPCC and the RACs.

(j) Assist FEMA in the development, implementation and maintenance of public information and education programs.

(k) Assist FEMA with other Federal agencies in the development of representative scenarios from which nuclear facility operators and State and local governments may select for use in testing and exercising radiological emergency plans.

(l) Assist FEMA in the development of guidance for State and local governments on emergency instrumentation systems for radiation detection and measurement.

(m) Assist FEMA with the development, implementation and presentation to the extent that resources permit of training programs for Federal, State and local radiological emergency preparedness personnel.

(n) Assist FEMA in providing guidance and assistance to State and local governments concerning the storage and distribution of radioprotective substances and prophylactic use of drugs (e.g., potassium iodide) to reduce the radiation dose to specific organs as a result of radiological emergencies.

**§ 351.22 The Environmental Protection Agency.**

(a) Establish Protective Action Guides (PAGs) for all aspects of radiological emergency planning in coordination with appropriate Federal agencies.

(b) Prepare guidance for State and local governments on implementing PAGs, including recommendations on protective actions which can be taken to mitigate the potential radiation dose to the population. This guidance will be presented in the Environmental Protection Agency (EPA) “Manual of Protective Action Guides and Protective Actions for Nuclear Incidents.” (The preparation of PAGs related to human food and animal feed will be done in coordination with the Department of Health and Human Services (HHS)/Food and Drug Administration.)

(c) Assist FEMA in developing and promulgating guidance to State and local governments for the preparation of radiological emergency plans.

(d) Assist FEMA with the development, implementation and presentation to the extent that resources permit of technical training for State and local officials regarding PAGs and protective actions, radiation dose assessment and decisionmaking.

(e) Participate with FEMA in assisting State and local governments in developing their radiological emergency plans, evaluating exercises to test plans and evaluating the plans and preparedness.

(f) Assist FEMA in the development of guidance for State and local governments on emergency instrumentation systems for radiation detection and measurement.

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(g) Provide representation to and support for the FRPCC and the RACs.

(h) Assist FEMA in developing representative scenarios from which nuclear facility operators and State and local governments may select for use in testing and exercising radiological emergency plans.

(i) Assist FEMA in the development, implementation and maintenance of public information and education programs.

**§ 351.23 The Department of Health and Human Services.**

(a) Develop and specify protective actions and associated guidance to State and local governments for human food and animal feed (in cooperation with the Environmental Protection Agency).

(b) Provide guidance and assistance to State and local governments in preparing programs related to mental health, behavioral disturbances and epidemiology associated with radiological emergencies.

(c) Assist FEMA in the development, implementation and maintenance of public information and education programs to support State and local government radiological emergency plans and preparedness.

(d) Assist FEMA with the development, implementation and presentation to the extent that resources permit of a radiological emergency training program to support State and local government personnel in accident assessment, protective actions and decisionmaking.

(e) Develop and assist in providing the requisite training programs for State and local health, mental health and social service agencies.

(f) Provide guidance to State and local governments on the use of radioprotective substances and prophylactic use of drugs (e.g., potassium iodide) to reduce the radiation dose to specific organs including dosage and projected radiation exposures at which such drugs should be used.

(g) Assist FEMA in developing and promulgating guidance to State and local governments for the preparation of radiological emergency plans.

(h) Participate with FEMA in assisting State and local governments in de-

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veloping their radiological emergency plans, evaluating exercises to test plans and evaluating the plans and preparedness.

(i) Provide representation to and support for the FRPCC and the RACs.

(j) Assist FEMA in developing representative scenarios from which nuclear facility operators and State and local governments may select for use in testing and exercising radiological emergency plans.

(k) Assist FEMA in the development of guidance for State and local governments on emergency instrumentation systems for radiation detection and measurement.

(l) Assist, in cooperation with the United States Department of Agriculture (USDA), the State and local governments in the planning for the safe production, during radiological emergencies, of human food and animal feed in the emergency planning zones around fixed nuclear facilities.

(m) Assist FEMA, through the Interagency Radiation Research Committee, chaired by the Department of Health and Human Services, in the coordination of Federal research efforts, primarily in areas related to the bioeffects of radiation, applicable to State and local plans and preparedness.

**§ 351.24 The Department of Energy.**

(a) Determine the appropriate planning bases for the Department of Energy (DOE) owned and contractor operated nuclear facilities (e.g., research and weapon production facilities) including distances, time and radiological characteristics.

(b) Assess DOE nuclear facility emergency plans for adequacy in contributing to the health and safety of the public.

(c) Verify that DOE nuclear facility emergency plans can be adequately implemented (e.g., adequacy and maintenance of equipment, procedures, training, resources, staffing levels and qualifications).

(d) Assist State and local governments, within the constraints of national security and in coordination with FEMA, in the preparation of those portions of their radiological emergency plans related to DOE owned and

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contractor operated nuclear facilities and radioactive materials in transit.

(e) Review and assess FEMA's findings and determinations on the adequacy of and capability to implement State and local radiological emergency plans for areas surrounding DOE nuclear facilities. Make independent assessments of the overall State of plans and preparedness.

(f) Serve as the lead agency for coordinating the development and issuance of interagency instructions and guidance to implement the Federal Radiological Monitoring and Assessment Plan (FRMAP), which will replace the Interagency Radiological Assistance Plan. The FRMAP provides the framework through which participating Federal agencies will coordinate their emergency radiological monitoring and assessment activities with those of State and local governments.

(g) Develop, maintain and improve capability to detect and assess hazardous levels of radiation.

(h) Assist FEMA in developing and promulgating guidance to State and local governments for the preparation of radiological emergency plans.

(i) Assist FEMA with the development, implementation and presentation to the extent that resources permit of training programs for Federal, State and local radiological emergency response personnel.

(j) Participate with FEMA in assisting State and local governments in developing their radiological emergency plans, evaluating exercises to test plans and evaluating the plans and preparedness.

(k) Develop, with FEMA, representative scenarios from which DOE facility operators and State and local governments may select for use in testing and exercising radiological emergency plans.

(l) Provide representation to and support for the FRPCC and the RACs.

(m) Assist FEMA in the development of guidance for State and local governments on emergency instrumentation systems for radiation detection and measurement.

**§ 351.25 The Department of Transportation.**

(a) Assist FEMA, along with NRC, in the preparation and promulgation of guidance to State and local governments for their use in developing the transportation portions of radiological emergency plans.

(b) Assist FEMA in its review and approval of State and local radiological emergency plans and in the evaluation of exercises to test such plans.

(c) Provide guidance and materials for use in training emergency services and other response personnel for transportation accidents involving radioactive materials and participate in interagency planning for such training.

(d) Provide representation to and support for the FRPCC and the RACs.

**§ 351.26 The United States Department of Agriculture.**

(a) Assist FEMA in developing and promulgating guidance to State and local governments for the preparation of radiological emergency plans.

(b) Participate with FEMA in assisting State and local governments in developing their radiological emergency plans, evaluating exercises to test plans and reviewing and evaluating the plans and preparedness.

(c) Assist State and local governments in preparing to implement protective actions in food ingestion pathway emergency planning zones around fixed nuclear facilities.

(d) Develop, in coordination with FEMA, the HHS and other Federal agencies, guidance for assisting State and local governments in the production, processing and distribution of food resources under radiological emergency conditions.

(e) Assist FEMA with the development, implementation and presentation to the extent that resources permit of training programs of Federal, State and local radiological emergency personnel.

(f) Provide representation to and support for the FRPCC and the RACs.

**§ 351.27 The Department of Defense.**

(a) Determine appropriate planning bases for Department of Defense (DOD) nuclear facilities and installations (e.g., missile bases, nuclear submarine



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facilities and weapon storage sites) including distances, time and radiological characteristics.

(b) Develop, with FEMA, representative scenarios from which DOD nuclear facility commanders and State and local governments may select for use in testing and exercising radiological emergency plans.

(c) Assist State and local governments, within the constraints of national security and in coordination with FEMA, in the development, review and assessment of those portions of their radiological emergency plans related to DOD nuclear facilities and assist State officials with planning for response to accidents involving DOD controlled radioactive materials in transit.

(d) Provide representation to and support for the FRPCC and the RACs when appropriate.

§ 351.28 The Department of Commerce.

(a) Assist State and local governments in determining their requirements for meteorological and hydrological services for radiological emergencies and assist State and local governments in preparing to meet these requirements within the limits of available resources.

(b) Assist FEMA in developing and promulgating guidance to State and local governments for the preparation of radiological emergency plans.

(c) Participate with FEMA in assisting State and local governments in developing their radiological emergency plans, evaluating exercises to test plans and evaluating the plans and preparedness.

(d) Assist FEMA with the development, implementation and presentation to the extent that resources permit of technical training for State and local officials in the use of meteorological information in responding to radiological emergencies.

(e) Provide representation to and support for the FRPCC and the RACs.

(f) Assist FEMA in the development of guidance for State and local governments on the exposure and location of emergency instrumentation systems for radiation detection and measurement.

(g) The Federal Coordinator for Meteorological Services and Supporting Research will, consistent with the provisions of the Office of Management and Budget Circular A-62, serve as the coordinating agent for any multi-agency meteorological aspects of assisting State and local governments in their radiological emergency planning and preparedness.

PART 352—COMMERCIAL NUCLEAR POWER PLANTS: EMERGENCY PREPAREDNESS PLANNING

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AUTHORITY: Federal Civil Defense Act of 1950, as amended (50 U.S.C. app. 2251 et seq.); Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq.; 31 U.S.C. 9701; Executive Order 12657; Executive Order 12148; Executive Order 12127 and Executive Order 12241.

SOURCE: 54 FR 31925, Aug. 2, 1989, unless otherwise noted.

**§ 352.1 Definitions.**

As used in this part, the following terms and concepts are defined:

(a) *Deputy Administrator* means the Deputy Administrator, National Preparedness Directorate, FEMA or designee.

(b) *Administrator* means the Administrator, FEMA or designee.

(c) *EPZ* means Emergency Planning Zone.

(d) *FEMA* means the Federal Emergency Management Agency.

(e) *NRC* means the Nuclear Regulatory Commission.

(f) *Regional Administrator* means the Regional Administrator of FEMA or designee.

(g) *Local government* means boroughs, cities, counties, municipalities, parishes, towns, townships or other local jurisdictions within the plume and ingestion exposure pathway EPZs that have specific roles in emergency planning and preparedness.

(h) *Decline or fail* means a situation where State or local governments do not participate in preparing offsite emergency plans or have significant planning or preparedness inadequacies and have not demonstrated the commitment or capabilities to correct those inadequacies in a timely manner so as to satisfy NRC licensing requirements.

(i) *Governor* means the Governor of a State or his/her designee.

(j) *Certification* means the written justification by a licensee of the need for Federal compensatory assistance. This certification is required to activate the Federal assistance under this part.

(k) *Responsible local official* means the highest elected official of an appropriate local government.

(l) *Technical assistance* means services provided by FEMA and other Federal agencies to facilitate offsite radiological emergency planning and preparedness such as: Provision of support for the preparation off site radiological emergency response plans and procedures; FEMA coordination of services from other Federal agencies; provision and interpretation of Federal guidance; provision of Federal and contract personnel to offer advice and recommendations for specific aspects of

preparedness such as alert and notification and emergency public information.

(m) *Federal facilities and resources* means personnel, property (land, buildings, vehicles, equipment), and operational capabilities controlled by the Federal government related to establishing and maintaining radiological emergency response preparedness.

(n) *Licensee* means the utility which has applied for or has received a license from the NRC to operate a commercial nuclear power plant.

(o) *Reimbursement* means the payment to FEMA/Federal agencies, jointly or severally, by a licensee and State and local governments for assistance and services provided in processing certifications and implementing Federal compensatory assistance under this part 352.

(p) *Host FEMA Regional Office* means the FEMA Regional Office that has primary jurisdiction by virtue of the nuclear power plant being located within its geographic boundaries.

(q) *Command and control* means making and issuing protective action decisions and directing offsite emergency response resources, agencies, and activities.

**§ 352.2 Scope, purpose and applicability.**

(a) This part applies whenever State or local governments, either individually or together, decline or fail to prepare commercial nuclear power plant offsite radiological emergency preparedness plans that are sufficient to satisfy NRC licensing requirements or to participate adequately in the preparation, demonstration, testing, exercise, or use of such plans. In order to request the assistance provided for in this part, an affected nuclear power plant applicant or licensee shall certify in writing to FEMA that the above situation exists.

(b) The purposes of this part are as follows: (1) To establish policies and procedures for the submission of a licensee certification for Federal assistance under Executive Order 12657; (2) set forth policies and procedures for FEMA's determination to accept, accept with modification, or reject the licensee certification; (3) establish a

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framework for providing Federal assistance to licensees; and (4) provide procedures for the review and evaluation of the adequacy of offsite radiological emergency planning and preparedness. Findings and determinations on offsite planning and preparedness made under this part are provided to the NRC for its use in the licensing process.

(c) This part applies only in instances where Executive Order 12657 is used by a licensee and its provisions do not affect the validity of the emergency preparedness developed by the licensee independent of or prior to Executive Order 12657.

## Subpart A—Certifications and Determinations

### § 352.3 Purpose and scope.

This subpart establishes policies and procedures for submission by a commercial nuclear power plant licensee of a certification for Federal assistance under Executive Order 12657. It contains policies and procedures for FEMA's determinations, with respect to a certification. It establishes a framework for providing Federal assistance to licensees. It also provides procedures for review and evaluation of the adequacy of licensee offsite radiological emergency planning and preparedness.

### § 352.4 Licensee certification.

(a) A licensee which seeks Federal assistance under this part shall submit a certification to the host FEMA Regional Administrator that a decline or fail situation exists. The certification shall be in the form of a letter from the chief executive officer of the licensee. The contents of this letter shall address the provisions set forth in paragraphs (b) and (c) of this section.

(b) The licensee certification shall delineate why such assistance is needed based on the criteria of decline or fail for the relevant State or local governments.

(c) The licensee certification shall document requests to and responses from the Governor(s) or responsible local official(s) with respect to the efforts taken by the licensee to secure their participation, cooperation, com-

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mitment of resources or timely correction of planning and preparedness failures.

[54 FR 31925, Aug. 2, 1989, as amended at 74 FR 15357, Apr. 3, 2008]

### § 352.5 FEMA action on licensee certification.

(a) Upon receiving a licensee certification, the host Regional Administrator shall immediately notify FEMA Headquarters of the licensee certification. Within 5 days the host Regional Administrator shall notify the Governor of an affected State and the chief executive officer of any local government that a certification has been received, and make a copy of the certification available to such persons. Within 10 days, the host Regional Administrator shall acknowledge in writing the receipt of the certification to the licensee.

(b) Within 15 days of receipt of the certification, the Regional Administrator shall publish a notice in the FEDERAL REGISTER that a certification from the licensee has been received, and that copies are available at the Regional Office for review and copying in accordance with 44 CFR 5.26.

(c) FEMA Headquarters shall notify the NRC of receipt of the certification and shall request advice from the NRC on whether a decline or fail situation exists.

(d) State and local governments may submit written statements to the host Regional Administrator outlining their position as to the facts stated in the letter of certification. Such statements shall be submitted to FEMA within 10 days of the date of notification provided to State and local government under § 352.5(a). Any such statements shall be a part of the record and will be considered in arriving at recommendations or determinations made under the provisions of this part.

(e) The host FEMA Regional Office shall provide, after consulting with State and responsible local officials, a recommended determination on whether a decline or fail situation exists to the FEMA Deputy Administrator for the National Preparedness Directorate within 30 days of receipt of the licensee certification.

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(f) The FEMA Deputy Administrator for the National Preparedness Directorate shall make a determination on whether a decline or fail situation exists within 45 days of receipt of the licensee certification and shall advise the licensee, NRC, and State and local officials.

(g) The times for actions set out above may be extended up to an aggregate of 30 days by the host Regional Administrator or Deputy Administrator for the National Preparedness Directorate, as appropriate.

### § 352.6 FEMA determination on the commitment of Federal facilities and resources.

(a) A licensee request for Federal facilities and resources shall document the licensee's maximum feasible use of its resources and its efforts to secure the use of State and local government and volunteer resources.

(b) Upon a licensee request for Federal facilities and resources, FEMA headquarters shall notify NRC and request advice from the NRC as to whether the licensee has made maximum use of its resources and the extent to which the licensee has complied with 10 CFR 50.47(c)(1). The host FEMA Regional Administrator shall make a recommendation to the FEMA Deputy Administrator for the National Preparedness Directorate on whether the provision of these facilities and resources is warranted. The FEMA Deputy Administrator for the National Preparedness Directorate shall make a final determination as to whether Federal facilities and resources are needed.

(c) In making the determination under paragraph (b) of this section, FEMA:

(1) Shall work actively with the licensee, and before relying upon any Federal resources, shall make maximum feasible use of the licensee's own resources, which may include agreements with volunteer organizations and other government entities and agencies; and

(2) Shall assume that, in the event of an actual radiological emergency or disaster, State and local authorities would contribute their full resources and exercise their authorities in accordance with their duties to protect

the public and would act generally in conformity with the licensee's radiological emergency preparedness plan.

(d) The FEMA Deputy Administrator for the National Preparedness Directorate shall make a determination on the need for and commitment of Federal facilities and resources. The FEMA determination shall be made in consultation with affected Federal agencies and in accordance with 44 CFR 352.21. FEMA shall inform the licensee, the States and affected local governments in writing of the Federal support which will be provided. This information shall identify Federal agencies that are to provide Federal support, the extent and purpose of the support to be provided, the Federal facilities and resources to be committed and the limitations on their use. The provision of the identified Federal support shall be made under the policies and procedures of subpart B of this part.

### § 352.7 Review and evaluation.

FEMA shall conduct its activities and make findings under this part in a manner consistent with 44 CFR part 350 to the extent that those procedures are appropriate and not inconsistent with the intent and procedures required by E.O. 12657. This Order shall take precedence, and any inconsistencies shall be resolved under the procedures in the NRC/FEMA Memorandum of Understanding (MOU) on planning and preparedness. (50 FR 15485, April 18, 1985)

## Subpart B—Federal Participation

### § 352.20 Purpose and scope.

This subpart establishes policy and procedures for providing support for offsite radiological emergency planning and preparedness in a situation where Federal support under Executive Order 12657 (E.O. 12657) has been requested. This subpart:

(a) Describes the process for providing Federal technical assistance to the licensee for developing its offsite emergency response plan after an affirmative determination on the licensee certification under subpart A (44 CFR 352.5(f));

(b) Describes the process for providing Federal facilities and resources to the licensee after a determination

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under subpart A (44 CFR 352.6(d)) that Federal resources are required;

(c) Describes the principal response functions which Federal agencies may be called upon to provide;

(d) Describes the process for allocating responsibilities among Federal agencies for planning site-specific emergency response functions; and

(e) Provides for the participation of Federal agencies, including the members of the FRPCC and the RACs.

### § 352.21 Participating Federal agencies.

(a) FEMA may call upon any Federal agency to participate in planning for the use of Federal facilities and resources in the licensee offsite emergency response plan.

(b) FEMA may call upon the following agencies, and others as needed, to provide Federal technical assistance and Federal facilities and resources:

- (1) Department of Commerce;
- (2) Department of Defense;
- (3) Department of Energy;
- (4) Department of Health and Human Services;
- (5) Department of Housing and Urban Development;
- (6) Department of the Interior;
- (7) Department of Transportation;
- (8) Environmental Protection Agency;
- (9) Federal Communications Commission;
- (10) General Services Administration;
- (11) National Communications System;
- (12) Nuclear Regulatory Commission;
- (13) United States Department of Agriculture; and
- (14) Department of Veterans Affairs.

(c) FEMA is the Federal agency primarily responsible for coordinating Federal assistance. FEMA may enter into Memorandums of Understanding (MOU) and other instruments with Federal agencies to provide technical assistance and to arrange for the commitment and utilization of Federal facilities and resources as necessary. FEMA also may use a MOU to delegate to another Federal agency, with the consent of that agency, any of the functions and duties assigned to FEMA. Following review and approval

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by OMB, FEMA will publish such documents in the FEDERAL REGISTER.

### § 352.22 Functions of the Federal Radiological Preparedness Coordinating Committee (FRPCC).

Under 44 CFR part 351, the role of the FRPCC is to assist FEMA in providing policy direction for the program of technical assistance to State and local governments in their radiological emergency planning and preparedness activities. Under this subpart, the role of the FRPCC is to provide advice to FEMA regarding Federal assistance and Federal facilities and resources for implementing subparts A and B of this part. This assistance activity is extended to licensees. The FRPCC will assist FEMA in revising the Federal Radiological Emergency Response Plan (FRERP).

### § 352.23 Functions of a Regional Assistance Committee (RAC).

(a) Under 44 CFR part 351, the role of a RAC is to assist State and local government officials to develop their radiological emergency plans, to review the plans, and to observe exercises to evaluate the plans. Under subparts A and B of this part, these technical assistance activities are extended to the licensee.

(b) Prior to a determination under subpart A (44 CFR 352.6(d)) that Federal facilities and resources are needed, the designated RAC for the specific site will assist the licensee, as necessary, in evaluating the need for Federal facilities and resources, in addition to providing technical assistance under § 352.23(a).

(c) In accomplishing the foregoing, the RAC will use the standards and evaluation criteria in NUREG-0654/FEMA-REP-1, Rev. 1 and Supp. 1,<sup>1</sup> or approved alternative approaches, and RAC members shall render such technical assistance as appropriate to their agency mission and expertise.

(d) Following determination under subpart A (44 CFR 352.6(d)) that Federal facilities and resources are needed,

<sup>1</sup>Copy available from FEMA Distribution Center, P.O. Box 70274 Washington, DC 20024

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the RAC will assist FEMA in identifying agencies and specifying the Federal facilities and resources which the agencies are to provide.

### § 352.24 Provision of technical assistance and Federal facilities and resources.

(a) Under a determination under subpart A (44 CFR 352.5(f) and 352.4(e)) that a decline or fail situation exists, FEMA and other Federal agencies will provide technical assistance to the licensee. Such assistance may be provided during the pendency of an appeal under § 352.29.

(b) The applicable criteria for the use of Federal facilities and resources are set forth in subpart A (44 CFR 352.6(c)(1)(2)). Upon a determination under subpart A (44 CFR 352.6(d)) that Federal resources or facilities will be required, FEMA will consult with the FRPCC, the RAC, the individual Federal agencies, and the licensee, to determine the extent of Federal facilities and resources that the government could provide, and the most effective way to do so. After such consultation, FEMA will specifically request Federal agencies to provide those Federal facilities and resources. The Federal agencies, in turn, will respond to confirm the availability of such facilities and resources and provide estimates of their costs.

(c) FEMA will inform the licensee in writing of the Federal support which will be provided. This information will identify Federal agencies which are to be included in the plan, the extent and purpose of technical assistance to be provided and the Federal facilities and resources to be committed, and the limitations of their use. The information will also describe the requirements for reimbursement to the Federal Government for this support.

(d) FEMA will coordinate the Federal effort in implementing the determinations made under subpart A (44 CFR 352.5(f) and 352.6(d)) so that each Federal agency maintains the committed technical assistance, facilities, and resources after the licensee offsite emergency response plan is completed. FEMA and other Federal agencies will participate in training, exercises, and

drills, in support of the licensee offsite emergency response plan.

(e) In carrying out paragraphs (a) through (c) of this section, FEMA will keep affected State and local governments informed of actions taken.

[54 FR 31925, Aug. 2, 1989, as amended at 74 FR 15357, Apr. 3, 2009]

### § 352.25 Limitation on committing Federal facilities and resources for emergency preparedness.

(a) The commitment of Federal facilities and resources will be made through the authority of the affected Federal agencies.

(b) In implementing a determination under subpart A (44 CFR 352.6(d)), that Federal facilities and resources are necessary for emergency preparedness, FEMA shall take care not to supplant State and local resources. Federal facilities and resources shall be substituted for those of the State and local governments in the licensee offsite emergency response plan only to the extent necessary to compensate for the nonparticipation or inadequate participation of those governments, and only as a last resort after consultation with the Governor(s) and responsible local officials in the affected area(s) regarding State and local participation.

(c) All Federal planning activities described in this subpart will be conducted under the assumption that, in the event of an actual radiological emergency or disaster, State and local authorities would contribute their full resources and exercise their authorities in accordance with their duties to protect the public from harm and would act, generally, in conformity with the licensee's offsite emergency response plan.

### § 352.26 Arrangements for Federal response in the licensee offsite emergency response plan.

Federal agencies may be called upon to assist the licensee in developing a licensee offsite emergency response plan in areas such as:

(a) Arrangements for use of Federal facilities and resources for response functions such as:

(1) Prompt notification of the emergency to the public;

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- (2) Assisting in any necessary evacuation;
  - (3) Providing reception centers or shelters and related facilities and services for evacuees;
  - (4) Providing emergency medical services at Federal hospitals; and
  - (5) Ensuring the creation and maintenance of channels of communication from commercial nuclear power plant licensees to State and local governments and to surrounding members of the public.
- (b) Arrangements for transferring response functions to State and local governments during the response in an actual emergency; and
- (c) Arrangements which may be necessary for FEMA coordination of the response of other Federal agencies.

**§ 352.27 Federal role in the emergency response.**

In addition to the Federal component of the licensee offsite emergency response plan described in subpart B (§352.26), and after complying with E.O. 12657, Section 2(b)(2), which states that FEMA:

- (2) Shall take care not to supplant State and local resources and that FEMA shall substitute its own resources for those of State and local governments only to the extent necessary to compensate for the non-participation or inadequate participation of those governments, and only as a last resort after appropriate consultation with the Governors and responsible local officials in the affected area regarding State and local participation;

FEMA shall provide for initial Federal response activities, including command and control of the offsite response, as may be needed. Any Federal response role, undertaken pursuant to this section, shall be transferred to State and local governments as soon as feasible after the onset of an actual emergency.

**§ 352.28 Reimbursement.**

In accordance with Executive Order 12657, Section 6(d), and to the extent permitted by law, FEMA will coordinate full reimbursement, either jointly or severally, to the agencies performing services or furnishing resources, from any affected licensee and from any affected nonparticipating or

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inadequately participating State or local government.

**§ 352.29 Appeal process.**

(a) Any interested party may appeal a determination made by the Deputy Administrator for the National Preparedness Directorate, under §§352.5 and 352.6 of this part, by submitting to the Administrator, FEMA, a written notice of appeal, within 30 days after issuance. The appeal is to be addressed to the Administrator, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472. The appeal letter shall state the specific reasons for the appeal and include documentation to support appellant arguments. The appeal is limited to matters of record under §§ 352.5 and 352.6.

(b) Within 30 days of receipt of this letter, the FEMA Administrator or designee will review the record and make a final determination on the matter.

(c) Copies of this determination shall be furnished to the Appellant, the State(s), affected local governments, and the NRC.

(d) For purposes of this section, the term *interested party* means only a licensee, a State or a local government, as defined in §352.1(g).

**PART 353—FEE FOR SERVICES IN SUPPORT, REVIEW AND APPROVAL OF STATE AND LOCAL GOVERNMENT OR LICENSEE RADIOLOGICAL EMERGENCY PLANS AND PREPAREDNESS**

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- 353.4 Payment of fees.
- 353.5 Average cost per FEMA professional staff-hour.
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- 353.7 Failure to pay.

**APPENDIX A TO PART 353—MEMORANDUM OF UNDERSTANDING BETWEEN FEDERAL EMERGENCY MANAGEMENT AGENCY AND NUCLEAR REGULATORY COMMISSION**

AUTHORITY: 31 U.S.C. 9701; E.O. 12657 of Nov. 18, 1988; 3 CFR, 1988 Comp., p. 611; 50 U.S.C. app. 2251 note; E.O. 12148 of July 20, 1979; 3 CFR, 1979 Comp., p. 412, 50 U.S.C. app. 2251 note.

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SOURCE: 56 FR 9455, Mar. 6, 1991, unless otherwise noted.

### § 353.1 Purpose.

This part sets out fees charged for site-specific radiological emergency planning and preparedness services rendered by the Federal Emergency Management Agency, as authorized by 31 U.S.C. 9701.

### § 353.2 Scope.

The regulation in this part applies to all licensees who have applied for or have received a license from the Nuclear Regulatory Commission to operate a commercial nuclear power plant.

### § 353.3 Definitions.

As used in this part, the following terms and concepts are defined:

(a) *FEMA* means the Federal Emergency Management Agency.

(b) *NRC* means the Nuclear Regulatory Commission.

(c) *Certification* means the written justification by a licensee of the need for Federal compensatory assistance, as authorized in 44 CFR part 352 and E.O. 12657.

(d) *Technical assistance* means services provided by FEMA to facilitate offsite radiological emergency planning and preparedness such as provision of support for the preparation of offsite radiological emergency response plans and procedures; provision of advice and recommendations for specific aspects of preparedness such as alert and notification and emergency public information.

(e) *Licensee* means the utility which has applied for or has received a license from the NRC to operate a commercial nuclear power plant.

(f) *Governor* means the Governor of a State or his/her designee.

(g) *RAC* means Regional Assistance Committee chaired by FEMA with representatives from the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Energy, Department of Agriculture, Department of Transportation, Department of Commerce and other Federal Departments and agencies as appropriate.

(h) *REP* means FEMA's Radiological Emergency Preparedness Program.

(i) *Fiscal Year* means Federal fiscal year commencing on the first day of October through the thirtieth day of September.

(j) *Federal Radiological Preparedness Coordinating Committee* is the national level committee chaired by FEMA with representatives from the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Interior, Department of Energy, Department of Transportation, United States Department of Agriculture, Department of Commerce and other Federal Departments and agencies as appropriate.

### § 353.4 Payment of fees.

Fees for site-specific offsite radiological emergency plans and preparedness services and related site-specific legal services are payable upon notification by FEMA. FEMA services will be billed at 6-month intervals for all accumulated costs on a site-specific basis. Each bill will identify the costs related to services for each nuclear power plant site.

### § 353.5 Average cost per FEMA professional staff-hour.

Fees for FEMA services rendered will be calculated based upon the costs for such services using a professional staff rate per hour equivalent to the sum of the average cost to the agency of maintaining a professional staff member performing site-specific services related to the Radiological Emergency Preparedness Program, including salary, benefits, administrative support, travel and overhead. This rate will be charged when FEMA performs such services as: Development of exercise objectives and scenarios, pre-exercise logistics, exercise conduct and participation, evaluation, meetings and reports; review and approval of Plan revisions that are utility-requested or exercise inadequacy related; remedial exercise, medical drill or any other exercise or drill upon which a license is predicated, with regard to preparation, review, conduct, participation, evaluation, meetings and reports; the issuance of interim findings pursuant



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to the FEMA/NRC Memorandum of Understanding (MOU) (App. A of this part); review of utility plan submissions through the NRC under the MOU; utility certification submission review under 44 CFR part 352 and follow-on activities; site-specific adjudicatory proceedings and any other site-specific legal costs and technical assistance that is utility requested or exercise inadequacy related. The professional staff rate for FY 91 is \$39.00 per hour. The referenced FEMA/NRC MOU is provided in this rule as appendix A. The professional staff rate for the REP Program and related legal services will be revised on a fiscal year basis using the most current fiscal data available and the revised hourly rate will be published as a notice in the FEDERAL REGISTER for each fiscal year if the rate increases or decreases.

#### § 353.6 Schedule of services.

Recipients shall be charged the full cost of site-specific services based upon the appropriate professional hourly staff rate for the FEMA services described in this Section and for related contractual services which will be charged to the licensee by FEMA, at the rate and cost incurred.

(a) When a State seeks formal review and approval by FEMA of the State's radiological emergency response plan pursuant to 44 CFR part 350 (Review and Approval Process of State and Local Radiological Emergency Plans and Preparedness), FEMA shall provide the services as described in 44 CFR part 350 in regard to that request and fees will be charged for such services to the licensee, which is the ultimate beneficiary of FEMA services. This provision does not apply where an operating license has been granted or the application denied or withdrawn, except as necessary to support biennial exercises and related activities. Fees will be charged for all FEMA, but not other Federal agency activities related to such services, including but not limited to the following:

- (1) Development of exercise objectives and scenarios, preexercise logistics, exercise conduct and participation, evaluation, meetings and reports.
- (2) Review of plan revisions that are exercise-inadequacy related;

(3) Technical assistance that is exercise-inadequacy related;

(4) Remedial exercise, medical drill, or any other exercise or drill upon which maintenance of a license is predicated, with regard to preparation, review, conduct, participation, evaluation, meetings and reports.

(b) Interim findings. Where the NRC seeks from FEMA under the FEMA/NRC MOU an interim finding of the status of radiological emergency planning and preparedness at a particular time for a nuclear power plant, FEMA shall assess a fee to the licensee for providing this service. The provision of this service consists of making a determination whether the plans are adequate to protect the health and safety of the public living in the vicinity of the nuclear power facility by providing reasonable assurance that appropriate protective measures can be taken off-site in the event of a radiological emergency and that such plans are capable of being implemented.

(c) NRC utility plan submissions. Fees will be charged for all FEMA but not other Federal agency activities related to such services, including but not limited to the following:

(1) Development of exercise objectives and scenarios, preexercise logistics, exercise conduct and participation, evaluation and post-exercise meetings and reports.

(2) Notice and conduct of public meeting.

(3) Regional finding and determination of adequacy of plans and preparedness followed by review by FEMA Headquarters resulting in final FEMA determination of adequacy of plans and preparedness.

(4) Remedial exercise, medical drill, or any other exercise or drill upon which maintenance of a license is predicated, with regard to preparation, review, conduct, participation, evaluation, meetings and reports.

(d) Utility certification submission review. When a licensee seeks Federal assistance within the framework of 44 CFR part 352 due to the decline or failure of a State or local government to adequately prepare an emergency plan, FEMA shall process the licensee's certification and make the determination

whether a decline or fail situation exists. Fees will be charged for services rendered in making the determination. Upon the determination that a decline or fail situation does exist, any services provided or secured by FEMA consisting of assistance to the licensee, as described in 44 CFR part 352, will have a fee charged for such services.

(e) FEMA participation in site-specific NRC adjudicatory proceedings and any other site-specific legal costs. Where FEMA participates in NRC licensing proceedings and any related court actions to support FEMA findings as a result of its review and approval of offsite emergency plans and preparedness, or provides legal support for any other site specific FEMA activities comprised in this rule, fees will be charged to the licensee for such participation.

(f) Rendering technical assistance. Where FEMA is requested by a licensee to provide any technical assistance, or where a State or local government requests technical assistance in order to correct an inadequacy identified as a result of a biennial exercise or any other drill or exercise upon which maintenance of a license is predicated, FEMA will charge such assistance to the licensee for the provision of such service.

**§ 353.7 Failure to pay.**

In any case where there is a dispute over the FEMA bill or where FEMA finds that a licensee has failed to pay a prescribed fee required under this part, procedures will be implemented in accordance with 44 CFR part 11 subpart C to effectuate collections under the Debt Collection Act of 1982 (31 U.S.C. 3711 *et seq.*).

APPENDIX A TO PART 353—MEMORANDUM OF UNDERSTANDING BETWEEN FEDERAL EMERGENCY MANAGEMENT AGENCY AND NUCLEAR REGULATORY COMMISSION

The Federal Emergency Management Agency (FEMA) and the Nuclear Regulatory Commission (NRC) have entered into a new Memorandum of Understanding (MOU) Relating to Radiological Emergency Planning and Preparedness. This supersedes a memorandum entered into on November 1, 1980 (published December 16, 1980, 45 FR 82713), revised April 9, 1985 (published April 18, 1985, 50

FR 15485), and published as Appendix A to 44 CFR part 353. The substantive changes in the new MOU are: (1) Self-initiated review by the NRC; (2) Early Site Permit process; (3) adoption of FEMA exercise time-frames; (4) incorporation of FEMA definition of exercise deficiency; (5) NRC commitment to work with licensees in support of State and local governments to correct exercise deficiencies; (6) correlation of FEMA actions on withdrawal of approvals under 44 CFR part 350 and NRC enforcement actions; and (7) disaster-initiated reviews in situations that affect offsite emergency infrastructures. The text of the MOU follows.

MEMORANDUM OF UNDERSTANDING BETWEEN NRC AND FEMA RELATING TO RADIOLOGICAL EMERGENCY PLANNING AND PREPAREDNESS

*I. Background and Purposes*

This Memorandum of Understanding (MOU) establishes a framework of cooperation between the Federal Emergency Management Agency (FEMA) and the U.S. Nuclear Regulatory Commission (NRC) in radiological emergency response planning matters so that their mutual efforts will be directed toward more effective plans and related preparedness measures at and in the vicinity of nuclear reactors and fuel cycle facilities which are subject to 10 CFR part 50, appendix E, and certain other fuel cycle and materials licensees which have potential for significant accidental offsite radiological releases. The memorandum is responsive to the President's decision of December 7, 1979, that FEMA will take the lead in offsite planning and response, his request that NRC assist FEMA in carrying out this role, and the NRC's continuing statutory responsibility for the radiological health and safety of the public.

On January 14, 1980, the two agencies entered into a "Memorandum of Understanding Between NRC and FEMA to Accomplish a Prompt Improvement in Radiological Emergency Preparedness," that was responsive to the President's December 7, 1979, statement. A revised and updated Memorandum of Understanding became effective November 1, 1980. The MOU was further revised and updated on April 9, 1985. This MOU is a further revision to reflect the evolving relationship between NRC and FEMA and the experience gained in carrying out the provisions of the previous MOU's. This MOU supersedes these two earlier versions of the MOU.

The general principles agreed to in the previous MOU's and reaffirmed in this MOU, are as follows: FEMA coordinates all Federal planning for the offsite impact of radiological emergencies and takes the lead for

assessing offsite radiological emergency response plans<sup>1</sup> and preparedness, makes findings and determinations as to the adequacy and capability of implementing offsite plans, and communicates those findings and determinations to the NRC. The NRC reviews those FEMA findings and determinations in conjunction with the NRC onsite findings for the purpose of making determinations on the overall state of emergency preparedness. These overall findings and determinations are used by NRC to make radiological health and safety decisions in the issuance of licenses and the continued operation of licensed plants to include taking enforcement actions as notices of violations, civil penalties, orders, or shutdown of operating reactors. This delineation of responsibilities avoids duplicative efforts by the NRC staff in offsite preparedness matters. However, if FEMA informs the NRC that an emergency, unforeseen contingency, or other reason would prevent FEMA from providing a requested finding in a reasonable time, then, in consultation with FEMA, the NRC might initiate its own review of offsite emergency preparedness.

A separate MOU dated October 22, 1980, deals with NRC/FEMA cooperation and responsibilities in response to an actual or potential radiological emergency. Operations Response Procedures have been developed that implement the provisions of the Incident Response MOU. These documents are intended to be consistent with the Federal Radiological Emergency Response Plan which describes the relationships, roles, and responsibilities of Federal Agencies for responding to accidents involving peacetime nuclear emergencies. On December 1, 1991, the NRC and FEMA also concluded a separate MOU in support of Executive Order 12657 (FEMA Assistance in Emergency Preparedness Planning at Commercial Nuclear Power Plants).

## II. Authorities and Responsibilities

FEMA-Executive Order 12148 charges the Director, FEMA, with the responsibility to “\* \* \* establish Federal policies for, and coordinate, all civil defense and civil emergency planning, management, mitigation, and assistance functions of Executive agencies” (Section 2-101) and “\* \* \* represent the President in working with State and local governments and the private sector to stimulate vigorous participation in civil emer-

gency preparedness, mitigation, response, and recovery programs” (Section 2-104.).

On December 7, 1979, the President, in response to the recommendations of the Kemeny Commission on the Accident at Three Mile Island, directed that FEMA assume lead responsibility for all offsite nuclear emergency planning and response.

Specifically, the FEMA responsibilities with respect to radiological emergency preparedness as they relate to NRC are:

1. To take the lead in offsite emergency planning and to review and assess offsite emergency plans and preparedness for adequacy.

2. To make findings and determinations as to whether offsite emergency plans are adequate and can be implemented (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment). Notwithstanding the procedures which are set forth in 44 CFR part 350 for requesting and reaching a FEMA administrative approval of State and local plans, findings, and determinations on the current status of emergency planning and preparedness around particular sites, referred to as interim findings, will be provided by FEMA for use as needed in the NRC licensing process. Such findings will be provided by FEMA on mutually agreed to schedules or on specific NRC request. The request and findings will normally be by written communications between the co-chairs of the NRC/FEMA Steering Committee. An interim finding provided under this arrangement will be an extension of FEMA’s procedures for review and approval of offsite radiological emergency plans and preparedness set forth in 44 CFR part 350. It will be based on the review of currently available plans and, if appropriate, joint exercise results related to a specific nuclear power plant site.

If the review involves an application under 10 CFR part 52 for an early site permit, the NRC will forward to FEMA pertinent information provided by the applicant and consult with FEMA as to whether there is any significant impediment to the development of offsite emergency plans. As appropriate, depending upon the nature of information provided by the applicant, the NRC will also request that FEMA determine whether major features of offsite emergency plans submitted by the applicant are acceptable, or whether offsite emergency plans submitted by the applicant are adequate, as discussed below.

An interim finding based only on the review of currently available offsite plans will include an assessment as to whether these plans are adequate when measured against the standards and criteria of NUREG-0654/FEMA-REP-1, and, pending a demonstration through an exercise, whether there is reasonable assurance that the plans can be implemented. The finding will indicate one of the

<sup>1</sup> Assessments of offsite plans may be based on State and local government plans submitted to FEMA under its rule (44 CFR Part 350), and as noted in 44 CFR 350.3(f), may also be based on plans currently available to FEMA or furnished to FEMA through the NRC/FEMA Steering Committee.

following conditions: (1) Plans are adequate and there is reasonable assurance that they can be implemented with only limited or no corrections needed; (2) plans are adequate, but before a determination can be made as to whether they can be implemented, corrections must be made to the plans or supporting measures must be demonstrated (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment) or (3) plans are inadequate and cannot be implemented until they are revised to correct deficiencies noted in the Federal review.

If, in FEMA's view, the plans that are available are not completed or are not ready for review, FEMA will provide NRC with a status report delineating milestones for preparation of the plan by the offsite authorities as well as FEMA's actions to assist in timely development and review of the plans.

An interim finding on preparedness will be based on review of currently available plans and joint exercise results and will include an assessment as to (1) whether offsite emergency plans are adequate as measured against the standards and criteria of NUREG-0654/FEMA-REP-1 and (2) whether the exercise(s) demonstrated that there is reasonable assurance that the plans can be implemented.

An interim finding on preparedness will indicate one of the following conditions: (1) There is reasonable assurance that the plans are adequate and can be implemented as demonstrated in an exercise; (2) there are deficiencies that must be corrected; or (3) FEMA is undecided and will provide a schedule of actions leading to a decision.

3. To assume responsibility, as a supplement to State, local, and utility efforts, for radiological emergency preparedness training of State and local officials.

4. To develop and issue an updated series of interagency assignments which delineate respective agency capabilities and responsibilities and define procedures for coordination and direction for emergency planning and response. [Current assignments are in 44 CFR part 351, March 11, 1982. (47 FR 10758)]

NRC-The Atomic Energy Act of 1954, as amended, requires that the NRC grant licenses only if the health and safety of the public is adequately protected. While the Atomic Energy Act does not specifically require emergency plans and related preparedness measures, the NRC requires consideration of overall emergency preparedness as a part of the licensing process. The NRC rules (10 CFR 50.33, 50.34, 50.47, 50.54, and appendix E to 10 CFR part 50, and 10 CFR part 52) include requirements for the licensee's emergency plans.

Specifically, the NRC responsibilities for radiological emergency preparedness are:

1. To assess licensee emergency plans for adequacy. This review will include organizations with whom licensees have written agreements to provide onsite support services under emergency conditions.

2. To verify that licensee emergency plans are adequately implemented (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment).

3. To review the FEMA findings and determinations as to whether offsite plans are adequate and can be implemented.

4. To make radiological health and safety decisions with regard to the overall state of emergency preparedness (i.e., integration of emergency preparedness onsite as determined by the NRC and offsite as determined by FEMA and reviewed by NRC) such as assurance for continued operation, for issuance of operating licenses, or for taking enforcement actions, such as notices of violations, civil penalties, orders, or shutdown of operating reactors.

*III. Areas of Cooperation*

*A. NRC Licensing Reviews*

FEMA will provide support to the NRC for licensing reviews related to reactors, fuel facilities, and materials licensees with regard to the assessment of the adequacy of offsite radiological emergency response plans and preparedness. This will include timely submission of an evaluation suitable for inclusion in NRC safety evaluation reports.

Substantially prior to the time that a FEMA evaluation is required with regard to fuel facility or materials license review, NRC will identify those fuel and materials licensees with potential for significant accidental offsite radiological releases and transmit a request for review to FEMA as the emergency plans are completed.

FEMA routine support will include providing assessments, findings and determinations (interim and final) on offsite plans and preparedness related to reactor license reviews. To support its findings and determinations, FEMA will make expert witnesses available before the Commission, the NRC Advisory Committee on Reactor Safeguards, NRC hearing boards and administrative law judges, for any court actions, and during any related discovery proceedings.

FEMA will appear in NRC licensing proceedings as part of the presentation of the NRC staff. FEMA counsel will normally present FEMA witnesses and be permitted, at the discretion of the NRC licensing board, to cross-examine the witnesses of parties, other than the NRC witnesses, on matters involving FEMA findings and determinations, policies, or operations; however, FEMA will not be asked to testify on status reports. FEMA is not a party to NRC proceedings

and, therefore, is not subject to formal discovery requirements placed upon parties to NRC proceedings. Consistent with available resources, however, FEMA will respond informally to discovery requests by parties. Specific assignment of professional responsibilities between NRC and FEMA counsel will be primarily the responsibility of the attorneys assigned to a particular case. In situations where questions of professional responsibility cannot be resolved by the attorneys assigned, resolution of any differences will be made by the General Counsel of FEMA and the General Counsel of the NRC or their designees. NRC will request the presiding Board to place FEMA on the service list for all litigation in which it is expected to participate.

Nothing in this MOU shall be construed in any way to diminish NRC's responsibility for protecting the radiological health and safety of the public.

#### B. FEMA Review of Offsite Plans and Preparedness

NRC will assist in the development and review of offsite plans and preparedness through its membership on the Regional Assistance Committees (RAC). FEMA will chair the Regional Assistance Committees. Consistent with NRC's statutory responsibility, NRC will recognize FEMA as the interface with State and local governments for interpreting offsite radiological emergency planning and preparedness criteria as they affect those governments and for reporting to those governments the results of any evaluation of their radiological emergency plans and preparedness.

Where questions arise concerning the interpretation of the criteria, such questions will continue to be referred to FEMA Headquarters, and when appropriate, to the NRC/FEMA Steering Committee to assure uniform interpretation.

#### C. Preparation for and Evaluation of Joint Exercises

FEMA and NRC will cooperate in determining exercise requirements for licensees, and State and local governments. They will also jointly observe and evaluate exercises. NRC and FEMA will institute procedures to enhance the review of objectives and scenarios for joint exercises. This review is to assure that both the onsite considerations of NRC and the offsite considerations of FEMA are adequately addressed and integrated in a manner that will provide for a technically sound exercise upon which an assessment of preparedness capabilities can be based. The NRC/FEMA procedures will provide for the availability of exercise objectives and scenarios sufficiently in advance of scheduled exercises to allow enough time for adequate review by NRC and FEMA and correction of

any deficiencies by the licensee. The failure of a licensee to develop a scenario that adequately addresses both onsite and offsite considerations may result in NRC taking enforcement actions.

The FEMA reports will be a part of an interim finding on emergency preparedness; or will be the result of an exercise conducted pursuant to FEMA's review and approval procedures under 44 CFR part 350 and NRC's requirement under 10 CFR part 50, appendix E, Section IV.F. Exercise evaluations will identify one of the following conditions: (1) There is reasonable assurance that the plans are adequate and can be implemented as demonstrated in the exercise; (2) there are deficiencies that must be corrected; or (3) FEMA is undecided and will provide a schedule of actions leading to a decision. The schedule for issuance of the draft and final exercise reports will be as shown in FEMA-REP-14 (Radiological Emergency Preparedness Exercise Manual).

The deficiency referred to in (2) above is defined as an observed or identified inadequacy of organizational performance in an exercise that could cause a finding that offsite emergency preparedness is not adequate to provide reasonable assurance that appropriate protective measures can be taken in the event of a radiological emergency to protect the health and safety of the public living in the vicinity of a nuclear power plant. Because of the potential impact of deficiencies on emergency preparedness, they should be corrected within 120 days through appropriate remedial actions, including remedial exercises, drills, or other actions.

Where there are deficiencies of the types noted above, and when there is a potential for remedial actions, FEMA Headquarters will promptly (1–2 days) discuss these with NRC Headquarters. Within 10 days of the exercise, official notification of identified deficiencies will be made by FEMA to the State, NRC Headquarters, and the RAC with an information copy to the licensee. NRC will formally notify the licensee of the deficiencies and monitor the licensee's efforts to work with State and local authorities to correct the deficiencies. Approximately 60 days after official notification of the deficiency, the NRC, in consultation with FEMA, will assess the progress being made toward resolution of the deficiencies.

#### D. Withdrawal of Reasonable Assurance Finding

If FEMA determines under 44 CFR 350.13 of its regulations that offsite emergency plans or preparedness are not adequate to provide reasonable assurance that appropriate protective measures can be taken in the event of radiological emergency to protect the health and safety of the public, FEMA shall, as described in its rule, withdraw approval.

Upon receiving notification of such action from FEMA, the NRC will promptly review FEMA's findings and determinations and formally document the NRC's position. When, as described in 10 CFR 50.54(s)(2)(ii) and 50.54(s)(3) of its regulations, the NRC finds the state of emergency preparedness does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, the NRC will notify the affected licensee accordingly and start the "120-day clock."<sup>2</sup>

E. Emergency Planning and Preparedness Guidance

NRC has lead responsibility for the development of emergency planning and preparedness guidance for licensees. FEMA has lead responsibility for the development of radiological emergency planning and preparedness guidance for State and local agencies. NRC and FEMA recognize the need for an integrated, coordinated approach to radiological emergency planning and preparedness by NRC licensees and State and local governments. NRC and FEMA will each, therefore, provide opportunity for the other agency to review and comment on such guidance (including interpretations of agreed joint guidance) prior to adoption as formal agency guidance.

F. Support for Document Management System

FEMA and NRC will each provide the other with continued access to those automatic data processing support systems which contain relevant emergency preparedness data.

G. Ongoing NRC Research and Development Programs

Ongoing NRC and FEMA research and development programs that are related to State and local radiological emergency planning and preparedness will be coordinated. NRC and FEMA will each provide opportunity for the other agency to review and comment on relevant research and development programs prior to implementing them.

<sup>2</sup>Per 10 CFR 50.54(s)(2)(ii), the Commission will determine whether the reactor shall be shut down or other appropriate enforcement actions if such conditions are not corrected within four months. The NRC is not limited by this provision of the rule, for, as stated in 10 CFR 50.54(s)(3), "Nothing in this paragraph shall be construed as limiting the authority of the Commission to take action under any other regulation or authority of the Commission or at any time other than that specified in this paragraph" (emphasis added).

H. Public Information and Education Programs

FEMA will take the lead in developing public information and educational programs. NRC will assist FEMA by reviewing for accuracy educational materials concerning radiation, and its hazards and information regarding appropriate actions to be taken by the general public in the event of an accident involving radioactive materials.

I. Recovery from Disasters Affecting Offsite Emergency Preparedness

Disasters that destroy roads, buildings, communications, transportation resources or other offsite infrastructure in the vicinity of a nuclear power plant can degrade the capabilities of offsite response organizations in the 10-mile plume emergency planning zone. Examples of events that could cause such devastation are hurricanes, tornadoes, earthquakes, tsunamis, volcanic eruptions, major fires, large explosions, and riots.

If a disaster damages the area around a licensed operating nuclear power plant to an extent that FEMA seriously questions the continued adequacy of offsite emergency preparedness, FEMA will inform the NRC promptly. Likewise, the NRC will inform FEMA promptly of any information it receives from licensees, its inspectors, or others, that raises serious questions about the continued adequacy of offsite emergency preparedness. If FEMA concludes that a disaster-initiated review of offsite radiological emergency preparedness is necessary to determine if offsite emergency preparedness is still adequate, it will inform the NRC in writing, as soon as practicable, including a schedule for conduct of the review. FEMA will also give the NRC (1) interim written reports of its findings, as appropriate, and (2) a final written report on the results of its review.

The disaster-initiated review is performed to reaffirm the radiological emergency preparedness capabilities of affected offsite jurisdictions located in the 10-mile emergency planning zone and is not intended to be a comprehensive review of offsite plans and preparedness.

The NRC will consider information provided by FEMA Headquarters and pertinent findings from FEMA's disaster-initiated review in making decisions regarding the restart or continued operation of an affected operating nuclear power reactor. The NRC will notify FEMA Headquarters, in writing, of the schedule for restart of an affected reactor and keep FEMA Headquarters informed of changes in that schedule.

IV. NRC/FEMA Steering Committee

The NRC/FEMA Steering Committee on Emergency Preparedness will continue to be

the focal point for coordination of emergency planning and preparedness. As discussed in Section I of this agreement, response activities between these two agencies are addressed in a separate MOU. The Steering Committee will consist of an equal number of members to represent each agency with one vote per agency. When the Steering Committee cannot agree on the resolution of an issue, the issue will be referred to NRC and FEMA management. The NRC members will have lead responsibility for licensee planning and preparedness and the FEMA members will have lead responsibility for offsite planning and preparedness. The Steering Committee will assure coordination of plans and preparedness evaluation activities and revise, as necessary, acceptance criteria for licensee, State and local radiological emergency planning and preparedness. NRC and FEMA will then consider and adopt criteria, as appropriate, in their respective jurisdictions. (See Attachment 1).

#### V. Working Arrangements

A. The normal point of contact for implementation of the points in this MOU will be the NRC/FEMA Steering Committee.

B. The Steering Committee will establish the day-to-day procedures for assuring that the arrangements of this MOU are carried out.

#### VI. Memorandum of Understanding

A. This MOU shall be effective as of date of signature and shall continue in effect unless terminated by either party upon 30 days notice in writing.

B. Amendments or modifications to this MOU may be made upon written agreement by both parties.

Approved for the U.S. Nuclear Regulatory Commission.

Dated: June 17, 1993.

James M. Taylor,

*Executive Director for Operations.*

Dated: June 17, 1993.

Approved for the Federal Emergency Management Agency.

Richard W. Krimm,

*Acting Associate Director, State and Local Programs and Support.*

#### ATTACHMENT 1—FEMA/NRC STEERING COMMITTEE

##### Purpose

Assure coordination of efforts to maintain and improve emergency planning and preparedness for nuclear power reactors as described in the NRC and FEMA rules and the NRC/FEMA MOU on Radiological Emergency Planning and Preparedness. Coordinate consistent criteria for licensee, State and local emergency plans and preparedness.

##### Membership

The NRC and FEMA consignees of this MOU will designate respective co-chairs for the Steering Committee. The designated co-chairs will, in turn, appoint their respective members to the Committee.

##### Membership Changes

Changes to the membership of the NRC/FEMA Steering Committee may be made by the co-chairs representing the agency whose member is being changed.

##### Operating Procedures

The Steering Committee will maintain a record of each meeting to include identification of issues discussed and conclusions reached. No meeting will be held without the attendance and participation of at least the co-chairs or two assigned members of each agency.

##### Coordination

When items involving responsibilities of other NRC or FEMA offices are discussed, the affected offices will be contacted as appropriate.

[58 FR 47997, Sept. 14, 1993]

## PART 354—FEE FOR SERVICES TO SUPPORT FEMA'S OFFSITE RADIOLOGICAL EMERGENCY PREPAREDNESS PROGRAM

### Sec.

354.1 Purpose.

354.2 Scope of this regulation.

354.3 Definitions.

354.4 Assessment of fees.

354.5 Description of site-specific, plume pathway EPZ biennial exercise-related component services and other services.

354.6 Billing and payment of fees.

354.7 Failure to pay.

**AUTHORITY:** Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Sec. 109, Pub. L. 96-295, 94 Stat. 780; Sec. 2901, Pub. L. 98-369, 98 Stat. 494; Title III, Pub. L. 103-327, 108 Stat. 2323-2325; Pub. L. 105-276, 112 Stat. 2502; EO 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; EO 12657, 53 FR 47513, 3 CFR, 1988 Comp., p. 611.

**SOURCE:** 66 FR 32577, June 15, 2001, unless otherwise noted.

### § 354.1 Purpose.

This part establishes the methodology for FEMA to assess and collect user fees from Nuclear Regulatory

Commission (NRC) licensees of commercial nuclear power plants to recover at least 100 percent of the amounts that we anticipate to obligate for our Radiological Emergency Preparedness (REP) Program as authorized under Title III, Public Law 105-276, 112 Stat. 2461, 2502. Public Law 105-276 established in the Treasury a Radiological Emergency Preparedness Fund, to be available under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et. seq.), and under Executive Order 12657 (3 CFR, 1988 Comp., p. 611), for offsite radiological emergency planning, preparedness, and response. Beginning in fiscal year 1999 and thereafter, the Administrator of FEMA must publish fees to be assessed and collected, applicable to persons subject to FEMA's radiological emergency preparedness regulations. The methodology for assessment and collection of fees must be fair and equitable and must reflect the full amount of costs of providing radiological emergency planning, preparedness, response and associated services. Our assessment of fees include our costs for use of agency resources for classes of regulated persons and our administrative costs to collect the fees. Licensees deposit fees by electronic transfer into the Radiological Emergency Preparedness Fund in the U.S. Treasury as offsetting collections.

**§ 354.2 Scope of this regulation.**

The regulation in this part applies to all persons or licensees who have applied for or have received from the NRC:

- (a) A license to construct or operate a commercial nuclear power plant;
- (b) A possession-only license for a commercial nuclear power plant, with the exception of licensees that have received an NRC-approved exemption to 10 CFR 50.54(q) requirements;
- (c) An early site permit for a commercial nuclear power plant;
- (d) A combined construction permit and operating license for a commercial nuclear power plant; or
- (e) Any other NRC licensee that is now or may become subject to requirements for offsite radiological emergency planning and preparedness.

**§ 354.3 Definitions.**

The following definitions of terms and concepts apply to this part:

*Biennial exercise* means the joint licensee/State and local government exercise, evaluated by FEMA, conducted around a commercial nuclear power plant site once every two years in conformance with 44 CFR part 350.

*EPZ* means emergency planning zone.

*Federal Radiological Preparedness Coordinating Committee (FRPCC)* means a committee chaired by FEMA with representatives from the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Interior, Department of Energy, Department of Transportation, Department of Agriculture, Department of Commerce, Department of State, Department of Veterans Affairs, General Services Administration, National Communications System, the National Aeronautics and Space Administration and other Federal departments and agencies as appropriate.

*FEMA* means the Federal Emergency Management Agency.

*Fiscal Year* means the Federal fiscal year, which begins on the first day of October and ends on the thirtieth day of September.

*NRC* means the U. S. Nuclear Regulatory Commission.

*Obligate* or *obligation* means a legal reservation of appropriated funds for expenditure.

*Persons* or *Licensee* means the utility or organization that has applied for or has received from the NRC:

- (1) A license to construct or operate a commercial nuclear power plant;
- (2) A possession-only license for a commercial nuclear power plant, with the exception of licensees that have received an NRC-approved exemption to 10 CFR 50.54(q) requirements;
- (3) An early site permit for a commercial nuclear power plant;
- (4) A combined construction permit and operating license for a commercial nuclear power plant; or
- (5) Any other NRC license that is now or may become subject to requirements for offsite radiological emergency planning and preparedness activities.



#### § 354.4

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*Plume pathway EPZ* means for planning purposes, the area within approximately a 10-mile radius of a nuclear plant site.

*RAC* means Regional Assistance Committee chaired by FEMA with representatives from the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Energy, Department of Agriculture, Department of Transportation, Department of Commerce, Department of Interior, and other Federal departments and agencies as appropriate.

*REP* means Radiological Emergency Preparedness, as in FEMA's REP Program.

*Site* means the location at which one or more commercial nuclear power plants (reactor units) have been, or are planned to be built.

*Site-specific services* mean offsite radiological emergency planning, preparedness and response services provided by FEMA personnel and by FEMA contractors that pertain to a specific commercial nuclear power plant site.

*Technical assistance* means services provided by FEMA to accomplish offsite radiological emergency planning, preparedness and response, including provision of support for the preparation of offsite radiological emergency response plans and procedures, and provision of advice and recommendations for specific aspects of radiological emergency planning, preparedness and response, such as alert and notification and emergency public information.

*We, our, us,* means and refers to FEMA.

#### § 354.4 Assessment of fees.

(a)(1) We assess user fees from licensees using a methodology that includes charges for REP Program services provided by both our personnel and our contractors. Beginning in FY 1995, we established a four-year cycle from FY 1995–1998 with predetermined user fee assessments that were collected each year of the cycle. The following six-year cycle will run from FY 1999 through FY 2004. The fee for each site consists of two distinct components:

(i) A *site-specific, biennial exercise-related component* to recover the portion of the REP program budget associated

only with plume pathway emergency planning zone (EPZ) biennial exercise-related activities. We determine this component by reviewing average biennial exercise-related activities/hours that we use in exercises conducted since the inception of our REP user fee program in 1991. We completed an analysis of REP Program activities/hours used during the FY 1991–1995 cycle at the end of that four-year cycle. We will make adjustments to the site-specific user fees for the next proposed FY 1999–2004 six-year cycle.

(ii) A *flat fee component* that is the same for each site and recovers the remaining portion of the REP Program budgeted funding that does not include biennial exercise-related activities.

(2) We will assess fees only for REP Program services provided by our personnel and by our contractors, and we will not assess fees for those services that other Federal agencies involved in the FRPCC or the RAC's provide.

(b) *Determination of site-specific, biennial exercise-related component for our personnel.* We will determine an average biennial exercise-related cost for our personnel for each commercial nuclear power plant site in the REP Program. We base this annualized cost (dividing the average biennial exercise-related cost by two) on the average number of hours spent by our personnel in REP exercise-related activities for each site. We will determine the average number of hours using an analysis of site-specific exercise activity spent since the beginning of our user fee program (1991). We determine the actual user fee assessment for this component by multiplying the average number of REP exercise-related hours that we determine and annualize for each site by the average hourly rate in effect for the fiscal year for a REP Program employee. We will revise the hourly rate annually to reflect actual budget and cost of living factors, but the number of annualized, site-specific exercise hours will remain constant for user fee calculations and assessments throughout the six-year cycle. We will continue to track and monitor exercise activity during the six-year cycle, FY

1999-2004. We will make appropriate adjustments to this component to calculate user fee assessments for later six-year cycles.

(c) *Determination of site-specific, biennial exercise-related component for FEMA contract personnel.* We have determined an average biennial exercise-related cost for REP contractors for each commercial nuclear power plant site in the REP Program. We base this annualized cost (dividing the average biennial exercise-related cost by two) on the average costs of contract personnel in REP site-specific exercise-related activities since the beginning of our user fee program (1991). We will continue to track and monitor activity during the initial six-year cycle, FY 1999-2004, and we will make appropriate adjustments to this component for calculation of user fee assessments during subsequent six-year cycles.

(d) *Determination of flat fee component.* For each year of the six-year cycle, we recover the remainder of REP Program budgeted funds as a flat fee component. Specifically, we determine the flat fee component by subtracting the total of our personnel and contractor site-specific, biennial exercise-related components, as outlined in paragraphs (a) and (b) of this section, from the total REP budget for that fiscal year. We then divide the resulting amount equally among the total number of licensed commercial nuclear power plant sites (defined under 354.2) to arrive at each site's flat fee component for that fiscal year.

(e) *Discontinuation of charges.* When we receive a copy from the NRC of their approved exemption to 10 CFR 50.54(q) requirements stating that offsite radiological emergency planning and preparedness are no longer required at a particular commercial nuclear power plant site, we will discontinue REP Program services at that site. We will no longer assess a user fee for that site from the beginning of the next fiscal year.

**§354.5 Description of site-specific, plume pathway EPZ biennial exercise-related component services and other services.**

Site-specific and other REP Program services provided by FEMA and FEMA

contractors for which FEMA will assess fees on licensees include the following:

(a) *Site-specific, plume pathway EPZ biennial exercise-related component services.* (1) Schedule plume pathway EPZ biennial exercises.

(2) Review plume pathway EPZ biennial exercise objectives and scenarios.

(3) Provide pre-plume pathway EPZ biennial exercise logistics.

(4) Conduct plume pathway EPZ biennial exercises, evaluations, and post exercise briefings.

(5) Prepare, review and finalize plume pathway EPZ biennial exercise reports, give notice and conduct public meetings.

(6) Activities related to Medical Services and other drills conducted in support of a biennial, plume pathway exercise.

(b) *Flat fee component services.* (1) Evaluate State and local offsite radiological emergency plans and preparedness.

(2) Schedule other than plume pathway EPZ biennial exercises.

(3) Develop other than plume pathway EPZ biennial exercise objectives and scenarios.

(4) Pre-exercise logistics for other than the plume pathway EPZ.

(5) Conduct other than plume pathway EPZ biennial exercises and evaluations.

(6) Prepare, review and finalize other than plume pathway EPZ biennial exercise reports, notice and conduct of public meetings.

(7) Prepare findings and determinations on the adequacy or approval of plans and preparedness.

(8) Conduct the formal 44 CFR part 350 review process.

(9) Provide technical assistance to States and local governments.

(10) Review licensee submissions pursuant to 44 CFR part 352.

(11) Review NRC licensee offsite plan submissions under the NRC/FEMA Memorandum of Understanding on Planning and Preparedness, and NUREG-0654/FEMA-REP-1, Revision 1, Supplement 1. You may obtain copies of the NUREG-0654 from the Superintendent of Documents, U.S. Government Printing Office.

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(12) Participate in NRC adjudication proceedings and any other site-specific legal forums.

(13) Alert and notification system reviews.

(14) Responses to petitions filed under 10 CFR 2.206.

(15) Congressionally-initiated reviews and evaluations.

(16) Responses to licensee's challenges to FEMA's administration of the fee program.

(17) Respond to actual radiological emergencies.

(18) Develop regulations, guidance, planning standards and policy.

(19) Coordinate with other Federal agencies to enhance the preparedness of State and local governments for radiological emergencies.

(20) Coordinate REP Program issues with constituent organizations such as the National Emergency Management Association, Conference of Radiation Control Program Directors, and the Nuclear Energy Institute.

(21) Implement and coordinate REP Program training with FEMA's Emergency Management Institute (EMI) to assure effective development and implementation of REP training courses and conferences.

(22) Participation of REP personnel as lecturers or to perform other functions at EMI, conferences and workshops.

(23) Any other costs that we incur resulting from our REP Program Strategic Review implementation and oversight working group activities.

(24) Costs associated with a transition phase should we decide to advertise and award a contract for technical support to the REP Program. Transition phase activities may include training new contractor personnel in the REP Exercise Evaluation and Planning courses, and on-the-job training for new evaluators at a select number of REP exercises.

(25) Services associated with the assessment of fees, billing, and administration of this part.

(26) Disaster-initiated reviews and evaluations.

### § 354.6 Billing and payment of fees.

(a) *Electronic billing and payment.* We will deposit all funds collected under

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this part to the Radiological Emergency Preparedness Fund as offsetting collections, which will be available for our REP Program. The Department of the Treasury revisions to section 8025.30 of publication I-TFM 6–8000 require Federal agencies to collect funds by electronic funds transfer when such collection is cost-effective, practicable, and consistent with current statutory authority. Working with the Department of the Treasury we now provide for payment of bills by electronic transfers through Automated Clearing House (ACH) credit payments.

(b) We will send bills that are based on the assessment methodology set out in § 354.4 to licensees to recover the full amount of the funds that we budget to provide REP Program services. Licensees that have more than one site will receive consolidated bills. We will forward one bill to each licensee during the first quarter of the fiscal year, with payment due within 30 days. If we exceed our original budget for the fiscal year and need to make minor adjustments, the adjustment will appear in the bill for the next fiscal year.

### § 354.7 Failure to pay.

Where a licensee fails to pay a prescribed fee required under this part, we will implement procedures under 44 CFR part 11, subpart C, to collect the fees under the Debt Collection Act of 1982 (31 U.S.C. 3711 *et seq.*).

## PARTS 355–359 [RESERVED]

## PART 360—STATE ASSISTANCE PROGRAMS FOR TRAINING AND EDUCATION IN COMPREHENSIVE EMERGENCY MANAGEMENT

Sec.

360.1 Purpose.

360.2 Description of program.

360.3 Eligible applicants.

360.4 Administrative procedures.

360.5 General provisions for State Cooperative Agreement.

AUTHORITY: Reorganization Plan No. 3 (3 CFR, 1978 Comp., p. 329); E.O. 12127 (44 FR 19367); E.O. 12148 (44 FR 43239).

SOURCE: 46 FR 1271, Jan. 6, 1981, unless otherwise noted.

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### § 360.1 Purpose.

The Emergency Management Training Program is designed to enhance the States' emergency management training program to increase State capabilities and those of local governments in this field, as well as to give States the opportunity to develop new capabilities and techniques. The Program is an ongoing intergovernmental endeavor which combines financial and human resources to fill the unique training needs of local government, State emergency staffs and State agencies, as well as the general public. States will have the opportunity to develop, implement and evaluate various approaches to accomplish FEMA emergency objectives as well as goals and objectives of their own. The intended result is an enhanced capability to protect lives and property through planning, mitigation, operational skill, and rapid response in case of disaster or attack on this country.

### § 360.2 Description of program.

(a) The program is designed for all States regardless of their present level of involvement in training or their degree of expertise in originating and presenting training courses in the past. The needs of individual States, difference in numbers to be trained, and levels of sophistication in any previous training program have been recognized. It is thus believed that all States are best able to meet their own unique situations and those of local government by being given this opportunity and flexibility.

(b) Each State is asked to submit an acceptable application, to be accompanied by a Training and Education (T&E) plan for a total of three years, only the first year of which will be required to be detailed. The remaining two year program should be presented in terms of ongoing training objectives and programs. In the first year plan applicants shall delineate their objectives in training and education, including a description of the programs to be offered, and identify the audiences and numbers to be trained. Additionally, the State is asked to note the month in which the activity is to be presented, the location, and cost estimates including instructional costs and partici-

pant's travel and per diem. These specifics of date, place, and costs will be required for the first year of any three year plan. A three year plan will be submitted each year with an application. Each negotiated agreement will include a section of required training (Radiological Defense), and a section including optional courses to be conducted in response to State and local needs.

(c) FEMA support to the States in their training program for State and local officials, has been designed around three Program elements. Each activity listed in the State Training and Education (T&E) Plan will be derived from the following three elements:

(1) *Government Conducted Courses:* Such courses require the least capability on the part of the State. They are usually conducted through provisions in a FEMA Regional Support Contract and/or FEMA or other Federal agency staff. The State's responsibilities fall primarily into administrative areas of recruiting participants, making all arrangements for the facilities needed for presentation of the course, and the handling of the cost reimbursement to participants, though State staff may participate as instructors. These courses for example include:

(i) Career Development Courses: Phases I, II, and III,

(ii) Radiological Officer and Instructor Courses,

(iii) Technical Workshops on Disaster Recovery or Hazard Mitigation.

(2) *Government and recipient conducted courses:* Responsibilities in these courses fall jointly upon Federal and State government as agreed in the planning for the course. Courses in this category might include:

(i) Emergency Management Workshops,

(ii) Multijurisdictional Emergency Operations Simulation Training.

In this category also, it is expected that the State will be responsible for administrative and logistical requirements, plus any instructional activity as agreed upon prior to the conduct of the course.

(3) *Recipient conducted courses:* This element requires the greatest degree of

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sophistication in program planning and delivery on the part of the State. Training events proposed by the State must be justified as addressing Emergency Management Training Program objectives. Additionally, they must address State or community needs and indicate the State's ability to present and carry out the Program of Instruction. Courses in this category could include:

- (i) Radiological Monitoring,
- (ii) Emergency Operations Simulating Training,
- (iii) Shelter Management.

(d) In order that this three year comprehensive Training and Education Program planning can proceed in a timely and logical manner, each State will be provided three target appropriation figures, one for each of the three program years. States will develop their proposals, using the target figure to develop their scope of work. Adjustments in funding and the scope of work will be subject to negotiation before finalization. Both the funding and the scope of work will be reviewed each year and adjustments in the out years will reflect increased sophistication and expertise of the States as well as changing training needs within each State.

(e)(1) FEMA funding through the State Cooperative Agreement for the training activities is to be used for travel and per diem expenses of students selected by the States for courses reflecting individually needed or required training. Additionally funds may be expended for course materials and instructor expenses. The funding provided in the State Cooperative Agreement is not for the purpose of conducting ongoing State activities or for funding staff positions to accomplish work to be performed under this Agreement. Nor is the Agreement for the purpose of purchasing equipment which may be obtained with the help of Personnel and Administrative funds. In cases where equipment has been identified as needed in the scope of work submitted with the application, and where it serves as an outreach to a new audience or methodology, equipment purchase may be approved at the time of initial application approval.

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(2) Allowable cost will be funded at 100%.

[46 FR 1271, Jan. 6, 1981, as amended at 48 FR 9646, Mar. 8, 1983]

### § 360.3 Eligible applicants.

Each of the 50 States, independent commonwealths, and territories is eligible to participate in a State Cooperative Agreement with FEMA. The department, division, or agency of the State government assigned the responsibility for State training in comprehensive emergency management should file the application.

### § 360.4 Administrative procedures.

(a) *Award.* Each State desiring to participate will negotiate the amount of financial support for the training and education program. Deciding factors will be the scope of the program, a prudent budget, the number of individuals to be trained, and variety of audiences included which are in need of training. All these factors are part of the required application as discussed in § 360.2.

(b) *Period of agreement.* Agreements will be negotiated annually and will be in effect for a period of 12 months. Each agreement, however, will include a scope of work for three years as reflected in § 360.2(b) to give continuity to the total training and education program.

(c) *Submission procedure.* Each State applicant shall comply with the following procedures:

(1) *Issuance of a request for application:* Each State emergency management agency will receive a Request for Application Package from the State's respective FEMA Regional Administrator.

(2) *How to submit:* Each State shall submit the completed application package to the Regional Administrator of the Appropriate Region.

(3) *Application package:* The Application Package should include:

(i) A transmittal letter signed by the State Director of the agency tasked with emergency management responsibilities for that State.

(ii) A three year projected training and education scope of work including

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both “required” training and “optional” courses. The first of the projected three year program is to be detailed as to list of courses, description of training to be offered, audiences to be reached and numbers to be trained. Dates and locations of training as well as costs of delivery and student travel and per diem are to be estimated. Special instructions for this portion of the submittal will be included in the Application Package.

(iii) Standard Form 270 “Request for Advance or Reimbursement” as required by 2 CFR parts 200 and 3002 and FEMA General Provisions for Cooperative Agreements.

(d) *Reporting agreements.* Recipients of State Agreement benefits will report quarterly during the Federal Fiscal year, directly to the Regional Administrator of their respective Regions. The report should include a narrative of the training programs conducted accompanied by rosters for each event, agenda, and a summary financial statement on the status of the Agreement funds. Any course or training activity included in the Scope of Work and not presented as scheduled should be explained in detail as to the reason for cancellation in the quarterly report. The costs allocated to this cancelled activity should be reprogrammed to another training activity approved by the Regional Administrator no later than the last day of the 3rd quarter, or released to the Region. An evaluation of the degree to which objectives were met, the effectiveness of the methodology, and the appropriateness of the resources and references used should also be included in the quarterly report. The report is due in the Regional Office no later than the 15th day of January, April, and July. A final report for the year is due the 15th of October.

[46 FR 1271, Jan. 6, 1981, as amended at 79 FR 76088, Dec. 19, 2014]

**§ 360.5 General provisions for State Cooperative Agreement.**

The legal funding instrument for the State Assistance Program for Training and Education FEMA is the State Cooperative Agreement. All States will be required to comply with FEMA General Provisions for the State Cooper-

ative Agreement. The General Provisions for the State Cooperative Agreement will be provided to the States as part of the Request for Application package. The General Provisions will become part of the Cooperative Agreement.

**PART 361—NATIONAL EARTHQUAKE HAZARDS REDUCTION ASSISTANCE TO STATE AND LOCAL GOVERNMENTS**

**Subpart A—Earthquake Hazards Reduction Assistance Program**

- Sec.
- 361.1 Purpose.
- 361.2 Definitions.
- 361.3 Project description.
- 361.4 Matching contributions.
- 361.5 Criteria for program assistance, matching contributions, and return of program assistance funds.
- 361.6 Documentation of matching contributions.
- 361.7 General eligible expenditures.
- 361.8 Ineligible expenditures.

**Subpart B [Reserved]**

**AUTHORITY:** Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. 7701 *et seq.*; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12381, 47 FR 39795, 3 CFR, 1982 Comp., p. 207.

**SOURCE:** 57 FR 34869, Aug. 7, 1992, unless otherwise noted.

**Subpart A—Earthquake Hazards Reduction Assistance Program**

**§ 361.1 Purpose.**

This part prescribes the policies to be followed by the Federal Emergency Management Agency (FEMA) and States in the administration of FEMA’s earthquake hazards reduction assistance program, and establishes the criteria for cost-sharing.

**§ 361.2 Definitions.**

*Cash Contribution* means the State cash outlay (expenditure), including the outlay of money contributed to the State by other public agencies and institutions, and private organizations and individuals. All expenditures must

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be listed in the project's approved budget.

*Certification* represents the Governor's written assurance describing the steps State agencies will take toward meeting the 50 percent cash contribution required following the third year of program funding. The letter of certification is intended to assist the State maintain a commitment to and plan for securing the future cash match with the long-range goal of developing an ongoing, rather than a short-term, State program.

*Cost Sharing* and *Matching* represent that portion of project costs not borne by the Federal Government.

*Eligible Activities* are activities for which FEMA may provide funding to States under this section. They include specific activities or projects related to earthquake hazards reduction which fall into one or more of the following categories: Preparedness and response planning; mitigation planning and implementation, including inventories preparation, seismic safety inspections of critical structures and lifelines, updating building and zoning codes and ordinances to enhance seismic safety; and public awareness and education. The activities that will actually be funded shall be determined through individual negotiations between FEMA and the States (see criteria in § 361.3(3)).

*In-kind contributions* represent the value of non-cash contributions provided by the States and other non-Federal parties. In-kind contributions may be in the form of charges for real property and non-expendable personal property and the value of goods and services directly benefiting and specifically identifiable to the States' earthquake hazards reduction projects.

*Project* means the complete set of approved earthquake hazards reduction activities undertaken by a State, or other jurisdiction, on a cost-shared basis with FEMA in a given Federal fiscal year.

*Project Period* is the duration of time over which an earthquake hazards reduction project is implemented.

*State* refers to the States of the United States of America, individually or collectively, the District of Columbia, the Commonwealth of Puerto Rico,

the Virgin Islands, Guam, American Samoa, the Mariana Islands, and any other territory or possession of the United States. It also means local units of government or substate areas that include a number of local government jurisdictions.

*State Assistance* means the funding provided under this subpart by FEMA through the National Earthquake Hazards Reduction Program (NEHRP) to States to develop State programs specifically related to earthquake hazards reduction. The term also includes assistance to local units of government or substate areas, such as a group of several counties.

*Target Allocation* is the maximum amount of FEMA earthquake program funds presumably available to an eligible State in a fiscal year. It is based primarily upon the total amount of State assistance funds available to FEMA annually, the number of eligible States, and a nationally standardized comparison of these States' seismic hazard and population-at-risk. The target allocation is not necessarily the amount of funding that a State will actually receive from FEMA. Rather, it represents a planning basis of negotiations between the State and its FEMA Regional Office which will ultimately determine the actual amount of earthquake State assistance to be provided by FEMA.

#### § 361.3 Project description.

(a) An objective of the Earthquake Hazards Reduction Act is to develop, in areas of seismic risk, improved understanding of and capability with respect to earthquake-related issues, including methods of mitigating earthquake damage, planning to prevent or minimize earthquake damage, disseminating warnings of earthquakes, organizing emergency services, and planning for post-earthquake recovery. To achieve this objective, FEMA has implemented an earthquake hazards reduction assistance program for State and local governments in seismic risk areas.

(b) This assistance program provides funding for earthquake hazards reduction activities which are eligible according to the definition in § 361.2. The categories, or program elements, listed

therein comprise a comprehensive earthquake hazards reduction project for any given seismic hazard area. Key aspects of each of these elements are as follows:

(1) *Mitigation* involves developing and implementing strategies for reducing losses from earthquakes by incorporating principles of seismic safety into public and private decisions regarding the siting, design, and construction of structures (i.e., updating building and zoning codes and ordinances to enhance seismic safety), and regarding buildings' nonstructural elements, contents and furnishings. Mitigation includes preparing inventories of and conducting seismic safety inspections of critical structures and lifelines, and developing plans for identifying and retrofitting existing structures that pose threats to life or would suffer major damage in the event of a serious earthquake.

(2) *Preparedness/response planning* are closely related and usually considered as one comprehensive activity. They do differ, however, in that preparedness planning involves those efforts undertaken before an earthquake to prepare for or improve capability to respond to the event, while response planning can be defined as the planning necessary to implement an effective response once the earthquake has occurred. Preparedness/response planning usually considers functions related to the following:

- (i) Rescue and fire services;
- (ii) Medical services;
- (iii) Damage assessments;
- (iv) Communications;
- (v) Security;
- (vi) Restoration of lifeline and utility services;
- (vii) Transportation;
- (viii) Sheltering, food and water supplies;
- (ix) Public health and information services;
- (x) Post-disaster recovery and the return of economic stability;
- (xi) Secondary impacts, such as dam failures, toxic releases, etc.; and
- (xii) Organization and management.

(3) *Public awareness/earthquake education* activities are designed to increase public awareness of earthquakes and their associated risks, and to stim-

ulate behavioral changes to foster a self-help approach to earthquake preparedness, response, and mitigation. Audiences that may be targeted for such efforts include:

- (i) The general public;
- (ii) School populations (administrators, teachers, students, and parents);
- (iii) Special needs groups (e.g., elderly, disabled, non-English speaking);
- (iv) Business and industry;
- (v) Engineers, architects, builders;
- (vi) The media; and
- (vii) Public officials.

(4) *Other Activities* in support of those listed in §361.3(b)(1), (b)(2), and (b)(3) may include, but are not limited to, State seismic advisory boards which provide State and local officials responsible for implementing earthquake hazards reduction projects with expert advice in a variety of fields; hazard identification which defines the potential for earthquakes and their related geological hazards in a particular area; and vulnerability assessments, also known as loss estimation studies, which provide information on the impacts and consequences of an earthquake on an area's resources, as well as opportunities for earthquake hazards mitigation.

(c) State eligibility for financial assistance to States under this section is determined by FEMA based on a combination of the following criteria:

- (1) Seismic hazard, including the historic occurrence of damaging earthquakes, as well as probable seismic activity;
- (2) Total population and major urban concentrations exposed to such risk; and
- (3) Other factors, the loss, damage, or disruption of which by a severe earthquake would have serious national impacts upon national security, such as industrial concentrations, concentrations or occurrences of natural resources, financial/economic centers and national defense facilities.

(d) Each fiscal year, FEMA will establish a target allocation of earthquake program funds for each eligible State.

(e) The specific activities, and the distribution of funds among them, that will be undertaken with this assistance will be determined during the annual



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Comprehensive Cooperative Agreement (CCA) negotiations between FEMA and the State, and will be based upon the following:

(1) The availability of information regarding identification of seismic hazards and vulnerability to those hazards;

(2) Earthquake hazards reduction accomplishments of the State to date;

(3) State and Federal priorities for needed earthquake hazards reduction activities; and

(4) State and local capabilities with respect to staffing, professional expertise, and funding.

(f) As a condition of receiving FEMA funding, a percentage of the amount of the total State project (FEMA State assistance, combined with the State match) must be spent for activities under the Mitigation Planning element. The percentage, to be determined by FEMA, may be increased by no more than 5 percent annually, beginning at 15 percent in fiscal year 1991 with a limit of 50 percent of the total State project. The increase will take into account the amount of time a State has been participating in the program. States may expend more than the required percentage of funding on eligible mitigation activities.

(g) The State match may be distributed among the eligible activities in any manner that is mutually agreed upon by FEMA and the State in the CCA negotiations.

(h) Negotiations between FEMA and the State regarding the scope of work and the determination of the amount of State assistance to be awarded shall consider earthquake hazards reduction activities previously accomplished by the State, as well as the quality of their performance.

#### § 361.4 Matching contributions.

(a) All State assistance will be cost shared after the first year of funding. States which received a grant before October 1, 1990, which included the 50 percent non-Federal contribution to the State program, will continue to match the Federal funds on a 50 percent cash match basis.

(b) States which did not receive a grant before October 1, 1990, will assume cost sharing on a phased-in basis

over a period of four years with the full cost sharing requirements being implemented in the fourth year. The sequence is as follows:

(1) For the first fiscal year, cost sharing will be voluntary. FEMA will provide State assistance without requiring a State match. Those States that are able to cost-share are encouraged to do so (on either a cash or in-kind basis).

(2) For the second fiscal year, the minimum acceptable non-Federal contribution is 25 percent of the total project cost, which may be satisfied through an in-kind contribution. Those States that are able to cost-share on a cash-contribution basis are encouraged to do so.

(3) For the third fiscal year, the minimum acceptable non-Federal contribution is 35 percent of the total project cost, which may be satisfied through an in-kind contribution. Those States that are able to cost-share on a cash-contribution basis are encouraged to do so.

(4) For the fourth and subsequent fiscal years, full cost sharing will be implemented, requiring a minimum of a 50 percent non-Federal contribution to a State program, with this share required to be cash. In-kind matching will no longer be acceptable. Thus, every dollar FEMA provides to a State must be matched by one dollar from the State. States that can contribute an amount greater than that required by the match are permitted and encouraged to do so. However, State assistance will not exceed the established target allocation.

(c) The State contribution need not be applied at the exact time of the obligation of the Federal funds. However, the State full matching share must be obligated by the end of the project period for which the State assistance has been made available for obligation under an approved program or budget.

(d) In the event a State interrupts its participation in this program, if it later elects to participate again, the nature and amount of that State's cost sharing shall be determined by the regulations then in effect, taking into account the number of years in which the State previously participated.

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§361.5 Criteria for program assistance, matching contributions, and return of program assistance funds.

(a) In order to qualify for assistance, a State must:

(1) Demonstrate that the assistance will result in enhanced seismic safety in the State;

(2) Provide a share of the costs of the activities for which assistance is being given, in accordance with §361.4; and

(3) Demonstrate that it is taking actions to ensure its ability to meet the 50 percent cash contribution commitment either on an ongoing basis or for new States, by the fourth year of funding.

(i) The Governor of newly participating State must certify to the FEMA Regional Administrator the State will take steps to meet the 50 percent cash contribution requirement after the third year of funding. The specific steps to be taken will be outlined in the certification which must be submitted prior to the State receiving program funds.

(ii) The Governor must certify the State's continued commitment in the second and third years of funding. The certification will describe the progress made on the steps contained in the previous year's certification and steps to be taken in the future. The certification must be submitted to the Regional Administrator before the State will receive program funds.

(iii) If a State encounters difficulties meeting the 50 percent cash contribution requirement for the target allocation following the fourth year of funding, the Regional Administrator may require the Governor to continue certifying the State is working to resolve the difficulty.

(iv) A State will not receive Federal funds if it cannot provide the required cash contribution.

(b) The value of any resources accepted as a matching share under one Federal agreement or program cannot be counted again as a contribution under another.

(c) The State seeking the match shall submit documentation sufficient for FEMA to determine that the contribution meets the following requirements. The match shall be:

(1) Necessary and reasonable for proper, cost-effective and efficient administration of the project, allocable solely thereto, and except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State and local governments;

(2) Verifiable from the recipient State's records;

(3) Not allocable to or included as a cost of any other Federally financed program in either the current or a prior period;

(4) Authorized under State law;

(5) Consistent with any limitations or exclusions set forth in these regulations, Federal laws or other governing limitations as to types of cost items;

(6) Accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances;

(7) Provided for in the approved budget/workplan of the State; and

(8) Consistent with 2 CFR parts 200 and 3002.

(d) A State must submit and FEMA must approve a statement of work before the State receives any grant funds. The statement of work and target allocation of funds are based on a 12-month performance period. Except under extenuating circumstances, the funds initially obligated to the State will be based on the amount of time remaining in the performance period at the time the statement of work is approved.

(e) States are expected to perform activities and therefore expend funds on a quarterly basis in accordance with the approved statement of work. At the end of the third quarter, State and FEMA regional office staff will review the State's accomplishments to date. Funds not expended in accordance with the approved statement of work by the end of the third quarter of the performance period will not be made available to the State unless the State can demonstrate, and FEMA approves, its ability to perform activities adequately resulting in the expenditure of the funds by the end of the performance period.

(Approved by the Office of Management and Budget under OMB control number 3067-0170)

[57 FR 34869, Aug. 7, 1992, as amended at 79 FR 76088, Dec. 19, 2014]

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**§ 361.6 Documentation of matching contributions.**

(a) The statement of work provided by the State to FEMA describing the specific activities comprising its earthquake hazards reduction project, including the project budget, shall reflect a level of effort commensurate with the total of the State and FEMA contributions.

(b) The basis by which the State determines the value of an in-kind match must be documented and a copy retained as part of the official record.

(c) The State shall maintain all records pertaining to matching contributions for a three-year period after the date of submission of the final financial report required by the CCA, or date of audit, whichever date comes first.

**§ 361.7 General eligible expenditures.**

(a) Expenditures must be for activities described in the statement of work mutually agreed to by FEMA and the State during the annual negotiation process, or for activities that the State agrees to perform as a result of subsequent modifications to that statement of work. These activities shall be consistent with the definition of eligible activities in § 361.2.

(b) The following is a list of eligible expenditures. When items do not appear on the list they will be considered on a case-by-case basis for policy determinations, based on criteria set forth in § 361.5. All costs must be reasonable, and consistent with OMB Circular A–87.

(1) Direct and indirect salaries or wages (including overtime) of employees hired specifically for carrying out earthquake hazards reduction activities are eligible when engaged in the performance of eligible work.

(2) Reasonable costs for work performed by private contractors on eligible projects contracted for by the State.

(3) Travel costs and per diem costs of State employees not to exceed the actual subsistence expense basis for the permanent or temporary activity, as determined by the State’s cost principles governing travel.

(4) Non-expendable personal property, office supplies, and supplies for workshops; exhibits.

(5) A maximum of \$8,000 or 10 percent of the total project allocation, whichever is less, may be expended for personal computer equipment in the first year of program funding. A full-time earthquake staff person must be employed and the equipment must be dedicated entirely to the earthquake project.

(6) Meetings and conferences, when the primary purpose is dissemination of information relating to the earthquake hazards reduction project.

(7) Training which directly benefits the conduct of earthquake hazards reduction activities.

**§ 361.8 Ineligible expenditures.**

(a) Expenditures for anything defined as an unallowable cost by OMB Circular A–87.

(b) Federal funds may not be used for the purchase or rental of any equipment such as radio/telephone communications equipment, warning systems, and computers and other related information processing equipment, except as stated in § 361.7(b)(5). If a State wishes to use its matching funds for this purpose, it must:

(1) Document during the annual negotiation process with FEMA how this equipment will support the earthquake hazards reduction activities in its scope of work (see § 361.7(a)); and

(2) Claim as credit for its match, if the equipment is to be used for purposes in addition to support of earthquake hazards reduction activities, only that proportion of costs directly related to its earthquake hazards reduction project.

**Subpart B [Reserved]**

**PART 362—CRITERIA FOR ACCEPTANCE OF GIFTS, BEQUESTS, OR SERVICES**

- Sec.
- 362.1 Purpose.
- 362.2 Definitions.
- 362.3 Criteria for determining acceptance.

AUTHORITY: 42 U.S.C. 7701, 7705c.

**Fed. Emergency Mgmt. Agency, DHS**

**§ 362.3**

SOURCE: 59 FR 35631, July 13, 1994, unless otherwise noted.

**§ 362.1 Purpose.**

This part establishes criteria for determining whether the Administrator may accept gifts, bequests, or donations of services, money or property for the National Earthquake Hazards Reduction Program (NEHRP), under section 9 of the National Earthquake Hazards Reduction Program Reauthorization Act, 42 U.S.C. 7705c.

**§ 362.2 Definitions.**

As used in this part—

*Gifts of property* means a gratuitous, voluntary transfer or conveyance of ownership in property by one person to another without any consideration, including transfer by donation, devise or bequest.

*Gifts of services* means a gratuitous, voluntary offer of labor or professional work by one person to another without any compensation for that labor or professional work.

*Program Agencies* means the Federal Emergency Management Agency, the United States Geological Survey, the National Science Foundation, and the National Institute of Standards and Technology.

*Property* means real or personal property, tangible or intangible, including money, certificates of stocks, bonds, or other evidence of value.

*Services* means labor or professional work performed for the benefit of another or at another's command.

*Solicit* means to endeavor to obtain by asking or pleading.

**§ 362.3 Criteria for determining acceptance.**

The following criteria shall be applied whenever a gift of property or gift of services is offered to the Administrator for the benefit of the National Earthquake Hazards Reduction Program.

(a) The gift of property or gift of services must clearly and directly further the objectives of the National Earthquake Hazards Reduction Program, as defined in 42 U.S.C. 7702.

(b) All gifts of property must be offered unconditionally, with sole discretion of use, administration and disposition of such property to be determined by the Administrator or his designee.

(c) The Administrator may accept and use gifts of services of voluntary and uncompensated personnel, and may provide transportation and subsistence as authorized by 5 U.S.C. 5703 for persons serving without compensation.

(d) Employees of FEMA or the Program agencies may not solicit gifts of property, or gifts of services.

(e) Acceptance of gifts of property, or gifts of services must first be approved by the Office of the Chief Counsel, FEMA, for conformance with all applicable laws and regulations.

(f) In all cases where it is determined that the acceptance of a gift may create a conflict of interest, or the appearance of a conflict of interest, the gift will be declined.

**PARTS 363–399 [RESERVED]**



## CHAPTER IV—DEPARTMENT OF COMMERCE AND DEPARTMENT OF TRANSPORTATION

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## PART 400 [RESERVED]

### PART 401—SHIPPING RESTRICTIONS (T-1)

Sec.

401.1 Prohibited transportation and discharge.

401.2 Application for adjustment or exceptions.

401.3 Reports.

401.4 Records.

401.5 Defense against claims for damages.

401.6 Violations.

AUTHORITY: Sec. 704, 64 Stat. 816, as amended; 50 U.S.C. app. 2154, as amended; Interpret or apply secs. 101, 705, 64 Stat. 799, as amended; 50 U.S.C. app. 2071; E.O. 10480, 3 CFR, 1949-1953 Comp., p. 962.

SOURCE: Transportation Order T-1, 30 FR 9092, July 21, 1965; 32 FR 15831, Nov. 17, 1967, unless otherwise noted. Redesignated at 45 FR 44574, July 1, 1980.

#### §401.1 Prohibited transportation and discharge.

No person shall transport in any ship documented under the laws of the United States or in any aircraft registered under the laws of the United States any commodity at the time not identified by the Symbol B in the last column of the Commodity Control List (339.1 of the Comprehensive Export Schedule, issued by the Bureau of International Commerce, Department of Commerce (15 CFR parts 368 through 399), any article designated as arms, ammunition, and implements of war in the United States Munitions List (22 CFR parts 121 through 128), or any commodity, including fissionable, materials controlled for export under the Atomic Energy Act of 1954, as amended, to any destination at the time in country groups X, Y, or Z as set forth in the Comprehensive Export Schedule (15 CFR 370.1(g)(2)), and no person shall discharge from any such ship or any such aircraft any such commodity or article at any such port or place or at any other port or place in transit to any such destination, unless a validated export license under the Export Control Act of 1949, as amended, under section 414 of the Mutual Security Act of 1954, as amended, or under the Atomic Energy Act of 1954, as amended, has been obtained for the shipment, or unless authorization for the shipment has

been obtained from the Assistant Secretary for Domestic and International Business. This prohibition applies to the owner of the ship or aircraft, the master of the ship or aircraft, or any other officer, employee or agent of the owner of the ship or aircraft who participates in the transportation. The consular officers of the United States are furnished with current copies of the Commodity Control List.

#### §401.2 Application for adjustment or exceptions.

Any person affected by any provisions of this order may file an application for an adjustment or exception upon the ground that such provision works an exceptional hardship upon him, not suffered by others, or that its enforcement against him would not be in the interest of the national defense program. Such an application may be made by letter or telegram addressed to the Assistant Secretary for Domestic and International Business, Department of Commerce, Washington, DC, 20230, reference T-1. If authorization is requested, any such application should specify in detail the material to be shipped, the name and address of the shipper and of the recipient of the shipment, the ports or places from which and to which the shipment is being made and the use to which the material shipped will be put. The application should also specify in detail the facts which support the applicant's claim for an exception.

#### §401.3 Reports.

Persons subject to this order shall submit such reports to the Assistant Secretary for Domestic and International Business as he shall require, subject to the terms of the Federal Reports Act.

#### §401.4 Records.

Each person participating in any transaction covered by this order shall retain in his possession, for at least 2 years, records of shipments in sufficient detail to permit an audit that determines for each transaction that the provisions of this order have been met. This does not specify any particular accounting method and does not require



## § 401.5

alteration of the system of records customarily maintained, provided such records supply an adequate basis for audit. Records may be retained in the form of microfilm or other photographic copies instead of the originals.

### § 401.5 Defense against claims for damages.

No person shall be held liable for damages or penalties for any default under any contract or order which shall result directly or indirectly from compliance with this order or any provision thereof, notwithstanding that this order or such provision shall thereafter be declared by judicial or other competent authority to be invalid.

### § 401.6 Violations.

Any person who wilfully violates any provisions of this order or wilfully conceals a material fact or furnishes false information in the course of operation under this order is guilty of a crime and upon conviction may be punished by fine or imprisonment or both. In addition, administrative action may be taken against any such person, denying him the privileges generally accorded under this order.

## PART 402—SHIPMENTS ON AMERICAN FLAG SHIPS AND AIRCRAFT (T-1, INT. 1)

Sec.

402.1 Shipments from the United States.

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402.3 Addition of commodities to the Positive List.

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402.5 Forwarding commodities previously shipped.

402.6 Relation to Transportation Order T-2.

AUTHORITY: Sec. 704, 64 Stat. 816, as amended; 50 U.S.C. app. 2154. Interpret or apply sec. 101, 64 Stat. 799, as amended; 50 U.S.C. app. 2071, E.O. 10480, 3 CFR, 1949-1953 Comp., p. 962.

SOURCE: Transportation Order T-1, Interpretation 1, 15 FR 9145, Dec. 21, 1950; 32 FR 15831, Nov. 17, 1967, unless otherwise noted. Redesignated at 45 FR 44574, July 1, 1980.

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### § 402.1 Shipments from the United States.

Transportation Order T-1 applies to shipments from the United States, as well as to shipments from foreign ports, on American flag ships and aircraft.

### § 402.2 Restricted commodities.

The restrictions of Transportation Order T-1 apply to the transportation or discharge of (a) commodities on the Positive List (15 CFR part 399) (as amended from time to time) of the Comprehensive Export Schedule of the Office of International Trade, Department of Commerce, (b) articles on the list of arms, ammunition and implements of war coming within the meaning of Proclamation No. 2776 of March 26, 1948, and (c) commodities, including fissionable materials, controlled for export under the Atomic Energy Act of 1946. The restrictions imposed by Transportation Order T-1 do not apply to other commodities, not within these restricted classes at the time of transportation or discharge, even though authorization for the export of the commodity from the United States to the particular destination is required under regulations of the Office of International Trade or under other Federal law or regulation. In this respect, Order T-1 is different from Order T-2 which applies to all commodities destined to Communist China. Order T-1 does not relax or modify any of the requirements of any other regulation or law.

### § 402.3 Addition of commodities to the Positive List.

Order T-1 applies to the transportation or discharge of commodities which are restricted at the time of transportation or discharge. Accordingly, if a commodity is added to the Positive List while the commodity is being transported on an American flag ship or aircraft, the restrictions of Order T-1 immediately apply and the commodity may not be transported to or discharged at any of the restricted ports or discharged in transit to one of the restricted ports, unless authorization under Order T-1 is obtained.

**§ 402.4 Calls at restricted ports en route to an unrestricted port with restricted cargo.**

Order T-1 does not prohibit an American flag ship or aircraft from going to or calling at one of the restricted ports, even though it has on board a commodity which could not be discharged at that port. (Note, however, that Order T-2 prohibits American flag ships and aircraft from calling at any port or other place in Communist China.) For example, an American flag ship may call at one of the restricted ports (except one in Communist China), even though it has on board the following classes of commodities:

(a) A Positive List commodity manifested to a destination outside the restricted area, with an export license and an export declaration showing the unrestricted destination at the ultimate destination, (b) a Positive List commodity destined for the restricted port of call which cannot be discharged there because there is no export license or authorization from the Assistant Secretary for Domestic and International Business permitting discharge at the restricted port of call, (c) a commodity of any kind destined for Communist China (the transportation and discharge of which is covered by Order T-2). None of these commodities may be discharged at the restricted port of call. Discharge of any of these commodities at the port covered by the restrictions of Order T-1 is prohibited and subject to penalty, regardless of the circumstances under which the discharge of the cargo at the restricted port occurs, unless appropriate authorization is obtained.

**§ 402.5 Forwarding commodities previously shipped.**

Order T-1 applies to transportation on or discharge from ships documented under the laws of the United States and aircraft registered under the laws of the United States. These restrictions

apply either in the case of a discharge at one of the restricted ports or to discharge at any other port in transit to a restricted destination. The restrictions of Order T-1 do not apply to transportation by foreign carriers, as long as there is no prohibited transportation or discharge by or from a United States flag ship or aircraft after the issuance of Order T-1. Accordingly, if an American flag ship or aircraft, before the issuance of Order T-1, had transported restricted commodities manifested to restricted destinations, and had completed the transportation to a foreign intermediate point and had completed the discharge from the American flag ship or aircraft before the issuance of Order T-1, no violation of that order would have occurred, but Order T-1 would prohibit further shipment on an American flag ship or aircraft unless authorization under Order T-1 is obtained.

**§ 402.6 Relation to Transportation Order T-2.**

Transportation Order T-1 applies to the transportation of commodities to, or in transit to, destinations in Sub-Group A, Hong Kong or Macao. It applies, however, only to commodities on the Positive List of the Office of International Trade, arms and ammunition, and commodities controlled under the Atomic Energy Act (see section 2 of this interpretation). Transportation Order T-2 applies to the transportation of commodities of any kind which are destined to Communist China (Order T-2 also prohibits American ships and aircraft from calling at any port or place in Communist China). Since Communist China is in Sub-Group A, the restrictions of both orders apply to the transportation of commodities to Communist China or to any other point in transit to Communist China.

**PARTS 403-499 [RESERVED]**



## FINDING AIDS

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