Avoiding Total Disaster: The Law and Emergencies

Disaster Preparedness Training for Local Government Legal Advisors

Playbook; Before A Crisis Parts 1-3

- Part 1: Before the Disaster/Emergency
- Part 2: City Attorney/County Counsel EOC Checklist
- Part 3: City Disaster/Disaster Ordinances

COUNTY COUNSELS' ASSOCIATION

LEAGUE OF CALIFORNIA CITIES

Avoiding Total Disaster: The Law and Emergencies

Disaster Preparedness Training for Local Government Legal Advisors

Introduction

Enclosed you will find over 150 documents — including draft resolutions, draft ordinances, and draft contracts — that city attorneys and county counsels can use when they encounter a disaster. This playbook is organized by topic and has been separated into 15 parts for ease of use.

The committee of attorneys who compiled the playbook suggest that you print the playbook as three binders; one binder for items you need before a disaster strikes (Parts 1 through 3), one binder for items you use during the "crisis" part of the event (Parts 4 through 10), and one binder for items needed after the immediate crisis has ceased (Parts 11 through 15). It is recommended that the "crisis" binder be printed in hard copy and kept somewhere that is easily accessible during an emergency.

You may want to have some documents in their original Word format for ease of use. County Counsels' Association members can contact (916) 327-7535 and League of California Cities members can contact (916) 658-8200 to request a Word copy, where available.

These materials are not offered as or intended to be legal advice. Readers are advised to seek the advice of an attorney when confronted with legal issues. Attorneys are advised to perform an independent evaluation of the issues raised in these materials.

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Disaster Preparedness Training for Local Government Legal Advisors

Acknowledgements

The Avoiding Total Disaster Playbook was designed to serve as a companion guide to the Avoiding Total Disaster conference held June 24, 2019 in Sacramento, CA, hosted by the County Counsels' Association of California and the League of California Cities, giving municipal lawyers a playbook they could turn to in a disaster or emergency scenario. Members of the planning committee for the conference recruited and compiled the documents found in the playbook, dividing them into three distinct volumes; before a crisis, during an emergency, and after a disaster.

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Avoiding Total Disaster: The Law and Emergencies

Disaster Preparedness Training for Local Government Legal Advisors

Disaster and Emergency Playbook

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Avoiding Total Disaster: The Law and Emergencies

Disaster Preparedness Training for Local Government Legal Advisors

Playbook Part 1

Before the Disaster/Emergency

FEMA

Top 10 Procurement Under Grant Mistakes Leading to Audits and Potential Loss of FEMA Public Assistance Funding

1. Engaging in a noncompetitive procurement (i.e., sole-sourcing) without carefully documenting how the situation has created an urgent need to perform the work sooner than a competitive procurement process would allow.

2. Continuing work under a sole-source contract after the urgent need (see #1) has ended, instead of transitioning to a competitively procured contract.

3. Piggybacking onto another jurisdiction's contract in a situation that doesn't allow noncompetitive procurement (see #1) or where the other contract is materially different in terms of scope or requirements. Piggybacking is rarely allowable.

4. Awarding a "time-and-materials" contract without a ceiling price that the contractor exceeds at its own risk and without documenting why no other contract type is suitable.

5. Awarding a "cost-plus-percentage-of-cost" or "percentage-of-construction-cost" contract.

6. Not including the required contract clauses (available online at the below website under "PDAT Resources" menu).

7. Including a geographic preference in a solicitation (i.e., giving an advantage to local firms).

8. Not making and documenting efforts to solicit small businesses, minority businesses, and woman's business enterprises.

9. Conducting a procurement exceeding $150,000 without conducting a detailed cost or price analysis.

10. Not carefully documenting all steps of a procurement to create a record if questions arise potentially years later.

For further information on FEMA grant procurement requirements, including contract review checklists, detailed guidance on the above topics, and online webinar training classes, please visit https://www.fema.gov/procurement-disaster-assistance-team.

6 Frequent Sources of Non-Compliance Issues

1. **Time & Materials Contracts.** T&M contracts can be used for a reasonable amount of time when (1) no other contract type is suitable; and (2) the contract includes a ceiling that the contractor exceeds at its own risk. Non-federal entities must also maintain a high degree of oversight (§ 200.318(j)).

2. **Cost-Plus-Percentage-of-Cost Contracts.** These are contracts where the contractor's profit is based on a percentage of the underlying project costs actually incurred. Such contracts are explicitly prohibited by the Federal procurement standards and ineligible for FEMA grant funding (§ 200.323(d)).

3. **Piggybacking.** Adopting a pre-existing contract solicited and awarded by another entity is referred to as "piggybacking." Non-state applicants considering piggybacking should closely examine whether use of another jurisdiction's contract would violate the federal procurement standards, as often these contracts do not contain required assignability clauses, are improper in scope, or were not procured in compliance with the federal procurement standards (§ 200.319).

4. **Geographic Preferences.** Non-state applicants 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 (§ 200.323(b)).

5. **Awarding to Contractors that Drafted Solicitation Documents.** Non-state applicants must prohibit contractors that develop or draft specifications, requirements, statements of work, invitations for bid or requests for proposal from competing for and being awarded the subsequent contract for that work (§ 200.323(a)).

6. **Suspended or Debarred Contractors.** Non-state applicants may not award a contract to a suspended or debarred contractor, nor may any prime contractor award to a suspended or debarred subcontractor. Check the database at www.sam.gov prior to awarding the contract (§§ 200.213, 200.318(h)).

What do non-state applicants need to document in the contract file?

Maintaining contemporaneous records to detail the history of a procurement action is both required under the federal procurement standards (§ 200.318(i)) and the best defense in the event of an audit. FEMA requires non-state applicants to keep at least the following documentation:

- **Why you chose the procurement method** (e.g., documentation explaining that the contract was for construction so sealed biding was the preferred procurement type pursuant to the federal procurement standards).

- **Why you chose the type of contract** (e.g., documentation explaining that the debris removal contract is a time and materials contract because no other contract type is suitable due to the uncertain amount of debris; that a firm ceiling price is included in the contract; and that this contract will be monitored to ensure the efficiency and avoid abuse by the contractor).

- **Why you chose or rejected a contractor** (e.g., documentation explaining that Contractor X was rejected because it failed to submit the required bid bond, whereas Contractor A was selected because it was deemed responsive, responsible, and had the lowest bid price).

- **The basis for the contract price** (e.g., documentation showing an independent cost estimate was performed prior to procurement; that although the contract price is slightly higher than the cost estimate, this contractor had a superior technical solution and was selected as the most advantageous; and that cost was further negotiated with the contractor to bring it closer to the cost estimate).

Procurement Under Public Assistance Awards

September 2017

FEMA

Intended Audience. This publication is primarily intended for local governments, tribal governments, institutions of higher education, hospitals, and other nonprofit organizations (non-state applicants) who receive funding through FEMA's Public Assistance Program. While this publication does not address the federal procurement standards that apply to state entities, states must follow the rule set forth in 2 C.F.R. § 200.317. States are defined as any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or any agency or instrumentality of a state except for local governments.

Purpose of this Publication. The purpose of this publication is to assist eligible Public Assistance applicants in identifying and applying the federal procurement standards. Public Assistance applicants must follow these standards when using FEMA funds to procure disaster materials, supplies, public works projects, and services. Non-compliance with the federal procurement standards may result in the denial or de-obligation of Public Assistance funding. This document only provides a snapshot of the federal procurement standards; it does not address all Public Assistance requirements. The information provided is not legal advice. Public Assistance applicants should always consult with their legal counsel regarding any legal questions.

Federal Procurement Standards. The federal procurement standards applicable to federal awards can be found at Title 2 of the Code of Federal Regulations, Part 200, Sections 200.317 through 200.326 (2 C.F.R. §§ 200.317-200.326).

FEMA Resources. The Procurement Disaster Assistance Team (PDAT) provides resources to help Public Assistance applicants comply with the federal procurement standards at their website: **www.fema.gov/procurement-disaster-assistance-team.** PDAT's resources include:

- Field Manual and Supplement on the Federal procurement standards;
- Compliance checklists;
- Required contract clauses template;
- Cost and price analysis guide; and
- Webinar series.

What federal procurement standards apply to non-state applicants (i.e., local governments, tribal governments, institutions of higher education, hospitals, and other nonprofit organizations)?

Non-state applicants must:

- Follow their own documented procurement procedures which reflect applicable state, local, and tribal laws and regulations; and
- Conform their procurements to applicable Federal law and the regulations identified in 2 C.F.R. §§ 200.318 through 200.326.

What procurement methods can non-state applicants use?

Micro-Purchase Procedures (§ 200.320(a))

- ≤$3,500 or comparable state/local/tribal threshold, whichever is lower
- Requires only ONE quote if price is reasonable
- MUST distribute equitably among vendors

Small Purchase Procedures (§ 200.320(b))

- ≤$150,000 or comparable state/local/tribal threshold, whichever is lower
- Requires quotes from three (3) suppliers

Sealed Bidding (§ 200.320(c))

- Preferred method for construction contracts
- Firm-fixed-price contract is awarded to the lowest priced, responsive, responsible bidder
- Non-state applicants must solicit bids from an adequate number of suppliers
- Local and tribal governments must publicly advertise the invitation for bids and open bids publicly

Competitive Proposals (§ 200.320(d))

- Method generally used when conditions are not appropriate for sealed bidding
- Fixed price or cost reimbursement contract is awarded to the responsible firm whose proposal is most advantageous to the non-state applicant
- Non-state applicants must publicize requests for proposals (RFPs), and solicit proposals from an adequate number of qualified sources
- RFPs must identify all evaluation factors and their relative importance

Do non-state applicants have to award to small, minority owned, women's business enterprises, or labor surplus area firms?

Non-state applicants must engage these categories of socioeconomic firms in the procurement process, but are not required to set aside awards for them. To engage them in the procurement process, non-state applicants MUST take the following affirmative steps (§ 200.321):

1. Place qualified socioeconomic firms on their solicitation lists;
2. Assure that socioeconomic firms are solicited whenever they are potential sources;
3. Divide total requirements, when economically feasible, into smaller tasks or quantities;
4. Establish delivery schedules, where the requirement permits, which encourage participation by socioeconomic firms;
5. Use 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. Require prime contractors to take steps (1) through (5) if they use subcontractors.

Is it ever permissible for non-state applicants to sole source a contract?

Yes, the federal procurement standards identify four situations in which a non-state applicant may sole source a contract (§ 200.320(f)):

1. The item is available from only one source;
2. A public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
3. FEMA or the State authorizes a written request to sole source; or
4. After solicitation of a number of sources, competition is determined inadequate.

When sole sourcing, the non-state applicant must provide a written justification in the contract file.

U.S. Department of Homeland Security
Washington, DC 20472

June 21, 2016

PROCUREMENT GUIDANCE FOR RECIPIENTS AND SUBRECIPIENTS UNDER 2 C.F.R PART 200 (UNIFORM RULES) SUPPLEMENT TO THE PUBLIC ASSISTANCE PROCUREMENT DISASTER ASSISTANCE TEAM (PDAT) FIELD MANUAL

1. PURPOSE. This document provides guidance for Non-Federal Entity ("NFE") recipients and subrecipients of Federal financial assistance awarded by the Federal Emergency Management Agency ("FEMA") when using that assistance to finance procurements of property and services. The guidance provided by this document only applies to Federal financial assistance (e.g., grants and cooperative agreements) subject to the procurement standards of the government-wide *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, at 2 C.F.R. §§ 200.317 to 200.326, which were adopted by the Department of Homeland Security ("DHS"). *See* 2 C.F.R. Part 3002.

2. AUTHORITY. FEMA provides Federal assistance through various financial assistance programs under the authority of various Federal laws. NFEs that are recipients and subrecipients of Federal financial assistance provided by FEMA under these programs are generally required to comply with the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* ("Uniform Rules") at 2 C.F.R. Part 200, as adopted by DHS at 2 C.F.R. Part 3002. Chapter I, ¶ 3 of this document contains a detailed list of these programs and authorizing statutes.

3. WAIVER. FEMA may waive any provisions of this document to the extent permitted by Federal law or regulation.

4. DATES OF APPLICABILITY

    a. With one exception identified in Sec. 4.b., below, financial assistance associated with emergencies or major disasters declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("Stafford Act"), the procurement standards at 2 C.F.R. §§ 200.317 to 200.326 are the default standards that apply to those grants associated with emergencies or major disasters declared on or after December 26, 2014. See 79 Fed. Reg. 75871, 75872 (Dec. 19, 2014). For awards made by FEMA, or for emergency or major disasters declared, prior to December 26, 2014 (this includes awards associated with prior emergencies or disasters, but not started until after this date), Federal financial assistance awards are governed by the Uniform Administrative Requirements at either 44 C.F.R. Part 13 (for state, local, and Indian tribal governments) or 2 C.F.R. Part 215 (for institutions of higher education, hospitals, and other nonprofit organizations), depending upon the type of entity.

b. Grace Period. A Non-Federal Entity (also known as a "NFE"), however, may continue to comply with the former procurement standards applicable to FEMA awards at 44 C.F.R. Part 13 (for states, local, and Indian tribal governments) or 2 C.F.R. Part 215 (for institutions of higher education, hospitals, and other nonprofit organizations) until the completion of two additional fiscal years after December 26, 2014. This is an elective grace period. If a NFE elects to use the previous procurement standards, it must affirmatively document this decision in its internal procurement policies, including the date upon which its grace period (based upon the two additional fiscal years) will end and it will accordingly transition to the new procurement standards. 2 C.F.R. § 200.110(a). *See also*, Ch. 1, par. 2.e., below for additional amplifying guidance.

5. AMENDMENTS TO THIS DOCUMENT. FEMA may periodically update this document due to changes in other revised or new guidance or regulations.

6. SUPPLEMENT. This document is intended to supplement the *FEMA Field Manual, Public Assistance Grantee and Subgrantee Procurement Requirements Under 44 C.F.R. Pt. 13 and 2 C.F.R. pt. 215*, dated, December 2014 ("PDAT[1] Field Manual" or "Field Manual") by providing up-to-date identification, analysis and discussion of the current Federal procurement standards found at 2 C.F.R. pt. 215, which went into effect on December 26, 2014. The Field Manual can be found online at the following web link: https://www.fema.gov/media-library/assets/documents/96773, and provides in-depth discussion of the previous Federal procurement standards, to include analysis of Department of Homeland Security ("DHS") Office of Inspector General ("OIG") audits related to various procurement violations and real-world procurement scenarios. Together, both documents provide a comprehensive analysis of the Federal procurement standards that apply to procurements associated with disaster financial assistance provided both after and prior to December 26, 2014.

7. DISCLAIMER. This document and the guidance provided therein is not intended to, nor does it provide or constitute legal advice. This document is only intended to serve as a general guide as to the Federal procurement standards identified in the Uniform Rules. Adherence to, application of, or use of this document and the information herein to a procurement subject to Federal grant money, does NOT guarantee the legal sufficiency of any procurement, nor ensure that an award or subaward will NOT be audited or investigated, and subsequently determined to be non-compliant with the procurement standards. All legal questions concerning the sufficiency or insufficiency of a procurement in regards to the Federal procurement standards should be referred to servicing legal counsel.

[1] PDAT – Procurement Disaster Assistance Team, Procurement and Fiscal Law Division, Office of Chief Counsel, FEMA

PROCUREMENT GUIDANCE FOR RECIPIENTS AND SUBRECIPIENTS

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CHAPTER I

INTRODUCTION

1. THE FEDERAL EMERGENCY MANAGEMENT AGENCY

a. The Federal Emergency Management Agency ("FEMA") is a Federal agency within the Department of Homeland Security ("DHS"). FEMA is headed by an Administrator. FEMA's primary mission is to reduce the loss of life and property and protect the Nation from all hazards, including natural disasters, acts of terrorism, and other man-made disasters, by leading and supporting the Nation in a risk-based, comprehensive emergency management system of preparedness, protection, response, recovery, and mitigation. *See* Homeland Security Act of 2002, Pub. L. No. 107-296, § 503 (2002) (codified as amended at 6 U.S.C. § 313).

b. FEMA administers its programs and carries out its activities through its headquarters offices in Washington, D.C.; ten Regional Offices; Area Offices for the Pacific, Caribbean, and Alaska; various Recovery Offices; and temporary Joint Field Offices.

c. FEMA provides Federal financial assistance through various assistance programs. Each program is not only governed by the enabling laws, implementing regulations, and FEMA policies for those programs, but also a wide range of cross-cutting laws, executive orders, and other regulations. As the Federal awarding agency for these programs, FEMA is responsible for the proper management and administration of these programs as otherwise required by law and enforcing the terms of the agreements it enters into with Non-Federal Entities (NFEs) that receive FEMA financial assistance, consistent with the requirements at 2 C.F.R. Part 200.

2. BACKGROUND

a. NFE recipients and subrecipients of FEMA financial assistance under the financial assistance programs may use contractors to assist them in carrying out the scope of work under their Federal financial assistance awards.

b. As a condition of receiving FEMA financial assistance for these contractor costs, a NFE must comply with applicable Federal laws, regulations, executive orders, and other requirements. Each NFE is responsible for managing and administering its Federal awards in compliance with the applicable requirements.

c. One such Federal requirement is the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* codified at 2 C.F.R. Part 200 ("Uniform Rules"), which DHS has adopted at 2 C.F.R. § 3002.10. 79 Fed. Reg. 75871 (Dec. 19, 2014). Of particular note, the regulations at 2 C.F.R. §§ 200.317 to 326 set forth various procurement standards that NFEs must follow when using FEMA financial assistance to finance procurements of property and

services.

d. The regulation at 2 C.F.R. § 200.110 provides that the procurement standards set forth at 2 C.F.R. §§ 200.317 to 200.326 apply to all FEMA awards issued on or after December 26, 2014. For grants and cooperative agreements under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, these procurement standards apply to those grants and cooperative agreements associated with emergencies or major disasters declared on or after December 26, 2014. *See* 79 Fed. Reg. 75871, 75872 (Dec. 19, 2014).

e. A NFE, however, may continue to comply with the former procurement standards applicable to FEMA awards at 44 C.F.R. Part 13 (for states, local, and Indian tribal governments) or 2 C.F.R. Part 215 (for institutions of higher education, hospitals, and other nonprofit organizations) under two scenarios:

   i. Until the completion of two additional fiscal years after December 26, 2014. "Two additional fiscal years" is interpreted to refer to the NFE's fiscal year. Accordingly, if the NFE's fiscal year is the equivalent of a calendar year (January 1 – December 31), the two additional fiscal year periods will begin on January 1, 2015 and end on December 31, 2016. If another NFE's fiscal year runs from 1 July – 30 June, its two additional fiscal year periods will begin on July 1, 2015 and end on June 30, 2017. During the period of the two additional fiscal years, the NFE may continue to follow the procurement standards found at 44 C.F.R. Part 13 or 2 C.F.R. Part 215 (depending upon the type of entity). Once the two additional fiscal years are complete, the NFE must transition to the new procurement standards found in 2 C.F.R. Part 200. As the grace period is voluntary, if a NFE elects to utilize the grace period, it must affirmatively document this decision in its internal procurement policies, including the date upon which it will transition to the new procurement standards. 2 C.F.R. § 200.110(a). There is no template or one way to do this.

   ii. The previous procurement standards must continue to be used in situations involving declarations that were issued prior to December 26, 2014, to include all projects associated with such a declaration, regardless of project start date. For example, if a disaster declaration was issued on November 1, 2014, the previous procurement standards would apply. If a project associated with this declaration did not begin until June 1, 2015, the previous procurement standards would remain applicable because the project is associated with a disaster declaration that was issued prior to the effective date of the procurement standards found in the Uniform Rules.[2]

[2] FEMA Office of Chief Counsel Procurement Disaster Assistance Team, Field Manual – Public Assistance Grantee and Subgrantee Procurement Requirements under 44 C.F.R. pt. 13 and 2 C.F.R. pt. 215, § V.C.2 (Dec. 2014), available at http://www.fema.gov/media-library-data/1419360792322-

f. The purpose of this document is to describe how a recipient or subrecipient of FEMA financial assistance can comply with the procurement standards of 2 C.F.R. §§ 200.317 to 200.326.

3. AUTHORIZING LEGISLATION AND GRANT AND COOPERATIVE AGREEMENT PROGRAMS

a. This circular applies to all of the grant and cooperative agreement programs listed in Appendix A.

b. Appendix A also identifies the programs' authorizing statutes and implementing regulations.

4. DEFINITIONS

a. Appendix B provides the definitions used in this document, which are consistent with the definitions set forth in 2 C.F.R. Part 200, subpart A, except where otherwise noted.

5. FEMA'S ROLE

a. General. As the Federal awarding agency, FEMA is responsible for monitoring financial assistance execution, and ensuring proper performance under the FEMA award, including compliance with the procurement standards. FEMA may, in exercising this responsibility, conduct both pre- and post-procurement reviews of a NFE's procurements consistent with the terms of 2 C.F.R. §§ 200.317-200.326.

b. Pre-Award Procurement Review.

i. Technical Specifications. A NFE must make available, upon request by FEMA or a pass-through entity, technical specifications of proposed procurements by the NFE where FEMA or the 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 will generally take place before the time the specification is incorporated into a solicitation document. However, if the NFE requests a procurement review after a solicitation has been developed, FEMA or a pass-through entity, may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase. 2 C.F.R. § 200.324(a).

ii. Procurement Documents. The NFE must make available upon request, for FEMA or a pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when any of the following conditions are

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present. 2 C.F.R. § 200.324(b).

(1) The NFE's procurement procedures or operation fails to comply with the procurement standards in 2 C.F.R. Part 200;

(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. 2 C.F.R. § 200.324(b).

iii. Exemption. The NFE is exempt from pre-procurement review if FEMA or the pass-through entity determines that the NFE's procurement systems comply with the standards of 2 C.F.R. Part 200. There are two possible methods for a NFE to avail itself of this exemption.

(1) FEMA or Pass-Through Entity Review. The NFE may request that its procurement system be reviewed by FEMA or a pass-through entity to determine whether its system meets the standards under 2 C.F.R. Part 200 in order for its system to be certified. 2 C.F.R. § 200.324(c)(1). Generally, these reviews must occur where there is continuous high-dollar funding and third party contracts are awarded on a regular basis. In all cases where a recipient reviews a subrecipient's procurement system, it must provide the results of that review to FEMA.

(2) Self-Certification. The NFE may self-certify its procurement system. Such self-certification must not limit FEMA's right to survey the system. Under a self-certification procedure, FEMA may rely on written assurances from the NFE that it is complying with the procurement standards at 2 C.F.R. §§ 200.317 to 200.326. The NFE must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review. 2 C.F.R. § 200.324(c)(2). Even if a NFE self-certifies, this does not prevent the NFE from requesting review by FEMA or a pass-through entity.

c. Post-Award Procurement Review. FEMA may review a NFE's procurement documents subsequent to the NFE's contract award as part of FEMA's authority

and responsibility to monitor financial assistance execution, and ensure proper performance and compliance with the terms and conditions of the FEMA award. Such a review may occur during close-out of a FEMA award, close-out of an individual project under a FEMA award, or through a FEMA audit or monitoring visit. *See* 2 C.F.R. § 200.336.

d. Standard of Review. A "standard of review" is the criterion or level of deference by which FEMA will measure the propriety of a decision or action made by a NFE when conducting pre- and post-award review.

   i. Mandatory Provisions. The regulations at 2 C.F.R. §§ 200.317 to 326 will, in some cases, set forth a mandatory procurement standard. For example, 2 C.F.R. § 200.323 requires NFEs that are not states to perform a price or cost analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold, including contract modifications. FEMA affords no deference to a NFE when making the determination of whether it complied with the mandatory regulation.

   ii. Discretionary Provisions. The regulations at 2 C.F.R. §§ 200.317 to 326 will, in other cases, allow the NFE to take an action that involves the exercise of discretion or judgment. For example, the regulation at 2 C.F.R. § 200.318(j) provides that a NFE may use a time and materials contract only after, among other things, it makes a determination that no other contract is suitable. FEMA will review such discretionary procurement decisions by a NFE to determine whether: (1) the NFE's decision lacked a rational basis; and/or (2) the procurement procedure involved a violation of Federal law, regulation, or FEMA policy. In reviewing whether a decision lacked a rational basis, FEMA does not substitute its judgment for that of a NFE, but may impose any one of the remedies for non-compliance available to it, for example, by identifying and substituting reasonable costs for actually incurred costs (that are determined to be unreasonable). 2 C.F.R. § 200.338

e. Access to Records. The Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity (e.g. the recipient), or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the NFE 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 NFE's personnel for the purpose of interview and discussion related to such documents. 2 C.F.R. § 200.336.

f. Audits. FEMA may perform or contract for audits of Federal awards or monitoring visits, which could include a review of a NFE's procurements. 2 C.F.R. §§ 200.336 and 200.503.

g. Training and Technical Assistance. FEMA provides procurement training and

technical assistance to NFEs at both the regional and national levels. For assistance, please contact your FEMA Regional Office.

CHAPTER II

APPLICABILITY

1. LEGAL EFFECT

a. FEMA has developed this document to assist NFEs in complying with the Federal procurement standards at 2 C.F.R. Part 200 and considers this document, in its entirety, to be a guidance document and not a legislative regulation. Although this guidance document does not have the force and effect of law or regulation, it does contain information about the regulations at 2 C.F.R. Part 200 that are mandatory.

b. This document describes how a NFE can comply with a particular procurement standard. Unless stated otherwise, such examples should not be treated as the exclusive manner in which a NFE can comply with a particular procurement standard. If a NFE identifies an alternate method to comply with a particular regulation, it may contact FEMA for comment before pursuing that alternate method.

2. APPLICABILITY

a. General.

i. The regulation at 2 C.F.R. § 200.110 provides that the procurement standards set forth at 2 C.F.R. §§ 200.317 to 326 apply to all FEMA awards issued on or after December, 26, 2014. For financial assistance under the Stafford Act, these procurement standards apply to those financial assistance awards associated with emergencies or major disasters declared on or after December 26, 2014. *See* 79 Fed. Reg. 75871, 75872 (Dec. 19, 2014).

ii. A NFE, however, may continue to comply with the former procurement standards applicable to FEMA awards at 44 C.F.R. Part 13 (for states, local, and Indian tribal governments) or 2 C.F.R. Part 215 (for institutions of higher education, hospitals, and other nonprofit organizations) until the completion of two additional fiscal years after December 26, 2014. This is an elective grace period and, if a NFE affirmatively elects to use the previous procurement standards, it must document this decision in its internal procurement policies, including the date upon which it will transition to the new procurement standards. 2 C.F.R. § 200.110(a). *See* Ch. I, ¶ e.

iii. This document only applies to those financial assistance awards that are awarded on or after the date of this circular's issuance or the end of the NFE's grace period, whichever is later. For financial assistance authorized under major disaster and emergency declarations pursuant to

the Stafford Act, this document only applies to financial assistance awarded under declarations occurring after December 26, 2014 or the end of the NFE's grace period (where affirmatively elected), whichever is later.

b. States. When procuring property and services under a grant or cooperative agreement, a state (to include state agencies and instrumentalities of the state[3]) must use the same policies and procedures that it uses for procurements from its non-Federal funds. 2 C.F.R. § 200.317. A state must comply with 2 C.F.R. § 200.322 (Procurement of Recovered Materials), must ensure that every purchase order or other contract included any clauses required by 2 C.F.R. § 200.326 (Contract Provisions), and must follow all applicable Federal laws, executive orders, implementing regulations, and policies. As such, Chapter I (*Introduction*), Chapter II, ¶ 1 (*Legal Effect*), Chapter II, ¶¶ 3 (*Federal Laws, Regulations, and Executive Orders*) and 4 (*State, Local, and Indian Tribal Laws and Regulations*), Chapter III (*Procurement by a State*), Chapter IV, ¶ 12 (Contract Provisions), and Chapter V, ¶ 7 (Procurement of Recovered Materials) of this Supplement apply to the procurement of services or property by a state.

c. Non-States. When procuring property and services under a grant or cooperative agreement, all other NFEs, must follow the regulations at 2 C.F.R. § 200.318 (General Procurement Standards) through 2 C.F.R. § 200.326 (Contract Provisions). 2 C.F.R. § 200.318. This includes local governments, institutions of higher education, hospitals, and other non-profit organizations, as well as Indian tribes (irrespective of whether they are serving as a recipient or subrecipient), institutions of higher education (that do not meet the definition of "state" instrumentality at 2 C.F.R. § 200.90), hospitals (that do not meet the definition of "state" instrumentality at 2 C.F.R. § 200.90), and other non-profit organizations. As such, Chapter I (*Introduction*), Chapter II, ¶ 1 (*Legal Effect of This Circular*), Chapter II, ¶¶ 3 (*Federal Laws, Regulations, and Executive Orders*) and 4 (*State, Local, and Indian Tribal Laws and Regulations*[4]), Chapter IV (*General Procurement Standards*), Chapter V (*Procedures and Guidance for Open Market Procurements*), and Chapter VI (*Other Procurement Methods and Additional Topics*) of this Supplement apply to the procurement of services or property by the NFEs that are not a state.

d. Recipients of Federal Financial Assistance from FEMA and other Federal Agencies. A NFE that uses funding provided by another Federal agency or agencies for a third party procurement also supported by FEMA financial assistance must comply with the procurement requirements of both FEMA and the other Federal agencies providing Federal financial assistance. These

[3] 2 C.F.R. § 200.90. "State" is defined as "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.

[4] Id.

requirements may sometimes differ, with the result that FEMA expects the NFE to comply with both sets of requirements. If compliance with all applicable Federal requirements is impossible, the NFE should notify FEMA or its pass-through entity, as appropriate, for resolution by FEMA.

3. FEDERAL LAWS, REGULATIONS, EXECUTIVE ORDERS, AND OTHER FEMA REQUIREMENTS

a. Enabling Laws, Implementing Regulations, and FEMA Policies. The property or services acquired by a NFE must be eligible for support and otherwise comply with the relevant enabling laws, regulations, and FEMA policies for the specific financial assistance programs set forth in Chapter I, ¶ 3.

b. Scope of the Grant or Cooperative Agreement. The property or services acquired must be within the scope of work of the underlying grant or cooperative agreement.

c. Period of Performance. FEMA expects the NFE to use sound business judgment in establishing and extending a contract's period of performance, with such period generally not exceeding the time necessary to accomplish the purpose of the contract. Furthermore, FEMA will not reimburse a NFE for contract work performed outside of the period of performance of the financial assistance award. 2 C.F.R. § 200.309; Standard Form 424D, ¶ 6.

d. Contract Costs Incurred Prior to the FEMA Federal Assistance Award.

i. Pre-Award Costs. Pre-award costs are those costs incurred before the effective date of the FEMA award directly pursuant to negotiation and in anticipation of the FEMA award where such costs are necessary for efficient and timely performance of the scope of work. 2 C.F.R. § 200.458. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the FEMA award and only with the written approval of FEMA. For example, FEMA may fund pre-award planning or project costs directly related to the development of a Hazard Mitigation Grant Program project or planning proposal. *See* 44 C.F.R. § 206.439.

ii. Project Implementation Before Award.

(1) Contract costs associated with project implementation but incurred before FEMA has awarded a grant or cooperative agreement (or project under a grant or cooperative agreement) are generally unallowable for reimbursement. *See also* Appendix C, ¶ 6 (concerning environmental and historic preservation implications). For example, contract costs associated with the commencement of actual implementation of a project under the Hazard Mitigation Grant Program before FEMA has awarded that project are ineligible for reimbursement. *See* 44 C.F.R. § 206.439.

(2) There are limited exceptions to this prohibition, and recipients should engage the appropriate Regional or FEMA Headquarters staff with specific questions. Furthermore, even where contract costs are incurred before the effective date of award, if those costs are ultimately deemed otherwise allowable, the NFE must still comply with the procurement standards of 2 C.F.R. Part 200 when procuring property or services.

e. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

i. General. The procurement standards set forth in the Uniform Rules at 2 C.F.R. §§ 200.317 to 200.326 apply to all awards as detailed in Chapter II, ¶ 2.a.

ii. Waivers. FEMA may, subject to certain limitations, approve exceptions to the procurement standards on a case-by-case basis for individual NFEs pursuant to 2 C.F.R. § 200.102(b). Recipients should contact their respective Regional Office for information about submitting waiver requests.

iii. More Restrictive Procurement Standards. FEMA may apply more restrictive procurement standards, to a class of FEMA awards or NFEs when approved by OMB or required by Federal statutes or regulations. 2 C.F.R. § 200.102(c). As of the date of this document, FEMA has not sought approval from OMB for any more restrictive requirements for any FEMA grant or cooperative agreement program or class of NFEs.

iv. Less Restrictive Procurement Standards. FEMA may also apply less restrictive procurement standards when making fixed amount awards, except for those requirements imposed by statute. 2 C.F.R. § 200.102(c).

v. Cost Principles. The costs under a FEMA grant or cooperative agreement must conform to the cost principles set forth under the Uniform Rules at 2 C.F.R. Part 200, subpart E. In general, costs must be necessary and reasonable; allocable to the FEMA award; conform to any limitations or exclusions set forth in the Cost Principles or in the FEMA award as to types or amount of cost items; be consistent with policies and procedures that apply uniformly to both Federally-financed and other activities of the NFE; be accorded consistent treatment; 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 and authorized by Federal law or regulation; be adequately documented; and 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 2 C.F.R. Part 200, subpart E. 2 C.F.R. § 200.403.

f. Other Federal Laws, Regulations, and Executive Orders.

i. In addition to complying with the Uniform Rules and the enabling laws, implementing regulations, and FEMA policies for a financial assistance program, each NFE must also comply with all other applicable Federal laws, regulations, and executive orders.

ii. Many of these laws, regulations, and executive orders will need to be included in third party contracts to the lowest tier necessary, and others, although not expressly referenced in a contract, will have a direct and indirect effect on a NFE's third party contracts.

iii. DHS issues, on an annual basis, Standard Terms and Conditions that apply to recipients of Federal awards from all DHS Components, including FEMA. In addition, a recipient executes a Standard Form ("SF") 424B or 424D with its financial assistance application to FEMA that contains standard assurances. The DHS Standard Terms and Conditions and SF 424B and D contain references to many cross-cutting Federal laws and regulations that may apply to a FEMA award.

iv. Appendix C provides a non-exhaustive list and description of some of the cross-cutting laws, regulations, and executive orders that may affect a NFE's procurement.

g. Federal Acquisition Regulation. The Federal Acquisition Regulation ("FAR"), 48 C.F.R. Chapter 1, does not apply to FEMA-assisted procurements, absent Federal laws or regulations to the contrary. Nevertheless, in the case where the regulations at 2 C.F.R. §§ 200.317 to 200.326 need amplification as they relate to a particular procurement or a NFE's procurement laws, regulations, or policies do not provide guidance on a particular issue, then the FAR may prove helpful if the NFE's circumstances are suitable for application of the specific FAR provision under consideration.

4. STATE, LOCAL, AND TRIBAL LAWS AND REGULATIONS AND STANDARDS

a. General. The Uniform Rules provide that a state must, among other things, follow the same policies and procedures it uses for procurements from its non-Federal funds. 2 C.F.R. § 200.317. They also provide that all other NFEs must use their own documented procurement procedures which reflect applicable state, local, and tribal laws and regulations, provided that the procurement conform to applicable Federal law and the procurement standards set forth at 2 C.F.R. §§ 200.317 to 200.326. 2 C.F.R. § 200.318.

b. Waivers of Local, State, and/or Tribal Procurement Standards. Under certain circumstances, NFE authorities may, pursuant to their own legal requirements, waive local, state, or tribal procurement standards or regulations as a result of, or in anticipation of a disaster or emergency. However, even though the appropriate NFE may have waived local, state or tribal procurement standards or regulations,

the NFE cannot waive the applicable Federal procurement standards, which would continue to apply to the NFE, even where local, state, or tribal procurement standards or regulations have been waived.

c. Direct Conflicts Between the Federal Procurement Standards and the Procurement Standards Applicable to NFEs Other Than States. The Federal procurement standards are relatively brief. They only address certain, limited procurement concepts and do not address all possible procurement issues. Where the Federal procurement standards do not address a particular area of procurement, FEMA expects the NFE to apply local, state, and/or tribal procurement standards or regulations – whichever applies to the particular NFE. However, where a *direct conflict* exists between a Federal procurement standard and a local, state and/or tribal procurement standard or regulation, FEMA expects the NFE to apply the more restrictive procurement standard.

NFE procurement standards may, in some cases, be more restrictive than the Federal procurement standards at 2 C.F.R. §§ 200.318 to 200.326. For example, the regulation at 2 C.F.R. § 200.320(b) allows a NFE to use procurement by small purchase procedures when the services, property, or other property acquired do not cost more than the simplified acquisition threshold (which is currently $150,000). It may be the case that the applicable state, local, and/or Indian tribal procurement laws and regulations do not permit small purchase procedures for acquisitions over $50,000. In such a circumstance where there is a direct conflict between local, state (and/or tribal) procurement standards and these Federal procurement standards, the NFE is required to follow the more restrictive applicable state, local, or tribal laws and regulations. A more permissive procurement standard of the Uniform Rules would not, in other words, control over more restrictive state, local, or tribal standards. Note that this concept of direct conflicts and more or less restrictive standards *only applies to NFEs other than states*. States will always follow the procurement standards found at 2 C.F.R § 200.317, which directs them to utilize their own procurement standards, comply with 2 C.F.R. § 200.322 (procurement of recovered materials), and 2 C.F.R. § 200.326 (contract provisions).

CHAPTER III

PROCUREMENT BY A STATE

1. GENERAL STANDARD

a. When procuring property and services under a grant or cooperative agreement, a state must follow the same policies and procedures that it uses for acquisitions from its non-Federal funds. 2 C.F.R. § 200.317. A state must comply with 2 C.F.R. § 200.322 (Procurement of Recovered Materials) and ensure that every purchase order or other contract includes any clauses required by 2 C.F.R. § 200.326 (Contract Provisions). As such, Chapter IV, ¶ 12 (Contract Provisions) and Chapter V, ¶ 7 (Procurement of Recovered Materials), which discuss the regulations at 2 C.F.R. §§ 200.322 and 326, apply to a state. A state must also follow all other applicable Federal law, executive orders, and implementing regulations.

b. A "state" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments. As such, the procurement standard at 2 C.F.R. § 200.317 and described in Chapter III, ¶ 1.a apply to a state agency irrespective of whether that agency is acting as recipient or subrecipient under a FEMA award.

c. Under the Stafford Act and other FEMA financial assistance programs, an Indian tribe may potentially serve as a recipient. An Indian tribe is not defined as a "state" at 2 C.F.R. § 200.90, however, meaning that the procurement standards applicable to an Indian tribe will always be 2 C.F.R. §§ 200.318 through 200.326 and not 2 C.F.R. § 200.317, unless the definition is subsequently revised by the Office of Management and Budget, which is responsible for the Uniform Rules.

2. COST ALLOWABILITY

a. The Uniform Rules require financial costs to conform to the Cost Principles at 2 C.F.R. Part 200, subpart E, for allowable costs. In general, costs must be necessary and reasonable; allocable to the FEMA award; conform to any limitations or exclusions set forth in the Cost Principles or in the FEMA award as to types or amount of cost items; be consistent with policies and procedures that apply uniformly to both Federally-financed and other activities of the NFE; be accorded consistent treatment; 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 and authorized by Federal law or regulation; be adequately documented; and 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 2 C.F.R. Part 200, subpart E. *See* 2 C.F.R. § 200.403.

b. Even if a state complies with its own policies and procedures when procuring services or property under a FEMA award, FEMA will not provide full reimbursement of a state's third party contract costs if FEMA determines the costs do not conform to the cost principles. For example, FEMA will not provide full reimbursement in the case of cost plus percentage of cost or cost plus percentage of construction cost contracts, as FEMA considers the percentage of cost portion of the contract to be unreasonable.

c. A state must use the cost principles at 2 C.F.R. Part 200, subpart E as a guide in the pricing of fixed-price contracts and subcontracts where costs are used in determining the appropriate price. 2 C.F.R. § 200.401.

3. LAW, REGULATIONS, AND EXECUTIVE ORDERS

a. A state must comply with all applicable Federal laws, regulations, and executive orders when procuring services or property under a FEMA award.

b. This document provides a list of some of the applicable Federal laws, executive orders, and regulations at Appendices A and C.

4. PROCUREMENTS BY NFEs OTHER THAN STATES

a. The remaining chapters of this circular discuss the procurement standards that apply to Institutions of Higher Education (both public and private), Hospitals, and other Private Non-Profit Organizations. Unlike the procurement standards for states, found in 2 C.F.R. § 200.317, the procurement standards for Institutions of Higher Education, Hospitals, and other Private Non-Profit Organizations are found at 2 C.F.R. §§ 200.318-326. With the exception of the requirements for Recovered Materials (2 C.F.R. § 200.322) and contract provisions (2 C.F.R. § 200.326), there is no other overlap of the procurement standards between States and NFEs other than States.

b. Accordingly, NFEs must be cognizant of the fact that the Federal procurement standards are differentiated by the type of entity receiving Federal disaster assistance from FEMA. In other words, the Federal procurement standards are divided into those that apply to States (as defined above and by the Uniform Rules) and those that apply to NFEs other than States – in other words, everyone else.

c. With the exception of the following discussion on the standards associated with 2 C.F.R. § 200.322 (Procurement of Recovered Materials) and 2 C.F.R. § 200.326 (contract provisions), the remaining sections and chapters of this document refer to the procurement standards applicable to NFEs other than States (local and tribal governments, institutions of higher education, hospitals, and other non-profit organizations). 2 C.F.R. § 200.318 – 200.326.

CHAPTER IV

GENERAL PROCUREMENT STANDARDS FOR NFEs OTHER THAN STATES

1. GENERAL

   a. A NFE that is NOT a state, must use its own documented procurement procedures which reflect applicable state, local, and tribal laws and regulations, provided the procurement conforms to applicable Federal law and the standards set forth in 2 C.F.R. Part 200.

   b. The regulations at 2 C.F.R. §§ 200.318, 319, and 326 set forth various general procurement standards for NFEs, some of which are mandatory and some of which are encouraged. These standards are discussed in this chapter.

   c. A NFE must comply with all other applicable Federal laws, regulations, and executive orders when procuring services or property under a FEMA award. The requirements identified in this supplement only address the Federal procurement standards and not the other requirements established and made applicable through the Uniform Rules. This supplement provides a (non-exclusive) list of some of the applicable Federal laws, executive orders, and regulations at Appendices A and C.

2. CONTRACTING CAPACITY AND OVERSIGHT

   a. NFEs must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. 2 C.F.R. § 200.318(b).

   b. A NFE should maintain adequate technical capacity to comply with the procurement standards at 2 C.F.R. §§ 200.318 to 326. If a NFE lacks qualified personnel (force account labor) within its organization to undertake the various tasks (such as evaluating contractors, drafting specifications, overseeing contract performance), then FEMA expects the NFE to acquire the necessary services from sources outside the NFE's organization. If the NFE obtains such services, those services are eligible under a particular FEMA grant or cooperative agreement, and the NFE seeks to fund those services using FEMA award funding, then the procurement standards at 2 C.F.R. Part 200 and this circular will apply to those contracts and to those contractors selected to perform procurement functions on behalf of the NFE.

3. STANDARDS OF CONDUCT

   a. Written Standards. The NFE 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. 2 C.F.R. § 200.318(c)(1).

b. Personal Conflicts of Interest. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a FEMA award if he or she has a real or apparent conflict of interest. Such a conflict 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 these parties, has a financial or other interest in or a tangible personal benefit from a firm considered for award. 2 C.F.R. § 200.318(c)(1); *See also* Standard Form 424D, ¶ 7; Standard Form 424B, ¶ 3.

   i. FEMA considers a "financial interest" to be the potential for gain or loss to 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 these parties as a result of the particular procurement. The prohibited financial interest may arise from ownership of certain financial instruments or investments such as stock, bonds, or real estate, or from a salary, indebtedness, job offer, or similar interest that might be affected by the particular procurement.

   ii. FEMA considers an "apparent" conflict of interest to exist where an actual conflict does not exist, but where a reasonable person with knowledge of the relevant facts would question the impartiality of the employee, officer, or agent participating in the procurement.

c. Gifts. The officers, employees, and agents of the NFE must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, NFEs may set standards for situations in which the financial interest is *de minimus*, not substantial, or the gift is an unsolicited item of nominal value. 2 C.F.R. § 200.318(c)(1).

d. Violations. The NFE's written standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the NFE. 2 C.F.R. § 200.318(c)(1). For example, the penalty for a NFE's employee may be dismissal, and the penalty for a contractor might be the termination of the contract.

e. Organizational Conflicts of Interest.

   i. Parent, Subsidiaries, and or Affiliates. If a NFE has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the NFE must maintain written standards of conduct governing organizational conflicts of interest. Organizational conflicts of interest within this context means that because of relationships with a parent company, affiliate, or subsidiary organization, the NFE is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization. 2 C.F.R. § 200.318(c)(2).

   ii. Other Contractors. An organizational conflict of interest can also arise

within the context of contractors that are not related organizations. An organizational conflict of interest arises in these cases where a person, because of other activities or relationships with other persons, is unable or potentially unable to render impartial assistance of advice to the NFE, the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage. Chapter V, ¶ 1.b provides more information about such organizational conflicts of interest.

iii. 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 requirements. 2 C.F.R. § 200.319(a).

4. DETERMINING NFE NEEDS

a. Eligibility. The property and services to be acquired must be eligible under the Federal financial assistance award, including the Federal law authorizing the FEMA award and any implementing regulations and policies. Furthermore, if FEMA assistance will finance the cost of property or services, the property or services must be within the scope of work of the specific FEMA grant or cooperative agreement (or project within that grant or cooperative agreement). *See* Chapter II, ¶ 3.a.

b. Necessity. The Uniform Rules require the NFE to establish procedures to avoid the purchase of unnecessary or duplicative items. 2 C.F.R. § 200.318(d). In monitoring whether a NFE has complied with its procedures to avoid the purchase of unnecessary or duplicative items, FEMA bases its determination on what would have been the NFE's reasonable expectations at the time it entered into the contract.

i. General Prohibition. FEMA expects the NFE to limit an acquisition to its current and reasonably expected needs to carry out the scope of work under the FEMA award, and may not add quantities or options to the contract solely for needs unrelated to the scope of work under the FEMA award or for the purpose of assignment to another party at a later date. The prohibition does not apply, however, to joint procurements or state or local government purchasing schedules or contracts.

ii. Advance Contracts for Future Work. A NFE may award advance contracts before an incident occurs for the potential performance of work under a Stafford Act emergency or major disaster. These are also known as pre-positioned or pre-awarded contracts. These types of contracts are eligible for reimbursement when used to support response and recovery efforts pursuant to a financial assistance award; however, NFEs must ensure that these contracts are awarded in accordance with the Federal

procurement standards found at 2 C.F.R. §§ 200.318 – 200.326 and that the scope of work adequately encompasses the type and extent of work anticipated for its use in response to and recovery from the disaster.

c. Procurement Size. The NFE should consider whether to consolidate or break out the procurement to obtain a more economical purchase. 2 C.F.R. § 200.318(d).

i. Joint Procurements. It may be economically advantageous for a NFE to enter into a joint procurement with others that have similar needs. A joint procurement will enable the two or more NFE's to obtain advantages unavailable for smaller procurements.

ii. Smaller Procurements. The regulations require a NFE to take the affirmative step, when possible, to divide total requirements by breaking out procurements when economically feasible into smaller tasks or quantities to permit maximum participation of small and minority businesses and women's business enterprises. 2 C.F.R. § 200.321(b)(3). Absent efforts to permit maximum participation of small and minority businesses and women's business enterprises, a NFE should not break out a larger procurement merely to bring it under the micro-purchase or simplified acquisition thresholds. In other words, NFEs should not perform what is commonly referred to as "project splitting," by which a single requirement is broken up into smaller components simply to defeat an established dollar threshold in order to take advantage of streamlined procurement procedures under the micro-purchase and small purchase procedures, methods of contracting.

d. Options. The NFE's contracts may include options to ensure the future availability of property or services as long as the NFE justifies them as needed for the purpose of the FEMA grant or cooperative agreement.

e. Lease vs. Purchase. A NFE must, where appropriate, make an analysis of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. 2 C.F.R. § 200.318(d). FEMA will review any costs used in the comparison for reasonableness, realistic current market conditions, and based on the expected useful service life of the asset. The following provide examples of where the lease vs. purchase analysis is required under FEMA financial assistance programs.

i. Temporary Facilities under the Public Assistance Grant Program. Eligible Public Assistance applicants may request FEMA financial assistance for temporary facilities following a Stafford Act declaration to continue the essential community services[5] previously performed at a damaged facility.

[5] "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

Applicants may decide to lease, purchase, or construct eligible temporary facilities; whichever option is selected, it must be reasonable, cost-effective, and temporary in nature. FEMA does not mandate that the applicant pursue a specific option, but will fund only the most cost-effective option. Before FEMA will provide financial assistance for temporary facilities under the Public Assistance Grant Program, FEMA requires the applicant to perform a cost comparison of the options and provide that to FEMA. Id.

ii. Equipment to Perform Emergency Work under the Public Assistance Grant Program. FEMA may provide FEMA financial assistance to a NFE to acquire equipment to perform emergency work following an emergency or major disaster declaration under the Stafford Act. In those circumstances, the NFE must analyze its options to either lease or purchase equipment. FEMA, in most cases, does not mandate that the NFE either purchase or lease equipment but will fund only the most cost-effective option, and will review the applicant's analysis of comparative costs and other factors. *See* Public Assistance Program and Policy Guide, Ch. 2, Section V (C). The following provides several factors that FEMA will consider: estimated length of the period the equipment is to be used and the extent of use within that period; cumulative rental payments for the estimated period of use; net purchase price; transportation and installation costs; maintenance and other service costs; availability of purchase options; and trade-in or salvage value.

5. VALUE ENGINEERING

a. A NFE 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 lowest cost. 2 C.F.R. § 200.318(g).

b. Under value engineering clauses, contractors are incentivized to submit change proposals which reduce the cost of contract performance by promising the contractor a share of the savings.

c. Part 48 of the FAR is dedicated to the subject of value engineering and may provide a useful reference for a NFE.

6. CONTRACTOR QUALIFICATIONS

a. Responsibility.

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community at large. Stafford Act § 102(11)(B), 42 U.S.C. 5122. *See also*, Public Assistance Program and Policy Guide, Ch. 2, Section VI (B) (17).

i. Requirement. A NFE must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed requirement. 2 C.F.R. § 200.318(h). The Uniform Rules require a NFE to give consideration to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. The following provide amplifying information in regard to these mandatory criteria.

(1) Integrity. A contractor must have a satisfactory record of integrity and business ethics. Contractors that are debarred or suspended as described in Chapter III, ¶ 6.d must be rejected and cannot receive contract awards at any level. A NFE, for those contractors that are not debarred or suspended, may also analyze whether the contractor has:

a. Committed fraud or a criminal offense in connection with obtaining or attempting to obtain a contract;

b. Violated Federal or state antitrust statutes;

c. Committed embezzlement, theft, forgery, bribery, falsification or destruction of records, or tax evasion;

d. Made false statements;

e. Violated Federal criminal tax laws;

f. Received stolen property;

g. Committed any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of the contractor;

h. Been indicted for any of the offenses described in ¶ 6.a.(1)(a)-(g); or

i. Has delinquent Federal or state taxes

(2) Public Policy. A contractor must have complied with the public policies of the Federal Government and state, local government, or tribal government. This includes, among other things, past and current compliance with the:

a. Equal opportunity and nondiscrimination laws described in Appendix C, ¶ 5;

b. Five affirmative steps described at 2 C.F.R. § 200.321(b) for all subcontracting under contracts supported by FEMA financial assistance; and

c. Applicable prevailing wage laws, regulations, and executive orders

(3) Record of Past Performance. A contractor must be able to provide a satisfactory past performance record, which could include:

a. Sufficient Resources. The contractor has key personnel with adequate experience and subcontractors with adequate experience that will be performing work under the prospective contract.

b. Adequate Past Experience. A contractor has successful past experience in carrying out similar work, including a record of:

i. Having the necessary organization, accounting, and operational controls;

ii. Conforming to requirements and standards of good workmanship;

iii. Forecasting and controlling costs and showing appropriate budgetary controls;

iv. Adherence to schedules, including the administrative aspects of performance;

v. Reasonable and cooperative behavior and commitment to customer satisfaction;

vi. Business-like concern for the interest of the customer; and

vii. Meeting quality requirements

(4) Financial Resources. A contractor must have adequate financial resources to perform the contract or the ability to obtain such resources. A NFE could analyze the existing cash flow of the contractor, account receivables, and other financial data as well as existing business prospects in making this evaluation.

(5) Technical Resources. A contractor must have or be able to acquire the required construction, production, and/or technical facilities, equipment, employees, and other resources to perform the work under the contract.

ii. While the NFE is afforded great discretion in its Responsibility determination, FEMA requires a NFE exercising this discretion to make a documented determination that a prospective contractor qualifies as responsible and set forth the basis for that determination. 2 C.F.R. §

200.318(h).

b. Organizational Conflict of Interest. The Uniform Rules require a NFE to exclude contractors that developed or drafted specifications, requirements, statements of work, or invitations for bids or requests for proposals from competing for such procurements in order to ensure objective contractor performance and eliminate unfair competitive advantage. *See* ¶ 3.e; 2 C.F.R. § 200.319(a).

c. Lobbying Certification. The NFE must obtain a lobbying certification and, if applicable, a lobbying disclosure from a prospective contractor if the contract will exceed $100,000 before awarding the contract. *See* 2 C.F.R. § 200.450; Chapter IV, ¶ 12.ix and Appendix C, ¶ 4; 44 C.F.R. Part 18 (New Restrictions on Lobbying).

d. Debarment and Suspension. A NFE's contractor or subcontractor must not be debarred nor suspended from Federal programs. *See* 2 C.F.R. § 200.213.

i. OMB Guidelines. The rules of assistance exclusion are governed by the OMB guidelines to agencies on government-wide debarment and suspension set forth at 2 C.F.R. Part 180. These guidelines prohibit a NFE from entering into a "covered transaction" with a party listed on the System for Award Management ("SAM) Exclusions list. *See* 2 C.F.R. Part 200, Appendix II, ¶ I; Appendix C, ¶ 2.

ii. Department Guidelines. The Department has adopted debarment and suspension guidelines at 2 C.F.R. Part 3000, which adopt OMB's regulations at 2 C.F.R. Part 180 and provide supplemental policies and procedures.

iii. Covered Transactions. As detailed in 2 C.F.R. Part 180 and 2 C.F.R. Part 3000, the following comprise "covered transactions" of a NFE under a FEMA award:

(1) Contract awarded by a NFE in the amount of at least $25,000 or more;

(2) Contract awarded by NFE that requires approval of FEMA (irrespective of contract amount);

(3) Contract awarded by a NFE for a Federally required audit (irrespective of the contract amount);

(4) A subcontract awarded by a NFE's contractor or subcontractor that requires the approval of FEMA (irrespective of amount) or is in the amount of least $25,000. 2 C.F.R. § 3000.220; 2 C.F.R. § 180.220.

iv. State Debarment and Suspension Lists. A NFE may treat, consistent with applicable state, local, and/or Indian tribal laws and regulations, any

prospective contractor or subcontractor listed on a centralized government debarment and suspension list as non-responsible and ineligible for contract award, pursuant to applicable state, local or tribal law. This would not fall within the Federal Suspension and Debarment classification, but would instead fall within the NFE's requirement to determine and award contracts only to contractors determined to be responsible.

7. RECORD KEEPING

a. Procurement History. The Uniform Rules require a NFE to maintain records sufficient to detail the history of a procurement. These records include, but are not limited to, the following: rationale for method of procurement, selection of contract type, contractor selection or rejection, and the basis for contract price. 2 C.F.R. § 200.318(i).

i. Procurement Method. A NFE must document its rationale for the method of procurement used for each contract (micro-purchases, small purchase procedures, sealed bidding, competitive proposals, and noncompetitive proposals), including a justification for using the procurement by noncompetitive proposals method.

ii. Contract Type. A NFE must document its rationale for selecting the contract type it used (fixed price, cost reimbursement, or time and materials). In addition, time and materials contracts have additional requirements described at 2 C.F.R. § 200.318(j). *See* Chapter IV, ¶ 8.

iii. Contractor Selection. A NFE must document its rationale for contractor selection or rejection, including a written responsibility determination for the successful contractor.

iv. Price. A NFE must document the basis for the contract price, which will include the cost or price analysis for contracts exceeding the simplified acquisition threshold. *See* 2 C.F.R. § 200.323; Chapter V, ¶ 4.

v. Other Documentation. A procurement file should also include the following documentation as appropriate:

(1) Acquisition planning information and other pre-solicitation documents;

(2) List of sources solicited;

(3) Copies of published notices of proposed contract action;

(4) Independent cost estimate;

(5) Copy of the solicitation, all addenda, and all amendments;

(6) Determination of contractor's responsiveness;

(7) Notice of award;

(8) Notice to unsuccessful bidders or offerors and record of any debriefing;

(9) Record of protests, disputes, and claims;

(10) Bid, performance, payment, and other bond documents;

(11) Notice to proceed

b. Extent of Documentation. FEMA expects that the NFE will maintain reasonable documentation, such that documents included in a procurement history should be commensurate with the size and complexity of the procurement.

c. Access to Records.

i. The Uniform Rules provide that FEMA, DHS Office of Inspector 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 NFE which are pertinent to the FEMA award, in order to make audits, examinations, excerpts, and transcripts. 2 C.F.R. § 200.336; DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (Dec. 4, 2013).

ii. A NFE must acknowledge and agree—and require any contractors, successors, transferees, and assignees acknowledge and agree—to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff. DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (Dec. 4, 2013).

8. TIME AND MATERIALS CONTRACTS

a. Definition. A time and materials type contract means a contract whose cost to a NFE is the sum of the actual cost of materials and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. 2 C.F.R. § 200.318(j)(1)(i) and (ii).

b. Conditions Precedent. A NFE may use a time and materials type contract only after a determination that (1) no other contract is suitable; and (2) if the contract includes a ceiling price that the contractor exceeds at its own risk. 2 C.F.R. § 200.318(j).

c. Oversight. Time and materials type contracts provide no positive profit incentive to the contractor for cost control or labor efficiency, which is why the Uniform Rule requires the inclusions of a contract ceiling price. The Uniform Rules also require the NFE to assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls. 2 C.F.R. § 200.318(j)(2).

d. Differentiating Time and Materials and Cost Plus Percentage of Cost Contracts.

i. As described above, a time and materials (T&M) contracts provides for the payment of labor costs on the basis of fixed hourly billing rates which are specified in the contract. These hourly billing rates would include wages, indirect costs, general and administrative expense, and profit. No fee or profit is allowed except as part of the fixed billing rate for direct labor hours, such that materials are billed at cost.

ii. To include for the payment of labor costs on the basis of fixed hourly billing rates and allow the contractor to bill for actual costs other than labor (such as materials or travel) plus a percentage rate of those actual costs would constitute a prohibited cost-plus-percentage-of-cost contract. A contractor, however, is allowed to recover overhead costs on its direct costs, such as materials or travel, if the contractor's accounting system clearly separates the overhead costs associated with those direct costs and those overhead costs are not included in the overhead pool that is applied to direct labor costs. In other words, there must be no duplicate billing for material handling overhead costs in the rates applied to labor hours.

e. FEMA Review.

i. FEMA will review a NFE's determination to use a time and materials contract under a reasonable basis standard.

ii. FEMA generally discourages a NFE from using time and materials type contracts; however, where their use is unavoidable, FEMA generally limits the use of these contracts to a reasonable time based on the circumstances during which the Applicant could not define a clear scope of work. FEMA also encourages a NFE to ensure that it has a unilateral right to terminate the contract for convenience that will enable the NFE to award a follow-on fixed price or cost reimbursement contract type.

9. SETTLEMENT OF ALL CONTRACTUAL AND ADMINISTRATIVE ISSUES

a. General. A NFE alone is 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. 2 C.F.R. § 200.318(k). While not specifically defined in the Uniform Rules, these terms generally have the following meaning:

i. A "protest" is a disagreement before or over the award of a contract. Such disagreements can arise from, among other things, content in a solicitation, an award or proposed award of a contract, or termination or cancellation of an award of the contract.

ii. A "dispute" is a disagreement between the NFE and its contractor

regarding the rights of the parties after a contract has been awarded that do not concern award of the contract itself.

iii. A "claim" is a written demand or assertion by the NFE or its contractor seeking payment of a specific sum of money, an adjustment or interpretation of contract terms, or other relief arising under or relating to the contract.

iv. A "source evaluation" generally refers to the evaluation by a NFE of a prospective contractor's proposal when using the procurement by competitive proposal method.

b. Contractual Responsibilities. Neither FEMA nor the Uniform Rules relieve the NFE of any contractual responsibilities under its contracts. 2 C.F.R. § 200.318(k).

c. Violations of Law. FEMA and NFEs must refer violations of law to the local, state, or Federal authority having proper jurisdiction. 2 C.F.R. § 200.318(k).

d. FEMA Review. FEMA will not substitute its judgment for that of the NFE in resolving contractual and administrative issues unless the matter is primarily a Federal concern. 2 C.F.R. § 200.318(k). An example of a matter that is "primarily a Federal concern" includes, but is not limited to, a violation of Federal law, violation of any of the procurement standards at 2 C.F.R. §§ 200.318 to 326, and violation of other Federal regulations or executive orders, impropriety, waste, fraud, or abuse.

e. Liquidated Damages. If a NFE's contract includes a liquidated damages provision, FEMA requires the NFE to credit any liquidated damages recovered to the FEMA award unless FEMA approves other uses for the liquidated damages.

10. WRITTEN PROCEDURES FOR PROCUREMENT TRANSACTIONS

a. General. The Uniform Rules require that a NFE must have written procedures for procurement transactions. 2 C.F.R. § 200.319(c). FEMA expects these written procedures to address the following items.

b. Solicitations. The NFE's written procedures must ensure that all solicitations meet the following requirements. 2 C.F.R. § 200.319(c).

i. Clear Description. The solicitation must incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. 2 C.F.R. § 200.319(c)(1).

ii. Nonrestrictive Specification. The description of the technical requirements must not contain features that unduly restrict competition. 2 C.F.R. § 200.319(c)(1).

iii. Qualitative Requirements. The description of the technical requirements 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. 2 C.F.R. § 200.319(c)(1). The NFE should avoid detailed product specifications if at all possible.

(1) Brand Name or Equal. When it is impractical or uneconomical to write a clear and accurate description of the technical requirements of the property or services to be acquired, a NFE may use a "brand name or equal" description 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 offerors must be clearly stated.

(2) Preference for Performance Specifications. FEMA interprets the Uniform Rules, in setting the requirements for solicitations, as expressing a preference for performance or functional specifications, although they do not prohibit the use of detailed technical specifications when appropriate. A performance specification describes an end result, an objective, or standard to be achieved, and leaves the determination of how to reach the result to the contractor. Using performance specifications, a NFE should describe what the product should be able to do or the services to accomplish without imposing unnecessarily detailed requirements on how to accomplish the tasks.

iv. Requirements. The solicitation must identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals. 2 C.F.R. § 200.319(c)(2). If using the procurement through competitive proposals method, the NFE should state if it is reserving its right to award the contract to other than the lowest priced offeror.

v. FEMA Funding. The solicitation must acknowledge the NFE's use of FEMA funding for the contract, in compliance with the terms of its financial assistance award from FEMA. Specifically, the document should indicate that FEMA is providing the funds, the Catalog of Federal Domestic Assistance Number, as applicable, and the amount provided. *See* Financial Services and General Government Appropriations Act, 2015, Pub. L. No. 113-83, Division E, § 724 (2015); DHS Standard Terms and Conditions, v 3.0, ¶ II (Dec. 4, 2013); Appendix C, ¶ 3.

vi. Contract Type. The solicitation should state the type of contract that will be awarded.

(1) Fixed Price. A fixed price contract provides for a firm price that remains irrespective of the contractor's actual cost of performing

the scope of work under the contract. The risk of performing the work, at the fixed price, is borne by the contractor. Fixed price contracts may include an economic price adjustment, incentives, or both.

(2) Cost Reimbursement. Cost-reimbursement type contracts provide for payment of certain incurred costs to the extent provided in the contract. They normally provide for the reimbursement of the contractor for its reasonable, allocable, actual, and allowable costs, with an agreed-upon fee. There is a limit to the costs that a contractor may incur at the time of contract award, and the contractor may not exceed those costs without the NFE's approval or does so at its own risk. In a cost-reimbursement contract, the NFE bears more risk than in a fixed price contract. There are many varieties of cost-reimbursement contracts, such as cost-plus-fixed-fee, cost-plus-incentive-fee, and cost-plus-award-fee.

(3) Time and Materials Contracts. A time and materials type contract is a contract whose cost to a NFE is the sum of the actual cost of materials and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. 2 C.F.R. § 200.318(j)(1)(i) and (ii). The Uniform Rules prohibit the use of this type of contract unless certain conditions precedent are met. *See* ¶ 8.b.

(4) Cost Plus Percentage of Cost. The use of cost plus percentage of cost and cost plus a percentage of construction cost methods of contracting are prohibited. *See* Chapter V, ¶ 4.c; 2 C.F.R. § 200.323(d).

vii. Prohibitions. The Uniform Rules prohibit a NFE from using a solicitation that contains features that unduly restrict competition. 2 C.F.R. § 200.319(a). Some of the situations considered restrictive of competition include the following. *See also* Chapter V, ¶ 1.b.

(1) Excessive Qualifications. Placing unreasonable requirements on firms in order for them to qualify to do business. 2 C.F.R. § 200.319(a)(1).

(2) Unnecessary Experience. Requiring unnecessary experience. 2 C.F.R. § 200.319(a)(2).

(3) Unnecessary Bonding. Requiring excessive bonding. 2 C.F.R. § 200.319(a)(2).

(4) Improper Qualification. Using improper prequalification procedures that conflict with 2 C.F.R. § 200.319(d).

(5) Retainer Contract. Making a noncompetitive solicitation only to a

person or firm on retainer contract where that award is not for property or services specified for delivery under the scope of work of the retainer contract. 2 C.F.R. § 200.319(a)(4).

(6) In-State, Local, or Tribal Geographic Preferences. Imposing prohibited in-state, local, or tribal geographic preferences that conflict with 2 C.F.R. 200.319(b).

(7) Organizational Conflicts of Interest. Allowing entities to submit bids or proposals in response to the solicitation where there would be a prohibited organizational conflict of interest. 2 C.F.R. § 200.319(a)(5).

viii. Federal Laws, Regulations, Executive Orders, and FEMA Requirements Affecting the Procurement. The solicitation should inform prospective contractors that they will need to comply with all applicable Federal laws, regulations, executive orders, and FEMA requirements.

c. Necessity. The Uniform Rules require a NFE's written procedures to avoid acquisition of unnecessary or duplicative items. 2 C.F.R. § 200.318(d); Chapter IV, ¶ 4.b

d. Records. The procurement procedures must ensure the generation of records sufficient to detail the history of the procurement. 2 C.F.R. § 200.318(i); Chapter IV, ¶ 7.

e. Lease vs. Purchase. The procurement procedures must ensure that, where appropriate, the NFE makes an analysis of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. 2 C.F.R. § 200.318(d); Chapter IV, ¶ 4.e.

f. Procurement Methods. The NFE's procurement procedures must address what procurement methods will be used, including a description of those methods and the circumstances when used. These methods should ensure that a procurement complies with at least the minimum standards at 2 C.F.R. § 200.320 (Methods of Procurement to Be Followed) when using FEMA financial assistance for that procurement. These methods should also include a description of how and when the NFE will use joint procurements, purchasing agents, and Federal and state supply schedules.

g. Additional Content. FEMA also recommends that a NFE's written procurement procedures address the following:

i. Legal Restrictions. The NFE's procurement procedures should include a description of any Federal, state, local, and tribal restrictions on the NFE's acquisitions.

ii. Third Party Contract Provisions. The NFE's procurement procedures

should address the required third party contract provisions required for third party contracts under Federal law, regulation, and executive order, including requirements for each third-party contractor to extend applicable requirements subcontractors. *See* 2 C.F.R. § 200.326; Chapter IV, ¶ 12.

iii. Resolution of Procurement Issues. The NFE's procurement procedures should provide procedures for settling contractual and administrative issues arising out of procurements, including source evaluation, protests, disputes, and claims, in order to meet the requirements of 2 C.F.R. § 200.318(k).

11. STATE AND LOCAL INTERGOVERNMENTAL AGREEMENTS

a. Use Encouraged. The Uniform Rules, to foster greater economy and efficiency, encourage a NFE 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. 2 C.F.R. § 200.318(e).

b. Joint Procurements. FEMA interprets the regulation at 2 C.F.R. § 200.318(e) as encouraging NFEs to enter into intergovernmental agreements to conduct joint procurements. FEMA uses the term "joint procurement" to mean a method of contracting in which two or more NFEs agree to use a single solicitation document and enter into a single contract with a vendor for delivery of property or services in a fixed quantity, even if expressed as a total minimum or total maximum. *See* Chapter VI, ¶ 3.

c. Purchasing Schedules or Purchasing Contracts. FEMA has interpreted the regulation at 2 C.F.R. § 200.318(e) as encouraging NFEs to enter into intergovernmental agreements for procurements and use of property and services through government purchasing schedules and contracts. FEMA uses the term "government purchasing schedule and contract" to mean an arrangement that a state, local, or Indian tribal government has established with several or many vendors in which those vendors agree to provide the option to the state, local, or Indian tribal government, their subordinate government entities, and others it might include in their programs to acquire specific property or services in the future at established prices. In establishing this arrangement, the NFE may also seek the agreement of a vendor to provide the listed property and services to others with access to the schedules. *See* Chapter VI, ¶ 4.

12. CONTRACT PROVISIONS

a. Requirement under the Uniform Rules. A NFE's contracts must contain the applicable provisions described in Appendix II to the Uniform Rules (Contract Provisions for NFE Contracts Under Federal Awards), which are set forth below. 2 C.F.R. § 200.326. FEMA has provided model language for these required contract clauses at: https://www.fema.gov/media-library/assets/documents/96773.

i. Remedies.

(1) Standard. Contracts for more than the simplified acquisition threshold 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.

(2) Applicability. This requirement applies to all FEMA financial assistance programs in excess of $150,000, which is the current simplified acquisition threshold.

ii. Termination for Cause and Convenience.

(1) All contracts in excess of $10,000 must address termination for cause and for convenience by the NFE including the manner by which it will be effected and the basis for settlement. *See* 2 C.F.R. Part 200, Appendix II, ¶ B.

(2) Applicability. This requirement applies to all FEMA grant and cooperative agreement programs, in excess of $10,000.

iii. Equal Employment Opportunity.

(1) 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.

(2) Key Definitions.

a. 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.

b. 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.

(3) Applicability. This requirement applies to all FEMA financial assistance programs.

iv. Davis Bacon Act and Copeland Anti-Kickback Act.

(1) Applicability of Davis-Bacon Act and Copeland-Anti-Kickback Act. The Davis-Bacon and Copeland-Anti-Kickback Acts only apply to the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. These Acts do not apply to other FEMA grant and cooperative agreement programs, such as FEMA's Public Assistance Grant Program. However, if the NFE's own procurement standards include equivalents to, or adopt the Davis-Bacon and Copeland-Anti-Kickback Acts, under those circumstances, they should be applied by the NFE.

(2) All prime construction contracts in excess of $2,000 awarded by NFEs 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 at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). *See* 2 C.F.R. Part 200, Appendix II, ¶ D.

(3) 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.

(4) The NFE 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 NFE must report all suspected or reported violations to the Federal awarding agency.

(5) In contracts subject to the Davis-Bacon Act, 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 at 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). The Copeland Anti-Kickback 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 NFE must report all suspected or reported violations to FEMA.

v. Contract Work Hours and Safety Standards Act.

(1) Where applicable (*see* 40 U.S.C. § 3701), all contracts awarded by the NFE 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 at 29 C.F.R. Part 5. *See* 2 C.F.R. Part 200, Appendix II, ¶ E.

(2) Under 40 U.S.C. § 3702, 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.

(3) 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 property or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(4) Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

vi. Rights to Inventions Made Under a Contract or Agreement.

(1) If the FEMA award meets the definition of a "funding agreement" under 37 C.F.R. § 401.2(a) and the NFE 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 NFE must comply with the requirements of 37 C.F.R. 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 FEMA. *See* 2 C.F.R. Part 200, Appendix II, ¶ F.

(2) The regulation at 37 C.F.R. § 401.2(a) currently defines "funding agreement" as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the *performance of experimental, developmental, or research work* funded in whole or in part by the Federal government. (emphasis added) This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

(3) Applicability. This requirement does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of "funding agreement."

vii. Clean Air Act and the Federal Water Pollution Control Act.

(1) Contracts for amounts in excess of $150,000 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.

(2) Applicability. This requirement applies to all FEMA financial assistance programs, in excess of $150,000.

viii. Debarment and Suspension.

(1) NFEs 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). 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, ¶ I; and Chapter IV, ¶ 6.d and Appendix C, ¶ 2.

(2) A contract award must not be made to parties listed on the SAM Exclusions list. 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. *See* 2 C.F.R. § 180.530; Chapter IV, ¶ 6.d and Appendix C, ¶ 2.

(3) Applicability. This requirement applies to all FEMA financial assistance programs.

ix. Byrd Anti-Lobbying Amendment.

(1) Contractors that apply or bid for an award of $100,000 or more must file the required certification. *See* 2 C.F.R. Part 200, Appendix II, ¶ J; 44 C.F.R. Part 18; Chapter IV, ¶ 6.c; Appendix C, ¶ 4.

(2) 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. *See* Chapter IV, ¶ 6.c and Appendix C, ¶ 4.

(3) Applicability. This requirement applies to all FEMA financial assistance programs where contractors apply or bid for an award of $100,000 or more.

x. Procurement of Recovered Materials.

(1) A NFE 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, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). *See* 2 C.F.R. Part 200, Appendix II, ¶ K; 2 C.F.R. § 200.322; Chapter V, ¶ 7.

(2) 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.

(3) Applicability. This requirement applies to all FEMA financial assistance programs, consistent with the guidance found in ¶ (2) above.

b. Additional FEMA Requirements. The Uniform Rules authorize FEMA to require additional provisions for NFE contracts. FEMA, pursuant to this authority, requires or recommends the following:

i. Changes. To be eligible for FEMA assistance under the NFE'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. *See* Chapter V, ¶ 8. FEMA recommends, therefore, that a NFE 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.

ii. Access to Records. All NFEs must place into their contracts a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff. *See* DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (Dec. 4, 2013).

iii. DHS Deal, Logo, and Flags. All NFEs must place in their contracts 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. *See* DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (Dec. 4, 2013).

iv. Compliance with Federal Law, Regulations, and Executive Orders. All NFEs must place into their contracts 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. *See* Standard Form 424D, ¶ 19; Chapter IV, ¶ 10.b.v; Appendix C, ¶ 3.

v. No Obligation by Federal Government. The NFE should 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 NFE, contractor, or any other party pertaining to any matter resulting from the contract.

vi. Program Fraud and False or Fraudulent Statements or Related Acts. The NFE must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

CHAPTER V

PROCEDURES AND GUIDANCE FOR OPEN MARKET PROCUREMENTS

1. COMPETITION

a. Competition Required. The Uniform Rules require a NFE to conduct all procurement transactions in a manner providing full and open competition consistent with the standards of 2 C.F.R. § 200.319. FEMA considers "full and open" competition to mean that a complete requirement is publicly solicited (except if specifically not required) and all responsible sources that are interested in doing so, are permitted to compete.

i. There are numerous benefits to full and open competition, such as increasing the probability of reasonable pricing from the most qualified contractors and helping discourage and prevent favoritism, collusion, fraud, waste, and abuse.

ii. FEMA will scrutinize procurements not providing for full and open competition, even if they result in the same or lower contract price than if conducted through full and open competition.

b. Prohibited Situations Restrictive of Competition. The Uniform Rules identify seven situations considered to be restrictive of competition. 2 C.F.R. § 200.319(a)(1)-(7). **This is an illustrative and non-exclusive list, such that FEMA may consider other situations as restrictive of competition, even though they are not specifically listed**.

i. Unreasonable Requirements. A NFE must not place unreasonable requirements on firms in order for them to qualify to do business. 2 C.F.R. § 200.319(a)(1). This means that the NFE should include only those requirements that are the least restrictive to establish the contractor's necessary qualifications.

ii. Unnecessary Experience and Excessive Bonding. A NFE must not require unnecessary experience and excessive bonding. 2 C.F.R. § 200.319(a)(2).

(1) Unnecessary experience could include unnecessary levels or years of experience for contractors as organizations, the contractors' workforce, or for the contractors' key personnel on a project.

(2) Excessive bonding increases the cost associated with the contract and restricts competition by reducing a prospective bidder's or offeror's capability to bid or offer a proposal on bonded work. FEMA does not require any additional bonding requirements other than construction or facility improvement contracts or subcontracts set forth at 2 C.F.R. § 200.325. Notwithstanding, a NFE might

find it desirable to exceed the bid, performance, or payment bond requirements at 2 C.F.R. § 200.325 for construction or facility improvements, or might find bonds desirable for work other than construction or facility improvements. In these cases, FEMA expects the NFE's bonding requirements to be reasonable, not unduly restrictive, and in accordance with any applicable local, state or tribal government standards.

iii. Noncompetitive Pricing Practices. A NFE should undertake reasonable efforts to ensure that prospective contractors have not engaged in noncompetitive pricing practices in responding to a solicitation. 2 C.F.R. § 200.319(a)(3). The most prominent form of noncompetitive pricing is referred to as "bid rigging," which is when conspiring competitors effectively raise prices under a process where a purchaser acquires goods or services by soliciting competing bids. Essentially, competitors agree in advance who will submit the winning bid on a contract being awarded through the competitive bidding process. Bid rigging takes many forms, but bid-rigging conspiracies usually fall into one or more of the following categories: bid suppression, complementary bidding, and bid rotation.

(1) In bid suppression schemes, one or more competitors, who otherwise would be expected to bid or who have previously bid, agree to refrain from bidding or withdraw a previously submitted bid so that the designated winning competitor's bid will be accepted.

(2) Complementary bidding (also known as "cover" or "courtesy" bidding) occurs when some competitors agree to submit bids that are either too high to be accepted or contain special terms that will not be acceptable to the buyer. Such bids are not intended to secure the buyer's acceptance, but are merely designed to give the appearance of genuine competitive bidding. Complementary bidding schemes are the most frequently occurring forms of bid rigging, and they defraud purchasers by creating the appearance of competition to conceal secretly inflated prices.

(3) In bid rotation schemes, all conspirators submit bids but take turns being the low bidder. The terms of the rotation may vary. For example, competitors may take turns on contracts according to the size of the contract, allocating equal amounts to each conspirator or allocating volumes that correspond to the size of each conspirator company.

iv. Noncompetitive Contracts to Consultants.

(1) A NFE must not make a noncompetitive award to a consultant on a retainer contract. 2 C.F.R. § 200.319(a)(4).

(2) Although the Uniform Rules do not define the term "retainer contract," FEMA considers a retainer contract to be a form of agreement for general, unspecified services entered into in advance of work to be done. Under such an agreement, the consultant remains available when the client needs services during a specific period or on a specified matter. As such, it would be restrictive of competition if a NFE simply made a noncompetitive contract award for work to be done under a FEMA award to a consultant that was already on retainer, specifically where the noncompetitive contract award was for property or services not specified for delivery under the retainer contract or where the retainer contract was not originally procured in a manner that met all of the requirements of 2 C.F.R. §§ 200.318 to 200.326.

v. Organizational Conflicts of Interest. A NFE must ensure that its procurements are free from organizational conflicts of interest. 2 C.F.R. § 200.319(a)(5).

(1) Meaning of Organizational Conflict of Interest. The Uniform Rules provide that an organizational conflict of interest can arise where, because of relationships with a parent company, affiliate, or subsidiary organization, a NFE is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization. 2 C.F.R. § 200.318(c)(2). In addition, an organizational conflict of interest may also occur in circumstances of impaired objectivity, unequal access to information, and biased ground rules, irrespective of whether the contractor is a related organization (parent, affiliate, or subsidiary) or not.

a. Impaired objectivity arises where a contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the NFE due to other relationships, contracts, or circumstances. This would comprise circumstances where a contractor's work under one contract could entail it evaluating itself through an assessment of performance under another contract or an evaluation of proposals.

b. Unequal access to information occurs when a contractor has access to nonpublic information as part of its performance under another contract with the NFE and where that information may provide the contractor with a competitive advantage in a later competition for a NFE contract.

c. Biased ground rules issues arise where a contractor, as part of its performance of work under a contract with the NFE, has in some sense set the ground rules for another NFE

contract. An example of such a situation would be where a NFE prepares a statement of work or specifications for a contract and later competes for that contract. Notably, the Uniform Rules require that, in order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements. 2 C.F.R. § 200.319(a).

(2) Advance Acquisition Analysis. FEMA expects a NFE to analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible and avoid or mitigate potential conflicts.

vi. Specifying Only a Brand Name. A NFE shall not specify 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. When it is impractical or uneconomical to write a clear and accurate description of the technical requirements of the property or services to be acquired, a NFE may use a "brand name or equal" description as a means to define the performance or other salient requirements of procurement. Should a NFE determine that only a brand name product is acceptable to fulfill a requirement, that determination must be documented and justified in the same manner as a noncompetitive procurement. The specific features or salient characteristics of the named brand which must be met by offers must be clearly stated. 2 C.F.R. § 200.319(a)(6) and (c)(1).

vii. Any Arbitrary Action. A NFE must not engage in any other arbitrary action in the procurement process that would restrict competition. 2 C.F.R. § 200.319(a)(7). The term "arbitrary" generally refers to an action or decision founded on prejudice or preference rather than on reason or fact or something that is otherwise unreasonable or unsupported. Accordingly, FEMA considers an "arbitrary action" within the procurement context to include, among other things, a discretionary action that showed preference or prejudice to certain contractors in a manner not consistent with full and open competition.

c. Prohibited Geographical Preferences.

i. Prohibition. A NFE 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. 2 C.F.R. § 200.319(b). Prohibited geographic preferences may come in a variety of forms, such as the

following:

(1) Exclusion of Contractors from Outside a Geographic Area. A NFE could exclude from consideration for a procurement all contractors incorporated or primarily doing business outside the state, local, or tribal geographical area in which the NFE is located. In other words, the NFE simply sets aside the contract for an in-state or local contractor.

(2) Price Matching. Price matching is where a NFE will give an opportunity for a local vendor—within a certain percentage of the lowest bid to a solicitation—to match the lowest bid. If the local vendor does not match the bid, then the NFE awards the contract to the next lowest bidder.

(3) Reducing Bids. A NFE may reduce by a percentage a bid submitted by a local vendor during the evaluation of bids submitted during sealed bidding. For example, a preference may deem a bid submitted by a resident business to be five percent lower than the bid actually submitted.

(4) Adding Weight to Evaluation Factors. A NFE may add weight on evaluation factors to an in-state or local business as part of a procurement by competitive proposals.

ii. Exception – Architectural and Engineering Contracts. When contracting for architectural and engineering 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. 2 C.F.R. § 200.319(b).

iii. Exception – State Licensing Laws. Nothing in the Uniform Rules or this document preempts state licensing laws. 2 C.F.R. § 200.319(b).

iv. Exception – Federal Law.

(1) General. A NFE may use a state, local, or tribal geographical preference in the evaluation of bids or proposals where applicable Federal statutes expressly mandate or encourage geographic preference.

(2) Federal Laws Establishing FEMA Grant and Cooperative Agreement Programs. None of the Federal laws establishing or governing FEMA grant and cooperative agreement programs mandate or encourage geographic preferences by NFEs. Of particular note, NFEs frequently have questions concerning Section 307 of the Stafford Act, which appears to direct local preferences in the award of response and recovery contracts;

however, Section 307 only applies to procurements conducted by FEMA or other Federal agencies, not NFEs.

(3) Tribal Self-Determination and Education Act. Tribal preferences may be permissible if certain requirements are met under the Indian Self - Determination and Education Assistance Act.[6] Pursuant to this Act, an Indian tribal government acting as either a recipient or subrecipient may give a preference in the award of contracts funded in whole or in part with Public Assistance funding to businesses falling within the meaning of "Indian organizations" or "Indian-owned economic enterprises," as further defined by section 3 of the Indian Financing Act of 1974.[7] This determination would generally be issued and documented by the tribal government claiming such an exception.

d. Prequalified Lists.

i. General. A NFE may use prequalified lists of persons, firms, and products among which to compete property and services under a FEMA award. 2 C.F.R. § 200.319(d). Prequalified lists, however, are not contracts. They are tools to aid in the procurement of future requirements by allowing NFEs to review the qualifications of prospective contractors prior to contract award of an anticipated future need. The Uniform Rules set forth two requirements that must be met in using such a list.

(1) Sources. A NFE 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 full and open competition.

(2) Qualification Period. A NFE must not exclude potential bidders or offerors from qualifying during the solicitation period. When using FEMA award funding, a NFE must allow vendors an opportunity to qualify during the solicitation period for the service or property, although FEMA does not expect a NFE to delay a proposed award (extend the solicitation period) in order to afford a vendor the opportunity to demonstrate that its product or services meet the pre-qualification requirements (*e.g.*, technical capability, management capability, prior experience, and past performance).

ii. Other Requirements. As pre-qualified lists are not contracts, but merely tools to assist NFEs with the solicitation and award of a future requirement, even after such a list is created, a NFE must still comply with

[6] Indian Self Determination and Education Assistance Act, Pub. L. No. 93-638, 88 Stat. 2205 (1975) (codified as amended at 25 U.S.C. § 5150(a)(3))

[7] Indian Financing Act of 1974, Pub. L. No. 93-262, § 2(e), 88 Stat 77 (codified as amended at 25 U.S.C. § 1452(e) and (f).

all other applicable procurement standards identified in 2 C.F.R. §§ 200.318-326 in the award of a contract. While a NFE may submit a solicitation directly to those contractors identified on a pre-qualified list, NFEs must still publicly solicit the requirement pursuant to the applicable standards contained in the Uniform Rules, and allow any additional interested contractors to submit their qualifications and, if deemed qualified, submit their bids or proposals in response to the solicitation. The solicitation, evaluation, and subsequent award of a contract or contracts must also conform to the standards identified in this Supplement.

2. METHODS OF PROCUREMENT

a. General. The NFE must use one of the following five methods of procurement: procurement by micro-purchases; procurement by small purchase procedures; procurement by sealed bids; procurement by competitive proposals; and procurement by noncompetitive proposals.

b. Procurement by Micro-Purchases. The Uniform Rules authorize a NFE to use simplified acquisition procedures to purchase property and services where the aggregate dollar amount of the property or services does not exceed the micro-purchase threshold. While the Micro-Purchase threshold is adjusted from time to time, as of October 2015, the Micro-Purchase threshold was adjusted to $3,500. Micro-purchase procedures comprise a subset of a NFE's small purchase procedures, and a NFE uses such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost. 2 C.F.R. §§ 200.67 and 320(a).

c. When Appropriate. A NFE may use the micro-purchases procurement method for the acquisition of property or services when the aggregate dollar amount of the services or property does not exceed the micro-purchase threshold.

d. Procedures. The following procedures apply to micro-purchases.

i. Competition. A NFE may award micro-purchases without soliciting competitive quotations if the NFE considers the price to be fair and reasonable. To the extent practicable, a NFE must distribute micro-purchases equitably among qualified suppliers. 2 C.F.R. § 200.320(a).

ii. Prohibited Divisions. A NFE must not split a larger procurement merely to lower the cost of a procurement to less than the micro-purchase threshold in order to take advantage of the streamlined procurement process associated with this method.

iii. Documentation. A NFE must document its determination that the price is fair and reasonable, and the basis for that determination, but does not need to document its rationale for the procurement method used or selection of contract type. It also does not need to document its reasons for contractor selection or rejection if it did not utilize competitive quotations. If the

NFE solicited competitive quotations and made an award to other than the lowest bidder, it must document its explanation for the award decision.

iv. Responsibility. A NFE must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the solicitation and contract. 2 C.F.R. § 200.318(h). This is a "go/no-go" determination. A NFE must give consideration to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. The NFE must document its responsibility determination for the winning bidder, and must (if applicable) also document its determination that the otherwise lowest bidder is not responsible. *See* Chapter IV, ¶ 6.

e. Procurement by Small Purchase Procedures. A NFE may use relatively simple and informal small purchase procedures when securing services, property, or other property where the aggregate dollar amount of the services, property, or other property does not exceed the simplified acquisition threshold, which is currently $150,000. NFEs adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. 2 C.F.R. §§ 200.88 and 320(b).

i. When Appropriate.

(1) Small purchase procedures may be used to acquire services and property where the aggregate dollar amount of the acquisition does not exceed the simplified acquisition threshold.

(2) The contracts should be fixed price or not to exceed cost-reimbursement contracts with assurances that the scope of work can be completed for less than the simplified acquisition threshold.

ii. Procedures. The following procedures apply to small purchases.

(1) Competition. The NFE must obtain price or rate quotations from an adequate number of qualified sources. What is an adequate number of sources will depend upon the facts and circumstances of the procurement, but in no case should this be less than three. 2 C.F.R § 320(b).

(2) Prohibited Divisions. A NFE must not split a larger procurement merely to bring the cost of a procurement under the simplified acquisition threshold. Similarly, a NFE may not intentionally limit the size of a procurement to only a portion of a known requirement in order to lower the cost of a procurement to under the simplified acquisition threshold and then, to fulfill the entire requirement, issue a follow-on change order that brings the procurement above the simplified acquisition threshold.

(3) Documentation. The NFE must document the procurement history as detailed in 2 C.F.R. § 200.318(i). *See* Chapter IV, ¶ 7. This should include an independent NFE estimate of the costs of the procurement that indicates the total estimated cost to fall below the simplified acquisition threshold.

(4) Responsibility. A NFE must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the solicitation and contract. 2 C.F.R. § 200.318(h). This a "go/no-go" determination. A NFE must give consideration to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. The NFE must document its responsibility determination for the winning bidder, and must (if applicable) also document its determination that the otherwise lowest bidder is not responsible. *See* Chapter IV, ¶ 6.

iii. Future Changes that Cause the Contract to Exceed the Simplified Acquisition Threshold.

(1) It may be the case that a NFE properly used small purchase procedures to acquire services or property below the simplified acquisition threshold, but later needs to modify the contract to an amount above the threshold to cover unforeseen circumstances or an unexpected overrun in the quantity of work.

(2) Such a change may be permissible under certain facts and circumstances, particularly where such a change falls within the scope of the original contract. The NFE should document its justification. FEMA will utilize this justification along with the independent NFE's estimate completed before the procurement in reviewing whether or not the NFE's decision to use small purchase procedures was permissible.

f. Procurement by Sealed Bids. Sealed bidding is a permissible method of procurement, where bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. 2 C.F.R. § 200.320(c).

i. When Appropriate. Sealed bidding is the preferred method for procuring construction if the following conditions apply. 2 C.F.R. § 200.320(c)(1).

(1) Specification. A complete, adequate, and realistic specification or purchase description is available.

(2) Adequate Price Competition. Two or more responsible bidders are willing and able to compete effectively for the business.

(3) Fixed Price Contract. The procurement lends itself to a firm fixed price contract.

(4) Price Determinative. The NFE selects the successful bidder principally on the basis of price, which includes the price-related factors included within the solicitation. *See* Chapter V, ¶ 2.d.ii.(5). Other than the responsibility determination, the NFE may not select a contractor on the basis of non-price related factors.

ii. Procedures. The following procedures apply to procurement by sealed bids. 2 C.F.R. § 200.320(c)(2).

(1) Public Advertisement. A local or tribal government must publicly advertise the invitation for bids. *Public advertisement is not a requirement for other NFEs*. 2 C.F.R. § 200.320(c)(2)(i).

(2) Solicitation from Adequate Sources. The NFE must solicit bids from an adequate number of known suppliers, providing them with sufficient response time before the date set for opening the bids. 2 C.F.R. § 200.320(c)(2)(ii). What is an adequate number of sources will depend upon the facts and circumstances of the procurement. Unlike small purchase procedures, FEMA has not defined an "adequate number" of qualified sources here, as obtaining at least three quotes.

(3) Invitation for Bids. The invitation for bids must define the items or services in order for the bidder to properly respond and must include any specifications and pertinent attachments. 2 C.F.R. § 200.320(c)(2)(ii).

(4) Bid Opening. The NFE must open the bids at the time and place prescribed in the invitation for bids. For local and Indian tribal governments, the bids must be publicly opened. Other NFEs are not required to open bids publicly. 2 C.F.R. § 200.320(c)(2)(iii).

(5) Firm Fixed Price Contract. The NFE will make a firm fixed price contract in writing to the lowest responsive and responsible bidder. 2 C.F.R. § 200.320(c)(2)(iv).

a. Price-Related Factors. Where specified in the bidding documents, the NFE may consider discounts, transportation costs, and life cycle costs in determining which bid is lowest. The NFE will only use payment discounts to determine the low bid when prior experience indicates such discounts are usually taken advantage of.

b. Incentives and Economic Adjustments. FEMA considers a fixed price incentive contract or inclusion of an economic price adjustment provision in a fixed price contract as

permissible if the NFE documents a rational basis for using those forms of fixed price contracts.

(6) Rejection of Bids. The NFE may reject any or all bids if it documents a sound reason for the rejection. 2 C.F.R. § 200.320(c)(2)(5).

(7) Documentation. The NFE must document the procurement history as detailed in 2 C.F.R. § 200.318(i). *See* Chapter IV, ¶ 7.

(8) Affirmative Steps. The NFE must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor area surplus firms are used when possible. The affirmative steps must include those set forth at 2 C.F.R. § 200.321(b). *See* Chapter V, ¶ 6.

(9) Responsibility. A NFE must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the solicitation and contract. 2 C.F.R. § 200.318(h). This is a "go/no-go" determination. A NFE to give consideration to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. The NFE must document its responsibility determination for the winning bidder, and must (if applicable) also document its determination that the otherwise lowest bidder is not responsible. *See* Chapter IV, ¶ 6.

g. Procurement by Competitive Proposals. Procurement by the competitive proposal method is an acceptable form of procurement, which is where more than one vendor submits an offer and the NFE awards either a fixed price or cost-reimbursement type contract. 2 C.F.R. § 200.320(d).

i. When Appropriate. A NFE will generally use this method when conditions are not appropriate for the use of sealed bids. FEMA considers the following as some of the possible factors that a NFE could use to justify procurement by competitive proposals.

(1) Types of Specifications and Other than Price-Related Factors. The procurement by competitive proposals method is used when the NFE cannot base the contract award exclusively on price or price-related factors due to the nature of the service or property to be acquired. When the NFE's material requirements are clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection and weighs against the need to use this procurement method. On the other hand, the less definitive the requirements, the more development work required, or the greater the performance risk, the more that technical capability, past performance, and prior

experience considerations may play a dominant role in source selection and weigh in favor of this procurement method.

ii. Procedures. The following procedures apply to procurement by competitive proposals. 2 C.F.R. § 200.319(d).

(1) Public Advertisement. The NFE must publicize the request for proposals. 2 C.F.R. § 200.319(d)(1).

(2) Solicitation from Adequate Sources. In addition to publicizing the request for proposals, the NFE must solicit proposals from an adequate number of qualified sources, providing them with sufficient response time before the date set for the receipt of proposals. 2 C.F.R. § 200.319(d). What is an adequate number of sources will depend upon the facts and circumstances of the procurement. Unlike small purchase procedures, FEMA has not defined an "adequate number" of qualified sources here, as meaning obtaining no less than three quotes. 2 C.F.R. § 200.320(c)(ii).

(3) Responsibility. A NFE must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the solicitation and contract. 2 C.F.R. § 200.318(h). A NFE must give consideration to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. The NFE must document its responsibility determination for the winning contractor, and must (if applicable) also document its determination that the otherwise lowest bidder is not responsible. *See* Chapter IV, ¶ 6.

(4) Evaluation Factors. The request for proposals must identify all evaluation factors and their relative importance. 2 C.F.R. § 200.319(d). The following provides several considerations for NFEs when developing evaluation factors:

a. The evaluation factors for a specific procurement should reflect the subject matter and elements that are most important to the NFE.

b. The evaluation factors may include such things as technical design, technical approach, length of delivery schedules, past performance, and quality of proposed personnel.

c. A NFE may use any one or a combination of source selection approaches as permitted under state, local, and tribal laws, regulations, and procedures, and these approaches will often differ based on the relative

importance of price or cost for the procurement.

d. If permitted by the NFE's written procurement procedures and applicable non-Federal laws and regulations, a NFE may award a contract to the offeror whose proposal offers the "best value" to the NFE. The solicitation must, in addition to the items described above, inform potential offerors that the award will be made on a "best value" basis, which should include a statement that the NFE reserves the right to award the contract to other than the lowest priced offeror.

e. Two examples of source selection approaches are "tradeoff" and "lowest price technically acceptable" ("LPTA") methods. Under the "tradeoff" process, a NFE may consider award to other than the lowest-priced offeror or other than the highest technically rated offeror. The process allows trade-offs among cost or price and non-cost factors and allows the NFE to accept other than the lowest priced proposal (meaning that the benefits of the higher priced proposal merit the additional cost). The LPTA process is similar to sealed bidding with the award going to the lowest priced offer that is technically acceptable. A cost-technical tradeoff is not used under the LPTA process—the award goes to the lowest price which meets the minimum technical standards. The technical factors, in other words, are go/no-go and rated only for acceptability (and not ranked or scored).

f. The request for proposals must identify evaluation factors and their relative importance, but need not disclose numerical or percentage ratings or weights.

g. FEMA does not require any specific evaluation factors or analytic process. Notwithstanding, the evaluation factors must support the purposes of the grant or cooperative agreement.

(5) Consideration. The NFE must consider any response to publicized requests for proposals to the maximum extent practical. 2 C.F.R. § 200.319(d)(1).

(6) Affirmative Steps. The NFE must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor area surplus firms are used when possible. The affirmative steps must include those set forth at 2 C.F.R. § 200.321(b). *See* Chapter V, ¶ 6.

(7) Evaluation Method. The NFE must have a written method for conducting technical evaluations of the proposals received and for selecting offerors. 2 C.F.R. § 200.319(d)(4).

a. When evaluating proposals, FEMA expects the NFE to consider all evaluation factors specified in its solicitation documents and evaluate offers only on the evaluation factors included in the solicitation documents.

b. The NFE may not modify its evaluation factors after proposals have been submitted without re-opening the solicitation.

c. In awarding a contract that will include options, FEMA expects the NFE to evaluate proposals for any option quantities or periods contained in the solicitation if it intends to exercise those options after the contract is awarded.

(8) Award. The NFE must make the award to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered. Price must be a factor evaluated by the NFE, unless the procurement is for architectural/engineering professional services. 2 C.F.R. § 200.319(d)(4).

(9) Documentation. The NFE must document the procurement history as detailed in 2 C.F.R. § 200.318(i). *See* Chapter IV, ¶ 7.

iii. Architectural and Engineering Services. A NFE may use competitive proposal procedures for qualifications-based procurement of architectural/engineering professional services.

(1) Price Not Used as an Evaluation Factor. Under this qualifications-based procurement, a NFE evaluates competitors' qualifications and selects the most qualified competitor for award, subject to negotiation of fair and reasonable compensation. 2 C.F.R. § 200.319(d)(5). The following provides amplifying guidance in the case of failed negotiations for compensation:

a. If failing to agree on a fair and reasonable price, the NFE may conduct negotiations with the next most qualified offeror.

b. Then, if necessary, the NFE will conduct negotiations with successive offerors in descending order until contract award can be made to the offeror whose price the NFE believes is fair and reasonable.

(2) Limitation. This method, where price is not used as an evaluation

factor, may only be used in procurement of architectural/engineering professional services. It cannot be used to purchase other types of services though architectural/engineering firms are a potential source to perform the proposed effort.

(3) Meaning of Architectural/Engineering Professional Services. FEMA considers the following to fall within the scope of architectural/engineering professional services:

a. Professional services of an architectural or engineering nature, as defined by applicable state law, and which the state law requires to be performed or approved by a registered architect or engineer.

b. Professional services of an architectural or engineering nature associated with design or construction of real property.

c. Other professional services of an architectural or engineering nature or services incidental thereto (including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals and other related services) that logically or justifiably require performance by registered architects or engineers or their employees.

d. Professional surveying and mapping services of an architectural or engineering nature.

h. Procurement by Noncompetitive Proposals. Procurement by noncompetitive proposals is an acceptable method of procurement under certain circumstances, where solicitation of a proposal occurs from only one source or a limited number of sources. 2 C.F.R. § 200.320(f).

i. When Appropriate. A NFE may use procurement by noncompetitive proposals only when one or more of the following circumstances apply.

(1) One Source. The item is only available from one source. An item or service is available from only one source when no other property or services will satisfy the NFE's requirements. 2 C.F.R. § 200.320(f)(1).

a. Examples. The following provide examples of some circumstances under which a NFE could consider property or services as available from only one source.

i. Unique Capability. The offeror demonstrates a unique or innovative concept or capability not available from another source. A unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to the NFE from only one source and has not in the past been available to the NFE from another source.

ii. Duplication of Costs. In the case of a follow-on award to an existing contractor already performing work, where there would be a substantial duplication of costs that would not be expected to be recovered through competition. This situation would arise, for example, if a contractor was in the middle of constructing a facility when the facility was damaged by a major disaster under the Stafford Act, and the eligible scope of work under the Public Assistance project award was to repair the facility to restore it to its pre-disaster condition.

iii. Patents or Restricted Data Rights. There are patent or data rights restrictions precluding competition.

b. Change Orders. When a NFE makes a change to an existing contract that is beyond the scope of the original contract (a cardinal change), then the NFE has made a sole source award that must be justified in the same manner as making an original award through solicitation of a proposal from only one source. *See* Chapter V, ¶ 8.

(2) Public Exigency or Emergency. The NFE determines that the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation. 2 C.F.R. § 200.320(f)(2).

a. Meaning of Exigency. FEMA defines an "exigency" as something that is necessary in a particular situation that requires or demands immediate aid or action. In these cases, the NFE would be seriously injured unless it performed the procurement in a noncompetitive manner.

b. Meaning of Emergency. FEMA defines an "emergency" as an unexpected and unusually dangerous situation that calls for immediate action or an urgent need for assistance or relief. One of the key distinctions between an "emergency"

and an "exigency" is that an emergency will typically involve a threat to life, public health or safety, improved property, and/or some other form of dangerous situation, whereas an exigency is not necessarily so limited.

c. Duration. Use of the public exigency or emergency exception **is only permissible during the actual exigent or emergency circumstances**. Once the exigent or emergency circumstances cease to exist, the NFE is expected to transition to a more appropriate method of contracting using full and open competition. Failure to properly transition to a more appropriate method of contracting at the cessation of the exigent or emergency circumstance has frequently been identified by the Department of Homeland Security ("DHS"), Office of Inspector General ("OIG") as problematic, resulting in frequent recommendations to de-obligate or disallow all or a portion of incurred costs.

d. Applicability to Categories of Work. The Federal procurement standards are not limited to the Public Assistance emergency work period under Category A or B. The Federal procurement standards apply to all categories of work.

(3) FEMA or Pass-Through Entity Approval. FEMA or the pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the NFE. While identified as a potential exception to full and open competition under the noncompetitive procurement process, approval for this exception has been exceptionally rare at both the FEMA and pass-through entity levels. NFEs that are considering the use and application of this exception, should first consult with their servicing FEMA Public Assistance Coordinator to ascertain whether this option is available and what steps are necessary to undertake its use. 2 C.F.R. § 200.320(f)(3).

(4) Competition Inadequate. The NFE determines that, after solicitation of a number of sources, competition is inadequate. 2 C.F.R. § 200.320(f)(4).

a. FEMA considers competition "inadequate" when a NFE has complied with all of the procurement standards and receipt of a single offer or bid, single responsive offer or bid, or no responsive bids or proposals is caused by conditions outside of the NFE's control.

b. FEMA will not, on the other hand, consider competition

inadequate where a NFE did not sufficiently publicize the requirement, solicited only a few sources that chose not to submit a proposal, set unduly restrictive specifications, and/or took arbitrary actions or failed to take other actions that resulted in the inadequate competition. In those cases, adequate competition may be attainable; however, the NFE failed to take the proper steps and actions to ensure such competition.

c. It is important for a NFE to document its justification for why there is inadequate competition and why it moved forward with a noncompetitive award without revising or cancelling the solicitation and re-soliciting offers or bids.

i. In making this justification, it may be necessary for the NFE to evaluate whether or not it sufficiently publicized the invitation for bids or requests for proposals and/or solicited an adequate number of firms.

ii. It may also be necessary to speak to those firms solicited to find out why they did not submit offers or bids. If the reason is an overly restrictive specification or delivery requirement, then the NFE would need to evaluate whether it should cancel the solicitation, change that specification to allow for more bids or offers, and re-solicit bids or offers. If the NFE chooses to move forward with the award in light of the restrictive specification, then the NFE should document in the procurement file why the restrictive specification or delivery requirement was necessary and could not be modified so as to enable additional competition.

(5) When Inappropriate. Procurement by noncompetitive proposals is not justified based on the NFE's failure to adequately plan its procurement, concerns about the amount of FEMA financial assistance available to support a procurement, or ability to save money.

(6) Procedures. The following procedures apply to a procurement through noncompetitive proposal:

a. Justification and Documentation. The NFE must document the procurement history as detailed in 2 C.F.R. § 200.318(i). *See* Chapter IV, ¶ 8. Of particular note, the NFE must adequately document its justification for the sole source contract in light of the requirement for full and open

competition.

b. Negotiation of Profit. The NFE must negotiate profit as a separate element of the price. 2 C.F.R. § 200.323(b).

c. Preaward Review. The NFE must submit proposed procurement documents to either FEMA or the pass-through entity as directed. *See* 2 C.F.R. § 200.324(b); Chapter I, ¶ 5.

(7) Affirmative Steps. Where there is sufficient justification for the NFE to use procurement through noncompetitive proposals, FEMA will generally consider it not possible for the NFE to take affirmative steps to assure that minority businesses, women's business enterprises, and labor area surplus firms are used under those circumstances.

3. METHODS OF PROCUREMENT – ADDITIONAL TOPICS

a. Design-Bid-Build. Constitutes the traditional system of construction in the United States. Involves the selection of an architect who completes a fully detailed design, solicitation of construction bids based on the 100 percent complete design, and the selection of the lowest eligible and responsible bidder to complete construction. In this process, the three phases of planning, design, and construction run sequentially and the construction contractor has no involvement until the construction stage.

i. Use Permitted. FEMA allows a NFE to use design-bid-build procurement procedures under FEMA awards if permitted by state, local, and/or Indian tribal laws and regulations.

ii. Procurement Process. Involves two (2) separate and distinct solicitations and contract awards. The first solicitation and contract award is for the complete building designs, drawings, and/or specifications. This is followed by a second solicitation and contract award for construction associated with the complete building designs, drawings, and/or specifications. Both procurements must comply with all of the procurement standards of the Uniform Rules.

iii. Prohibition. 2 C.F.R. § 200.319 prohibits a contractor that is awarded a contract to develop designs, drawings, and/or specifications from competing for and receiving award for the associated construction portion of the work.

b. Two-Step Procurement Procedures. A two-step procurement procedure is a selection method used during either procurement by competitive proposals or sealed bidding in which the NFE selects a limited number of contractors during step 1 to submit detailed proposals or bids for step 2.

i. Use Permitted. FEMA allows a NFE to use two-step procurement procedures under FEMA awards if permitted by state, local, and/or Indian tribal laws and regulations.

ii. Procurement Process. The procurement must comply with all of the procurement standards of the Uniform Rules. In addition, FEMA expects that the NFE's procurement will, at a minimum, meet the following requirements.

(1) Review of Technical Qualifications and Approach. The first step consists of a review of the prospective contractors' technical approaches to the NFE's request and technical qualifications to carry out that approach. The NFE may then narrow the competitive range to prospective contractors that demonstrate a technically satisfactory approach and have satisfactory qualifications.

(2) Review of Bids and Proposals Submitted by Qualified Prospective Contractors. The second step consists of soliciting and reviewing complete proposals (including price) or bids submitted by each prospective contractor that the NFE has determined to be qualified during step 1. The NFE should attempt to obtain bids or quotations from as many qualified sources as possible, but should solicit bids or proposals from at least three qualified sources. In the case where the NFE conducts a qualifications based procurement during step 2, the NFE must evaluate contractors on price as well as any non-price evaluation factors.

c. Design-Build Contracts. The design-build procurement method consists of contracting for design and construction simultaneously with a contract award to a single contractor or contractor team that will be responsible for both the project's design and construction.

i. Use Permitted. FEMA allows the use of "design-build" contracts, if permitted by state, local, or tribal laws and regulations, under FEMA awards involving construction and design. The use of such a method must meet the following minimum requirements.

ii. Procurement Method Determined by Value. The NFE must separate the various contract activities to be undertaken and classify them as either design or construction, and then calculate the estimated total value of each. FEMA expects the NFE to use the procurement method appropriate for the services having the greatest cost.

(1) The construction costs normally comprise a greater estimated total value than design costs. If so, then FEMA expects the NFE to use procurement by competitive proposals or sealed bidding for the entire procurement rather than a qualifications-based procurement

by competitive proposals.

(2) If architectural and engineering services are predominant (which is usually not the case), then the NFE may use sealed bidding, procurement by competitive proposals, or a qualifications-based procurement by competitive proposals.

iii. Selection Processes. A NFE may use a one-step or two-step procurement process when conducting a design-build procurement.

d. Construction Manager at Risk (CMAR) Delivery Method. Under a CMAR delivery method, a project owner conducts a procurement of a construction manager firm early in or before the design process that will later serve as the project's general contractor. The construction manager, during the design and planning process, is the equivalent of an agent or consultant of the project owner and conducts early coordination with the architect, project cost, estimating, value engineering, construction scheduling, and constructability reviews. After the project owner selects a design, the construction manager and the NFE negotiate a Guaranteed Maximum Price (GMP).[8] If a GMP is agreed upon, the CM then acts as the equivalent of a general contractor during the construction phase to select, schedule, and sequence subcontractors to complete the required construction work. (However, jurisdictions differ as to the purpose and extent of performance required during the construction phase, which provides an added layer of complexity in defining a uniform rule pertaining to the CMAR delivery method.)[9]

i. Use Permitted. The Federal procurement standards do not expressly prohibit the potential use of the CMAR delivery process by a NFE. However, because there is no uniform CMAR standard across the different NFEs, particularly in regards to the construction phase and the evaluation thereof, FEMA will review the use of the CMAR delivery method on a case-by-case basis to ensure that the method utilized conforms to the requirements outlined by the Federal procurement standards for the solicitation and award of contracts using federal disaster assistance funds – even where use of the CMAR delivery method is otherwise permitted by state, local, and/or Indian tribal laws and regulations.

ii. Procurement Process. NFEs will generally issue a Request for

[8] The GMP includes hard (estimated) costs of construction, associated fees, and contingencies applicable to the construction phase of the project. If agreed upon by the CM and the NFE, any cost overruns over the GMP (that are not due to change orders from the NFE) will be borne by the CM, hence, the CM "at risk." Conversely, any savings under the GMP will be attributed to the NFE and not to the CM, unlike traditional fixed price/lump sum contracts.

[9] In other words, some CMAR processes provide for the CM to directly perform the work once a GMP is agreed upon, while other CMAR processes prohibit the CM from performing such work itself, and require the CM to either subcontract out the work or conduct solicitations, evaluations and awards for construction work on the behalf of the NFE.

Qualifications (RFQ)/Request for Proposals (RFP) for construction management at risk preconstruction and construction management services and require prospective offerors to submit both a price and non-price related proposal – the extent and thoroughness of which differs between jurisdictions.

(1) Preconstruction Phase. This phase includes the performance of tasks such as developing professional construction cost estimates and schedules, developing value-added concepts and value engineering reviews, providing advice relative to the overall project budget and constructability reviews; collaborating with project architects on design, and preparing detailed estimates of the schematic design.

(2) Construction Phase. There is no uniformity between NFE jurisdictions concerning this phase of the CMAR delivery method. Some jurisdictions prohibit the Construction Manager (CM) from performing the construction work itself – instead requiring the CM to use its construction and management expertise to procure and manage subcontractors and trade subcontractors to construct the project more efficiently – while other jurisdictions have no such prohibition. Accordingly, in situations such as these, questions are appropriately raised as to the propriety of the solicitation, evaluation, and award of CMAR contracts, particularly when it comes to the construction phase of work.

4. CONTRACT COST OR PRICE

a. Cost or Price Analysis. A NFE must perform a cost or price analysis in connection with every procurement action in excess of the simplified acquisition threshold, including contract modifications. 2 C.F.R. § 200.323(a).

i. Method and Degree of Analysis and Independent Estimate. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the NFE must make independent estimates before receiving bids or proposals. 2 C.F.R. § 200.323(a).

ii. Amplifying Guidance. FEMA provides the following guidance as to the meaning and use of cost and price analysis.

(1) Price Analysis. A price analysis is the examination and evaluation of a proposed price without evaluating its separate cost elements and proposed profit.

a. This is the form of analysis typically used when acquiring commercial items or when using the procurement through sealed bidding method.

b. The NFE is responsible for selecting and using whatever price analysis techniques will ensure a fair and reasonable price. Some of the ways in which a price analysis could be performed include comparing offers with one another; comparing prior proposed prices and contract prices with current proposed prices for the same or similar goods or services; comparing offers with competitive published price lists, published market prices, or similar indexes; comparing proposed prices with independently developed estimates of the NFE; and comparing proposed prices with prices of the same or similar items obtained through market research.

(2) Cost Analysis. A cost analysis is the review and evaluation of the separate cost elements (such as labor hours, overhead, materials, etc.) and proposed profit in a proposal in order to determine a fair and reasonable price for a contract and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

a. This is the form of analysis typically used to establish the basis for negotiating contract prices when using the procurement through competitive proposals method; using procurement through sealed bidding where price competition was not sufficient; making contract modifications; and any other case when a price analysis, by itself, does not ensure price reasonableness.

b. The NFE is responsible for selecting and using whatever cost analysis techniques will ensure a fair and reasonable price. Some of the ways in which a cost analysis could be performed include verification of the cost or pricing data and evaluation of cost elements and comparison of costs proposed for individual cost elements with previously incurred actual costs and independently developed estimates by the NFE.

b. Negotiation of Profit. A NFE 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 a 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. 2 C.F.R. § 200.323(b).

c. Cost Plus Percentage of Cost. A NFE is prohibited from using the cost plus

percentage of cost and percentage of construction cost methods of contracting. 2 C.F.R. § 200.323(d).

i. FEMA considers a cost plus a percentage of cost or percentage of construction cost contract to be a contract containing some element that obligates the NFE to pay the contractor an amount (in the form of either profit or cost), undetermined at the time the contract was made and to be incurred in the future, based on a percentage of future costs. The inclusion of a ceiling price does not make these forms of contracts acceptable.

ii. FEMA will use the following four-part analysis to determine if a certain contract is a prohibited cost plus percentage of cost or percentage of construction cost contract:

(1) Payment is made on a pre-determined percentage rate;

(2) The pre-determined percentage rate is applied to actual performance costs;

(3) The contractor's entitlement is uncertain at the time of contracting; and

(4) The contractor's entitlement increases commensurately with increased performance costs.

iii. The prohibition against a cost plus percentage of cost and percentage of construction cost applies to subcontracts of the contractor in the case where the prime contract is a cost-reimbursement type contract or subject to price redetermination.

d. Estimated Costs. Costs or prices based on estimated costs for contracts under the FEMA award are allowable only to the extent that costs incurred or cost estimates included in the negotiated prices would be allowable for the NFE under the Federal cost principles at 2 C.F.R. Part 200, subpart E. The NFE may reference its own cost principles that comply with the Federal cost principles.

5. BONDING REQUIREMENTS

a. General. There are bonding requirements for ***construction or facility improvement contracts*** exceeding the simplified acquisition threshold. 2 C.F.R. § 200.325.

i. A bond is a written instrument executed by a contractor (the "principal"), and a second party ("the surety" or "sureties") to assure fulfillment of the principal's obligations to a third party (the "obligee"), identified in the bond. If the principal's obligations are not met, the bond assures payment, to the extent stipulated, of any loss sustained by the obligation.

ii. FEMA or the pass-through entity may accept the bonding policy and requirements of the NFE provided that FEMA or pass-through entity has made a determination that the Federal interest is adequately protected. This means that FEMA will approve the bonding policy and requirements of a recipient, and that the recipient will approve the bonding policy and requirements of its subrecipients.

iii. If FEMA or the pass-through entity has not made such a determination, then the NFE must meet the bid guarantee, performance bond, and payment bond requirements described in ¶ 5.b through 5.d.

b. Bid Guarantee. Each bidder must provide a bid guarantee 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 by the NFE, execute such contractual documents as may be required within the time specified. 2 C.F.R. § 200.325(a).

c. Performance Bond. There must be a performance bond on the part of the contractor for 100% of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract. 2 C.F.R. § 200.325(b).

d. Payment Bond. There must be 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 for all persons supplying labor and material in the execution of work provided for in the contract. 2 C.F.R. § 200.325(c).

e. Not Construction or Facility Improvement. If the NFE is procuring neither construction nor facility improvement services, then there are no bonding requirements imposed by the Uniform Rules or this document.

6. CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR AREA SURPLUS FIRMS

a. Requirement. A NFE must take all necessary, affirmative steps to assure that small and minority businesses, women's business enterprises, and labor area surplus firms are used when possible. 2 C.F.R. § 200.321(a). *These steps are in addition to full and open competition* and must include, at a minimum, the following six affirmative steps.

i. Solicitation Lists. The NFE must place small and minority businesses and women's business enterprises on solicitation lists. 2 C.F.R. § 200.321(b)(1).

ii. Solicitations. The NFE must assure that it solicits small and minority businesses and women's business enterprises whenever they are potential sources. 2 C.F.R. § 200.321(b)(2).

iii. Dividing Requirements. The NFE must divide total requirements, *when economically feasible*, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises. 2 C.F.R. § 200.321(b)(3).

iv. Delivery Schedules. The NFE must establish delivery schedules, *where the requirement permits*, which encourage participation by small and minority businesses and women's business enterprises. 2 C.F.R. § 200.321(b)(4).

v. Obtaining Assistance. The NFE must use 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. 2 C.F.R. § 200.321(b)(5).

vi. Prime Contractor Requirements. The NFE must require the prime contractor, if subcontracts are anticipated or let, to take the five affirmative steps described in ¶ 6.a.i through 6.a.v above. 2 C.F.R. § 200.321(b)(6).

b. Additional Guidance.

i. Meaning of Terms. The Uniform Rules do not define the terms small business, minority business, women's business enterprises, and labor area surplus firms. FEMA will use the following meaning of the terms when evaluating compliance with the requirements of the Uniform Rules. If state, local, or tribal law and procedures provide different meanings of small business, women's business enterprise, and minority business, then FEMA may accept those meanings.

(1) Small Business. A business that is independently owned and operated, not dominant in the field of operation in which it is bidding on NFE contracts, and qualified as a small business under the Small Business Administration criteria and size standards at 13 C.F.R. Part 121.

(2) Women's Business Enterprise. A business enterprise that is: (a) at least 51 percent owned by one or more women or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more women; and (b) whose management and daily

operations are controlled by one or more women.

(3) Minority Business. A business that is (a) at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more minority group members; and (b) whose management and daily operations are controlled by one or more minority group members.

(4) Labor Area Surplus Firm. A labor surplus area firm is one that, together with its first tier subcontractors, will perform substantially in labor surplus areas. The Department of Labor's Employment and Training Administration has defined labor surplus areas (LSA) as localities that have a "civilian average annual unemployment rate during the previous two calendar years of 20 percent or more above the average annual civil unemployment rate for all states" during that same period. 20 C.F.R. §§ 654.4-654.5. More information about LSAs is available at 20 C.F.R. pt. 654, subchapter A as well as on this website: https://www.doleta.gov/programs/laborsurplus02.cfm. The Department of Labor has also issued a list for FY 2016 of all the LSAs: https://www.doleta.gov/programs/lsa.cfm.

ii. Documentation of Compliance. A NFE must document its compliance with the six affirmative steps. As it relates to the prime contractor requirements, FEMA recommends the inclusion of the requirement in the solicitation and also in the contract.

iii. Set-Asides.

(1) A set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to small businesses, minority business, women's business enterprises, and/or labor area surplus firms. FEMA considers set-asides or percentages as impermissible (unless otherwise authorized by Federal law).

(2) Noticeably, the Federal procurement standards do NOT mandate a set aside of a solicitation or reservation of an award to any socioeconomic contractor, but merely that they are used, when possible, e.g. in other words, given the opportunity to compete for such awards.

(3) Indian tribes may use preferences pursuant to the requirements and conditions set forth in the Indian Self-Determination and Education Assistance Act, Pub. L. No. 93-638, 88 Stat. 2205 (1975) (codified as amended at 25 U.S.C. § 450 *et seq*.).

7. PROCUREMENT OF RECOVERED MATERIALS

a. Requirement. A NFE 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, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). 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 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. 2 C.F.R. § 200.322.

b. Additional Background.

i. Inapplicability to Indian Tribes and Private Parties. The requirements of Section 6002 and its implementing regulations at 40 C.F.R. Part 247 do not apply to procurements by Indian tribes or private party NFEs (such as hospitals, institutions of higher education, and non-profit organizations).

ii. Product Designation and Associated Procurement Requirement. EPA is required to designate products that are or can be made with recycled materials, and to recommend best practices for buying these products. EPA has currently designated 61 products across eight categories, which are construction products, landscaping products, non-paper office products, paper products, park and recreation products, transportation products, vehicular products, and miscellaneous products. *See* 40 C.F.R. Part 247, subpart B.

(1) Once EPA designates a product, Section 6002(c)(1) of the Solid Waste Disposal Act (codified as amended at 42 U.S.C. § 6962(c)(1)) requires a NFE to procure that designated item composed of the highest recovered material content level practicable, consistent with maintaining a satisfactory level of competition, considering such guidelines. *See also* 40 C.F.R. § 247.2(d).

(2) A NFE may decide not to procure such items if they are not reasonably available in a reasonable period of time; fail to meet reasonable performance standards; or are only available at an unreasonable price. *See* Section 6002(c) of the Solid Waste Disposal Act (codified as amended at 42 U.S.C. § 6962(c)); 40 C.F.R. § 247.2(d).

iii. Affirmative Procurement Program. Section 6002(i) of the Solid Waste Disposal Act (codified as amended at 42 U.S.C. § 6962(i)) provides that each NFE that purchases items designated by EPA must establish an affirmative procurement program, containing four specific elements, for procuring such items containing recovered materials to the maximum extent practicable. *See also* 40 C.F.R. § 247.6. The four required elements of the affirmative procurement program are:

(1) Preference program for purchasing the designated items;

(2) Promotion program;

(3) Procedures for obtaining estimates and certifications of recovered materials content and for verifying the estimates and certifications; and

(4) Annual review and monitoring of the effectiveness of the program

iv. Solid Waste Disposal Services. Section 6002(f) of the Solid Waste Disposal Act (codified as amended at 42 U.S.C. § 6962(f)) requires a NFE, to the maximum extent practicable, manage or arrange for the procurement of solid waste management services in a manner which maximizes energy and resource recovery.

v. Certifications. Section 6002(c)(3) of the Solid Waste Disposal Act (codified as amended at 42 U.S.C. § 6962(c)(3)) and 40 C.F.R. § 247.4 provide that a NFE must require that its vendors:

(1) Certify that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by applicable specifications or other contractual requirements; and

(2) Estimate the percentage of the total material utilized for the performance of the contract which is recovered materials (for contracts greater than $100,000).

8. CHANGES

a. General. There are many reasons why a NFE may wish to make changes to an existing contract. For example, during performance, changes may be required in order to fix inaccurate or defective specifications, react to unforeseen circumstances, or otherwise modify the work to ensure the contract meets NFE requirements.

b. NFE Responsibilities. The NFE is responsible for issuing, evaluating, and making necessary decisions involved any change to its third party contracts and any change orders it may issue. The NFE is also responsible for evaluating and making the necessary decisions involving any claim of a constructive change.

c. Cardinal Change.

i. A cardinal change is a significant change in contract work (property or services) that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract.

ii. FEMA considers a cardinal change to a contract to be a noncompetitive award and will evaluate whether the NFE meets the necessary conditions precedent for using the procurement through noncompetitive proposal method.

iii. A change within the scope of the contract (sometimes referred to as an "in-scope" change) is not a cardinal change. Nothing restricts a NFE from exercising reasonable freedom to make minor adjustments contemplated fairly and reasonably by the parties when they entered into the contract.

d. Evaluation of Changes. FEMA will, in determining whether the NFE has made a prohibited cardinal change, evaluate whether the change is "within the general scope of the contract" and "within the scope of competition."

i. Scope of the Contract. FEMA will, in determining whether changes are beyond the scope of the contract, usually compare the total work performed by the contractor to the work called for by the original contract. This includes evaluating the nature of the work being performed and also the amount of effort the contractor is required to perform in order to evaluate the cumulative impact on the contract's quantity, quality, costs, and delivery terms.

ii. Scope of Competition. FEMA will, in determining whether changes are beyond the scope of competition, usually evaluate whether there is a material difference between the modified and original contract that was originally competed, to include considering whether the solicitation for the original contract adequately advised offerors of the potential for the type of changes at issue or whether the changes are of a nature that potential offerors would have reasonably anticipated them.

iii. In both evaluations, FEMA has not adopted a specific detailed list of acceptable contract changes, as cardinal changes cannot be easily established by setting specific objective and measurable threshold criteria that would apply in all cases. Such evaluations will be conducted on a case-by-case basis.

e. Changes Clause. FEMA recommends that NFEs incorporate a "changes clause" in their contracts. A changes clause is one that permits the NFE contracting officer to make unilateral changes, in designated areas, within the general scope

of the contract, to be followed by such equitable adjustments in the price and delivery schedule as the changes make necessary.

CHAPTER VI

OTHER PROCUREMENT METHODS AND ADDITIONAL TOPICS

1. FEDERAL SUPPLY SCHEDULES

a. Background. GSA establishes long-term government-wide multiple award schedule ("MAS") contracts with commercial firms to provide access to millions of commercial products and services at volume discount pricing. The MAS contracts, also referred to as GSA Schedule and Federal Supply Schedule contracts, are indefinite delivery, indefinite quantity contracts.

b. Permissible Use of Federal Supply Schedules – Disaster Purchasing.

i. Federal law authorizes "state and local governments" access to buy goods and services from GSA Federal Supply Schedules to facilitate recovery from a major disaster declared by the President under the Stafford Act; facilitate disaster preparedness or response; or facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack. 40 U.S.C. § 502(d)(1).

ii. The Department of Homeland Security has determined that all of the products and services available under GSA Federal Supply Schedules qualify as those that could be used in preparation or response to all disasters, as well as recovery from major disasters declared by the President, or recovery from terrorism or nuclear, biological, chemical, or radiological attack. 40 U.S.C. § 502(d)(2).

iii. Participation by a firm that sells to the Federal Government through the schedule is voluntary with respect to a sale to the state or local government through such supply schedule. 40 U.S.C. § 502(d)(1).

iv. Key Definitions.

(1) State and Local Governments. Only states or local governments may access and buy goods and services from GSA Federal Supply Schedules. A NFE falling outside the definition of a state or local government is not authorized to use GSA Federal Supply Schedules pursuant to 40 U.S.C. § 502(c) or (d).

a. The term "state or local government" includes any state, local, regional, or tribal government, or any instrumentality thereof (including any local educational agency or institution of higher education). 40 U.S.C. § 502(c)(3)(A).

b. The term "tribal government" means: (1) the governing body of any Indian tribe, band, nation, or other organized

group or community located in the continental United States (excluding the State of Alaska) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, and (2) any Alaska Native regional or village corporation established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 *et seq*.). 40 U.S.C. § 502(c)(3)(B).

c. The term "local educational agency" has the meaning given that term in section 8013 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. § 7713). 40 U.S.C. § 502(c)(3)(C).

d. The term "institution of higher education" has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. § 1001(a)). 40 U.S.C. § 502(c)(3)(D).

(2) Preparedness, Response, and Recovery. State and local governments may buy goods and services from GSA Federal Supply Schedules in preparation or response to all disasters, facilitate *recovery* from a major disaster declared by the President under the Stafford Act; or facilitate *recovery* from terrorism or nuclear, biological, chemical, or radiological attack.

a. "Preparedness" means actions that involve a combination of planning, resources, training, exercising, and organizing to build, sustain, and improve operational capabilities. Preparedness is the process of identifying the personnel, training, and equipment needed for a wide range of potential incidents, and developing jurisdiction – specific plans for delivering capabilities when needed for an incident. U.S. General Services Administration, *Disaster Purchasing FAQs.*

b. "Response" means immediate actions to save lives, protect property and the environment, and meet basic human needs. Response also includes the execution of emergency plans and actions to support short-term recovery. U.S. General Services Administration, *Disaster Purchasing FAQs.*

c. "Recovery" means the development, coordination, and execution of service- and site-restoration plans; the reconstitution of government operations and services; individual, private-sector, nongovernmental, and public-assistance programs to provide housing and to promote

restoration; long-term care and treatment of affected persons; additional measures for social, political, environmental, and economic restoration; evaluation of the incident to identify lessons learned; post incident reporting; and development of initiatives to mitigate the effects of future incidents. U.S. General Services Administration, *Disaster Purchasing FAQs.*

c. Permissible Use of Federal Supply Schedules – Information Technology, Law Enforcement, Security, and Certain Other Related Items.

i. Federal law authorizes state and local governments access to buy information technology ("IT") through GSA's Federal Supply Schedule, which includes automated data processing equipment (including firmware), software, property, support equipment, and services (as contained in Federal supply classification code group 70). 40 U.S.C. § 502(c)(1)(A).

ii. Federal law also authorizes state and local governments access to buy alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services (as contained in Federal supply classification code group 84 or any amended or subsequent version of that Federal supply classification group). 40 U.S.C. § 502(c)(1)(B).

iii. Participation by a firm that sells to the Federal Government through the supply schedule shall be voluntary with respect to a sale to the state or local government through such supply schedule. 40 U.S.C. § 502(c)

iv. Key Definitions. The definitions of state and local government, tribal government, local educational agency, and institution of higher education are set forth in Chapter VI, ¶ 1.b.iv(1).

d. Ordering Procedures and Additional Information.

i. Federal law requires that all users of Federal supply schedules, including non-Federal users, shall use the schedules in accordance with the ordering guidance provided by the GSA Administrator. 40 U.S.C. § 502(f).

ii. GSA has provided guidance that a NFE must follow its own procurement procedures when ordering goods and services from the GSA Federal Supply Schedules. In addition to ensuring compliance with its own procurement procedures, a NFE is encouraged—but not required—to use GSA's Schedule Ordering Procedures to ensure competition and to receive best value from GSA Federal Supply Schedule contractors. *See* U.S. General Services Administration, *Disaster Purchasing FAQs* and *Cooperative Purchasing FAQs*. These ordering procedures can be found

at 48 C.F.R. § 8.405-1 (Ordering Procedures for Property and Services Not Requiring a Statement of Work) and § 8-405-2 (Ordering Procedures for Services Requiring a Statement of Work).

iii. Orders placed under the Disaster Purchasing program must include the following statement: "This order is placed under GSA Schedule number _____ under the authority of the GSA Disaster Purchasing program. The products and services purchased will be used in preparation or response to disasters or recovery from major disaster declared by the President, or recovery from terrorism or nuclear, biological, chemical, or radiological attack."

iv. If a NFE uses the GSA ordering procedures, *it will have fulfilled the requirements for full and open competition*. The NFE must also ensure that all required clauses in 2 C.F.R. § 200.326 are included in the contract and determine whether the GSA price is reasonable. The NFE may seek a lower price than that published on the schedules.

v. If a NFE does not follow the GSA ordering procedures, it must at least follow ordering procedures that meet the minimum requirements for full and open competition.

2. USE OF EXISTING CONTRACTS

a. Background. A NFE may wish to use an existing contract in order to perform work under a FEMA award. FEMA considers an "existing contract" as a contract that, when formed, was intended to be limited to the parties, and does not include state, local, or tribal purchasing schedules or purchasing contracts.

b. Permissible Use of Existing Contracts. FEMA permits a NFE to use an existing contract in the following circumstances:

i. The NFE originally procured the contract in full compliance with the procurement standards under the Uniform Rules.

ii. The scope of work to be performed falls within the scope of work of the original contract and there are no cardinal changes.

iii. The scope of work of the contract as originally procured did not exceed the amount of property and services required to meet the NFE's original, reasonably expected needs.

(1) The Uniform Rules require the NFE to establish procedures to avoid the purchase of unnecessary or duplicative items. 2 C.F.R. § 200.318(d).

(2) The NFE should only contract for its current and reasonably expected needs under the FEMA award, and may not add

quantities or options to contract for solely for the purpose of a potential use at a later date. Therefore, an existing contract could have an improper, original scope if the NFE added excess capacity in the original procurement primarily for its future use. Moreover, an existing contract with an overbroad scope of work may lead to unreasonable pricing and should not be used.

(3) The quantity of property or services a NFE reasonably believes it may need at the time of contract award could decrease due to changed circumstances or other reasons. In those situations, the NFE may use the excess contract authority to perform work under the FEMA award.

c. Advance Contracts. A NFE may award advance contracts, also referred to as prepositioned contracts or pre-awarded contracts, before an incident occurs for the potential performance of work under the Public Assistance Grant Program under a Stafford Act emergency or major disaster.

i. This approach enables a NFE to conduct a deliberate procurement process outside of the pressure and immediate demands of an incident and also helps to ensure that the NFE has a contractor(s) ready to perform work very quickly after an incident occurs when needed most.

ii. The use of such contracts is permissible so long as the circumstances below are met:

(1) The NFE originally procured the contract in full compliance with the procurement standards under the Uniform Rules.

(2) The scope of work originally procured must not exceed the reasonably expected needs during a future declaration.

(3) The scope of work performed must fall within the scope of work of the original contract and there are no cardinal changes.

(4) The pricing structure must be reasonable.

a. The contract price may come at a premium based on the need for the contractor to be able to perform services with little or no notice. Such a pricing structure is not, per se, unreasonable, although FEMA will scrutinize premium prices for work. For example, FEMA will scrutinize such work at premium prices extending beyond the period of time in which the NFE could have completed a competitive procurement following the declaration and the winning contactor begun work at non-premium prices.

b. The contract price may have built-in contingencies that result in unreasonable pricing for the work to be performed.

For example, a state could procure a statewide debris removal contract that is available for use by all state agencies and also all local governments in the state. Even assuming the procurement was conducted in full compliance with the Uniform Rules for non-state recipients and subrecipients and consistent with Chapter VI, ¶ 2.c.ii.(1)-(3), the contract would presumably have unit pricing that builds in a contractor's costs for potential debris removal anywhere in the state and on a large-scale basis. This means that the application of such a rate to a particular jurisdiction—where the scope of work is very narrow and the market rate for such services are less—may result in unreasonable pricing as applied to that particular jurisdiction. While this may be the case, per 2 C.F.R. § 200.404, costs are not unreasonable simply because there may have been a method whereby the recipient could have received a better price. A finding of "unreasonable costs" must be based on a determination that the costs incurred appear to be unreasonable because they do not reflect the actions a prudent person would take in the circumstances.

iii. Permissibility of Use of Contracts Awarded Under the Old Procurement Standards After the Implementation of the Uniform Rules.

(1) If a prepositioned (advanced/pre-awarded) contract was properly awarded in accordance with the old Federal procurement standards found at 44 C.F.R. pt. 13 – and to a lesser extent, 2 C.F.R. pt. 215 – on a general basis, the NFE would not likely be required to necessarily re-solicit or re-award the existing contract for use during a disaster or emergency declaration issued after December 26, 2014. If the existing contracts were properly solicited and awarded under the old procurement standards at 44 C.F.R. § 13.36(a)-(i), they'll likely be in compliance when it comes to using these existing contracts today and maintaining the potential for maximum reimbursement of eligible expenses – at least from a purely procurement-related perspective. The final determination of course will need to be made on a case-by-case basis.

(2) The old procurement standards found at 44 C.F.R. § 13.36(a)-(i) served as the basis for the new procurement standards identified at 2 C.F.R. §§ 200.317-200.326. However, with few exceptions, the new procurement standards are much more lenient than the older standards. If for example, the competition requirements, socioeconomic requirements and non-competitive proposal requirements were met under the prior rules, they would most likely survive any scrutiny under the current rules. Many of the requirements under the Uniform Rules were carried over from the old standards found at 44 C.F.R. § 13.36(b)-(i). For example, the

competition requirement (with the exception of the prohibition on award to contractors that assist in the development of a specification or requirement, Invitations for Bid or Requests for Proposals from competing for and receiving that very same contract award) and the socioeconomic standards are identical. Few requirements are more onerous such as the prohibition on award mentioned immediately above, while most changes are in fact more lenient, such as the elimination of the two-step process of analysis under non-competitive proposals, involving a preliminary determination as to whether any other contract method is infeasible for use under the four contemplated circumstances (only one source, exigent/emergency circumstances, FEMA or pass through entity pre-approval, or inadequate competition), or requirement to conduct cost or price analysis only where procurements are in excess of the simplified acquisition threshold.

(3) As indicated above, contracts that are found to have been properly solicited and awarded IAW the old procurement standards will most likely meet the current standards, with two noticeable potential exceptions:

a. 2 C.F.R. § 200.319 – prohibiting a contractor from developing the specifications and requirements; Invitation for Bids or Request for Proposals; and competing for and receiving the subsequent award. This prohibition wasn't specifically addressed in the old regulations. If this situation exists in the existing contract, it would be difficult to impossible to cure this deviation in order to ensure that the existing contract meets the requirements of the current procurement standards.

b. 2 C.F.R. § 200.326 – requiring each purchase order or contract to include certain contract provisions. The contract provisions required by the new procurement standards have been revised in subtle ways. It would be a matter of local, state, and tribal analysis to determine whether the current contract provisions could be added through a contract modification to the existing contract and still remain within scope.

(4) As the differences between the new standards and the old procurement standards for Institutions of Higher Education, Hospitals, and certain Private Non-profits has changed more drastically with the conversion to the Uniform Rules, use of existing contracts for these types of entities that were awarded under the old procurement standards would necessarily require a more intensive analysis by these entities to ensure that the existing contracts were solicited and awarded in a manner that would have

met the new procurement standards.

(5) Additionally, while states have fewer requirements under the Federal procurement standards than other entities, existing contracts awarded by a state would need to be analyzed on a case-by-case basis in order to determine whether they meet the new procurement standards at 2 C.F.R. § 200.317, requiring compliance with the new contract provisions found at 2 C.F.R. § 200.326.

(6) However, in the absence of such confirmations, the grace period available at 2 C.F.R. § 200.110 could be exercised by a NFE, in accordance with the Uniform Rules' requirements for doing so, with the existing contracts (compliant with the old procurement standards but not the new) continuing to be used during the two additional fiscal years associated with the grace period, while follow on contracts were solicited and awarded pursuant to the new procurement standards. Under this scenario, the NFE would have an additional two fiscal years after the Uniform Rules went into effect on December 26, 2014 to get its procurement systems and contracts in line with the new standards.

iv. Impermissible Use of Existing Contracts. A NFE may not use FEMA assistance to finance cardinal changes (e.g. out of scope changes – after-the-fact addition of parties able to use the contract, changes in the type or extent of work to be performed, use of the contract in manner and/or duration that was not originally anticipated, etc.) of an existing contract for its use under a subsequent FEMA award.

3. JOINT PROCUREMENTS

a. Background. The Uniform Rules provide that—to foster greater economy and efficiency and in accordance with efforts to promote cost-effective use of shared services across of the Federal government—a NFE 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. 2 C.F.R. § 200.318(e). FEMA has interpreted this regulation as encouraging NFEs to collaborate in joint procurements.

b. Meaning of Joint Procurement. FEMA uses the term "joint procurement" to mean a method of contracting in which two or more NFEs agree from the outset to use a single solicitation document and enter into a single contract with a vendor for delivery of property or services in a fixed quantity, even if expressed as a total minimum or total maximum. This is typically done to obtain advantages unavailable for smaller procurements, and a joint procurement is separate and distinct from a purchasing schedule.

c. Compliance with Uniform Rules. When procuring goods or services using a joint procurement, the NFEs must comply with all applicable procurement standards

set forth in the Uniform Rules and detailed in this document.

d. Responsibilities under the Joint Procurement. The NFE responsible for undertaking the joint procurement may, upon contract award, assign to the other participants responsibilities for administering those parts of the contract affecting their property or services. Participation in a joint procurement, however, does not relieve any participating NFE from the requirements and responsibilities it would have if it were procuring the property or services itself, and does not relinquish responsibility for the actions of other participants merely because the primary administrative responsibility for a particular action resides in another NFE other than in itself. In other words, each party taking action under a joint procurement, must ensure that all applicable Federal procurement standards are met in order to maximize the potential for reimbursement for all eligible expenses incurred under the procurement.

e. Joint Procurements: Statewide Debris Removal Contracts. A state may establish a statewide debris removal contract that could permissibly be used by a local government under a Public Assistance award through a joint procurement. Under such an approach, the state would procure a single contractor to provide debris removal services statewide for state agencies and, at their election, for the local government.

f. Compliance with State Law and Regulation. The state's procurement of the original contract and its use by local governments must comply with state and local law, regulations, and written procurement procedures. Importantly, the state must procure the contract with the express purpose of making it available to local governments and the contract must specifically allow for such use.

g. Scope of Work. The scope of the work to be performed for the local government must fall within the scope of work under the statewide contract as to type, amount, haul distance, and geography.

h. Definitive Requirements. FEMA expects the state to limit the acquisition of Federally-assisted debris removal services to the amount it needs to support its and other NFE's Public Assistance project(s).

i. Compliance with the Uniform Rules. The state's procurement of the contract must comply with all of the procurement standards *applicable to a local government* at 2 C.F.R. §§ 200.318 to 326. This is a very important caveat, as the state would otherwise not be required to comport with the regulations when procuring services or property for its own use, but only with the regulation at 2 C.F.R. § 200.317. However, because local governments are subject to the requirements of 2 C.F.R. §§ 200.318 to 326, the state must comply with those procurement standards in order for the local governments to permissibly use the statewide contract.

j. Pricing. It is possible that a joint procurement may not have pricing that accounts

for variables in geographic and market conditions unique to the local government availing itself of the contract. This may or may not lead to a local government paying more than it otherwise may have paid had the local government procured its own contract. While this may be the case, per 2 C.F.R. § 200.404, costs are not unreasonable simply because there may have been a method whereby the recipient could have received a better price. A finding of "unreasonable costs" must be based on a determination that the costs incurred appear to be unreasonable because they do not reflect the actions a prudent person would take in the circumstances.

4. PURCHASING SCHEDULES

a. Background. FEMA uses the term "state, local, or tribal purchasing schedule" to mean an arrangement that a state, local, or tribal government has established with several or many vendors in which those vendors agree to provide essentially an option to the state, local, or tribal government (and their subordinate government entities) to acquire specific property or services in the future at established, binding prices. If permitted by state, local, or tribal laws and regulations, a non-governmental NFE may also use the state, local, or Indian tribal purchasing schedule.

b. Use Permitted. The Uniform Rules encourage state, local, and tribal governments to enter into intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. As such, FEMA allows a NFE to use a state, local, or tribal purchasing schedule to procure services and property under a FEMA award if the schedule was established in a manner that complies with 2 C.F.R. §§ 200.318 to 326.

c. Ordering Procedures.

i. A NFE must follow its own procurement procedures which reflect applicable state, local, or tribal laws and regulations when ordering property and services. These procedures must at least meet the minimum requirements of full and open competition and the source selection requirements under the Uniform Rules. FEMA may, in reviewing such a procurement, request not only the procurement records for originally establishing the supply schedule, but also records concerning the ordering solicitation prepared by the ordering NFE, documentation demonstrating that an adequate number of sources were solicited, documentation showing the evaluation of bids or offers received, rationale for source selection (including the cost or price analysis), and other documentation as required.

ii. Any property ordered must be an end item from the supply schedule, such as office property, computers, other commercial off the shelf items, and construction materials. Minor modifications or modifications customarily available in the marketplace may be permissible so long as the

modifications do not comprise a cardinal change.

iii. Any services ordered must be for the specific tasks and/or specific outcomes to be achieved as detailed in the supply schedule, and not for tasks and/or specific outcomes falling outside the scope of the supply schedule. The acquisition of new construction services or non-routine alterations and repair services will rarely, if ever, be appropriate to order from a supply schedule, as a purchasing schedule or contract for new construction or non-routine alterations and repairs will lack the specificity for critical circumstances common to such efforts, such as the technical approach for completion of the work, innumerable combinations of site requirements (weather, physical conditions, etc.), and tailored pricing.

5. OBTAINING GOODS AND SERVICES THROUGH MUTUAL AID AGREEMENTS

a. FEMA, pursuant to Subchapter H of Ch. V of the Public Assistance Program and Policy Guide, FP 104-009-2, January 2016, allows a subrecipient to use Public Assistance funding to pay for work performed by another entity through a mutual aid agreement.

b. FEMA does not treat a mutual aid agreement as a procurement for the purposes of 2 C.F.R. pt. 200 so long as the work provided under the agreement falls within certain categories of work. Rather, FEMA treats the mutual aid assistance performed by a providing entity's employees as akin to temporary hires of the requesting entity.

c. This applies to all forms of mutual aid assistance, including agreements between a requesting and providing entity, statewide mutual aid agreements, and mutual aid services provided under the Emergency Management Assistance Compact ("EMAC").

d. There are three types of mutual aid work eligible for FEMA assistance:

i. ***Emergency Work (Public Assistance Categories A and B)*** – Mutual aid work provided in the performance of emergency work necessary to meet immediate threats to life, public safety, and improved property.

ii. ***Emergency Utility Restoration (Regardless of whether it is deemed Category B or F)*** – Work that is of a permanent nature but is necessary for emergency restoration of utilities. For example, work performed to restore electrical and other power.

iii. ***Grant Management Work*** – Work associated with the performance of the grantee's responsibilities as grant administrator. EMAC provided assistance to perform these tasks is eligible mutual aid work.

e. If mutual aid work falls within the scope described above, then FEMA will next look to see if the providing entity performed the work using force account labor or

contract resources. A subrecipient (the requesting entity) may use Public Assistance funding to pay for the costs of *the force account labor or use of equipment* of the entity providing assistance (the providing entity) consistent with Subchapter H of Ch. V of the Public Assistance Program and Policy Guide, FP 104-009-2.

f. If, however, the providing entity performs mutual aid work through contract, then FEMA will perform the following analysis:

i. Contract Services or Supplies are Incidental to the Work Performed by the Providing Entity. In those cases where contract services or supplies are incidental to the work performed by the providing entity, then FEMA will generally not treat the mutual aid agreement as a procurement and evaluate it according to the criteria at 2 C.F.R. Part 200.

ii. The Providing Entity Predominantly or Exclusively Performs Mutual Aid Work Through Contract. In other cases, however, a providing entity may perform the work under the mutual aid agreement predominantly or exclusively through contract. FEMA will, in these cases, treat the mutual aid agreement as a procurement and evaluate it against the criteria of 2 C.F.R. §§ 200.318-200.326.

6. ASSIGNMENT OF CONTRACT RIGHTS

a. Background. A NFE may find it advantageous to use existing contract rights of another NFE. An "existing contract" does not include, for the purposes of this section, a state, local, or tribal supply schedule or the GSA Federal Supply Schedule.

b. Exercise of Assignment Rights. Although FEMA generally discourages a NFE from obtaining contract rights from another NFE, a NFE may exercise contractual rights obtained through assignment subject to the following limitations.

i. Original Procurement. The original contract must have been procured in full compliance with the procurement standards under the Uniform Rules.

ii. Original Scope. The scope of the contract originally procured by the assigning party does not exceed the amount of property and services required to meet the assigning party's original, reasonably expected needs. The regulation at 2 C.F.R. § 200.318(d) requires a NFE to have procurement procedures that preclude it from acquiring property or services it does not need. Therefore, a contract would have an improper original scope if the original party added excess capacity in the original procurement primarily to permit assignment of those contract rights to another entity. Moreover, an assignable contract with an overbroad scope of work may lead to unreasonable pricing and thus should not be used.

iii. Assignability Provisions. The original contract must contain appropriate

assignability provisions that permit the assignment of all or a portion of the specified deliverables under the terms originally advertised, competed, evaluated, and awarded, or contains other appropriate assignment provisions.

iv. No Cardinal Changes. The scope of work, terms, and conditions of the assigned contract rights that the NFE seeks to exercise must be the same or substantially similar to those in the original contract and there are no cardinal changes.

v. Quantities. The quantities the assigning party acquired, coupled with the quantities the acquiring recipient or subrecipient seeks, do not exceed the amounts available under the assigning entity's contract

vi. Price. The NFE may not exercise assigned contract rights unless it has determined that the price is fair and reasonable.

c. Noncompetitive Procurement. FEMA will treat an assignment of contract rights that does not meet the limitations described in Chapter VI, ¶ 5.b as a sole source procurement, such that a NFE may only use such a method if it meets the requirements for procurement through noncompetitive proposals.

7. USE OF PURCHASING AGENTS

a. General. FEMA uses the term "purchasing agent" to generally refer to a contracted agent of the NFE that assists in the procurement of goods and services. The purchasing agent may assist the NFE in, among other things, conducting market research, preparing solicitations, evaluating bids or proposals, and negotiating contracts, and screening information about products on the behalf of the recipient or subrecipient.

b. Use Permitted. If the NFE lacks qualified personnel within its organization to undertake the various tasks required to comply with the procurement standards, FEMA expects the NFE to acquire the necessary services from sources outside the NFE's organization, such as a purchasing agent. The use of a purchasing agent should be specified in the NFE's written procurement procedures.

c. Conflicts of Interest. A purchasing agent shall not participate in the selection, award, or administration of a contract supported by a FEMA award if he or she has a real or apparent conflict of interest. *See* 2 C.F.R. § 200.318(c)(1); Chapter IV, ¶ 3. In addition, the NFE must take appropriate steps to prevent or mitigate organizational conflicts of interest that would result in conflicting roles that might bias a contractor's judgment or would result in unfair competitive advantage.

8. FEDERAL EXCESS PROPERTY

a. The Uniform Rules encourage NFEs to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and

reduces project costs. 2 C.F.R. § 200.318(f). A NFE would acquire such equipment and property through the Federal Surplus Personal Property Donation Program.

b. The General Services Administration ("GSA") carries out the Federal Surplus Personal Property Donation Program under which GSA will donate "surplus" Federal property—through a state agency for surplus property—to eligible public agencies and eligible nonprofit educational or public health institutions. *See* 40 U.S.C. § 549; 41 C.F.R. Part 102-37. Surplus personal property (surplus property) means excess personal property not required for the needs of any Federal agency, as determined by GSA.

c. A NFE interested in obtaining Federal surplus personal property should contact its servicing FEMA Regional Administrator for additional information.

APPENDIX A

AUTHORIZING LEGISLATION AND GRANT PROGRAMS

1. A number of Federal laws provide the authority for FEMA to carry out its grant and cooperative agreement programs.

2. Public Assistance Grant Program. The Public Assistance ("PA") Grant Program is authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288, §§ 402, 403, 406, 407, and 502 (1974) (codified as amended at 42 U.S.C. §§ 5170a, 5170b, 5172, 5173, and 5192) ("Stafford Act"). The implementing regulations for this program are set forth at 44 C.F.R. Part 206, subparts C, G, H, I, and M. FEMA has also issued the *Public Assistance Program and Policy Guide* ("PAPPG"), which includes most of the Public Assistance policy. Additional documents not yet superseded by the PAPPG are available online.

3. Hazard Mitigation Grant Program. The Hazard Mitigation Grant Program ("HMGP") is authorized by the Stafford Act, § 404 (codified as amended at 42 U.S.C. § 5170c) under a major disaster declaration. The implementing regulations are set forth at 44 C.F.R. Part 206, subpart N. FEMA has also issued the *Hazard Mitigation Assistance Unified Guidance* to provide additional guidance.

4. Fire Management Assistance Grant Program. The Fire Management Assistance Grant ("FMAG") Program is authorized by the Stafford Act, § 420 (codified as amended at 42 U.S.C. § 5187) under a fire declaration. The implementing regulations are set forth at 44 C.F.R. Part 204. FEMA has also issued a number of policy documents and issued the *FMAG Guide* to describe the basic provisions, processes, and procedures of the program.

5. Crisis Counseling Assistance and Training Grant Program. The Crisis Counseling Assistance and Training Grant Program is authorized by the Stafford Act, § 416 (codified as amended at 42 U.S.C. § 5183) under a major disaster declaration. The implementing regulations are set forth at 44 C.F.R. § 206.171.

6. Disaster Case Management Grant Program. The Disaster Case Management Service Grant Program is authorized by the Stafford Act, § 426 (codified as amended at 42 U.S.C. § 5189d) under a major disaster declaration. FEMA has adopted *Disaster Case Management Program Guidance* to provide implementing guidance for this grant program.

7. Federal Assistance to Individual and Households – Other Needs Assistance (State Option). The Other Needs Assistance ("ONA") program is authorized by the Stafford Act, § 408 (codified as amended at 42 U.S.C. § 5174) under either an emergency or major disaster declaration. The implementing regulations are set forth at 44 C.F.R. Part 206, subpart D.

8. Flood Mitigation Assistance Grant Program. The Flood Mitigation Assistance ("FMA") Program is authorized by the National Flood Insurance Act of 1968, Pub. L. No. 90-448, § 1366 (1968) (codified as amended at 42 U.S.C. § 4104c) ("NFIA"). The implementing

regulations are set forth at 44 C.F.R. Parts 78 and 79. FEMA has also issued the *Hazard Mitigation Assistance Unified Guidance*

9. Pre-Disaster Mitigation Grant Program. The Pre-Disaster Mitigation ("PDM") Program is authorized by Stafford Act, § 203 (codified as amended at 42 U.S.C. § 5133). FEMA has issued the *Hazard Mitigation Assistance Unified Guidance* to provide additional guidance.

10. Cooperating Technical Partners Cooperative Agreement Program. The Cooperating Technical Partners Program ("CTPP") is authorized by the NFIA, § 1360 (codified as amended at 42 U.S.C. § 4101).

11. National Dam Safety Grant Program. The National Dam Safety Program is authorized by the National Dam Safety Program Act, Pub. L. No. 93-367, § 8 (1972) (codified as amended at 33 U.S.C. § 467f).

12. Earthquake Hazards Reduction Cooperative Agreement Program. The Earthquake Hazard Reduction Program is authorized by the Earthquake Hazard Reduction Act ("EHRA") of 1977, Pub. L. No. 95-124, § 5 (1977) (codified as amended at 42 U.S.C. § 7704). The implementing regulations are set forth at 44 C.F.R. Part 361.

13. Emergency Management Preparedness Grant. The Emergency Management Preparedness Grant ("EMPG") is authorized by the Stafford Act, §§ 611 and 613 (codified as amended at 42 U.S.C. §§ 5196 and 5196b); Post-Katrina Emergency Management Reform Act of 2006, Pub. L. No. 109-295, § 662 (2006) (codified as amended at 6 U.S.C. § 762); NFIA; and EHRA. FEMA publishes each year the *Emergency Management Performance Grant Program Funding Opportunity Announcement* that provides detailed information about this program. This announcement is posted on the Preparedness (Non-Disaster) Grants webpage.

14. Homeland Security Grant Program. The Homeland Security Grant Program is authorized by the Homeland Security Act of 2002, Pub. L. No. 107-296, §§ 2002 and 2003 (2002) (codified as amended at 6 U.S.C. §§ 603 and 604) ("Homeland Security Act"). The Homeland Security Grant Program is comprised of three interconnected grant programs: State Homeland Security Program, Urban Areas Security Initiative, and Operation Stonegarden. FEMA publishes each year the *Homeland Security Grant Program Funding Opportunity Announcement* that provides detailed information about this program. This announcement is posted on the Preparedness (Non-Disaster) Grants webpage.

15. Nonprofit Security Grant Program. The Non-Profit Security Grant Program is authorized by the Homeland Security Act, § 2003 (codified as amended at 6 U.S.C. § 604). FEMA publishes each year the *Nonprofit Security Grant Program Funding Opportunity Announcement* that provides detailed information about this program. This announcement is posted on the Preparedness (Non-Disaster) Grants webpage.

16. Tribal Homeland Security Grant Program. The Tribal Homeland Security Grant Program is authorized by the Homeland Security Act, § 2005 (codified as amended at 6 U.S.C. § 606). FEMA publishes each year the *Tribal Homeland Security Grant Program Funding*

Opportunity Announcement that provides detailed information about this program. This announcement is posted on the Preparedness (Non-Disaster) Grants webpage.

17. Transit Security Grant Program. The Transit Security Grant Program is authorized by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53, § 1406 (2007) (codified as amended at 6 U.S.C. § 1135). FEMA publishes each year the *Transit Security Grant Program Funding Opportunity Announcement* that provides detailed information about this program. This announcement is posted on the Preparedness (Non-Disaster) Grants webpage.

18. Port Security Grant Program. The Port Security Grant Program is authorized by the Maritime Transportation Security Act of 2002, Pub. L. No. 107-295, § 102 (2002) (codified as amended at 46 U.S.C. § 70107). FEMA publishes each year the *Port Security Grant Program Funding Opportunity Announcement* that provides detailed information about this program. This announcement is posted on the Preparedness (Non-Disaster) Grants webpage.

19. Fire Prevention and Safety Grant Program. The Fire Prevention and Safety Grant Program is authorized by the Federal Fire Prevention and Control Act of 1974, Pub. L. No. 93-498, § 33 (1974) (codified as amended at 15 U.S.C. § 2229) ("Federal Fire Prevention and Control Act"). The implementing regulations are set forth at 44 C.F.R. Chapter I, Subchapter C. FEMA also publishes each year the *Fire Prevention and Safety Grant Program Funding Opportunity Announcement* that provides detailed information about this program. This announcement is posted at the Assistance to Firefighters Grant Program webpage.

20. Staffing for Adequate Fire and Emergency Response. The Staffing for Adequate Fire and Emergency Response Program is authorized by the Federal Fire Prevention and Control Act, § 34 (codified as amended at 15 U.S.C. § 2229a). The implementing regulations are set forth at 44 C.F.R. Chapter I, Subchapter C. FEMA also publishes each year the *Staffing for Adequate Fire and Emergency Response Funding Opportunity Announcement* that provides detailed information about this program. This announcement is posted at the Assistance to Firefighters Grant Program webpage.

21. Continuing Training Grants. The Continuing Training Grant Program is authorized by the annual DHS Appropriations Acts.

APPENDIX B

DEFINITIONS

1. All definitions at 2 C.F.R. Part 200, subpart A apply to this circular, and the definitions marked by an "*" below are restatements of several of those definitions. In addition, there are additional definitions provided below that apply to this Supplement.

2. Approval means a written statement transmitted in written hard copy or in electronic format or medium of a FEMA official authorized to permit the NFE to take or omit an action required by the grant agreement, cooperative agreement, Uniform Rules, or this circular, which action may not be taken or omitted without such permission. An oral permission or interpretation has no legal effect, force, or authority.

3. Best value means a procurement by competitive proposal process in which the NFE reserves the right to select the most advantageous offer by evaluating and comparing factors in addition to cost or price, consistent with the stated evaluation criteria. Under such a process, the NFE may award a contract to the offeror whose offer is the most technically superior but is higher in price than the lowest priced, technically acceptable proposal.

4. Cardinal change means a significant change in contract work (property or services) that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract.

5. Change order means an order authorized by the recipient or subrecipient to make changes, pursuant to contract provisions for such changes; may be issued with or without consent of the contractor, depending upon the language of the provision.

6. Constructive change means an act or omission by the NFE that, although not identified as a "change order," does in fact cause a change in the contract work.

7. *Contract means a legal instrument by which a NFE purchases property or services needed to carry out the project or program under a Federal award. The term does not include legal instrument, even if the NFE considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward. 2 C.F.R. § 200.22.

8. *Cooperative agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a NFE that, consistent with 31 U.S.C. §§ 6302-6305:

    a. Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the NFE 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;

b. Is distinguished from a grant in that a cooperative agreement provides for substantial involvement between the Federal awarding agency or pass-through entity and the NFE in carrying out the activity contemplated by the Federal award.

c. The term does not include:

i. A cooperative research and development agreement as defined in 15 U.S.C. § 3710a;

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. 2 C.F.R. § 200.24.

9. Department or DHS means the Department of Homeland Security.

10. Design-build means a procurement method consisting of contracting for design and construction simultaneously with a contract award to a single contractor or contractor team that will be responsible for both the project's design and construction.

11. *Federal awarding agency means the Federal agency that provides a Federal award directly to the NFE. 2 C.F.R. § 200.37. In this circular, the Federal awarding agency is FEMA.

12. FEMA financial assistance means the assistance that NFEs receive or administer in the form of grants and cooperative agreements under the programs set forth in Chapter I, ¶ 3.

13. FEMA means the Federal Emergency Management Agency.

14. FEMA Award or "Award" has the meaning, depending on the context, of:

a. The FEMA financial assistance that a NFE receives directly from FEMA or indirectly from a pass-through entity under one of the grant and cooperative agreement programs set forth in Chapter I, ¶ 3; or

b. The instrument setting forth the terms and conditions associated with FEMA financial assistance.

15. *Fixed amount award means a type of grant 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 recordkeeping requirements for both the NFE and Federal awarding agency or pass-through entity. Accountability is based primarily on performance and results. 2 C.F.R. § 200.45.

16. Full and open competition generally means that a complete requirement is publicly solicited and all responsible sources are permitted to compete.

17. *Grant agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a NFE that, consistent with 31 U.S.C. §§ 6302, 6304:

    a. Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the NFE 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;

    b. Is distinguished from a cooperative agreement in that it does not provide for substantial involvement between the Federal awarding agency or pass-through entity and the NFE in carrying out the activity contemplated by the Federal award.

    c. Does not include an agreement that provides only: (1) Direct United States Government cash assistance to an individual; (2) A subsidy; (3) A loan; (4) A loan guarantee; or (5) Insurance. 2 C.F.R. § 200.51.

18. *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. 2 C.F.R. § 200.54.

19. *Institution of higher education is defined at 20 U.S.C. § 1001. 2 C.F.R. § 200.55.

20. *Local government means any unit of government within a state, including a: (a) County; (b) Borough; (c) Municipality; (d) City; (e) Town; (f) Township; (g) Parish; (h) Local public authority, including any public housing agency under the United States Housing Act of 1937; (i) Special district; (j) School district; (k) Intrastate district; (l) Council of governments, whether or not incorporated as a nonprofit organization under state law; and (m) any other agency or instrumentality of a multi-, regional, or intra-state or local government. 2 C.F.R. § 200.64.

21. Joint procurement means a method of contracting in which two or more purchasers agree to use a single solicitation document and enter into a single contract with a vendor for delivery of property or services for a fixed quantity. The fixed quantity may be expressed as a total minimum and total maximum. Unlike a State, local, or Indian tribal purchasing schedule, a joint procurement is not drafted for the purpose of accommodating the needs of other parties that may later choose to participate in the benefits of that contract.

22. *Micro-purchase means a purchase of property or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchase procedures comprise a subset of a NFE's small purchase procedures. The NFE uses such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burdens and costs. The

micro-purchase threshold is set by the Federal Acquisition Regulation at 48 C.F.R. Part 2 (Definitions of Words and Terms), subpart 2.1 (Definitions). The regulations state that it is $ 3,000 *except as otherwise discussed in subpart 2.1 of that regulation*, but this threshold is periodically adjusted for inflation. 2 C.F.R. § 200.67. As of 1 October 2015, the current micro-purchase threshold, after adjustment for inflation, is $ 3,500.

23. *NFE means a state, local government, Indian tribe, institution of higher education, hospital, or nonprofit organization that carries out a Federal award as a recipient or subrecipient. 2 C.F.R. § 200.69.

24. *Nonprofit organization means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:

    a. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

    b. Is not organized primarily for profit; and

    c. Uses net proceeds to maintain, improve, or expand the operations of the organization. 2 C.F.R. § 200.69.

25. Option means a unilateral right in a contract by which, for a specified time, a NFE may elect to purchase additional equipment, property, or services called for by the contract, or may elect to extend the term of the contract for a set period of time.

26. Office of Inspector General or "OIG" means the independent auditing organization within the Department of Homeland Security.

27. *Pass-through entity means a NFE that provides a subaward to a subrecipient to carry out part of a Federal program. 2 C.F.R. § 200.74.

28. *Personal property means property other than real property. It may be tangible, having physical existence, or intangible. 2 C.F.R. § 200.78.

29. *Property means real property or personal property. 2 C.F.R. § 200.81.

30. Purchasing agent means an agent of the NFE that assists in the procurement of goods and services. The purchasing agent may assist the NFE in, among other things, conducting market research, preparing solicitations, evaluating bids or proposals, and negotiating contracts, and screening information about products.

31. *Real property means land, including land improvements, structures or appurtenances thereto, but excludes machinery and equipment. 2 C.F.R. § 200.85.

32. *Recipient (formerly "Grantee) means a NFE that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients. 2 C.F.R. § 200.86.

33. *Simplified acquisition threshold means the dollar amount below which a NFE may purchase property or services using small purchase methods. NFEs adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. 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 circular, the simplified acquisition threshold is $150,000, but this threshold is periodically adjusted for inflation. 2 C.F.R. § 200.88.

34. *State means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments. 2 C.F.R. § 200.90. A State does not include an Indian tribe.

35. State, local government, or Indian tribe purchasing schedule or purchasing contract means an arrangement that a State, local government, or Indian tribe has established with multiple vendors in which those vendors agree to provide essentially an option to the State, local government, or Indian tribe and their subordinate government entities and others it might include in their programs, to acquire specific property or services in the future at established prices and consistent with the terms established in the schedule or purchasing contract.

36. *Subaward (formerly "Subgrant") 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. 2 C.F.R. § 200.92.

37. *Subrecipient (formerly "Subgrantee") means a NFE that receives a subaward from a pass-through entity to carry out part of a Federal program; but 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. 2 C.F.R. § 200.93.

38. Third party contract means a "contract" as defined above.

39. Uniform Rules (also referred to as the Super Circular) means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards codified at 2 C.F.R. Part 200, which DHS adopted on December 19, 2014.

40. *Value engineering means the systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lowest cost. Normally associated with construction or production contracts. 2 C.F.R. § 200.318(g).

APPENDIX C

APPLICABLE FEDERAL LAWS, REGULATIONS, AND EXECUTIVE ORDERS

1. Background.

   a. In addition to complying with the Uniform Rules and the enabling laws, implementing regulations, and FEMA policies for a grant or cooperative agreement program, each NFE must also comply with all other applicable Federal laws, regulations, and executive orders.

   b. Many of these laws, regulations, and executive orders will need to be included in third party contracts to the lowest tier necessary, and others, although not expressly referenced in a contract, will have a direct and indirect effect on a NFE's third party contracts.

   c. DHS issues, on an annual basis, Standard Terms and Conditions that apply to recipients of Federal awards from all DHS Components, including FEMA. In addition, a recipient executes a Standard Form ("SF") 424B or 424D with its grant or cooperative agreement application to FEMA that contains standard assurances. The DHS Standard Terms and Conditions and SF 424B and D contain references to many cross-cutting Federal laws and regulations that may apply to a FEMA award.

   d. The following provides a non-exhaustive list and description of some of the cross-cutting laws, regulations, and executive orders that may affect a NFE's procurement.

2. Debarment and Suspension

   a. NFEs 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 (Nonprocurement Debarment and Suspension). 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.

   b. The regulations at 2 C.F.R. Part 180 and 2 C.F.R. Part 3000 specifically prohibit a NFE from entering into a "covered transaction" with a party listed on the System for Award Management Exclusions ("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. *See* 2 C.F.R. §§ 180.530.

   c. The Department of Homeland Security regulations at 2 C.F.R. Part 3000 include, within the meaning of a "covered transaction," a third party contract at any tier of

$25,000 or more; a third party contract at any tier for a Federally required audit (irrespective of the contract amount); and a third party contract at any tier that must be approved by an FEMA official irrespective of the contract amount. 2 C.F.R. § 3000.220; 2 C.F.R. § 180.220.

d. The Uniform Rules require a NFE to include contract provisions that require compliance with debarment and suspension prohibitions. *See* Chapter IV, ¶¶ 6.d and 12.a.ix; 2 C.F.R. Part 200, Appendix II, ¶ I; DHS Standard Terms and Conditions, v 3.0, ¶ X (Dec. 4, 2013)

3. Acknowledgement of FEMA Funding. A NFE must acknowledge its use of Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with FEMA financial assistance. Specifically, the document shall indicate that FEMA is providing the funds, the Catalog of Federal Domestic Assistance Number, as applicable, and the amount provided. *See* Financial Services and General Government Appropriations Act, 2015, Pub. L. No. 113-83, Division E, § 724 (2015); DHS Standard Terms and Conditions, v 3.0, ¶ II (Dec. 4, 2013).

4. Lobbying Certification and Disclosure.

a. A NFE must comply with 31 U.S.C. § 1352 and 44 C.F.R. Part 18, which provides that no FEMA financial assistance may be expended by a recipient, subrecipient, contractor, or subcontractor to pay any person 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 any Federal action concerning the award or renewal.

b. If a third party contract will exceed $100,000, before awarding the contract, the NFE must obtain a lobbying certification and, if applicable, a lobbying disclosure from a prospective third party contractor. 44 C.F.R. § 18.110.

c. The Uniform Rules require a contractor to include provisions in its contracts of $100,000 or more for compliance with lobbying certification and disclosure requirements. *See* Chapter IV, ¶ 12.a.x; 2 C.F.R. Part 200, Appendix II, ¶ J; DHS Standard Terms and Conditions, v. 3.0, ¶ XVIII (Dec. 4, 2013).

5. Civil Rights Requirements. A NFE is required to follow various civil rights requirements when carrying out activities under a FEMA award, and these requirements will flow down to a NFE's contractors at every tier.

a. Nondiscrimination.

i. Nondiscrimination on the Basis of Race, Color, and National Origin. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq*.), FEMA's implementing regulations at 44 C.F.R. Part 7 (*Nondiscrimination in Federally Assisted Programs*), and the Department's implementing regulations at 6 C.F.R. Part 21 (*Nondiscrimination on the Basis of Race, Color, or National Origin in Programs*

or Activities Receiving Federal Financial Assistance) provide that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. *See* DHS Standard Terms and Conditions, v 3.0, ¶ VII (Dec. 4, 2013); Standard Form 424D, ¶ 10.

ii. Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972 (codified as amended at 20 U.S.C. § 1681 et seq.), FEMA's implementing regulations at 44 C.F.R. Part 19 (*Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*), and the Department's implementing regulations at 6 C.F.R. Part 15 (*Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*) prohibit discrimination on the basis of sex in any education program or activity receiving Federal financial assistance. *See* DHS Standard Terms and Conditions, v 3.0, ¶ IX (Dec. 4, 2013); Standard Form 424D, ¶ 10.

iii. Nondiscrimination on the Basis of Disability. The Americans with Disability Act of 1990 (codified as amended at 42 U.S.C. §§ 12101-12213) prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private public and private entities. Contractors must comply with the responsibilities under Titles I, II, III, IV, and V of the Americans with Disability Act of 1990 in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies. *See* DHS Standard Terms and Conditions, v 3.0, ¶ V (Dec. 4, 2013); Standard Form 424D, ¶ 10.

iv. Nondiscrimination on the Basis of Handicap. Section 504 of the Rehabilitation Act of 1973 (codified as amended at 29 U.S.C. § 794) and FEMA's implementing regulations at 44 C.F.R. Part 16 (*Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Federal Emergency Management Agency*) provide that no otherwise qualified handicapped individual in the United States will, solely by reason of handicap, be excluded from participation in, be denied the benefits of, or be subjected to, discrimination under any program or activity receiving Federal financial assistance. *See* DHS Standard Terms and Conditions, v 3.0, ¶ XXIII (Dec. 4, 2013); Standard Form 424D, ¶ 10.

v. Nondiscrimination on the Basis of Age. The Age Discrimination Act of 1975 (codified as amended at 42 U.S.C. § 6101 *et seq.*), and Department of Health and Human Services implementing regulations at 45 C.F.R. Part 90 (*Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance*) prohibit discrimination against individuals on the basis of age in any program or activity receiving Federal financial assistance. *See* DHS Standard Terms and Conditions, v 3.0, ¶ IV (Dec. 4, 2013); Standard Form 424D, ¶ 10.

vi. Nondiscrimination on the Basis of Limited English Proficiency. Title VI of the Civil Rights Act of 1964 prohibition against discrimination on the basis of national origin requires that recipients and subrecipients of FEMA assistance take reasonable steps to provide meaningful access to persons with limited English proficiency. Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency* (Aug. 11, 2000), requires Federal agencies to issue guidance to recipients, assisting such organizations and entities in understanding their language access obligations. The Department published the required guidance, which is entitled DHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 76 Fed. Reg. 21755-21768 (Apr. 18, 2011). *See* DHS Standard Terms and Conditions, v 3.0, ¶ XVII (Dec. 4, 2013).

vii. Consistent with the preceding nondiscrimination requirements, a NFE's contractors must comply with the following requirements.

(1) A contractor of a NFEs must not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, English proficiency, or disability.

(2) A contractor of a NFE carrying a program or activity under a FEMA award must not, on the grounds of race, color, creed, national origin, sex, age, English proficiency, or disability, exclude a person from participation in, deny him/her benefits, or subject him/her to discrimination.

(3) Contractors must adhere to any Federal implementing regulations and other requirements that the Department and the FEMA have with respect to nondiscrimination.

b. Equal Opportunity

i. Race, Creed, National Origin, Sex. A contractor must, in accordance with Title VII of the Civil Rights Act of 1968, comply with all applicable equal employment opportunity requirements of U.S. Department of Labor regulations at 41 C.F.R Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor), which implement Executive Order No. 11246, *Equal Employment Opportunity*, as amended by Executive Order No. 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, 42 U.S.C. § 2000e note. The Contractor must take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. 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. *See* DHS Standard Terms and Conditions, v 3.0, ¶ VII (Dec. 4, 2013); Standard Form 424D, ¶ 10.

ii. Age. A contractor must refrain from discrimination against present and prospective employees for reason of age in accordance with section 4 of the Age Discrimination in Employment Act of 1967 (codified as amended at 29 U.S.C. § 623).

iii. Disabilities. A contractor must, in accordance with Section 102 of the Americans with Disabilities Act of 1990 (codified as amended at 42 U.S.C. § 12112) and the requirements of the U.S. Equal Employment Opportunity Commission at 29 C.F.R. Part 1630 (Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act) pertaining to employment of persons with disabilities.

iv. Except as otherwise provided under 41 C.F.R. Part 60, the Uniform Rules require that 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* Chapter IV, ¶ 12.a.iii; 2 C.F.R. Part 200, Appendix II, ¶ C.

6. Environmental and Historic Preservation Protections. Federal laws, regulations, and executive orders and the terms and conditions of specific FEMA award require the NFE to comply with applicable environmental and historic preservation requirements, which will, in turn, necessitate the NFE's implementation of these requirements as necessary in its third party contracts. *See* Standard Form 424D, ¶¶ 15, 16, and 17.

a. General – Environmental and Historic Preservation Compliance. FEMA will identify various environmental and historic preservation mitigation measures with which a NFE must comply when performing the scope of work under a FEMA award. FEMA expects the NFE to include adequate third party provisions to facilitate compliance with such measures that the NFE has agreed to implement as a term and condition of the FEMA award. The following sections provide brief discussion of a few of the applicable environmental and historic preservation statutes.

b. National Environmental Policy Act

i. The National Environmental Policy Act ("NEPA") requires FEMA to consider the environmental impact of proposed actions (such as awarding Federal grants and cooperative agreements), including adverse consequences and reasonable alternatives, before making decisions or taking actions that may significantly affect the quality of the human environment. *See* National Environmental Policy Act of 1969, Pub. L. No. 91-190 (1969) (codified as amended at 42 U.S.C. §§ 4321-4347); Standard Form 424D, ¶ 15.

ii. A NFE should not have a contractor proceed with contract work until FEMA has completed any necessary NEPA review and awarded the grant, cooperative agreement, and individual project under such grant or cooperative agreement.

iii. Occasionally, a NFE will request funding for an action that has been initiated and/or completed before FEMA has completed environmental review and documentation as required by NEPA and FEMA's implementing regulations at 44 C.F.R. Part 10 (Environmental Considerations) and the Council for Environmental Quality implementing regulations at title 40 of the C.F.R.

iv. It is FEMA policy that actions initiated and/or completed without fulfilling the specific documentation and procedural requirements of NEPA may not be considered for funding. There are, notably, statutory exclusions to this requirement, and FEMA may provide additional exceptions in emergency situations. *See* FEMA Environmental Planning and Historic Preservation Policy No. 108.024.4, *Projects Initiated Without Environmental Review Required by the National Environmental Policy Act* (NEPA) (Dec. 18, 2013).

v. The statutory exclusions and exceptions do not relieve FEMA of the responsibility to comply with other legal requirements under the National Historic Preservation Act, Endangered Species Act, Clean Water Act, other laws, and various executive orders. Furthermore, FEMA may not consider for funding work commenced before FEMA has completed review under these other legal requirements, even where NEPA review is not required.

c. Endangered Species Act

i. The Endangered Species Act ("ESA") requires all Federal agencies to consider the effects of their actions (such as grants and cooperative agreement awards) on listed species and their critical habitats. *See* Endangered Species Act of 1973, Pub. L. No. 93-205 (1973) (codified as amended at 16 U.S.C. §§ 1531-1544); Standard Form 424D, ¶ 15.

ii. FEMA must consult with the National Marine Fisheries Service or U.S. Fish and Wildlife Services to ensure that any proposed action funded under a grant or cooperative agreement is not likely to jeopardize the continued existence of any endangered or threatened species or result in in the destruction or adverse modification of a habitat. This consultation, if necessary, must take place before the action is taken, although there are exceptions for emergency actions.

d. Clean Air Act

i. The Clean Air Act establishes the basic structure for regulating air pollutants, which requires the Environmental and Protection Agency ("*EPA*") to establish national air quality standards and states to adopt enforceable plans to achieve the standards. 42 U.S.C. §§ 7401-7671q.

ii. Section 306 of the Clean Air Act (42 U.S.C. § 7606) and EPA's implementing regulations at 2 C.F.R. Part 1523, subpart J, disqualify persons convicted of certain offenses from eligibility to receive any contract, subcontract, assistance, subassistance, loan, or other nonprocurement benefit or transaction that is prohibited by a Federal agency under the government debarment and suspension system if a person will perform any part of the transaction or award at the facility giving rise to the conviction and the person owns, leases, or supervises the facility.

iii. The Uniform Rules require a contractor to agree to comply with this and all other applicable standards, orders, or regulations issued pursuant to the Clean Air Act for contracts over $150,000. *See* Chapter IV, ¶ 12.a.vii and 2 C.F.R. Part 200, Appendix II, ¶ G; Standard Form 424D, ¶ 15.

e. Federal Water Pollution Control Act

i. The Federal Water Pollution Control Act ("Clean Water Act") establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. 33 U.S.C. §§ 1251-1387.

ii. Section 508 of the Clean Water Act (33 U.S.C. § 1368) and EPA's implementing regulations at 2 C.F.R. Part 1523, subpart J, disqualify persons convicted of certain offenses from eligibility to receive any contract, subcontract, assistance, subassistance, loan, or other nonprocurement benefit or transaction that is prohibited by a Federal agency under the government debarment and suspension system if a person will perform any part of the transaction or award at the facility giving rise to the conviction and the person owns, leases, or supervises the facility.

iii. The Uniform Rules require a contractor to agree to comply with this and all other applicable standards, orders, or regulations issued pursuant to the Clean Water Act for contracts over $150,000. *See* Chapter IV, ¶ 12.a.vii and 2 C.F.R. Part 200, Appendix II, ¶ G; Standard Form 424D, ¶ 15.

f. Recycled Products

i. A NFE that is a State agency or agency of a political subdivision of a State and its contractors must comply with section 6002 of the Resource Conservation and Recovery Act of 1976. 42 U.S.C. § 6962; 2 C.F.R. § 200.322.

ii. 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.

iii. The Uniform Rules require a NFE to include provisions in its contracts for compliance with section 6002 of the Resource Conservation and Recovery Act of 1976. *See* Chapter IV, ¶ 12.a.xi and Chapter V, ¶ 7; 2 C.F.R. Part 200, Appendix II, ¶ K.

7. Davis-Bacon Act

a. When required by FEMA grant or cooperative agreement program legislation, all prime construction contracts in excess of $2,000 awarded by NFEs 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 at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction). *See* Chapter IV, ¶ 12.a.iv; 2 C.F.R. Part 200, Appendix II, ¶ D.

b. In accordance with the statute, a NFE's contractors must 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.

c. The Davis-Bacon Act only applies to the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. It does not apply to other FEMA grant and cooperative agreement programs, such as the Public Assistance Grant Program.

8. Copeland "Anti-Kickback" Act

a. The Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by its implementing regulations at 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) apply to any NFE contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. This law prohibits a contractor from inducing, by any means, any employee to give up any part of his or her compensation to which he or she is otherwise entitled.

b. The Uniform Rules require a NFE to include a provision for compliance with the Copeland Anti-Kickback Act in all contracts *subject to* the Davis-Bacon Act. *See* Chapter IV, ¶ 12.a.iv; 2 C.F.R. Part 200, Appendix II, ¶ D.

9. Contract Work Hours and Safety Standards Act

a. The Uniform Rules require, where applicable, all contracts awarded by the NFE in excess of $100,000 that involve the employment of mechanics or laborers to 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 and 29 C.F.R. Part 1926. *See* Chapter IV, ¶ 12.a.v; 2 C.F.R. Part 200, Appendix II, ¶ E.

b. Under 40 U.S.C. § 3702, 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.

c. 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 property or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence

10. Seismic Safety

a. All construction of new buildings for which FEMA award funding will be used must use appropriate seismic design and construction standards and practices pursuant to the Earthquake Hazard Reduction Act of 1977, Pub. L. No. 95-124 (1977) (codified as amended at 42 U.S.C. §§ 7701-7709) and Executive Order 12699, *Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction* (1990).

b. A NFE should include compliance with seismic safety provisions in its third party contracts for construction.

11. Hotel and Motel Fire Safety. The Hotel and Motel Fire Safety Act of 1990, Pub. L. No. 391 (1990) (codified at 15 U.S.C. § 2225a) prohibits, among other things, a NFE from using FEMA award funding to source contract costs to sponsor or fund in whole or in part a meeting, convention, conference, or training seminar that is conducted in, or that otherwise uses the rooms, facilities, or services of, a place of public accommodation that does not meet the requirements of the fire prevention and control guidelines described in section 29 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. § 2225).

12. Buy American Act.

a. General. The Buy American Act is a major domestic preference statute governing procurement by the Federal government. 41 U.S.C. §§ 8301-8305; 48 C.F.R. Part 25. In brief, the Federal government is required to buy domestic "articles, materials, and property" when they are acquired for public use unless a specific exception applies. The Buy American Act, however, only applies to direct procurements by the Federal government and does not apply to procurement by NFEs even when using FEMA assistance funding.

b. "Little Buy American Acts." In addition to the Buy American Act, Congress has passed numerous "Little Buy American Acts" to govern specific types of procurements that are not covered by the Buy American Act. There are currently no such Little Buy American Acts for FEMA grant and cooperative agreements subject to this circular.

c. Stafford Act Grant Programs. The Disaster Mitigation Act of 2000 amended various provisions of the Stafford Act—this included Sections 404, 406, and 408 of the

Stafford Act, which are the enabling authorities for the Hazard Mitigation Grant Program, Public Assistance Grant Program, and Individual and Households Program. Notably, Section 306(a) of the Disaster Mitigation Act of 2000 also had a general provision that provided that "No funds ***authorized to be appropriated*** under…any amendment made by [the Disaster Mitigation Act of 2000] may be expended by an entity unless the entity, in expending the funds, complies with chapter 83 of title 41." Disaster Mitigation Act of 2000, Pub. L. No. 106-390, § 306(a) (2000) (codified at 42 U.S.C. § 5206(a)) (emphasis added). There is, however, currently no authorization of appropriations for the Stafford Act, rendering Section 306(a) of the Disaster Mitigation Act of 2000 inapplicable to Stafford Act grant and cooperative agreements.

13. Federal Criminal Law. A NFE may not use funding under a FEMA award to violate any Federal criminal law either directly or through its contractors. Any such activity that FEMA administratively determines to violate a criminal law is ineligible for FEMA assistance, and FEMA may terminate an entire award based on the violation. The following provides a summary of several of those laws.

    a. Representational Statutes. Sections 203 and 205 of title 18 of the United States Code impose restrictions on outside activities of Federal employees involving representation of others before the Federal government. The prohibitions under 18 U.S.C. §§ 203 and 205 apply to all FEMA employees, including Disaster Reservists. Disaster Reservists are personnel authorized by the special hiring authority in the Stafford Act that are not full-time employees, but rather work on an on-call, intermittent basis to perform disaster response and recovery activities. In some cases, a NFE may hire a contractor to perform work under a FEMA award, and the contractor may have employees who are also Disaster Reservists (not currently activated by FEMA) perform that work. These Disaster Reservists are prohibited from performing any representational activity on behalf of the contractor and NFE before any Federal agency, including FEMA.

    b. False Statements Act. The False Statement Act sets forth liability for, among other things, any person who knowingly submits a false claim to the Federal government or causes another to submit a false claim to the government or knowingly makes a false record or statement to get a false claim paid by the government. 31 U.S.C. §§ 3729-3733. For example, a false claim could include false billing documentation submitted by a NFE from a third-party contractor under a FEMA award.

Checklist for Reviewing Procurements Under Grants by Non-Federal Entities (States, local and tribal governments, Institutions of Higher Education, Hospitals, and private non-profit organizations) – 2 CFR pt. 200

This checklist was created to assist FEMA recipients and subrecipients in complying with the federal requirements that procurements must meet in order for FEMA to reimburse eligible expenses. Importantly, this checklist is intended to provide general guidance only and does not provide a detailed explanation of the Federal procurement requirements – it is not intended to serve as legal advice and FEMA makes no guarantee that adherence to this checklist will result in full reimbursement of eligible expenses. To understand the requirements fully, the user should review the provisions of 2 C.F.R. § 200.317 – 326, which is the source of these requirements. FEMA's in – depth guidance on these provisions can be found in its *Supplement to the Public Assistance Field Manual*. In addition, the user may review FEMA's Field Manual, *Public Assistance Grantee and Subgrantee Procurement Requirements*, which is available on the internet by searching for "FEMA Procurement Field Manual." While the Field Manual was drafted to specifically address the Federal procurement standards that were in effect prior to 26 December 2014 (44 C.F.R. § 13.36(a)-(i) – States, Local and Tribal Governments; and 2 C.F.R. § 215.40-48 – Institutions of Higher Education, Hospitals, and other Non-Profit Organizations), many of the concepts are similar or identical in substance, and thus remains an excellent tool for navigating the current Federal procurement standards. If any questions arise, please contact your servicing attorney or legal counsel for assistance.

2 C.F.R. § 200.317 – 326 became effective on December 26, 2014. For disasters (and their associated projects) declared prior to that date, the relevant procurement standards can continue to be found in 44 C.F.R. § 13.36(a)-(i) (States, local and tribal governments) and 2 C.F.R. § 215.40-48 (Institutions of Higher Education, Hospitals, and Private Non-Profits).[1] As indicated above, while many of the concepts are similar or identical, there are some substantive differences between the old and the new standards. Accordingly, this checklist should not be used for procurements associated

[1] This includes projects associated with declarations issued prior to 26 December 2014, regardless of project start date. For example, if a disaster was declared on 1 November 2014, but contracting for a project under that declaration did not begin until 1 April 2015, then a State (or state agency/instrumentality) would still utilize the old procurement standards found at 44 C.F.R. § 13.36(a); local and tribal governments would follow § 13.36(b)-(i); and Institutions of Higher Education, Hospitals, and Private Non-Profits would use 2 C.F.R. §§ 215.40-48.

with declarations issued prior to 26 December 2014. Instead, see procurement standards Checklists 13.36 and 215.[2]

Instructions: Each standard below is followed by a block for "Yes", "No", or in some cases, "Not applicable". Red font is used to indicate the response which, if checked, indicates that the contract does not comply with federal requirements.

The term "non-Federal entity" (NFE) below refers to the entity that is conducting the procurement action (i.e., the state, local, or tribal government or private-non-profit entity).

1. Does the procurement comply with the State's own procurement laws, rules, and procedures? §200.317 ☐ **Yes** ☐ **No**

2. Does the procurement comply with the requirement to make maximum use of recovered/recycled materials? § 200.317, § 200.322. ☐ **Yes** ☐ **No** ☐ **N/A – work does not involve the use of materials (e.g., debris removal or other services)**

3. ***Does the contract include the following clauses?***[3]

    a. *If the contract amount exceeds $150,000*[4], does it address **administrative, contractual, or legal remedies** in instances where contractors violate or breach contract terms, and provide for sanctions and penalties? ☐ **Yes** ☐ **No** ☐ **N/A**

    b. *If the contract amount exceeds $10,000*, does it address **termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement**? ☐ **Yes** ☐ **No** ☐ **N/A**

    c. *If the contract is for construction*, does it include the required **Equal Employment Opportunity clause**?[5] ☐ **Yes** ☐ **No** ☐ **N/A**

    d. *For construction contracts exceeding $2,000 awarded under a Federal grant*, does the contract include a **Davis-Bacon Act clause** and **Copeland "Anti-Kickback" Act clause**[6] addressing prevailing wage rates? [Note that Public

[2] 2 C.F.R. §200.110 provides prospective applicants with the option of exercising a "grace period," which allows the prospective applicant to continue to use the old procurement standards at 13.36 or 215 for an additional two (2) fiscal years beginning on the first fiscal year after 26 December 2014. The fiscal year is based upon the prospective applicant's own fiscal year. In order to utilize this exception, the prospective applicant is required to affirmatively elect its use through the documentation of this decision in its contract records.

[3] See Appendix II of 2 CFR part 200. See also, PDAT Field Manual, section IV.H for a detailed discussion of these clauses. Sample clauses and templates can be found in the Required Contract Clauses 2 CFR 200.326 and 2 CFR Part 200 Appendix II.

[4] $150,000 is the current dollar threshold for the simplified acquisition threshold, as authorized by 41 U.S.C. § 1908.

[5] The EEO clause can be found at 41 C.F.R. § 60-1.4(b).

[6] The clause may read as follows:

Compliance with the Copeland "Anti-Kickback" Act

Assistance and Hazard Mitigation Grant Program contracts do NOT require these clauses.] ☐ **Yes** ☐ **No** ☐ **N/A**

e. *If the contract amount exceeds $100,000 and involves the employment of mechanics or laborers*, does the contract include a **Contract Work Hours and Safety Standards clause**?[7] ☐ **Yes** ☐ **No** ☐ **N/A**

f. Rights to Inventions Made Under a Contract or Agreement.[8] ☐ N/A

g. *If the contract or subgrant amount exceeds $150,000,* does the contract include clauses addressing the **Clean Air Act and the Federal Water Pollution Control Act**?[9] ☐ **Yes** ☐ **No** ☐ **N/A**

h. *Does the contract include* a **Suspension and Debarment clause**?[10] ☐ **Yes** ☐ **No**[11]

i. *Does the contract include* an **Anti-Lobbying clause**?[12] ☐ **Yes** ☐ **No**

(1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
(2) Subcontracts. 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.
(3) 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.

[7] 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.

[8] As FEMA does not award grants or subgrants associated with research and development projects, this contract clause is inapplicable.

[9] The clause may read as follows:

> 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), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

[10] See, PDAT Manual, pps. 99-100 for sample text.

[11] A prospective contractor that is listed on the government-wide Excluded Parties List System in the System for Award Management (www.SAM.gov) as suspended or debarred, **CANNOT** be awarded a contract funded with Federal assistance.

[12] See PDAT Manual, pgs. 127-129. The clause may read substantially as follows:

i. For contracts exceeding $100,000, have bidders submitted an Anti-Lobbying Certification? ☐ **Yes** ☐ **No** ☐ **N/A**

j. *Does the contract include* a clause requiring the contractor to maximize use of **recovered/recycled materials**? ☐ **Yes** ☐ **No** ☐ **N/A – work does not involve the use of materials (e.g., debris removal or other services)**

If a State agency is awarding the contract, stop here. If the contract is being awarded by a local or tribal government or private nonprofit entity, continue with the checklist.

4. ***General requirements***[13]

a. *Does the procurement comply with* the NFE's[14] own procurement laws, rules, and procedures? §200.318(a) ☐ **Yes** ☐ **No**

b. *Does the NFE maintain* contract oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders? §200.318(b) ☐ Yes ☐ No

c. *Does the NFE have* - §200.318(c)(1):

i. Written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts? ☐ **Yes** ☐ **No**

ii. Any employee, officer, or agent participating in the selection, award, or administration of a contract supported by a Federal award that has an actual or apparent conflict of interest?[15] ☐ Yes ☐ No

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.

[13] See, 2 C.F.R. § 200.318

[14] Non-Federal Entity (NFE)

[15] 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.

iii. Any employee, officer, or agent that has solicited and/or accepted gratuities, favors, or anything of monetary value from contractors or parties to subcontracts?[16] ☐ Yes ☐ No

iv. Written standards of conduct that provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity. ☐ Yes ☐ No

d. *If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe*, does the non-Federal entity have written standards of conduct covering organizational conflicts of interest? § 200.318(c)(2)[17] ☐ **Yes** ☐ **No** ☐ **N/A**

e. The NFE must avoid acquisition of unnecessary or duplicative items. Has the NFE *considered* consolidating or breaking out procurements to obtain a more economical purchase? Where appropriate, has the NFE considered lease versus purchase alternatives? § 200.318(d) ☐ **Yes** ☐ **No**

f. *Is the contract being awarded to a* responsible contractor possessing the ability to perform successfully under the terms and conditions of the proposed procurement, giving consideration to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources? § 200.318(h) ☐ **Yes** ☐ **No**

g. *Is the NFE keeping records sufficient to* detail the history of the procurement, including, but not limited to, records documenting the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price? § 200.318(i) ☐ **Yes** ☐ **No**

h. *Is the contract a time-and-materials contract?*[18] § 200.318(j) ☐ **Yes** ☐ **No**

[16] However, NFEs may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.

[17] Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the NFE is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

[18] 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. Because 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, a time-and-materials 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. [**Note that FEMA previously reimbursed costs under a time-and-materials contract for only the first 70 hours of work performed.** *See*, FEMA PA Guide (2007 ed.), pg. 53. However, FEMA's new Public Assistance Guide, published on 1 January 2016, has eliminated this requirement and replaced it with a reasonable period of time standard. Please engage your FEMA Public Assistance POC for additional information]

i. If so, has the NFE documented why no other contract is suitable? ☐ **Yes** ☐ **No**

ii. Does the contract include a ceiling price that the contractor exceeds at its own risk? ☐ **Yes** ☐ **No**

i. *Is the NFE alone* responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements? §200.318(k) ☐ Yes ☐ No

j. *Encouraged*, but not required standards at § 200.318(e), (f), and (g).[19]

5. ***Competition*:**

a. All procurement transactions must be conducted in a manner providing ***full and open competition*** consistent with the standards of this section. *Does the procurement involve any of the following*[20] § 200.319(a):

i. Placing unreasonable requirements on firms in order for them to qualify to do business? ☐ **Yes** ☐ **No**

ii. Requiring unnecessary experience and excessive bonding? ☐ **Yes** ☐ **No**

iii. Noncompetitive pricing practices between firms or between affiliated companies?[21] ☐ **Yes** ☐ **No**

iv. Noncompetitive contracts to consultants that are on retainer contracts?[22] ☐ **Yes** ☐ **No**

v. Organizational conflicts of interest?[23] ☐ **Yes** ☐ **No**

[19] §200.318(e) – to foster greater economy and efficiency, the NFE 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 (this section provides the authority for state schedule and mutual aid agreements, for example); §200.318(f) – NFEs are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs; and §200.318(g) – NFEs are encouraged to use value engineering clauses in contracts for construction projects (value engineering is a systematic and creative analysis of each contract item or task to encourage the contractor to develop more cost effective means to produce or procure requirements.).

[20] This list is non-exclusive and only serves as an example of some of the types of situations that are considered to be restrictive of competition.

[21] For example, bid suppression or bid rigging.

[22] For example, out-of-scope disaster work added to the consultant's work on retainer.

[23] See, fn 18.

vi. 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? ☐ **Yes** ☐ **No**

vii. Any arbitrary action in the procurement process? ☐ **Yes** ☐ **No**

b. Was the contractor that is bidding on the contract also involved with developing or drafting the specifications, requirements, statement of work, invitation for bids or request for proposals? (If so, that contractor must be excluded from competing for such procurements) § 200.319(a) ☐ Yes ☐ No ☐ N/A

c. *Does the contract include* a state or local geographic preference for local contractors?[24] § 200.319(b) ☐ **Yes** ☐ **No**

d. Do the NFE's written procurement procedures ensure that all solicitations comply with the following: § 200.319(c)

i. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured? § 200.319(c)(1) ☐ **Yes** ☐ **No**

ii. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals? § 200.319(c)(2) ☐ **Yes** ☐ **No**

e. If the NFE is using a prequalified list of persons, firms, or products which are used in acquiring goods and services: § 200.319(d) ☐ N/A

i. Is the list current? ☐ Yes ☐ No

ii. Does the list include enough qualified sources to ensure maximum open and free competition? ☐ Yes ☐ No

iii. Were any potential bidders precluded from qualifying during the solicitation period?[25] ☐ **Yes** ☐ **No**

6. ***Method of Procurement***

[24] Geographic preferences are generally not allowed under FEMA grants. The only exception is that 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.

[25] Pre-qualified lists are **NOT** contracts. Accordingly, once the decision to solicit and award a contract is made, the NFE may issue the solicitation directly to the contractors on the pre-qualified list, but must also allow any interested contractor (not on the pre-qualified list) to submit its qualifications, and if deemed qualified, allow that contractor to submit a bid or proposal in response to the solicitation. Contract award will then be made to one of the contractors submitting a bid or proposal, IAW the evaluation/award criteria identified in the solicitation.

a. Is the NFE using one of the following acceptable methods of procurement? § 200.320

i. **Micro-purchase** (i.e., purchases below $3,500, see, §200.67 Micro-purchases). § 200.320(a) ☐ **Yes** ☐ **No**

1. [Note: Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.]

2. To the extent practicable, is the NFE distributing micro-purchases equitably among qualified suppliers? ☐ **Yes** ☐ **No** ☐ **N/A – not practicable**

ii. **Small purchase procedures** § 200.320(b) ☐ **Yes** ☐ **No**

1. [Note: Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the ***lesser*** of either (1) the federal small purchase threshold (i.e., $150,000), *or* (2) whatever amount State or local procurement rules set as the small purchase threshold – *if more restrictive than the federal threshold.*]

2. Did the NFE obtain price or rate quotations from an adequate number of qualified sources?[26] ☐ **Yes** ☐ **No**

iii. **Sealed bids** § 200.320(c)[27] ☐ **Yes** ☐ **No**

1. [Note: 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. Sealed bidding is the preferred method for procuring construction]

2. Are *all* of the following conditions to use sealed bidding present? § 200.320(c)(1) ☐ **Yes** ☐ **No**

a. A complete, adequate, and realistic specification or purchase description is available ☐ **Yes** ☐ **No**

[26] FEMA has determined that for simplified purchase procedures, an adequate number of qualified sources is considered to be three (3). *See*, FEMA Recovery Fact Sheet 9580.212 – Public Assistance Grant Contracting Frequently Asked Questions (FAQ), FAC No. 3 and the PDAT Field Manual.

[27] Sealed bidding is generally used where price is the most important evaluation factor for the NFE. Accordingly, contract award under the sealed bidding method of procurement is made to the bidder submitting *the lowest priced, responsive and responsible bid*. "Responsive" refers to whether the bidder meets all the material requirements of the Invitation for Bid (IFB), while "Responsibility" is described at § 200.318(h).

b. Two or more responsible bidders are willing and able to compete effectively for the business ☐ **Yes** ☐ **No**

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 ☐ **Yes** ☐ **No**

3. *If sealed bids are used*, the following requirements apply: § 200.320(c)(2)

a. Did the NFE solicit bids from an adequate number[28] of known suppliers, providing them sufficient response time prior to the date set for opening the bids? ☐ **Yes** ☐ **No**

b. If the NFE is a local or tribal government, was the invitation for bids publically advertised? ☐ **Yes** ☐ **No** ☐ **N/A**

c. Did the invitation for bids include any specifications and pertinent attachments, and define the items or services in order for the bidder to properly respond? ☐ **Yes** ☐ **No**

d. Did the NFE open all bids at the time and place prescribed in the invitation for bids? ☐ **Yes** ☐ **No**

e. For local and tribal governments, were the bids opened publicly? ☐ **Yes** ☐ **No** ☐ **N/A**

f. Did the NFE award a firm fixed price contract award in writing to the lowest responsive and responsible bidder? ☐ **Yes** ☐ **No**

g. If any bids were rejected, was there a sound documented reason supporting the rejection? ☐ Yes ☐ No ☐ N/A

iv. **Procurement by competitive proposals[29]** § 200.320(d) ☐ **Yes** ☐ **No**

1. [Note: The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is

[28] Unlike, for simplified purchase procedures, FEMA has not defined an "adequate number" of known sources under the sealed bidding method. While left undefined, a NFE is likely to meet this requirement through the application of "full and open competition." (See fn. 27)

[29] Whereas contract awards under sealed bidding are focused on selecting the lowest responsive responsible bid, NFEs under the competitive procurement method may prioritize non-price factors, such as technical capability or past performance, over price and therefore award a contract to a contractor whose proposal is more expensive but reflects a better overall value to the NFE (e.g. "best value" contracting).

awarded. It is generally used when conditions are not appropriate for the use of sealed bids.]

2. Did the NFE publicize the Requests For Proposals (RFPs) and identify all evaluation factors and their relative importance? ☐ **Yes** ☐ **No**

3. Did the NFE solicit proposals from an adequate number of qualified sources?[30] ☐ **Yes** ☐ **No**

4. Did the NFE have a written method for conducting technical evaluations of the proposals received and for selecting recipients? ☐ **Yes** ☐ **No**

5. Did the NFE award the contract to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered? ☐ **Yes** ☐ **No**

6. [Note regarding architectural/engineering (A/E) professional services: The NFE may use competitive proposal procedures for qualifications-based procurement of A/E professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. **The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort**.]

v. **Noncompetitive proposals** § 200.320(f)[31] ☐ **Yes** ☐ **No**

1. [Note: Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one (or an improperly limited number of) source(s)]

2. Do one or more of the following circumstances apply? ☐ **Yes** ☐ **No**

    a. The item is available only from a single source ☐ **Yes** ☐ **No**

[30] Unlike, for simplified purchase procedures, FEMA has not defined an "adequate number" of qualified sources under the competitive procurement method. While left undefined, a NFE is likely to meet this requirement through the application of "full and open competition."
[31] § 200.320(e) is reserved.

b. The public exigency or emergency[32] for the requirement will not permit a delay resulting from competitive solicitation ☐ **Yes** ☐ **No**

c. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity ☐ **Yes** ☐ **No**

d. After solicitation of a number of sources, competition is determined inadequate.[33] ☐ **Yes** ☐ **No**

7. ***Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms***

a. Has the NFE taken the following affirmative steps[34] to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible?[35] § 200.321 ☐ **Yes** ☐ **No** ☐ **N/A (document)**

i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists? ☐ **Yes** ☐ **No** ☐ **N/A (document)**

ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources? ☐ **Yes** ☐ **No** ☐ **N/A – no potential sources (document)**

iii. 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?[36] ☐ **Yes** ☐ **No** ☐ **N/A – not economically feasible (document)**

[32] For an explanation of what "emergency" and exigency" mean, see PDAT Field Manual, pg. 68.
[33] Before utilizing this exception, Applicants should review their solicitation and the publicizing of their solicitation to ensure that it was not inadvertently drafted in a manner to reduce or eliminate competition, which resulted in the receipt of one or no proposals. If this is found to be the case, the Applicant should revise the solicitation and re-publicize the solicitation in order to resolve the competitive concerns.
[34] The following affirmative steps are non-exclusive; while these steps must be taken, additional steps, as determined by the NFE, local, state, or tribal government regulations or procedures, may also be taken.
[35] Collectively referred to as "socioeconomic contractors" or "socioeconomic contracting," this requirement does not impose an obligation to set aside either the solicitation or award of a contract to these types of firms; this requirement only imposes an obligation to carry out and document the six identified affirmative steps. Failure to do so has been frequently identified as a justification to de-obligate funding by the Department of Homeland Security (DHS), Office of Inspector General (OIG).
[36] This is not the same as breaking a single project down into smaller components in order to circumvent the micro-purchase or small purchase thresholds to utilize their streamlined acquisition procedures (e.g. "project splitting.")

iv. Establishing delivery schedules, *where the requirement permits*, which encourage participation by small and minority businesses, and women's business enterprises? ☐ **Yes** ☐ **No** ☐ **N/A – the requirement does not permit (document)**

v. 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 ☐ **Yes** ☐ **No** ☐ **N/A – not appropriate (document)**

vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above? ☐ **Yes** ☐ **No** ☐ **N/A – no subcontracts will be let (document)**

8. ***Contract cost and price***[37]

a. *If the contract amount (including contract modifications) exceeds $150,000*, did the NFE perform a cost or price analysis? § 200.323(a) ☐ **Yes** ☐ **No** ☐ **N/A**

b. Did the NFE 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*? § 200.323(b) ☐ **Yes** ☐ **No** ☐ **N/A**

c. Is the contract a "cost plus a percentage of cost" or "percentage of construction cost" contract?[38] [Note: This form of contract is prohibited under the Federal procurement standards and is ineligible for FEMA reimbursement] ☐ **Yes** ☐ **No**

9. ***Bonding requirements for construction or facility improvement contracts exceeding $150,000***

a. [Note: *For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (i.e, $150,000)*, the Federal awarding agency or pass-through entity may accept the bonding policy and

[37] See, Pricing Guide for Recipients and Subrecipients Under the Uniform Rules for guidance on cost or price analysis.

[38] This type of contract is separate and distinct from cost plus fixed fee, cost plus incentive fee, and cost plus award fee type contracts, which are permissible and used to incentivize contractors to perform to a higher standard of quality, lower cost, or faster performance. Cost plus percentage of cost contracts on the other hand provide none of these incentives; instead, there is a reverse incentive for the contractor to increase its costs as the higher its costs go, the more profit it earns, as its potential earnings are uncapped. The following characteristics are suggestive of a prohibited cost plus percentage of cost contract: (1) payment is on a predetermined percentage rate; (2) the predetermined percentage rate is applied to actual performance costs; (3) the contractor's entitlement is uncertain at the time of contracting; and (4) the contractor's entitlement increases commensurately with increased performance costs.

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.]

b. If such a determination (see above) has not been made, does the procurement include the following? ☐ **Yes** ☐ **No** ☐ **N/A**

   i. A bid guarantee from each bidder equivalent to five percent of the bid price? ☐ **Yes** ☐ **No** ☐ **N/A**

      1. 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.

   ii. A performance bond on the part of the contractor for 100 percent of the contract price? ☐ **Yes** ☐ **No** ☐ **N/A**

      1. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

   iii. A payment bond on the part of the contractor for 100 percent of the contract price. ☐ **Yes** ☐ **No** ☐ **N/A**

      1. 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.

END OF CHECKLIST[39]

[39] All FEMA PDAT Reference Materials can be found at the following website: www.fema.gov/procurement-disaster-assistance-team

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Current as of 10/28/16

Key Points Regarding Contracting Practices for Local and Tribal Governments, Institutions of Higher Education, Hospitals, and other Non-Profits Receiving FEMA Public Assistance Grant Funds

In the aftermath of a disaster resulting in a disaster declaration by the President of the United States, FEMA provides grant funding to local and tribal governments and non-profit ("PNP") entities to assist them with recovering from the event. Local governments and non-profit entities are generally referred to as "Subrecipients" because they receive grant funds through the state; tribal governments also are Subrecipients when not receiving grant funds directly from FEMA.[1] **Subrecipients must comply with the federal procurement standards to ensure their procurements are eligible for federal grant funding.** These standards are found in Title 2 of the Code of Federal Regulations ("CFR"), sections 200.318 through 200.326 and became effective for declarations issued on or after December 26, 2014.[2] While this document is intended to provide a summary of general guidance on FEMA's standards for procurement, it is not intended to be comprehensive, serve as legal advice, or replace the advice of your servicing legal counsel.

The standards Subrecipients must comply with include, but are not limited to:

- Having written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in contract award and administration.
- Maintaining records to detail the significant history of the procurement action.
- Performing a cost or price analysis for procurement actions exceeding the small purchase threshold of $150,000 – or the equivalent local or state threshold (whichever is less).
- Taking the required six affirmative steps to encourage small and women/minority-owned businesses to participate in the contracting process.[3]

[1] Irrespective of whether a tribal government is designated as a Recipient or a Subrecipient, they will always follow the procurement standards discussed in this document. (2 CFR §§ 200.318 – 200.326)

[2] The rules governing Subrecipient procurements were formerly published at 44 CFR § 13.36 (for state, local and tribal governments) and at 2 CFR part 215 (for Institutions of Higher Education, Hospitals, and PNPs). These earlier published rules still apply to projects associated with declarations issued before December 26, 2014. While the CFR citations have changed, the rules for state, local and tribal governments are substantially the same, with some exceptions. The rules for Institutions of Higher Education, Hospitals and PNPs have changed significantly.

With the exception of two provisions described below, the detailed standards in 2 CFR §§ 200.318 – 200.326 for the most part do not apply to State agencies procuring property and services with FEMA grant funds. A State agency or instrumentality of a state (as defined by the state but excluding local governments) must follow its normal procurement policies and procedures; it must comply with 2 CFR § 200.322 regarding the procurement of recovered materials; and it must ensure that every purchase order or other contract includes any clauses required by 2 CFR § 200.326. (See, 2 CFR § 200.317 for the federal procurement standards applicable to States.)

[3] See, 2 CFR § 200.320. This is not a set-aside requirement or a requirement to prioritize award to these types of firms – it is only a requirement to take and document that you took the six affirmative steps to encourage these types of firms to participate in the procurement.

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- Prohibiting contractors that develop or draft specifications, requirements, statements of work, invitations for bid or requests for proposal from competing for and being awarded the subsequent contract for that work.
- Prohibiting the use of state, local, or tribal geographical preferences in the evaluation of bids or proposals.
- Including certain specific provisions in the contract.[4]

Acceptable methods of Procurement:

- Micro purchase procedures (for purchases under $3,500 – or the equivalent local or state threshold, whichever is less);
- Small purchase procedures (for purchases under $150,000 – or the equivalent local or state threshold, whichever is less);
- Sealed Bids (award to the lowest priced, responsive, responsible bidder);
- Competitive Proposals (award need not be made to the lowest priced offeror if award criteria establish award is to be based on some other non-price-related factor; however, while price is not a factor in awarding a contract for architectural/engineering *services*—it is separately negotiated after the proposal has been selected); and
- Noncompetitive Proposals.

Procurement by noncompetitive proposals may be used only under one of the following circumstances:

- The item is available from only a single source (not the most convenient source);
- After solicitation of a number of sources, competition is determined to be inadequate; or
- A Public emergency (threats to health, life or safety) or exigency (threats requiring an immediate response) exists that will not permit a delay resulting from competitive solicitation. An exigency or emergency period will last often for a short time—generally until roads are cleared and power is back on; this exception can only be used until the emergency or exigency period ends, at which time, the contract must be re-solicited under full and open competition.

Things to watch out for:

- **Pre-awarded (also known as pre-positioned or standby) contracts**. A contract that was awarded prior to the issuance of the current federal procurement standards may still be used if certain conditions are met:

[4] The contract provisions can be found in Appendix II of 2 C.F.R. Part 200.

- The existing contract must have been in compliance with the federal procurement standards that were applicable at the time the contract was solicited and awarded;
- The Subrecipient must re-examine the contract to ensure that it complies with the current federal procurement standards – some of which have been revised, but most of which have become more permissive;
- Where there has been a change in the new procurement standards and the existing contract is non-compliant, the Subrecipient must determine under local, state, or tribal procurement law, whether a contract modification is legally permissible to bring the contract into compliance;[5]
- The Subrecipient would have to determine that the existing contract's scope of work was broad enough to cover the type and extent of work now contemplated – out of scope work cannot be included in an existing contract; and
- The Subrecipient would have to reassess whether the age of the existing contract is a problem as it relates to whether the associated prices/costs remain fair and reasonable due to the passage of time, e.g., a 4-5 year old contract should probably be re-competed.

- **Time-and Materials (T&M) contracts**. T&M contracts can be used for a reasonable period of time only when:
  - No other contract is suitable; and
  - The contract includes a ceiling price that the contractor exceeds at its own risk.

  This type of contract is often used where the scope of work or the duration of the work is unclear. Because this type of contract requires significant oversight to ensure costs are reasonable, the Subrecipient should start thinking about switching to a different type of contract as soon as it awards a T&M contract. Once the scope of work becomes clear, the Subrecipient should switch to a different type of contract, like a cost reimbursement or fixed price contract.

- **Cost-Plus-Percentage-of-Cost contracts**. These are contracts where the contractor's profit is based on a percentage of the underlying project costs actually incurred. Such contracts are explicitly prohibited by the federal procurement standards and ineligible for FEMA grant funding because they incentivize the contractor to increase their actual

[5] For example, it's possible that contract provisions could potentially be added, or standards of conduct updated, etc. via modification. It is doubtful that more substantial non-compliance issues with the new federal procurement standards could be cured so easily, such as the prohibition against a contractor developing the solicitation requirements and/ or specifications and later on competing for and being awarded a contract involving that same work – this is now specifically prohibited under the new federal procurement standards at 2 CFR § 200.319.

costs in order to increase the associated profit. Subrecipients should read contracts carefully to ensure these types of provisions are not included in a contract, as they can be difficult to identify.

- **Piggyback contracts**. Adopting a pre-existing contract solicited and awarded by another entity is referred to as "piggybacking." FEMA closely reviews piggyback contracts because the original underlying contract often does not meet all of the federal procurement standards as they pertain to the Subrecipient attempting to utilize them, having often been issued under different circumstances and for a different scope of work.

Additional information about Subrecipient requirements under the federal procurement standards can be found in FEMA's *Public Assistance Procurement Field Manual (*dated December 2014 - addresses the procurement based rules applicable before Dec. 26, 2014), *Supplement to the Field Manual* (dated 2016 - addresses the procurement based rules applicable on or after Dec. 26, 2014), *Procurement checklists*; *Contract provisions template*, *Cost or price guide*; and all other procurement under grants developed reference materials. These materials can be found at the following webpage: www.fema.gov/procurement-disaster-assistance-team.

In addition to these materials, FEMA has established a Procurement Disaster Assistance Team ("PDAT") dedicated to providing training to applicants. During the recovery phase following a disaster, FEMA works with the state to establish PDAT training meetings for Public Assistance applicants. PDAT provides training, reference materials, and real time guidance to actual and prospective Recipients and Subrecipients on the federal procurement standards *in order to reduce the likelihood that disaster financial assistance awards are de-obligated, which would require applicants to return federal funds even if they have already been expended.* FEMA encourages applicants to attend these trainings when provided.

2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses

Requirements under the Uniform Rules. A non-Federal entity's 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), which are set forth below. 2 C.F.R. § 200.326. For some of the required clauses we have included sample language or a reference a non-Federal entity can go to in order to find sample language. Please be aware that this is sample language only and that the non-Federal entity alone is responsible 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. We do not include sample language for certain required clauses (remedies, termination for cause and convenience, changes) as these must necessarily be written based on the non-Federal entity's own procedures in that area.

1. Remedies.

    a. Standard: Contracts for more than the simplified acquisition threshold ($150,000) 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.

    b. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

2. Termination for Cause and Convenience.

    a. 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. See 2 C.F.R. Part 200, Appendix II, ¶ B.

    b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

3. Equal Employment Opportunity.

    a. 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.

    b. Key Definitions.

(1) 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.

(2) 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.

c. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

d. The regulation at 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, 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.

(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 considerations for employment without regard to race, color, religion, sex, or national origin.

(3) 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.

(4) 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.

(5) 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.

(6) 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 as 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.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) 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."

4. Davis Bacon Act and Copeland Anti-Kickback Act.

a. Applicability of Davis-Bacon Act. The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. **It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program**.

b. 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 at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). See 2 C.F.R. Part 200, Appendix II, ¶ D.

c. 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.

d. 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.

e. In contracts subject to the Davis-Bacon Act, 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 at 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). The Copeland Anti-Kickback 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 FEMA.

f. The regulation at 29 C.F.R. § 5.5(a) does provide the required contract clause that applies to compliance with both the Davis-Bacon and Copeland Acts. However, as discussed in the previous subsection, the Davis-Bacon Act does not apply to Public Assistance recipients and subrecipients. **In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback Act.**" However, for purposes of grant programs where both clauses do apply, FEMA requires the following contract clause:

"Compliance with the Copeland "Anti-Kickback" Act.

(1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. 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.

(3) 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."

5. Contract Work Hours and Safety Standards Act.

a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

b. Where applicable (see 40 U.S.C. § 3701), 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 at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E.

c. Under 40 U.S.C. § 3702, 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.

d. 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.

e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

"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 (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 (1) of this section, in the sum of $10 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 (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 (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (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 (1) through (4) of this section."

6. Rights to Inventions Made Under a Contract or Agreement.

a. Stafford Act Disaster Grants. This requirement **does not apply to the Public Assistance**, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of "funding agreement."

b. If the FEMA award meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and the non-Federal entity 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 non-Federal entity must comply with the requirements of 37 C.F.R. 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

FEMA. See 2 C.F.R. Part 200, Appendix II, ¶ F.

c. The regulation at 37 C.F.R. § 401.2(a) currently defines "funding agreement" as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

7. Clean Air Act and the Federal Water Pollution Control Act. Contracts of amounts in excess of $150,000 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.

a. The following provides a sample contract clause concerning compliance for contracts of amounts in excess of $150,000:

"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 the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), 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 state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal

government) will, in turn, report each violation as required to assure notification to the (name of recipient), 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."

8. Debarment and Suspension.

a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

b. 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 (Nonprocurement Debarment and Suspension).

c. 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 *Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules): Supplement to the Public Assistance Procurement Disaster Assistance Team (PDAT) Field Manual* Chapter IV, ¶ 6.d, and Appendix C, ¶ 2 [hereinafter *PDAT Supplement*]. 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. See 2 C.F.R. § 180.530; *PDAT Supplement,* Chapter IV, ¶ 6.d and Appendix C, ¶ 2.

d. 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 nonprocurement 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 nonprocurement common rule and DHS's implementing regulations, it does include some contracts awarded by recipients and subrecipient.

e. Specifically, a covered transaction includes the following contracts for goods or services:

(1) The contract is awarded by a recipient or subrecipient in the amount of at least $25,000.

(2) The contract requires the approval of FEMA, regardless of amount.

(3) The contract is for federally-required audit services.

(4) 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.

d. 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, its 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 subrecipient). 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 (name of state agency serving as recipient and name of subrecipient), 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."

9. Byrd Anti-Lobbying Amendment.

a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

b. Contractors that apply or bid for an award of $100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, ¶ I; 44 C.F.R. Part 18; *PDAT Supplement*, Chapter IV, 6.c; Appendix C, ¶ 4.

c. 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. See *PDAT Supplement*, Chapter IV, ¶ 6.c and Appendix C, ¶ 4.

d. The following provides a Byrd Anti-Lobbying contract clause:

"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."

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding $100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, 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 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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. § 3801 *et seq*., apply to this certification and disclosure, if any.

_____

Signature of Contractor's Authorized Official

_____

Name and Title of Contractor's Authorized Official

_____

Date"

10. Procurement of Recovered Materials.

a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

b. 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, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, ¶ J; 2 C.F.R. § 200.322; *PDAT Supplement*, Chapter V, ¶ 7.

c. 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.

d. The following provides the clause that a state agency or agency of a political subdivision of a state and its contractors can include in contracts meeting the above contract thresholds:

> "(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—
>
> (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
>
> (ii) Meeting contract performance requirements; or
>
> (iii) At a reasonable price.
>
> (2) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program."

11. Additional FEMA Requirements.

a. The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts. FEMA, pursuant to this authority, requires or recommends the following:

b. Changes.

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. 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.

c. Access to Records.

All non-Federal entities must place into their contracts a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and

agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff. See DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (2013).

d. The following provides a contract clause regarding access to records:

"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."

12. DHS Seal, Logo, and Flags.

a. All non-Federal entities must place in their contracts 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. See DHS Standard Terms and Conditions, v 3.0, ¶ XXV (2013).

b. The following provides a contract clause regarding DHS Seal, Logo, and Flags: "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."

13. Compliance with Federal Law, Regulations, and Executive Orders.

a. All non-Federal entities must place into their contracts 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.

b. The following provides a contract clause regarding Compliance with Federal Law, Regulations, and Executive Orders: "This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor

will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives."

14. No Obligation by Federal Government.

a. The non-Federal entity must 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.

b. The following provides a contract clause regarding 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 non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract."

15. Program Fraud and False or Fraudulent Statements or Related Acts.

a. 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.

b. The following provides a contract clause regarding 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."

Public Assistance Program and Policy Guide

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FEMA

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FOREWORD

On behalf of the Federal Emergency Management Agency (FEMA), I am pleased to issue this revised Third Edition (Version 3.1) of the Public Assistance (PA) Program and Policy Guide. FEMA has archived the First and Second Editions at www.fema.gov/media-library/assets/documents/111781. FEMA applies the First Edition to incidents declared from January 1, 2016 through March 31, 2017. FEMA applies the Second Edition to incidents declared from April 1, 2017 through August 22, 2017. And FEMA applies this Version 3.1 to incidents declared on or after August 23, 2017 or, with respect to the changes made in this version, any application for assistance that was pending before FEMA as of August 23, 2017 and has not been finally resolved as of January 1, 2018. This version supersedes Version 3.0 issued on January 2, 2018.

On February 9, 2018, Congress passed and the President signed the Bipartisan Budget Act of 2018 (P.L. 115-123). The Act includes a provision amending the Stafford Act in a manner that largely codifies the changes related to houses of worship which were made in Version 3.0 of this Guide.

Version 3.0 incorporated the following revisions:

- Deleting "Community centers operated by a religious institution that provides secular activities, such as fundraising activities that help the community at large";
- Replacing "Social activities to pursue items of mutual interest or concern" with "Activities to pursue items of mutual interest or concern or social engagement" and adding the example "Activities of community centers or houses of worship open to the general public, without regard to their secular or religious nature";
- Deleting "religious" from the sentence "Facilities established or primarily used for political, athletic, religious, recreational, vocational, or academic training, conferences, or similar activities are not eligible";
- Deleting language excluding "religious education," "religious services," and "religious activities, such as worship, proselytizing, religious instruction, or fundraising activities that benefit a religious institution and not the community at large" as ineligible services;
- Deleting from Appendix B examples of mixed-use facilities that suggest FEMA must deduct from primary-use analysis activities associated with religious worship and instruction.

This Version 3.1 makes the following additional revisions to align with the changes made by the Bipartisan Budget Act:

- Changes the terms "essential governmental services" and "essential governmental-type services" to "essential social services" and "essential social-type services."
- Adds houses of worship as eligible private nonprofit facilities, distinct from community centers.
- Clarifies that houses of worship cannot be deemed ineligible because leadership or membership in the organization operating the house of worship is limited to persons who share a religious faith or practice.
- Removes the exclusion of buildings and items used primarily for religious purposes or instruction from the definition of eligible private nonprofit educational facilities and

makes clear that such facilities are eligible regardless of their religious character or use for religious instruction.

These changes do not affect or change other general eligibility requirements for nonprofit eligibility. These include the requirement pursuant to 44 C.F.R. § 206.221(f) that private nonprofit facilities must have been granted tax exemption under Sections 501(c), (d), or (e) of the Internal Revenue Code of 1954 or provide satisfactory evidence the organization is a nonprofit organized or doing business under state law; and that pursuant to 42 U.S.C. § 5172(a)(3), private nonprofit facilities that do not provide critical services must apply to the Small Business Administration (SBA) for disaster loans and either (1) be determined ineligible for such a loan or (2) have obtained such a loan in the maximum amount for which the SBA determines the facility is eligible.

Version 3.1 also clarifies that new construction is prohibited in Coastal High Hazard Areas pursuant to 44 C.F.R. § 9.11(d)(1). This addition is included in Chapter 2:VII.B.5(a) *Minimum Requirement for Structures in a Floodplain*.

FEMA will make updates to this guide at www.fema.gov/public-assistance-policy-and-guidance on an annual basis, as necessary, and will conduct a comprehensive review no less than every three years. We look forward to your feedback to help inform the next version of this guide. Please send policy recommendations to FEMA-PAPolicy@fema.dhs.gov.

Keith Turi
Acting Assistant Administrator
Recovery Directorate

HOW TO USE THIS PUBLICATION

The Public Assistance Program and Policy Guide is organized as shown in Figure 1. A brief summary of each chapter follows.

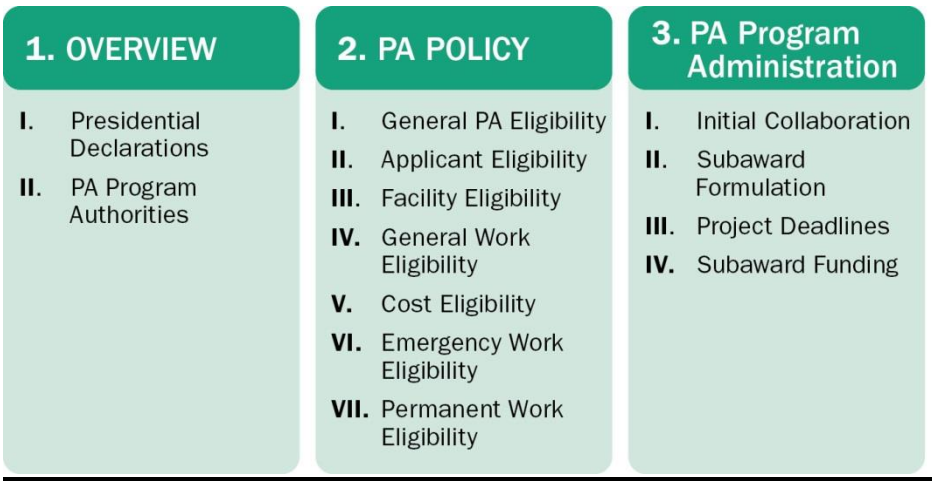


Figure 1. Public Assistance Program and Policy Guide Organization

Chapter 1: Overview

Chapter 1 provides an overview of the Presidential declaration process, the purpose of the Public Assistance (PA) Program, and the authorities authorizing the assistance that the Federal Emergency Management Agency (FEMA) provides under the PA Program.

Chapter 2: Public Assistance Policy

Chapter 2 provides PA policy language to guide eligibility determinations. Overarching eligibility requirements are presented first and are not reiterated for each topic. For example, cost eligibility is discussed prior to work eligibility as it applies to all work. The requirement that costs be reasonable applies to costs related to all work. The requirement that contracts be properly procured applies to all contracted work.

Chapter 2 Sections I, General PA Eligibility; II, Applicant Eligibility; IV, General Work Eligibility; and V, Cost Eligibility apply to all work and must be considered when evaluating assistance for any work discussed in Chapter 2 Sections VI, Emergency Work Eligibility, and VII, Permanent Work Eligibility. Chapter 2 Section III, Facility Eligibility applies to all work except where otherwise specified.

Chapter 3: Public Assistance Program Administration

Chapter 3 provides a synopsis of the PA Program implementation process beginning with pre-declaration activities and continuing through closeout of the PA Program award, as shown in Figure 2. In addition to describing these processes, this chapter provides checklists of specific information that entities need to document throughout the response and recovery phases of the incident to help substantiate claims for assistance.

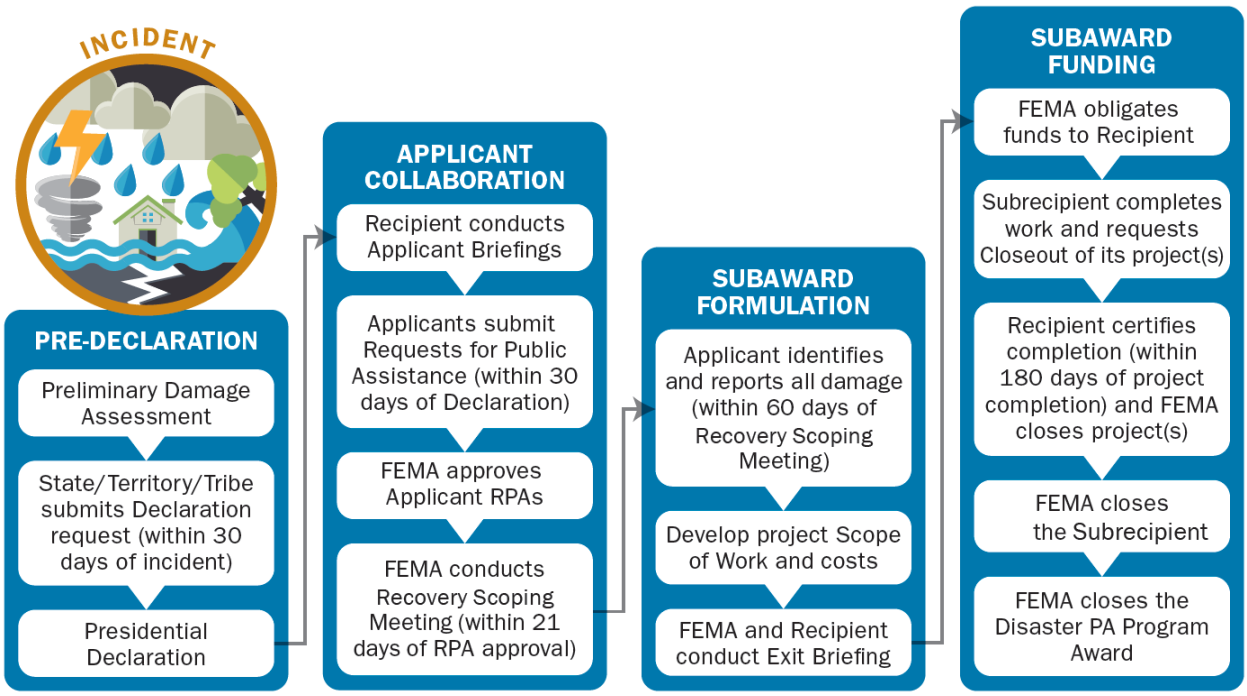


Figure 2. PA Program Implementation Process

Title 2 of the Code of Federal Regulations (CFR) Part 200 provided new terms for Grantee and Subgrantee as follows:

- 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
- Applicant: A non-Federal entity submitting an application for assistance under the Recipient's Federal award
- Pass-through entity: A non-Federal entity that provides a subaward to an Applicant
- Subrecipient: An Applicant that receives a subaward from a pass-through entity

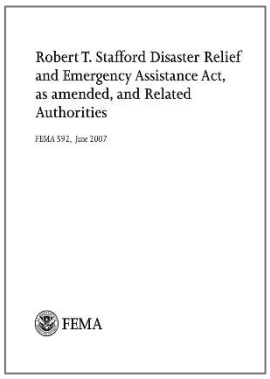
For simplicity, FEMA generally uses the term Applicant throughout this document when referring to the responsible entity for a project rather than making distinctions between an entity as an Applicant, Recipient, pass-through entity, or Subrecipient.

Appendices

This document includes several appendices, most of which are related to specific types of work and are referenced throughout Chapter 2. Of specific note are Appendices A, D, and K.

- Appendix A, Environmental and Historic Preservation Compliance, provides summaries of various Federal environmental and historic preservation laws that entities need to consider prior to conducting work.
- Appendix D, Debris Management Plan Job Aid, is a tool to assist entities with establishing written procedures for managing debris in an expeditious, efficient, and environmentally sound manner.
- Appendix K, Work Eligibility Considerations by Type of Facility, provides a summary of eligibility considerations by facility type.

CHAPTER 1: OVERVIEW



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.,[1] authorizes the President to provide Federal assistance when the magnitude of an incident or threatened incident exceeds the affected State,[2] Territorial,[3] Indian Tribal,[4] and local[5] government capabilities to respond or recover.

I. Presidential Declarations

When a State, Territorial, or Indian Tribal Government determines that an incident may exceed State, Territorial, Indian Tribal, and local government capabilities to respond, it requests a joint Preliminary Damage Assessment (PDA) with the Federal Emergency Management Agency (FEMA).[6] Federal, State, Territorial, Indian Tribal, local government, and certain private nonprofit (PNP) organization officials work together to estimate and document the impact and magnitude of the incident.[7]

The Governor[8] or Indian Tribal Chief Executive[9] must request a declaration from the President through FEMA within 30 days of the incident.[10] FEMA may extend the deadline if the Governor or Indian Tribal Chief Executive submits a written time extension request within 30 days of the incident stipulating the reason for the delay.[11]

For FEMA to provide assistance, the President must declare that an emergency or major disaster exists. The declaration[12] establishes the:

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[1] See http://www.fema.gov/robert-t-stafford-disaster-relief-and-emergency-assistance-act-public-law-93-288-amended.
[2] Robert T. Stafford Disaster Relief and Emergency Assistance Act, as Amended (Stafford Act) § 102(4), 42 United States Code (U.S.C.) § 5122 and Title 44 of the Code of Federal Regulations (CFR) § 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.
[3] Territories are included in the definition of a State and are also listed separately throughout this document. FEMA Public Assistance (PA) requirements are the same for States and Territories.
[4] Stafford Act § 102(6), Title 42 of the U.S.C. § 5122, and 44 CFR § 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.
[5] Stafford Act § 102(8), 42 U.S.C. § 5122; and 44 CFR § 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.
[6] 44 CFR § 206.33(a).
[7] 44 CFR § 206.33(b).
[8] Stafford Act § 102(5), 42 U.S.C. § 5122, and 44 CFR § 206.2(12).
[9] Stafford Act § 102(12), 42 U.S.C. § 5122.
[10] Stafford Act § 401, 42 U.S.C. § 5170; Stafford Act § 501, 42 U.S.C. § 5191; and 44 CFR §§ 206.35 and 206.36.
[11] 44 CFR §§ 206.35(a) and 206.36(a).
[12] Each Presidential declaration is available at http://www.fema.gov/disaster.

- Federal cost share
- Type of incident
- Incident period
- Designated areas
- Types of assistance
- 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.[13] 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.[14] 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.[15] This period varies in length, depending on the incident.

C. Designated Areas

The declaration designates which areas (e.g., county, parish, city, or Indian Tribal Government) are eligible to receive Federal assistance.[16] 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)[17] or, for Indian Tribal declarations, the Indian Tribal Chief Executive or Indian 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.[18] FEMA may extend the deadline if the Governor, GAR, Indian 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.[19]

D. Types of Assistance

The declaration designates the types of Federal assistance authorized.[20] The President may authorize assistance to individuals, households, and State, Territorial, Indian Tribal, and local governments, and certain types of PNP organizations. FEMA provides assistance to individuals

[13] Stafford Act § 102(1), 42 U.S.C. § 5122, and 44 CFR § 206.2(a)(9).
[14] Stafford Act § 102(2), 42 U.S.C. § 5122, and 44 CFR § 206.2(a)(17).
[15] 44 CFR § 206.32(f).
[16] 44 CFR §§ 206.2(6) and 206.40(b).
[17] 44 CFR §§ 206.2(a)(13) and 206.41(d).
[18] 44 CFR § 206.40(c).
[19] 44 CFR § 206.40(d).
[20] 44 CFR § 206.40(a).

and households via its Individual Assistance (IA) programs. FEMA provides assistance to State, Territorial, Indian Tribal, and local governments and certain types of PNP organizations via its Public Assistance (PA) Program. The type of assistance available 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 Indian Tribal declarations, the Indian Tribal Chief Executive or TAR must request the assistance within 30 days of the declaration date or the end of the incident period, whichever is later.[21] FEMA may extend the deadline if the Governor, GAR, Indian 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.[22]

Required Forms

The declared State, Territorial, and/or Indian Tribal Government must submit an Application for Federal Assistance (SF-424) and Assurances (SF 424-D) before FEMA provides assistance. FEMA provides PA funds via the U.S. Department of Health and Human Services (HHS) Payment Management System (SmartLink). Therefore, if the President issues a declaration for an Indian Tribal Government for the first time, the Tribal Government must also submit a Payment Management System Access Form and a Direct Deposit Form (SF-1199A) to obtain a FEMA-specific SmartLink account before FEMA can provide funding. These 2 forms are available at https://pms.psc.gov/.

FEMA Regional Administrators (RAs)[23] have the authority to issue Fire Management Assistance Grant (FMAG) declarations for wildfires that threaten such destruction that would constitute a major disaster.[24] The FMAG Program is separate and distinct from the PA Program. FMAG declaration criteria, eligibility, and other program information are available at Title 44 of the Code of Federal Regulations (CFR)[25] Part 204, Fire Management Assistance Grant Program, and in FEMA's *Fire Management Assistance Grant Program Guide* (FEMA P-954).[26]

If significant damage occurs as a result of one or more FMAG fire incidents, the Governor or Indian Tribal Chief Executive may subsequently request a Major Disaster Declaration for the fire incident(s). FEMA will evaluate 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 generally funds all of the 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.[27] The Federal share is not less than 75 percent of the eligible costs.[28] Although the Federal share is usually 75

[21] 44 CFR § 206.40(c).
[22] 44 CFR § 206.40(d).
[23] 44 CFR § 206.2(a)(21).
[24] Stafford Act § 420, 42 U.S.C. § 5187, and 44 CFR Part 204.
[25] See http://www.ecfr.gov.
[26] http://www.fema.gov/media-library/assets/documents/92379.
[27] 44 CFR § 206.203(b).
[28] Stafford Act §§ 403(b), 406(b), 407(d), and 503(a), 42 U.S.C. §§ 5170b, 5172, 5173, 5193; and 44 CFR §§ 206.47(a) and 206.65.

percent, if actual Federal obligations, excluding administrative costs, meet or exceed a qualifying threshold, FEMA may recommend an increase up to 90 percent.[29] The Federal cost share for Emergency Work may be increased in limited circumstances if warranted.[30]

F. FEMA-State/Territory/Tribe Agreement

After every declaration, the applicable State, Territorial, or Indian Tribal Government enters into an agreement with FEMA regarding the understanding, commitments, and conditions under which FEMA will provide assistance (FEMA-State/Territory/Tribe Agreement). FEMA and the Governor or Indian Tribal Chief Executive must sign this agreement before FEMA provides assistance. If necessary, because of exigent circumstances, FEMA may authorize essential emergency services or housing assistance under the Individuals and Households Program (IHP) while the agreement is in process for signature.[31]

G. Federal, State, Territorial, Indian Tribal, and Local Government Coordination

The *National Response Framework*[32] and *National Disaster Recovery Framework*[33] detail Federal, State, Territorial, Indian Tribal, and local government roles and responsibilities during response and recovery operations.

The declaration identifies the FCO.[34] The FCO works in partnership with the State Coordinating Officer[35] and GAR (or for Indian Tribal declarations, the Indian Tribal Coordinating Officer and TAR) to coordinate Federal resources and disaster assistance programs.[36] FEMA and the State, Territorial, or Indian Tribal Government may initially operate at Emergency Operations Centers (EOCs) and, when warranted, subsequently establish a Joint Field Office (JFO) for Federal, State, Territorial, and Indian Tribal government coordination and administrative activities.

[29] 44 CFR § 206.47(b).
[30] 44 CFR § 206.47(d).
[31] 44 CFR § 206.44(a).
[32] http://www.fema.gov/national-response-framework.
[33] http://www.fema.gov/national-disaster-recovery-framework.
[34] Stafford Act §§ 302(a) and (d), 42 U.S.C. § 5143; 44 CFR §§ 206.2(a)(11) and 206.41(a).
[35] Stafford Act § 302(c), 42 U.S.C. § 5143, and 44 CFR §§ 206.2(a)(23) and 206.41(c).
[36] Stafford Act § 302(b), 42 U.S.C. § 5143, and 44 CFR § 206.42.

FEMA uses the following terms provided in 2 CFR when discussing PA funding:

- Recipient: A non-Federal entity that receives a Federal award[37] directly from a Federal awarding agency to carry out an activity under a Federal program[38]
- Applicant: A non-Federal entity submitting an application to the Recipient for assistance under the Recipient's Federal award
- Pass-through entity: A non-Federal entity that provides a subaward[39] to an Applicant to carry out part of a Federal program[40]
- Subrecipient: An Applicant that receives a subaward from a pass-through entity to carry out part of a Federal program[41]

Use of the Term Applicant in this Document

When a non-Federal entity applies for PA funding, it is an **Applicant**. Once an Applicant receives funding, it is either a **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 an Applicant, Recipient, pass-through entity, or Subrecipient. FEMA uses the terms Recipient and Subrecipient in this document when necessary to differentiate between the two entities.

FEMA provides PA funding to the applicable State, Territorial, or Indian Tribal Government (Recipient). An Indian Tribal Government may elect to be a Subrecipient under a State declaration or request its own declaration and be a Recipient.[42] The Recipient distributes the funds to the appropriate Subrecipient.[43] When a Recipient distributes funds, it is a pass-through entity.

FEMA may approve a State or Tribal Recipient to manage small disasters. Participation in the State Management of Small Disasters program is voluntary. Small disasters are those with sufficient severity and magnitude to warrant a major disaster declaration by the President, but are limited in scope and size as defined by the following:

- Statewide infrastructure damage is less than $2 per capita;
- Total estimated infrastructure damage is less than $15 million;
- Categories of work are limited to debris removal and emergency protective measures; or
- The PA operation is within a Recipient's capability to manage (varies by State).

If a Recipient is interested in managing a disaster, it must specify this in the request for a disaster declaration. FEMA will determine whether the Recipient is capable of managing a disaster.

Interested Recipients should have:

- Recent disaster experience;

[37] Per 2 CFR § 200.38, a Federal award is the Federal financial assistance that a non-Federal entity receives 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.
[38] 2 CFR § 200.86.
[39] Per 2 CFR § 200.92, a subaward is 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.
[40] 2 CFR § 200.74.
[41] 2 CFR § 200.93.
[42] 44 CFR § 206.201(e).
[43] 44 CFR § 206.202(a).

- Adequate staff;
- A State or Tribal Management Addendum to the Administrative Plan;
- A fiscal accounting system that can track specific projects, prepare for and undergo audit, and be used to evaluate appeals; and
- An established record of having met deadlines for grant management activities.

H. Correspondence

Throughout this document, FEMA notes specific instances in which the Applicant needs to submit written correspondence to obtain FEMA approval. The Applicant needs to submit all written correspondence through the Recipient.[44] The Recipient will forward the correspondence to FEMA with its recommendation. The RA has the authority to respond to all written correspondence unless otherwise noted. The RA delegates this authority to the FCO upon a Presidential declaration. The RA or FCO may further delegate authorities as appropriate. FEMA provides its response to the Recipient, which subsequently forwards FEMA's determination to the Applicant. In general, the Recipient addresses all correspondence to the FCO while the JFO is active and to the RA upon closure of the JFO when the FEMA Regional Office assumes responsibility for that incident. See Figure 3 for the geographical responsibilities of each FEMA Region.

Figure 3. Map of FEMA Regions

II. Public Assistance Program Authorities

The mission of FEMA's PA Program is to provide assistance to State, Territorial, Indian Tribal, and local governments, and certain types of PNP organizations so that communities can quickly

[44] A Recipient is a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program.

respond to and recover from major disasters or emergencies declared by the President. Through the PA Program, FEMA provides supplemental Federal disaster grant assistance for debris removal, emergency protective measures, and the restoration of disaster-damaged, publicly owned facilities and the facilities of certain PNP organizations. The PA Program also encourages protection of these damaged facilities from future events by providing assistance for hazard mitigation measures.

FEMA provides this assistance based on authority in statutes, executive orders (EOs), regulations, and policies. 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.[45]

A. Statutes

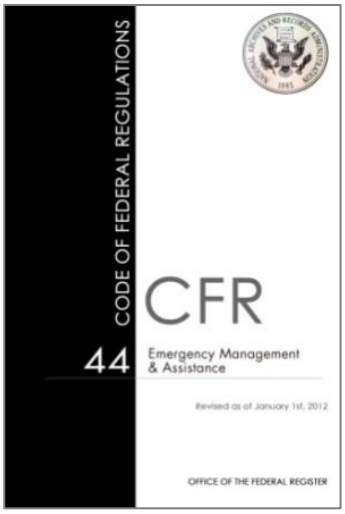
Statutes are Federal laws passed by U.S. Congress and signed by the President. All PA Program assistance must comply with all applicable statutes.[46] The statute that authorizes FEMA to provide assistance via the PA Program is the Stafford Act. The following sections of the Stafford Act specifically authorize the assistance FEMA provides under the PA Program:

- Title I – Findings, Declarations and Definitions
- Title III – Major Disaster and Emergency Assistance Administration
    - 311, Insurance
    - 312, Duplication of Benefits
    - 324, Management Costs
- Title IV – Major Disaster Assistance Programs (applies to Major Disaster Declarations)
    - 403, Essential Assistance
    - 406, Repair, Restoration, and Replacement of Damaged Facilities
    - 407, Debris Removal
    - 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.[47] FEMA is currently implementing these Alternative Procedures via pilot programs. These pilot programs 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)
    - 502, Federal Emergency Assistance
- Title VII – Miscellaneous
    - 705, Disaster Grant Closeout Procedures

[45] 2 CFR § 200.338.
[46] 44 CFR § 206.200(b).
[47] Stafford Act § 428, 42 U.S.C. § 5189f.

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.[48] FEMA and any entity receiving PA assistance must comply with all applicable Federal Regulations.[49]

FEMA publishes PA Program rules in the following parts of 44 CFR:[50]

- Part 206 Subpart G, Public Assistance Project Administration;
- Part 206 Subpart H, Public Assistance Eligibility;
- Part 206 Subpart I, Public Assistance Insurance Requirements; and
- Part 207, Management Costs.

The Office of Management and Budget establishes regulations regarding administrative requirements, cost principles, and audit requirements in 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.[51]

C. Environmental and Historic Preservation Requirements

Several statutes, EOs, and regulations establish requirements to protect the environment and preserve the Nation's historic and prehistoric resources. FEMA must review each PA project to ensure the work complies with applicable Federal environmental and historic preservation (EHP) laws and their implementing regulations, and applicable EOs.[52] 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. See Appendix A: Environmental and Historic Preservation Compliance for a description of applicable EHP statutes, EOs, and regulations.

D. Public Assistance Policy

FEMA issues policy to articulate the Agency's intent and direction in applying statutory and regulatory authority to guide decision-making, achieve desired outcomes, and ensure consistent implementation of programs across the Nation. FEMA generally publishes proposed PA policy language in the *Federal Register* for public comment prior to publishing in this document.[53] PA policy is included in Chapter 2 of this document. This document also references other FEMA policies that apply to both the PA Program and other FEMA programs. FEMA will conduct a comprehensive review of this publication no less than every 3 years.

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[48] Stafford Act § 321, 42 U.S.C. § 5164.
[49] 44 CFR § 206.200(b).
[50] Stafford Act § 325, 42 U.S.C. § 5165c, and 44 CFR § 1.4.
[51] 2 CFR § 200.101.
[52] 2 CFR § 200.300.
[53] FEMA is required to publish policies for comment if they are deemed "significant" by the Office of Management and Budget, pursuant to the Final Bulletin on Agency Good Guidance Practices, 72 *Fed. Reg.* 3432 (Jan. 25, 2007) and when the policy reduces assistance, pursuant to Stafford Act § 325, 42 U.S.C. § 5165, Public Notice, Comment, and Consultation Requirements.

CHAPTER 2: PUBLIC ASSISTANCE POLICY

This chapter discusses the eligibility criteria for Public Assistance (PA) funding and provides comprehensive PA policy to use when evaluating eligibility.

I. General Public Assistance Eligibility

The four basic components of eligibility are:

- Applicant
- Facility
- Work
- Cost

Figure 4. Eligibility Pyramid

FEMA refers to these components as the building blocks of an eligibility pyramid. Generally, FEMA must determine each building block eligible, starting at the foundation (Applicant) and working up to cost at the top of the pyramid (Figure 4). There are two exceptions to the standard eligibility pyramid. For private nonprofits (PNPs), FEMA must determine whether the PNP owns or operates an eligible facility in order to determine whether the Applicant is eligible (see Chapter 2:II.D. for additional information and a pyramid specific to PNP eligibility). Secondly, for State, Territorial, Tribal, and local government Applicants, evaluating facility eligibility is not a necessary step for most Emergency Work, as described in Chapter 2:VI.

The Applicant is responsible for providing documentation to support that each component is eligible. FEMA accepts a variety of documentation to substantiate eligibility. Chapter 3 provides lists of recommended documentation. In some cases, FEMA requires specific documentation to support eligibility. FEMA specifies these requirements in this chapter, where applicable.

II. Applicant Eligibility

FEMA provides assistance to eligible Applicants, which are defined below.[54] As shown in Figure 5, FEMA must first determine whether an Applicant is eligible before evaluating the Applicant's claim.

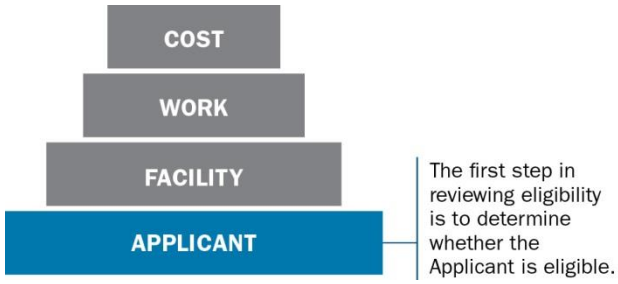

Figure 5. Applicant Eligibility

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.[55]

[54] 44 CFR § 206.222.
[55] Stafford Act § 102(4), 42 U.S.C. § 5122; 44 CFR §§ 206.2(a)(22) and 206.222(a); and 2 CFR § 200.90.

B. Indian Tribal Governments

Federally recognized Indian Tribal Governments, including Alaska Native villages and organizations (hereinafter referred to as "Tribal Governments"), are eligible Applicants. Alaska Native Corporations are not eligible as they are privately owned.[56]

C. Local Governments

The following types of local governments are eligible Applicants:[57]

- 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
- Special districts established under State law
    - 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 be legally responsible for ownership, maintenance, and operation of an eligible facility that is accessible to the general public.

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.[58]

D. Private Nonprofit Organizations

Only certain PNPs are eligible Applicants. To be an eligible PNP Applicant, the PNP must show that it has:

- A current 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

Figure 6. PNP Eligibility

[56] Stafford Act § 102(6), 42 U.S.C. § 5122; 44 CFR §§ 206.201(i) and 206.222(c); and 2 CFR § 200.54.
[57] Stafford Act § 102(8), 42 U.S.C. § 5122; 44 CFR §§ 206.2(a)(16) and 206.222(a); and 2 CFR § 200.64.
[58] Stafford Act § 102(8)(c), 42 U.S.C. § 5122, and 44 CFR § 206.2(a)(16)(iii).

- Documentation from the State substantiating it is a non-revenue producing, nonprofit entity organized or doing business under State law.[59]

Additionally, as shown in Figure 6, prior to determining whether the PNP is eligible, FEMA must first determine whether the PNP owns or operates an eligible facility.[60] For PNPs, an eligible facility is one that provides an eligible service as listed below:

- A facility that provides a critical service, which is defined as education, utility, emergency, or medical (see Table 1);[61] or
- A facility that provides a non-critical, but essential social service AND provides those services to the general public (see Table 2).[62] PNP facilities generally meet the requirement of serving the general public if ALL of the following conditions are met:
  - 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 prohibited with gates or other security systems; and
  - Any membership fees meet all of the following criteria:
    - Are nominal;
    - 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.[63]

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, such as:

- U.S. Internal Revenue Service documentation
- Pre-disaster charter, bylaws, and amendments
- Evidence of longstanding, routine (day-to-day) use (e.g., a calendar of activities)

Facilities established or primarily used for political, athletic, recreational, vocational, or academic training, conferences, or similar activities are not eligible (see Table 3).

[59] 44 CFR § 206.221(f).
[60] 44 CFR § 206.222(b).
[61] Stafford Act § 406(a)(3)(B), 42 U.S.C. § 5172, and 44 CFR § 206.221(e).
[62] 44 CFR § 206.221(e)(7).
[63] As amended by the Bipartisan Budget Act of 2018, Stafford Act sections 102(11)(B) and 406(a)(3)(C) make clear that an organization operating houses of worship that limits leadership or membership to persons who share a religious faith or practice still provides essential social services to the general public.

Table 1. PNP Eligible Critical Services

PNP ELIGIBLE CRITICAL SERVICES

EDUCATION

- Primary or secondary education as determined under State law and provided in a day or residential school, including parochial schools, OR
- Higher-education institutions that meet all of the following criteria:
  - Admit students or persons having a high school diploma or equivalent;
  - Are legally authorized to provide education beyond a secondary level;
  - Award a bachelor's degree or a 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
  - Are accredited by a nationally recognized agency or association (as determined by the Secretary of Education).
- Educational facilities that meet the above criteria are eligible without regard to their religious character or use for religious instruction

MEDICAL

- Emergency medical care (diagnosis or treatment of mental or physical injury or disease) provided in:
  - Clinics
  - Facilities that provide in-patient care for convalescent or chronic disease patients
  - Hospices and nursing homes
  - Hospitals and related facilities, including:
    - Central service facilities operated in connection with hospitals
    - Extended-care facilities
    - Facilities related to programs for home-health services
    - Laboratories
    - Self-care units
    - Storage, administration, and record areas
  - Long-term care facilities
  - Outpatient facilities
  - Rehabilitation centers that provide medical care

UTILITY

- Communications transmission and switching, and distribution of telecommunications traffic
- Electric power generation, transmission, and distribution.
- Irrigation to provide water for drinking water supply, fire suppression, or electricity generation
- Sewer and wastewater collection, transmission, and treatment
- Water treatment, transmission, and distribution by a water company supplying municipal water

EMERGENCY SERVICES

- Ambulance
- Fire protection
- Rescue

Administrative and support buildings essential to the operation of PNP critical services are eligible facilities.

Table 2. PNP Eligible Non-critical, Essential Social-Type Services

PNP ELIGIBLE NON CRITICAL, ESSENTIAL SOCIAL TYPE SERVICES

Community centers established and primarily used for the purpose of offering the following services (or similar) to the community at large:

- Art services authorized by a State, Territorial, Tribal, or local government, including, but not limited to:
  - Arts administration
  - Art classes
  - Management of public arts festivals
  - Performing arts classes
- Educational enrichment activities that are not vocational, academic, or professional training; examples include hobby or at-home pursuits, such as:
  - Car care
  - Ceramics
  - Gardening
  - Personal financial and tax planning
  - Sewing
  - Stamp and coin collecting
- Multi-purpose arts programming
- Senior citizen projects, rehabilitation programs, community clean-up projects, blood drives, local government meetings, and similar activities
- 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
- Social activities to pursue items of mutual interest or concern, such as:
  - Community board meetings
  - Neighborhood barbecues
  - Various social functions of community groups
  - Youth and senior citizen group meetings
- Youth and senior citizen group meetings
- Activities of community centers that serve the general public

Facilities that do not provide medical care, but do provide:

- Alcohol and drug treatment
- Assisted living
- Custodial care, even if the facility is not open to the general public (including essential administration and support facilities)
- Rehabilitation
- Child care
- Day care for individuals with disabilities or access and functional needs (for example, those with Alzheimer's disease, autism, muscular dystrophy)
- Food assistance programs
- Health and safety services
- Homeless shelters
- Houses of worship
- Libraries
- Low-income housing (as defined by Federal, State, Territorial, Tribal, or local law or regulation)
- Museums:
  - Constructed, manufactured, or converted with a primary purpose of preserving and exhibiting a documented collection of artistic, historic, scientific, or other objects
  - Buildings, associated facilities, fixed facilities, and equipment primarily used for the preservation or exhibition of the collection, including:
    - Permanent infrastructure, such as walkways and driveways of outdoor museum-type exhibition areas
    - Historic buildings, such as barns and other outbuildings, intended for the preservation and exhibition of historical artifacts within a defined area
    - Permanent facilities and equipment that are part of arboretums and botanical gardens
    - Infrastructure, such as utilities, and administrative facilities necessary for support
  - The grounds at museums and historic sites are not eligible.
  - Open natural areas/features or entities that promote the preservation/conservation of such areas are not eligible.
- Residential and other services for battered spouses
- Residential services for individuals with disabilities
- Senior citizen centers
- Shelter workshops that create products using the skills of individuals with disabilities
- Zoos
- Performing arts centers with a primary purpose of producing, facilitating, or presenting live performances, including:
  - Construction of production materials
  - Creation of artistic works or productions
  - Design
  - Professional training
  - Public education
  - Rehearsals
- Public broadcasting that monitors, receives, and distributes communication from the Emergency Alert System

With the exception of custodial care facilities and museums, administrative and support buildings essential to the operation of PNP non-critical services are NOT eligible facilities.

Table 3. PNP Ineligible Services

PNP INELIGIBLE SERVICES	
COMMUNITY CENTER SERVICES • Training individuals to pursue the same activities as full-time paying careers (for example, vocational, academic, or professional training) • Meetings or activities for only a brief period, or at irregular intervals	**OTHER COMMUNITY SERVICES** • Advocacy or lobbying groups not directly providing health services • Cemeteries • Conferences • Day care services not included in previous table of eligible services • Irrigation solely for agricultural purposes[64] • Job counseling • Property owner associations with facilities such as roads and recreational facilities (except those facilities that could be classified as utilities or emergency facilities) • Public housing, other than low-income housing • Recreation • Parking not in direct support of eligible facility
EDUCATION • Athletic, vocational, academic training, or similar activities • Political education	

III. Facility Eligibility

In general a facility must be determined eligible in order for work to be eligible. There are exceptions for some emergency work activities as shown in Figure 7 and discussed in Chapter 2:VI.

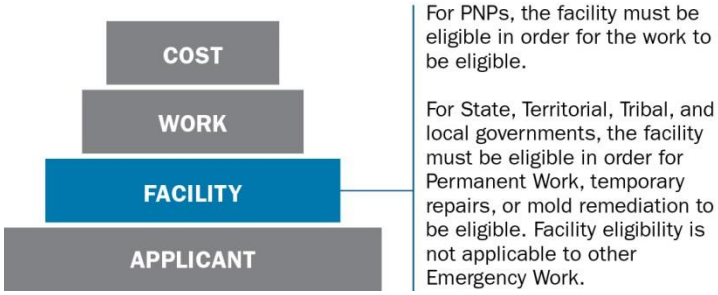

Figure 7. Facility Eligibility

A facility is a building, works, system, or equipment, built or manufactured, or an improved and maintained natural feature.[65]

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

[64] 44 CFR § 206.221(e)(3).
[65] 44 CFR § 206.201(c).

- 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 not eligible facilities:

- Unimproved property (e.g., a hillside or slope, forest, natural channel bank)
- Land used for agricultural purposes[66]

A. Public Facility

An eligible public facility is one that a State, Territorial, Tribal, or local 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
- Park[67]

When a facility maintained by a Community Development District[68] is not open to the general public or does not provide a service to the general public, the facility is not eligible.

B. Private Nonprofit Facility

An eligible PNP facility is one that provides educational, utility, emergency, medical, or custodial care, including for the aged or disabled, and other essential social-type services to the general public (further described in Tables 1 and 2).[69]

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 various examples of PNP facilities and corresponding eligibility determinations.

[66] Ibid.
[67] Stafford Act § 102(10), 42 U.S.C. § 5122, and 44 CFR § 206.221(h).
[68] 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.
[69] Stafford Act § 102(11), 42 U.S.C. § 5122, and 44 CFR § 206.221(e).

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 funding based on the percentage of physical space dedicated to eligible services. 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.

(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, in order to be eligible, the facility must be primarily owned by the PNP Applicant and meet 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 that provide non-

critical, essential social services, FEMA only provides PA funding for eligible Permanent Work costs that an SBA loan will not cover. Therefore, non-critical PNPs must also apply for a disaster loan from the SBA.[70] Possible outcomes are shown in Figure 8.

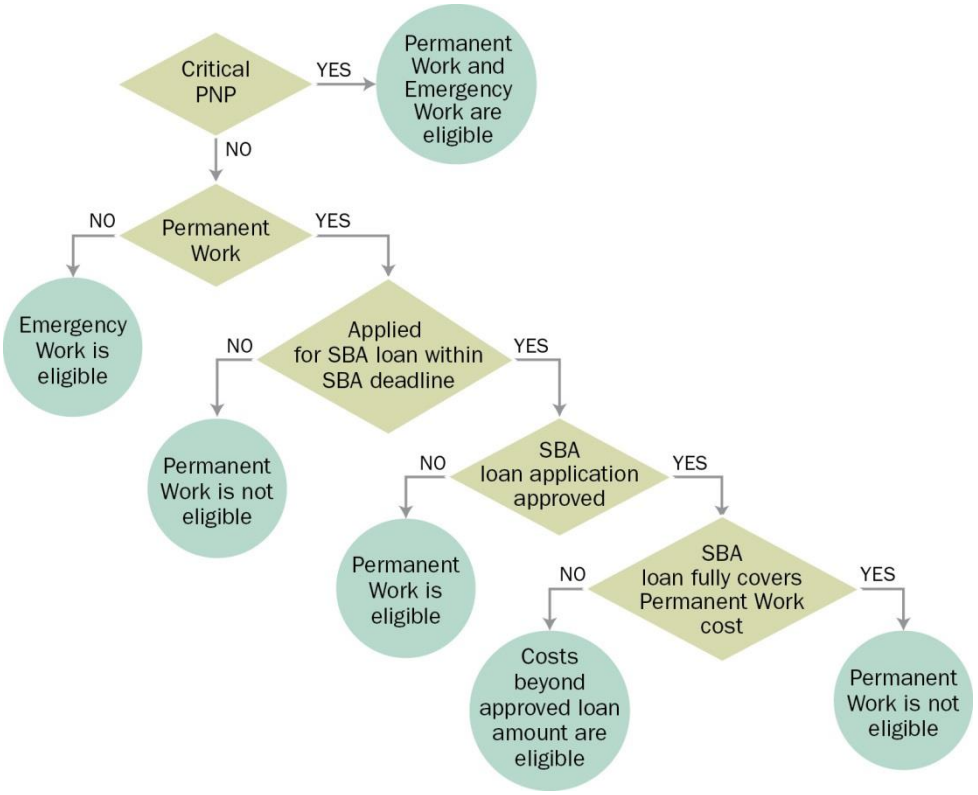

Figure 8. SBA Loan Outcomes

PNPs that provide critical services can apply to FEMA without having to apply to SBA. If the eligible portion of a mixed-use facility provides critical services (or is partially used to provide critical services), the Applicant may apply for PA funding without also applying to SBA for a loan. If the eligible portion of a mixed-use facility is used to provide services that are entirely non-critical, the Applicant must also apply to SBA for a loan.

C. Facility under the Specific Authority of Other Federal Agencies

Other Federal agencies also have authority to provide assistance after disasters. If a facility is under the specific authority of another Federal agency, FEMA does not provide assistance to restore that facility even if that Federal agency does not provide funding to restore the facility.[71] Public Housing Authority facilities are eligible unless Congress appropriates funds to the U.S. Department of Housing and Urban Development (HUD) for emergency capital needs for that facility.

Additionally, other Federal agencies have authority to conduct specific work that may overlap with FEMA's authority. FEMA does not provide assistance for that work except in certain, limited circumstances as described in Chapter 2:VI.A.4(b).

[70] Stafford Act § 406(a)(3)(A)(ii), 42 U.S.C. § 5172, and 44 CFR § 206.226(c).
[71] 44 CFR § 206.226(a).

The Applicant should apply to the respective agency for assistance with a facility or work under that agency's authority.

D. 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 not eligible, 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.[72]

The above criteria also apply to facilities that are partially inactive at the start of the incident period. Inactive portions are not eligible 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 facilities, more than 50 percent of the facility had to be in active use for an eligible purpose at the time of the incident in order for the facility to be eligible.

E. 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 the bid 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 not eligible. In such a case, the Applicant should coordinate with the agency funding the project to expedite replacement, if possible.

[72] 44 CFR § 206.226(k)(2).

IV. General Work Eligibility

Through the PA Program, FEMA provides:

- Grant funding for emergency protective measures and debris removal (Emergency Work)
- Grant funding for permanent restoration of damaged facilities, including cost-effective hazard mitigation to protect the facilities from future damage (Permanent Work)

Administrative Plan Requirement for PA funding

In accordance with 44 CFR § 206.207(b), State Administrative Plan, before FEMA provides PA funding for any project, a Recipient must have a FEMA-approved Administrative Plan that describes how it intends to administer the PA Program. A Recipient must submit its Administrative Plan to FEMA on an annual basis. For any new incident that occurs within the year, the Recipient must also submit amendments to its Administrative Plan to address specifics of the new incident.

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 9.

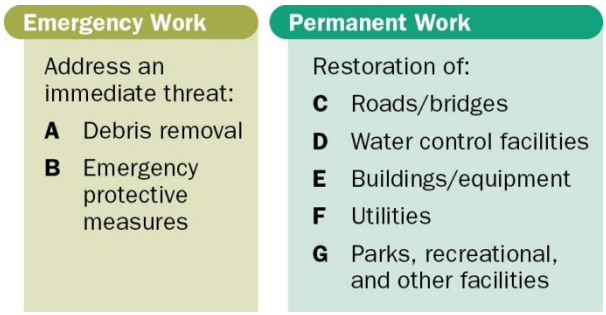

Figure 9. Categories of Work

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, with the exception of sheltering and evacuation activities; and
- Be the legal responsibility of an eligible Applicant.[73]

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 (for Emergency Work); or
- To address damage caused by the declared incident.

For debris removal, the Applicant must demonstrate that the debris causing an immediate threat was generated during the declared incident period and directly by declared incident.

For temporary repairs, mold remediation, and Permanent Work, 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

[73] 44 CFR § 206.223(a).

- Negligence[74]

2. Within Designated Area

To be eligible, work must be located in the designated area defined in the declaration (with the exception of sheltering and evacuation activities).[75] Emergency Work or Permanent Work performed on a facility located outside of the designated area is not eligible. 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, Tribal Government declarations do not usually define specific designated geographical areas. If a specific designated area is not defined in the declaration, 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.[76]

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 facility restoration, 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).

(a) Facility Ownership

When an 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 generally 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.

(b) 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.[77] 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;

[74] 44 CFR § 206.223(e).
[75] 44 CFR § 206.223(a)(2).
[76] 44 CFR § 206.223(a)(3).
[77] Stafford Act § 406(e)(2), 42 U.S.C. § 5172.

- 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.

(c) Leased Facilities

An Applicant may own a facility and lease it to a tenant, or an 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.

(d) Federal Facilities

Facilities owned and maintained by Federal agencies are not eligible. However, if a Federal agency constructed a facility and formally designated the Applicant as the legally responsible entity for facility operation, maintenance, and repairs, then the facility is eligible. FEMA reviews the agreement between the Federal agency and the Applicant to confirm the legally responsible entity.

(e) Jurisdiction over an Area

In general, an Applicant only has legal responsibility to conduct Emergency Work activities within its jurisdiction. If an Applicant conducts Emergency Work activities outside its jurisdiction, it must demonstrate its legal basis and responsibility to conduct those activities.

(f) Conducting Activities on Private Property

To determine whether a State, Territorial, Tribal, or local government has legal responsibility to conduct activities on private property, FEMA reviews the Applicant's legal basis and authority to conduct the activities.

V. Cost Eligibility

The final component evaluated for eligibility, as shown in Figure 10, are the costs claimed by the Applicant. 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;[78]

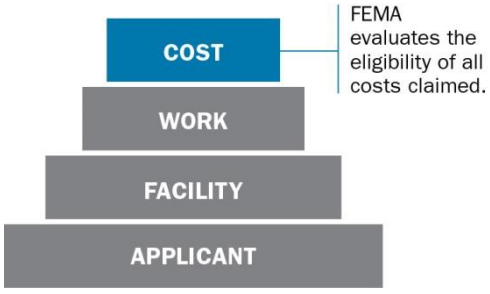

Figure 10. Cost Eligibility

[78] 2 CFR § 200.403(g).

- Reduced by all applicable credits, such as insurance proceeds and salvage values;[79]
- Authorized and not prohibited under Federal, State, Territorial, Tribal, or local 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.[80]

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.[81]

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.[82]
- The cost is comparable to the current market price[83] for similar goods or services based on:
    - Historical documentation;
    - Average costs in the area; or
    - Published unit costs from national cost estimating databases.
- Any of the following factors caused escalation of 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, such as environmental or historic issues, remote access or location, provision of a unique service with few providers, or elements requiring an extraordinary level of effort; or
    - The Applicant deviated from its established practices.[84]
- Exigent circumstances existed. If so, FEMA evaluates the length of time the circumstances existed compared to the length of time costs were incurred.
- The 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.[85]
- The Applicant complied with procurement requirements (see Chapter 2:V.G.).

The Applicant is responsible for providing documentation to demonstrate its claimed costs are reasonable. If FEMA determines any of the costs to be unreasonable based on its evaluation,

[79] Stafford Act § 312, 42 U.S.C. § 5155, and 2 CFR § 200.406.
[80] 2 CFR § 200.403.
[81] 2 CFR § 200.404.
[82] 2 CFR § 200.404(a).
[83] 2 CFR § 200.404(c).
[84] 2 CFR § 200.404(e).
[85] 2 CFR § 200.404(b).

FEMA may disallow all or part of the costs by adjusting eligible funding to an amount it determines to be reasonable.

A. 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
- Administrative leave

1. 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 will determine 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.

2. 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 employees.[86] For Emergency Work, only overtime labor is eligible for budgeted employees.[87] For unbudgeted employees performing Emergency Work, both straight-time and overtime labor are eligible. Figure 11 indicates different types of budgeted and unbudgeted employees.

Regular Time for Debris Removal Projects

- Alternative Procedures: Eligible
- Standard Program: Ineligible

Under the alternative procedures authorized by Section 428 of the Stafford Act, if the Applicant opts to participate in the straight-time procedure for debris removal, straight-time labor costs are eligible for budgeted employees conducting eligible debris removal (Category A) activities. See Chapter 2:VI.A.1(b) for further information.

Emergency Work Labor Eligibility		
Budgeted Employees	**Overtime**	**Straight-Time**
Permanent employee	☑	
Seasonal employee working during normal season of employment	☑	
Unbudgeted Employees	**Overtime**	**Straight-Time**
Essential employee called back from administrative leave	☑	☑
Permanent employee funded from external source	☑	☑
Temporary employee hired to perform eligible work	☑	☑
Seasonal employee working outside normal season of employment	☑	☑

Figure 11. Emergency Work Labor Eligibility

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.

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.

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.

[86] Stafford Act § 406(a)(2)(C), 42 U.S.C. § 5172, and 44 CFR § 206.228(a)(2)(i).
[87] Stafford Act § 403(d)(1)(B), 42 U.S.C. § 5170b, and 44 CFR § 206.228(a)(2)(iii).

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.

Supervisors

Second-level supervisors and above (e.g., commissioners, mayors, department directors, police and fire chiefs) are usually exempt employees[88] and are not directly involved in the performance of a specific project. Therefore, they are not eligible for overtime, 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 2:V.A.1.

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 not eligible.

Stand-by Time

Subject to the provisions of labor cost eligibility criteria, FEMA also provides PA funding for costs related to stand-by time incurred in preparation for and directly related to actions necessary to save lives and protect public health and safety. To be eligible, stand-by time must be reasonable, necessary, and consistent with the Applicant's practice in non-federally declared incidents. Examples of when FEMA may reimburse costs for stand-by time include, but are not limited to:

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

FEMA will determine whether any stand-by time claimed is reasonable and necessary based on whether:

- There is a contractual obligation to pay for stand-by time based on a labor agreement

[88] These employees are exempt from the overtime pay requirements set forth in the Fair Labor Standards Act.

- The stand-by time occurred when it was necessary to have resources available to save lives and protect health and safety

For instance, 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. However, FEMA limits its reimbursement to that which is reasonable and necessary, not to exceed 14 calendar days from the start of the incident period.

B. Applicant (Force Account) Equipment and Purchased Equipment

FEMA provides PA funding for the use of Applicant-owned equipment (force account equipment), including permanently mounted generators, based on hourly rates.[89] 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 an 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 mobilizing equipment to a project site are eligible, costs for standby time (time spent on hold or in reserve) are not eligible 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.

Executive Order (EO) 13688, Federal Support for Local Law Enforcement Equipment Acquisition, requires Federal agencies to ensure careful coordination and oversight of providing military and military-styled equipment, firearms, and tactical vehicles, including property covered under 22 CFR Part 121, The United States Munitions List, and 15 CFR Part 774, The Commerce Control List, (collectively "controlled equipment"), to State, Territorial, Tribal, and local law enforcement agencies. FEMA must comply with this EO when providing PA funding for purchase of this type of equipment.[90] The PA Division at FEMA Headquarters provides specific guidance when an Applicant seeks PA funding for law enforcement equipment.[91]

FEMA provides PA funding for force account equipment usage based on FEMA, State, Territorial, Tribal, or local equipment rates in accordance with the specific criteria noted below.

FEMA Rates

FEMA publishes equipment rates applicable on a national basis.[92] 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, with

[89] 44 CFR § 206.228(a)(1).
[90] Executive Order (EO) 13688, 80 *Fed. Reg.* 3451 (January 22, 2015).
[91] As of the date of this publication, FEMA policy to meet the requirements of EO 13688 is under development. Absent publication of a specific policy, Recipients and Applicants must obtain specific guidance from FEMA.
[92] www.fema.gov/schedule-equipment-rates.

the exception of 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 not eligible.

State and Territorial Rates

State and Territorial rates are those established under State or Territorial guidelines for use in normal day-to-day operations. FEMA provides PA funding based on State or Territorial rates up to $75 per hour.[93] 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.[94]

Tribal Rates

Tribal rates are those developed under Tribal 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 Tribal rate or the FEMA rate. However, if the Tribal 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 Tribal rate is higher, the Applicant must document the basis for that rate and obtain approval from FEMA for the higher rate.[95]

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 will determine which schedule of rates is lower.

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.[96]

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 will determine which schedule of rates is lower.

[93] 44 CFR § 206.228(a)(1)(i).
[94] Per 44 CFR § 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.
[95] 44 CFR § 206.228(a)(1)(ii).
[96] Ibid.

Equipment with No Established Rate

If the Applicant uses equipment that has no established State, Territorial, Tribal, or local rate, FEMA reimburses that equipment based on the FEMA rate.[97] 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 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.

C. 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;[98] 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 2:V.B.

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.

D. 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 needs to 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.[99] If the Applicant does not have an established method, FEMA provides PA funding based on historical data or prices from area vendors.

[97] 44 CFR § 206.228(a)(1)(iii).
[98] 2 CFR § 200.318(d).
[99] 2 CFR § 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.

E. 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.[100] Tangible personal property that does not fall under this definition of equipment is a supply.[101]

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.

When equipment or supplies (including materials) purchased with PA funding are no longer needed for response to or recovery from the incident, the Applicant may use the items for other federally funded programs or projects, provided the Applicant informs FEMA.[102]

1. Disposition of Purchased Equipment

In accordance with Federal regulations, State and Territorial government Applicants dispose of equipment in accordance with State or Territorial laws and procedures.[103]

Tribal and local governments and PNPs must calculate the current fair market value of each individual item of equipment. The Applicant must provide the current fair market for any items that have a current fair market value of $5,000 or more. FEMA reduces eligible funding by this amount.[104]

Terminology

Fair market value is either the selling price or the advertised price for a similar item in a competitive market.

If an individual item of equipment has a current fair market value less than $5,000, FEMA does not reduce the eligible funding.[105]

2. Disposition of Purchased Supplies

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.

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[100] 2 CFR § 200.33.
[101] 2 CFR § 200.94.
[102] 2 CFR § 200.313(c).
[103] 2 CFR § 200.313(b).
[104] 2 CFR § 200.313(e)(2).
[105] 2 CFR § 200.313(e)(1).

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.[106]

If the aggregate total of unused residual supplies is less than $5,000, FEMA does not reduce the eligible funding.

F. Disposition of Real Property

If the Applicant acquires or improves real property with PA funds, disposition and reporting requirements apply.[107] The PA Division at FEMA Headquarters provides disposition instructions when acquired or improved real property is no longer needed for the originally authorized purpose.[108]

G. 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. This section provides information on Federal procurement and contracting requirements. 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.[109]

1. Procurement Standards

Applicants must comply with Federal procurement standards as a condition of receiving PA funding for contract costs for eligible work. Federal procurement standards for State and Territorial governments are different than those for Tribal and local governments and PNPs.

State and Territorial government Applicants must follow the same policies and procedures they would use for procurements with non-Federal funds; comply with 2 CFR § 200.322, Procurement of recovered materials; and ensure that every purchase order or other contract includes any clauses required by 2 CFR § 200.326, Contract provisions.[110]

Non-State Applicants (Tribal and local governments and PNPs) must use their own documented procurement procedures that reflect applicable State, Territorial, Tribal, and local government laws and regulations, provided that the procurements conform to applicable Federal law and standards.[111] This requirement applies to Tribal Governments even when the Tribe is a Recipient.

Tribal and local governments and PNPs must conduct procurement transactions in a manner that complies with the following Federal standards:

- Provide full and open competition;[112]

[106] 2 CFR § 200.314(a).
[107] 2 CFR §§ 200.311 and 200.329.
[108] 2 CFR § 200.311(c). As of the date of this publication, FEMA policy to meet these requirements is under development. Absent publication of a specific policy, Recipients and Applicants must obtain specific disposition instructions from FEMA.
[109] www.fema.gov/media-library/assets/documents/96773.
[110] 2 CFR § 200.317.
[111] 2 CFR § 200.318(a).
[112] 2 CFR § 200.319(a).

- Conduct all necessary affirmative steps to ensure the use of minority businesses, women's business enterprises, and labor surplus area firms when possible;[113]
- Exclude 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;[114]
- Maintain written standards of conduct covering conflicts of interest and governing the performance of employees who engage in the selection, award, and administration of contracts; and[115]
- Maintain records sufficient to detail the history of the procurement. These records will include, but are not limited to:
    - Rationale for the method of procurement
    - Selection of contract type
    - Contractor selection or rejection
    - The basis for the contract price[116]

Terminology

Micro-purchase: purchase of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold.
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 CFR Subpart 2.1.
Sealed bid: publicly solicited bid awarded via a firm fixed price contract to the lowest 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.

Tribal and local governments and PNPs must use one of the following procurement methods:[117]

- Micro-purchase
- Small purchase procedure
- Sealed bid (formal advertising)
- Competitive proposal

FEMA may reimburse costs incurred under a contract procured through a noncompetitive proposal only when one or more of the following apply:

- The item is only available from a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- FEMA or the Recipient expressly authorizes a noncompetitive proposal in response to a written request from the Applicant; or
- After solicitation of a number of sources, competition is determined inadequate.[118]

[113] 2 CFR § 200.321.
[114] 2 CFR § 200.319(a).
[115] 2 CFR § 200.318(c)(1).
[116] 2 CFR § 200.318(i).
[117] 2 CFR § 200.320.
[118] 2 CFR § 200.320(f).

Tribal or local governments and PNPs must perform a cost or price analysis in connection with every procurement action in excess of the simplified acquisition threshold,[119] including contract modifications. The method and degree of analysis depends on the facts surrounding the particular procurement situation. As a starting point, the Applicant must make independent estimates before receiving bids or proposals.[120] Additionally, the Applicant 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 a cost analysis is performed.[121]

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 non-compliance with Federal procurement requirements, FEMA determines a reasonable cost for the eligible work completed based on all available information and documentation.[122]

2. Contracts

FEMA reimburses costs incurred using three types of contract payment obligations: fixed-price, cost-reimbursement, and, to a limited extent, time and materials (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)*.[123]

The Applicant must include required provisions in all contracts awarded[124] and maintain oversight to ensure contractors perform according to the conditions and specifications of the contract and any purchase orders.[125]

FEMA does not reimburse costs incurred under a cost plus a percentage of cost contract or a contract with a percentage of construction cost method.[126]

FEMA advises against the use of T&M contracts and generally limits the use of these contracts to a reasonable time based on the circumstances during which the Applicant could not define a clear scope of work (SOW). T&M contracts do not provide incentives to the contractor for cost control or labor efficiency. Therefore, FEMA may reimburse costs incurred under a T&M contract only if all of the following apply:

- No other contract was suitable;
- The contract has a ceiling price that the contractor exceeds at its own risk; and
- The Applicant provides a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.[127]

The Applicant should define the SOW as soon as possible to enable procurement of a more acceptable type of contract.

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[119] The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR § 2.101. The threshold is adjusted periodically for inflation.
[120] 2 CFR § 200.323(a).
[121] 2 CFR § 200.323(b).
[122] 2 CFR § 200.338.
[123] www.fema.gov/media-library/assets/documents/96773.
[124] 2 CFR § 200.326.
[125] 2 CFR § 200.318(b).
[126] 2 CFR § 200.323(d).
[127] 2 CFR § 200.318(j).

Some entities, such as Rural Electrical Cooperatives, provide the materials necessary to restore their 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.

The Davis Bacon Act, which requires "prevailing wage" payment to contracted workers based on the local union wage scale defined by the U.S. Department of Labor, does not apply to State, Territorial, Tribal, local government, or PNP contracts for PA-funded projects. However, 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.

H. Mutual Aid

When an Applicant does not have sufficient 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 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.

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).[128]

[128] The Recipient conducts Applicant Briefings to provide PA Program information to potential applicants. This briefing is described in Chapter 3 Section I.B.

Eligibility

Three types of mutual aid are eligible: Emergency Work, emergency utility restoration (regardless of whether it is deemed Category B or F), and grant management. 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 or "standing-by"
- Dispatch operations outside the receiving State, Territory, or Tribe
- Training and exercises
- 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 not eligible 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 State, Territorial, Tribal, or local government and the Providing Entity is another division within the same State, Territorial, Tribal, or local government, straight-time for budgeted employees of the Providing Entity is not eligible.

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 not eligible.

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 2:V.B). 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 2:VI.C).

I. 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.[129]

J. 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

[129] Stafford Act § 406(a)(2)(B), 42 U.S.C. § 5172.

personnel costs, and any other costs funded by the U.S. Department of Defense, such as training, are not eligible.

K. Direct Federal Assistance

When the impact of an incident is so severe that the State, Territorial, Tribal, and local 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 2:VI.A or B.[130] FEMA issues a "Mission Assignment" to task the work and refers to it as Direct Federal Assistance (DFA).[131] FEMA cannot task work that another Federal agency has its own authority to perform.[132] DFA has the same cost-share provisions applicable to the declaration (as described in Chapter 1:I.E).

L. Donated Resources

Individuals and organizations often donate resources (equipment, supplies, materials, or labor) to assist with response activities. FEMA does not provide PA funding for donated resources; however, the Applicant may use the value of donated resources to offset the non-Federal share of its eligible Emergency Work projects and DFA.

The Applicant may apply the offset if all of the following conditions are met:

- The donated resource is from a third party (a private entity or individual that is not a paid employee of the Applicant or Federal, State, Territorial, or Tribal government);
- The Applicant uses the resource in the performance of eligible Emergency Work; and
- The Applicant or volunteer organization tracks the resources and work performed, including description, specific locations, and hours.[133]

FEMA considers unpaid individuals who volunteer their labor to an 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).

Resources donated to the Applicant by an organization that would normally provide the same resources under its mission 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 the non-Federal cost share of its Emergency Work.

Resources donated by a Federal agency, funded through a Federal award, or from another federally funded source are not eligible as an offset to the

Donated Resource Project Preparation

FEMA prepares the donated resource project separate from the Emergency Work projects for the Applicant's incurred costs. FEMA does not obligate the donated resource project until after it obligates all of that Applicant's Emergency Work projects.

[130] 44 CFR § 206.208(a).
[131] 44 CFR § 206.208(c)(1).
[132] 44 CFR § 206.208(c)(2).
[133] 2 CFR § 200.434(d).

non-Federal share.[134] Additionally, when an Applicant uses donated resources for ineligible Emergency Work, or for any Permanent Work (eligible or ineligible), the value of those resources are not eligible as an offset to the non-Federal share.

All projects approved under PA are subject to cost sharing[135]; therefore, FEMA applies the Federal cost share to the total value of donated resources. FEMA does not apply the offset toward other State, Territorial, or Tribal government obligations, toward Permanent Work, or toward another Applicant's projects.

Offset Amounts

- Volunteer Labor: The offset for volunteer labor 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.[136]
- Donated Equipment: The offset for donated equipment is based on equipment rates. See Chapter 2:V.B for information on equipment rates.
- Donated Supplies or Materials: The offset for donated supplies or materials is based on current commercial rates, which FEMA validates based on invoices from previous purchases or information available from vendors in the area.[137]
- Logistical Support: Reasonable logistical support for volunteers doing eligible work, such as donations warehousing and management related to eligible Emergency Work, may be eligible either for funding (if the Applicant provides the logistical support) or as a donations credit (if a third party provides the logistical support), subject to approval by FEMA.

M. Project Management and Design Services

Project management activities, such as procurement, document review, and construction oversight, are eligible provided the activities are tracked and directly related to a specific, eligible project.

Engineering and design services and construction inspection are also eligible provided the services are necessary to complete eligible work. Some projects require only very basic services or none at all, while others require specialized engineering and design.

When evaluating the eligibility of project management and design services and the reasonableness of associated costs, FEMA considers all of the following:

- Project complexities;
- Whether redesign was necessary as a result of unexpected site conditions;
- Whether the project includes improvements that are not eligible for funding (management and design costs associated with ineligible work are not eligible); and

[134] 2 CFR § 200.306(b)(5).
[135] 44 CFR § 206.203(b).
[136] 2 CFR § 200.306(e).
[137] 2 CFR § 200.306(g).

- Applicable cost factors noted in the beginning of Chapter 2:V.

N. Grant Management and Administration

FEMA provides PA funding for administrative costs related to managing the PA Program and PA projects. FEMA provides PA funding differently depending on whether the costs are indirect, administrative, or other expenses the Recipient or Subrecipient incurs in administering and managing PA awards that are not directly chargeable to a specific project or if the costs are directly chargeable to a specific project.[138]

1. Section 324 Management Costs

Section 324 of the Stafford Act authorizes PA funding for management costs. Management costs are indirect costs, administrative expenses, and other expenses a Recipient or Subrecipient incurs in administering and managing PA awards that are not directly chargeable to a specific project.[139] Examples include, but are not limited to:

- Preliminary Damage Assessments (PDAs)
- Meetings regarding the PA Program or overall damage claim
- Organizing damage sites into logical groups
- Travel expenses
- Correspondence

FEMA provides 100 percent Federal funding for management costs based on actual costs incurred up to a percentage of the Federal share of projected eligible program costs, not including DFA. For PA, the maximum percentage is 3.34 percent for Major Disaster Declarations[140] and 3.90 percent for Emergency Declarations.[141] Management costs are capped at a combined total of $20 million dollars per declaration across both PA and the Hazard Mitigation Grant Program (HMGP), unless FEMA approves an exception.[142]

If a State and Tribal Government are both Recipients for the same incident within the same State, then both are eligible to receive management cost funding. The Recipient determines the amount of funds, if any, that it will pass through to Subrecipients for management costs.[143]

The Recipient can expend management cost funds for a maximum time of:

- Eight years from the date of a Major Disaster Declaration, or 180 days after the latest performance period of a non-management cost PA project or HMGP project narrative, whichever is sooner[144]
- Two years from the date of an Emergency Declaration, or 180 days after the latest performance period of a non-management cost PA project, whichever is sooner[145]

[138] Stafford Act § 324(a), 42 U.S.C. § 5165b; 44 CFR § 207.2; and 2 CFR §§ 200.56 and 200.412.
[139] Stafford Act § 324(a), 42 U.S.C. § 5165b; 44 CFR § 207.2; and 2 CFR §§ 200.56 and 200.412.
[140] 44 CFR § 207.5(b)(4)(i).
[141] 44 CFR § 207.5(b)(4)(iii).
[142] 44 CFR § 207.5(c).
[143] 44 CFR § 207.4(c).
[144] 44 CFR § 207.8(b)(1).
[145] 44 CFR § 207.8(b)(2).

The Recipient can submit a written justification for an extension on the period of availability to FEMA.[146] If approved, FEMA limits any additional time to a maximum of 180 days after the expiration of any performance period extensions granted under PA for project completion of a non-management cost project.[147]

2. Direct Administrative Costs

If the Recipient or Subrecipient incurs administrative costs that it tracks, charges, and accounts for directly to a specific eligible project, the costs are eligible as Direct Administrative Costs (DAC). The Recipient or Subrecipient cannot charge costs to a project if it previously allocated similar costs incurred for the same purpose in like circumstances to indirect costs.

Costs associated with the following activities are eligible as DAC if they are related to only one project and meet the above requirements (this list is not all-inclusive):

- Site inspections
- Developing the detailed site-specific damage description
- Evaluating Section 406 hazard mitigation measures
- Reviewing the Project Worksheet (PW)[148]
- Preparing Small Projects[149]
- Preparing correspondence
- Travel Expenses
- Collecting, copying, filing, or submitting documents to support the claim
- Requesting disbursement of PA funds

Recipient DAC Claim

Recipients may claim all DAC for each declaration on one PW provided DAC related to different Subrecipients are documented on separate site sheets within that PW. The Recipient must link the costs and activities to specific subawards within each site sheet.

Some Recipients submit DAC quarterly. To minimize Federal, State, and Tribal administrative costs, once a Recipient submits its initial DAC claim, FEMA does not process another DAC claim related to the same subaward until the Recipient submits its final DAC claim for that subaward.

See Chapter 3:II for information on PWs and sites sheets.

FEMA normally considers the salaries of administrative and clerical staff as indirect costs. Direct charging of these costs may be appropriate only if all of the following conditions are met:

- Administrative or clerical services are integral to a project or activity;
- Individuals involved are specifically identified with the project or activity;
- Such costs are explicitly included in the budget for that project or have FEMA's prior written approval; and
- The costs are not also recovered as indirect costs.

FEMA considers the following factors when determining the reasonableness of DAC:

- Whether the type of employee and skill level is appropriate for the activities performed; and

[146] The FEMA Chief Financial Officer must approve the request.
[147] 44 CFR § 207.8(b)(3).
[148] A Project Worksheet (PW) is the form FEMA uses to document the details of the Applicant's project and costs claimed.
[149] The Applicant may prepare its own Small Projects. Chapter 3 Section IV.B defines Small Projects.

- The level of effort required to perform an 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.

FEMA will use the level of effort required by FEMA staff to perform similar functions as a reference point to determine whether the level of effort claimed by the Recipient or Subrecipient is reasonable.

FEMA does not reimburse DAC based on blended rates (e.g., a labor rate plus a percentage of overall travel expenses or one rate for all levels of employees involved in a project). Labor and travel expenses must be tracked separately and shown as directly related to a specific project.

FEMA provides PA funding for DAC at the same cost-share provisions applicable to the declaration (as described in Chapter 1:I.E).

O. 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 indirect costs and eligible as management costs, described in Chapter 2:V.N.1. They are not eligible as project costs or DAC.

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 DAC provided the Applicant tracks the costs to a specific project.

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 that system that was actually damaged. For example, if after inspecting 500 linear feet of sewer line, the Applicant identified 100 linear feet of damaged line, only one-fifth of the total 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).[150] The criteria are summarized in Appendix C: Welded Steel Moment Frame.

Safety inspections are eligible as discussed in Chapter 2:VI.B.14.

P. 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.[151]

[150] www.fema.gov/media-library/assets/documents/747.
[151] Stafford Act § 312, 42 U.S.C. § 5155, and 2 CFR § 200.406.

1. Insurance Proceeds

FEMA cannot provide PA funding that duplicates insurance proceeds.[152] Consequently, FEMA reduces eligible costs by the amount of:

- Actual insurance proceeds, if known;[153] 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). 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 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.[154]

2. 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.
  - 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 not eligible, FEMA does not allow the Applicant to apply the funds toward its non-Federal cost share.

[152] Ibid.
[153] 44 CFR §§ 206.252(c) and 253(a).
[154] www.fema.gov/media-library/assets/documents/107564.

3. Third-Party Liability

When a third party[155] causes damage (e.g., an oil spill) or increases the cost of repair or cleanup and an 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.

4. 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.

The Applicant can only apply other Federal award funds toward the PA non-Federal cost share if the other Federal award has specific statutory authority allowing it to be utilized to meet cost-share requirements.[156] For example, the Community Development Block Grant program administered by HUD may be used for the non-Federal share on PA projects if certain requirements are met. The Applicant cannot apply PA funds toward the non-Federal cost share of other Federal agency funding.

Q. Duplication of Funding Between FEMA Programs

FEMA provides assistance under its Individual Assistance (IA) programs and 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 State, Territorial, Tribal, or local government has legal authority to perform the work. For example, a homeowner may receive Individuals and Households Program (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.

R. 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 not eligible because the Stafford Act does not authorize FEMA to provide PA funding for these items.

[155] 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.
[156] Stafford Act § 312, 42 U.S.C. § 5155.

1. Loss of Revenue

FEMA cannot provide PA funding for revenue lost as a result of the incident. The following are examples of when loss of revenue may occur as a result of an incident:

- Hospitals release non-critical patients to make room for survivors
- Hospitals sustain damage that reduces pre-existing capacity
- States open a toll road for evacuation and do not charge a toll
- States waive the normal fee for ferry service to encourage alternate transportation after an incident
- A utility system is shut down as a result of the incident
- Events are cancelled as a result of an entity using a venue for incident-related activities, such as sheltering

2. 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 period of time, 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.

3. Tax Assessments

State, Territorial, Tribal, and local governments may conduct tax assessments to re-assess real property values after an incident. Costs related to conducting these assessments are not eligible 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.

4. Increased Operating Costs

Increased costs of operating a facility or providing a service are generally not eligible, 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 2:VI.B.2.

VI. Emergency Work Eligibility

FEMA is authorized to provide PA funding for Emergency Work,[157] including emergency protective measures and debris removal. Emergency Work is that which must be done immediately to:

- Save lives;
- Protect public health and safety;
- Protect improved property; or

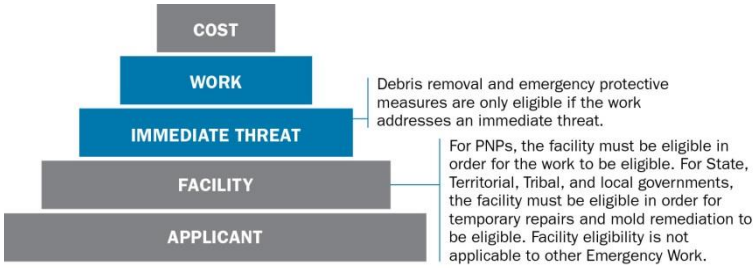

Figure 12. Emergency Work Eligibility

[157] 44 CFR § 206.201(b).

- Eliminate[158] or lessen an immediate threat of additional damage.[159]

"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.[160]

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.[161] 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 12). 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
- 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 2:III.B for details).

For State, Territorial, Tribal, and local 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.

Environmental and Historic Preservation

The Applicant is responsible for obtaining all required environmental and historic preservation (EHP) permits from the appropriate agencies before proceeding with Emergency Work. 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 prior to the start of work.

Emergency Work is excluded from National Environmental Policy Act (NEPA) review through a statutory exclusion (STATEX).[162] However, FEMA must ensure compliance with other Federal

[158] 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."
[159] 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.
[160] 44 CFR § 206.221(c).
[161] 44 CFR §§ 206.204(c) and (d).
[162] Stafford Act § 316, 41 U.S.C. 5159.

EHP laws, regulations, and EOs, including those related to floodplains, wetlands, federally listed threatened and endangered species and their critical habitats, and historic properties. Most EHP laws contain emergency provisions to expedite response activities that must be taken to prevent imminent loss of human life or damage to improved property.

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.

A. 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;[163] or
- Mitigates risk to life and property by removing Substantially Damaged[164] 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.[165]

Debris includes, but is not limited to, vegetative debris, construction and demolition debris, sand, mud, silt, gravel, rocks, boulders, 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,[166] is eligible. If State, Territorial, Tribal, or local governments authorize residents to place incident-related debris on public ROWs, FEMA provides PA funding to remove the debris from the ROWs for a limited period of time.

Removal of debris placed on the public ROWs from commercial properties is not eligible unless it is pre-approved by FEMA (see Chapter 2.VI.A.6(d)). Additionally, removal of materials related to the construction, repair, or renovation of either residential or commercial structures is not eligible.

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[163] 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.
[164] 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.
[165] Stafford Act § 407, 42 U.S.C. § 5173, and 44 CFR § 206.224(a).
[166] 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).

Debris removal from the following is not eligible:

- Federally maintained navigable channels and waterways
- Flood control works under the authority of the Natural Resources Conservation Service (NRCS)
- Agricultural land
- Natural, unimproved land, such as heavily wooded areas and unused areas

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 2:VII.H.2(a).

Environmental and Historic Preservation Compliance Considerations

Although debris removal is generally 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 debris removal operations avoid impacts to 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, wetlands, structures, wells, and septic tanks with leach fields.

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.

1. Alternative Procedures Pilot Program for Debris Removal

The Applicant may elect to participate in one or more of the following Alternative Procedures for debris removal:[167]

- Increased Federal cost share based on a sliding scale linked to the accelerated completion of debris removal
- Reimbursement of straight-time for force account labor
- Retention of income generated from recycling debris
- A one-time 2 percent increased cost-share incentive for a FEMA-accepted debris management plan[168] with pre-qualified debris removal contractors before the start of the incident period

The Applicant must notify FEMA of its intent to participate in the pilot program by signing and submitting the *Public Assistance Alternative Procedures Pilot Program for Debris Removal*

[167] The Debris Removal Alternative Procedures Pilot Program is currently authorized for declarations through June 27, 2017. On or before that date, FEMA will provide information as to whether the program is extended beyond that date at www.fema.gov/alternative-procedures.
[168] FEMA reviews debris management plans as described in Appendix D: Debris Management Plan Job Aid.

Acknowledgement[169] before obligation of its first debris removal project or within 60 days of its Recovery Scoping Meeting, whichever is sooner. If the Applicant submits the acknowledgement and subsequently wishes to rescind its participation in one or more of the Alternative Procedures, it may do so provided it submits written notification prior to obligation of its first debris removal project. The process for participating in and preparing projects under the Alternative Procedures is further detailed at www.fema.gov/alternative-procedures.

(a) Accelerated Debris Removal – Increased Federal Cost Share

With the Accelerated Debris Removal Procedure, FEMA increases its Federal cost share above the minimum 75 percent based on the timeframes shown in Table 4. Each percentage applies to the costs related to the work conducted during each timeframe. The timeframe is based on the start date of the incident period.

FEMA will not provide PA funding for costs associated with debris removal activities conducted after 180 days from the start of the incident period, unless FEMA grants an extension. Recipients may not grant time extensions under the Accelerated Debris Removal Procedure. FEMA is unlikely to authorize extensions for weather-related delays or the inability to obtain permits in a timely manner. Additional debris removal beyond the 180 days cannot be completed via DFA.

Table 4. Accelerated Debris Removal Alternative Procedure

Timeframe (days from start of incident period)	Federal Cost Share
1–30	85%
31–90	80%
91–180	75%
181+	0% (unless FEMA approves a time extension)

To participate in the Accelerated Debris Removal Procedure, the Applicant must apply the procedure to all of its debris removal projects. The projects must reflect actual costs for all debris removal activities conducted from the incident's start date until the end of the applicable timeframe. FEMA will not process Accelerated Debris Removal projects based on estimates, even for Small Projects.

The Accelerated Debris Removal Procedure is only available for grant assistance. FEMA will not apply this procedure to debris removal conducted via DFA.

(b) Reimbursement of Straight-Time for Force Account Labor

Reimbursement of straight-time for the Applicant's employees conducting debris removal activities is eligible.

(c) One-Time 2 Percent Increased Federal Cost Share Incentive for a FEMA-Accepted Debris Management Plan

FEMA encourages State, Territorial, Tribal, and local governments to establish written procedures and guidance for managing debris in an expeditious, efficient, and environmentally sound manner. FEMA refers to this as a Debris Management Plan (DMP). When the Applicant

[169] www.fema.gov/media-library/assets/documents/89675.

has both a FEMA-accepted DMP and pre-qualified[170] debris removal contractors before the start of the incident period, the Applicant may request the DMP incentive under the Alternative Procedures. The incentive consists of an additional 2 percent Federal cost share for debris removal activities conducted within 90 days from the start of the incident period. The Applicant must implement the DMP for that incident. FEMA will only provide this incentive toward one incident for each Applicant during the Alternative Procedures Pilot Program for Debris Removal.

The content of a DMP will vary depending on State, Territorial, Tribal, and local vulnerabilities, ordinances, zoning, critical infrastructure locations, disposal locations, and other localized factors. The following 10 elements are the basic components of a comprehensive DMP:

- Debris management overview
- Incidents and assumptions
- Debris collection and removal plan
- Debris removal from private property
- Public information
- Health and safety requirements
- Environmental considerations and other regulatory requirements
- Temporary debris management sites and disposal locations
- Force account or contract resources and procurement
- Monitoring of debris operations

FEMA's Debris Management Plan Job Aid (Appendix D) discusses each of these components in detail.

Pre-qualified Contractor

The Applicant must have pre-qualified contractors in order to be eligible for the additional 2 percent Federal cost share. A pre-qualified 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. To pre-qualify a contractor, the Applicant:

- Should identify the qualifications during the development of its DMP, which should include specific contract requirements, and explain how it established the qualifications;
- Should ensure pre-qualification procedures do not restrict full and open competition and should document its justification for the use of pre-qualified contractors in procurements using Federal funds; and
- Must ensure that the list is current and includes enough qualified sources to ensure maximum full and open competition.

A pre-qualified contractor is not entitled to a "stand-by" contract. The Applicant must still conduct full and open competition that meets the requirements of Chapter 2:V.G. The Applicant must allow additional contractors to qualify during the solicitation period.

[170] 2 CFR § 200.319(d).

Review and Acceptance

The Applicant should submit its DMP to the State or Territory for review and coordination. The State or Territory should review the DMP to ensure that it meets the overall intent of establishing processes and procedures to remove debris expeditiously, efficiently, and in an environmentally sound manner and subsequently forward it to FEMA. FEMA reviews the DMP to confirm that it sufficiently addresses each of the components. FEMA generally provides its determination of whether the DMP is acceptable within 30 days of receipt of the DMP.

FEMA's review and acceptance of the DMP does not constitute FEMA approval of any operational component of the plan and does not commit FEMA to funding any aspect of the plan. FEMA determines the eligibility of costs for debris removal and management based on established PA Program authorities, regulations, policies and guidance.

(d) Recycling Revenue

Standard PA Program

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.

Alternative Procedures Pilot Program

One of the alternative procedures authorizes the Applicant to retain revenue received through recycling if used prior to the period of performance deadline for any of the following purposes:

- To offset the non-Federal cost share of the Applicant's debris projects
- To develop disaster preparedness and assistance plans, programs, and capabilities
- To reduce the risk of future damage, hardship, or suffering from an incident
- To improve future debris removal operations or planning, including, but not limited to, the following:
    - Developing, updating, or revising DMPs
    - Enhancing Applicant-owned landfills and debris management sites
    - Installing mechanisms to control the flow of debris in future incidents (e.g., debris trash racks, K-Rail debris guards, silt fences)
    - Purchasing equipment to facilitate sorting, reducing, recycling, or removing debris (e.g., street sweepers, shredders, backhoes, balers, sorting conveyors)
    - Purchasing software and hardware products to facilitate quantifying debris
    - Purchasing onboard weight measurement systems for debris-collection trucks

- Purchasing software systems for debris load management to assist in tracking trucks, drivers, and routes

FEMA does not provide PA funding for the cost of establishing or managing the recycling program or process, or additional sorting or processing of debris for recycling purposes.

The Applicant must provide written notification of the revenue received. It should submit this information within 30 days of completion of its debris removal operations. This should include the completion date of the debris removal operations, the quantity and types of debris recycled, and the cost for processing the debris for recycling. The Applicant must provide an accounting of how it used the revenue. It should submit this information within 90 days of the period of performance deadline.

If the Applicant does not use the revenue for an authorized purpose, FEMA reduces PA funding by the amount of the recycling revenue.

2. 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 not eligible 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 will jeopardize 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 not eligible for removal later if it dies.

Pruning, maintenance, trimming, and landscaping are not eligible.

(a) 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 not eligible if the threat can be eliminated by cutting it at the closest main branch junction.

(b) 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 not eligible.

(c) 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 the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO). If the Applicant discovers any potential archeological resources during stump removal, the Applicant must immediately cease work and notify FEMA.

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 not eligible.

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 the Stump Conversion Table (Appendix E).

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 the Hazardous Stump Worksheet (Appendix F) and present documentation to substantiate the costs as reasonable based on the equipment required to perform the work.

(d) Documentation Requirements

The Applicant must provide all of the following documentation to support the eligibility of removing tree limbs, branches, stumps, or trees that are still in place:

- Specifics of the immediate threat with the U.S. National Grid (USNG) location and photograph or video documentation that establishes the item is on public property;
- Diameter of each item removed (measurement must be 2 feet up the trunk from the ground for stumps and 4.5 feet up for trees);
- Quantity of material to fill root-ball holes; and
- Equipment used to perform the work.

3. 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 and treating water contaminated with the hazardous material
- 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, but testing for the purpose of long-term cleanup actions is not eligible.

The Applicant must comply with Federal, State, Territorial, Tribal, and local government environmental requirements for handling hazardous materials. Before handling or disposing of hazardous materials, the Applicant should contact the appropriate Federal, State, Territorial, or Tribal agency and obtain required permits. 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), the U.S. Environmental Protection Agency (EPA)[171] and the U.S. Coast Guard (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

[171] 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/media-library/assets/documents/136089.

zone[172] and the USCG has responsibility for responses in the coastal zone.[173] Response actions may include containment, stabilization, decontamination, collection (e.g., orphan tanks, drums), and disposal.

4. 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 not eligible, even if the debris is deposited by the incident.

EPA and 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.

(a) 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 not eligible unless it is necessary in order 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 U.S. Army Corps of Engineers (USACE) have specific authorities for removal of hazardous substances, vessels, and other obstructions from federally maintained navigable waterways.

(b) 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.

[172] 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.
[173] 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.

Removal of the obstruction is eligible even in streams where debris removal would also be eligible under the NRCS Emergency Watershed Protection Program (EWP)[174] unless NRCS provides assistance for the debris removal. However, debris removal from flood control works that are under the specific authority of NRCS is not eligible for PA funding, even if NRCS does not have sufficient funding or does not provide assistance.

For flood control works that are eligible for the USACE Rehabilitation and Inspection Program (RIP),[175] debris removal is eligible for PA funding. USACE does not reimburse Applicants for debris removal, but conducts this activity directly when necessary.

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.

(c) 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 not eligible. 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) Documentation

For FEMA to determine that debris removal from waterways is eligible, the Applicant must provide documentation that:

- Establishes legal responsibility;
- Includes the basis of the immediate threat determination;
- Identifies locations, types, and quantities of debris; and
- Demonstrates the debris claimed was deposited by the incident and was not pre-existing.

5. Privately Owned Vehicles and Vessels

Removal of privately owned vehicles and vessels 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 and the Applicant is unable to identify the owner;
- The Applicant follows applicable State, Territorial, Tribal, and local government ordinances or laws for private vehicle or vessel removal; and
- The Applicant verifies the chain of custody of the vehicle or vessel.

[174] See www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/landscape/ewpp.
[175] See www.usace.army.mil/Missions/CivilWorks/LeveeSafetyProgram/LeveeInspections.aspx.

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 subsequently identified, the Applicant must return to FEMA the Federal share of any funds it recovers for storage costs.

6. Debris Removal from Private Property (Requires Prior FEMA Approval)

In limited circumstances, based on the severity of the impact of an incident, FEMA may determine that debris removal from private property is eligible under the PA Program. In making its determination, FEMA evaluates whether the impacts of debris on private property affect the general public in that community and whether the Applicant has legal authority to perform the work.

If debris on private property is so widespread that it threatens public health and safety or the economic recovery of the community, FEMA may provide PA funding for debris removal from private property. This debris removal must be in the public interest, not merely benefiting an individual or a limited group of individuals within the community.[176]

In such cases, FEMA works with the State, Territorial, Tribal, and local governments to designate specific areas where debris removal from private property, including private waterways, is eligible.

Clarification of Demolition versus Debris

If more than one wall of a structure is standing, FEMA considers the removal of that structure to be demolition and not debris removal. Demolition is subject to additional documentation to determine eligibility and must comply with Chapter 2:VI.B.16.

(a) Written Request

Prior to commencing work on private property, the Applicant must submit a written request and receive approval from FEMA. The written request must include:

- A public interest determination;
- Documentation supporting the Applicant's legal authority to remove the debris; and
- Indemnification.

The Applicant needs to identify the specific properties or areas of properties for which it is requesting approval.

Public Interest Determination

The Applicant must provide the basis for the determination that removing the debris from the private property requested is 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 in the designated area constitutes an immediate threat to life, public health, or safety, or to the economic recovery of the community at large.

[176] Stafford Act § 407, 42 U.S.C. § 5173, and 44 CFR § 206.224(b).

Additionally, the Applicant must submit its established, specific legal requirements for declaring the existence of a threat to public health and safety.

Legal Authority and Responsibility

The Applicant must provide documentation to confirm its legal authority and responsibility to enter private property and remove disaster-related debris. This includes:

- Citation of the law, ordinance, code, or emergency powers for which it is exercising its legal authority to remove debris from private property. The authority cited must be applicable to the condition representing the immediate threat and not merely the Applicant's uniform level of services. Typically, solid waste disposal ordinances are part of an Applicant's uniform level of services and not a justification for entering private property to remove disaster-related debris.
- 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 to remove debris to address immediate threats to life, public health, and safety.

Indemnification

The Applicant must indemnify the Federal Government and its employees, agents, and contractors from any claims arising from the removal of debris from private property.

(b) FEMA Approval

FEMA will provide a written response to the request specifying any properties or area of properties for which debris removal is approved.

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 before FEMA will provide PA funding for debris removal from private property.

(c) Debris Removal from Gated Communities

Debris removal from private residential property within a gated community is not eligible. However, if the debris is placed on a private road within the gated community, debris removal from the road may be eligible in accordance with the eligibility and request criteria listed in Chapter 2.VI.A.6(a).

(d) Debris Removal from Commercial Property

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 2.VI.A.6(a) and (b).

(e) Duplication of Benefits

The Applicant should 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 will coordinate closely with IA staff to ensure FEMA does not fund the same work under both programs.

7. 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.

Certain types of construction and demolition debris are reusable or recyclable. The Applicant should conserve landfill space by separating materials for reuse or recycling.

(a) Temporary Staging Sites

Establishing and operating a temporary staging site necessary for the purpose of 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.

(b) 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 will only fund a maximum of 85 percent of the debris in trucks without solid tailgates.

The Applicant must document the types and total quantity of debris that was hand-loaded 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.

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

(c) 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 not eligible 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.

8. Monitoring Debris Removal Operations

For FEMA to determine the eligibility of debris removal operations, the Applicant must provide debris types, quantities, reduction methods, and pickup and disposal locations. FEMA requires the Applicant to monitor all contracted debris operations to document this information and ensure that its contractor removes eligible debris. If the Applicant does not monitor contracted debris removal operations, it will jeopardize 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 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
- Training debris monitors on debris removal operations, monitoring responsibilities and documentation processes, and FEMA debris eligibility criteria

B. 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.[177]

FEMA may require certification by Federal, State, Territorial, Tribal, or local government officials that a threat exists, including:

- Identification and evaluation of the threat
- Recommendations of the work necessary to cope with the threat[178]

[177] 44 CFR § 206.225(a)(3).
[178] 44 CFR § 206.225(a)(2).

Saving Lives and Protecting Public Health and Safety

The following is a list of emergency protective measures and costs that are eligible. These actions save lives or protect public health or safety. This list is not all-inclusive. Some of these actions are discussed in detail below.

- Transporting and pre-positioning equipment and other resources for response
- Flood fighting
- Emergency Operation Center (EOC)-related costs
- Emergency access
- Supplies and commodities
- Medical care and transport
- Evacuation and sheltering, including that provided by another State or Tribal government
- Child care
- Safety inspections
- Animal carcass removal[179]
- Demolition of structures[180]
- Search and rescue to locate survivors, household pets, and service animals requiring assistance
- Fire fighting
- 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
- 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 2:VI.B.2)
- Mosquito abatement (see Chapter 2:VI.B.12)
- Repair of residential electrical meters (see Chapter 2:VI.B.13)
- Temporary relocation of essential services, including safe rooms for schools (see Chapter 2:VI.B.17)
- Snow-related activities when specifically authorized in the declaration (see Chapter 2:VI.B.18)

[179] 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.
[180] FEMA usually reimburses demolition of a public structure as part of the Permanent Work project to replace the facility.

Protecting Improved Property

The following is a list of eligible emergency protective measures to protect improved property,[181] some of which are discussed in further detail below. This list is not all-inclusive.

- 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
- Temporary 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)
- Taking actions to save the lives of animals that are eligible for replacement (see Chapter 2:VII.H.3(e))

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 in a community such that it is a threat to the health and safety of the general public in that community;
- 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.

Examples of situations where this may occur include:

- Demolition of unsafe private structures that endanger the public
- Pumping of flooded basements
- Pumping of septic tanks or decontamination of wells causing a pollution threat
- Stabilizing a slope

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 in that community; and

[181] 44 CFR § 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.

- 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 staff will coordinate closely with IA staff to ensure FEMA does not fund the same work under both programs.

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 State, Territorial, Tribal, or local 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
- 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 State, Territorial, Tribal, or local 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 State, Territorial, Tribal, or local government, FEMA may reimburse the volunteer fire department directly as an eligible Applicant.

1. 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.

Pre-positioning resources for the purpose of evacuating, or providing emergency medical care during the evacuation period (such as ambulances and busses), is eligible even if those resources are not ultimately used, provided the staging of those resources was necessary and prudent based on the data at the time of staging.

2. Expenses Related to Operating a Facility or Providing a Service

The Applicant may incur additional costs related to operating a facility 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 period of time based on the exigency of the circumstances; and
- The Applicant tracks and documents the additional costs.

Potentially eligible increased operating costs include, but are not limited to, costs for:

- Generators at a hospital or police station
- Water testing and treatment supplies in the immediate aftermath of the incident to counter a specific threat
- Fuel for increased use of a pumping station
- EOC facility costs (e.g., utilities)

Examples of ineligible operating costs include, but are not limited to, costs for:

- Patient care, except as noted in Chapter 2:VI.B.9
- Administrative activities
- Provision of food, except as noted in Chapter 2:VI.B.5, 7, and 8
- 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 fuel for school bus service

For PNPs, operating costs are generally not eligible 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.

3. Emergency Public Transportation and Communication (DFA only)

A State, Territorial, Tribal, or local 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 not eligible for reimbursement.[182] However, FEMA may provide short-term DFA for these services.[183]

4. 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 Applicants for flood fighting. However, they are not eligible 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.

[182] Transportation costs for the purpose of evacuation are eligible for reimbursement as described in Chapter 2:VI.B.10.
[183] Stafford Act §§ 418 and 419, 42 U.S.C. §§ 5185 and 5186, and 44 CFR § 206.225(c) and (d).

Dewatering agricultural and natural areas behind levees and other water control structures is not eligible.

5. 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
- Meal costs, as described in Chapter 2:VI.B.8

6. Emergency Access

There are times when the incident damages or impairs all access routes to an essential community service, or to a community with survivors. If the extent of damage makes these areas inaccessible, work related to providing access may be eligible. This includes debris removal from or 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.

Removal of debris from a privately owned facility, including those within gated communities, is eligible only when all of the following conditions are met:

- There is no other access point;
- Debris impedes emergency access;
- The Applicant completes all legal processes and obtains rights-of-entry and agreements to indemnify and hold harmless the Federal Government; and
- Work is performed by an eligible Applicant with legal authority to perform the work.

Emergency repairs to a privately owned facility, 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;
- The Applicant completes all legal processes and obtains rights-of-entry and agreements to indemnify and hold harmless the Federal Government; and
- Work is performed by an eligible Applicant with legal authority to perform the work.

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.

7. 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 2:V.D. Examples 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.

8. 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 2:V.A.1;
- 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.[184]

9. 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

[184] FEMA reimburses meal costs as part of a contract in accordance with the contract terms provided it meets the requirements in Chapter 2:V.G.

medical services provided. Costs are eligible for up to 30 days from the declaration date unless extended by FEMA.

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
- 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 not eligible. 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.[185] 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
- Administrative costs associated with the treatment of survivors

[185] Stafford Act § 312, 42 U.S.C. § 5155.

10. 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.

(a) Evacuation Including Accessible Transportation and Emergency Medical Transportation

Transportation of evacuees, household pets, service 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:

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.

- 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 stand-by 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.

- 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.[186]

(b) Sheltering

FEMA provides PA funding to State, Territorial, Tribal, and local 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.

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:

Transitional Sheltering Assistance Program

FEMA's Transitional Sheltering Assistance program provides short-term lodging to eligible survivors who, after an evacuation, cannot return to their homes for an extended period of time because their community is either uninhabitable or inaccessible as a result of the incident.

FEMA implements and manages Transitional Sheltering Assistance directly through a contract agent.

- Justification for the necessity of non-congregate sheltering;
- Whether the State or Tribal Government has requested Transitional Sheltering Assistance;

[186] Stafford Act § 312, 42 U.S.C. § 5155.

- 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 time frame requested (i.e., date of activation and length of time).[187]

FEMA will limit any approval to that which is reasonable and necessary to address the needs of the event (generally 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 will need to maintain tracking mechanisms to 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 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
- 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.

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 2:V.L. Sheltering and caring for household pets is only eligible while the pet owner is in an emergency shelter.

Shelter Facility Costs

- 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 child care facility, or functional as an animal shelter
- Restoration to return the facility to its condition prior to use
- Generator costs
- Secure storage space for medical supplies

[187] 44 CFR §§ 206.225(a)(2) and 206.202(c) and (d).

If an eligible State, Territorial, Tribal, or local 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 costs for the volunteer agency's workers are not eligible (except as a donated resource in accordance with the criteria in Chapter 2:V.L).

Shelter Staff Costs

- Medical staff
- Personal assistance service staff
- Veterinary staff
- Public Information Officer
- Social workers
- Food service workers
- Custodial and facilities staff
- National Guard personnel (See Chapter 2:V.J)

Shelter Supplies and Commodities

- 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
- Washers and dryers – one of each per 50 shelterees
- Toys and books

Shelter Services

Shelter services are eligible for the time the facility is actively used to shelter survivors.

- 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
    - Movement between a cot and wheelchair (transferring)
    - Maintaining health and safety
    - Taking medications
    - 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)
    - 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 a congregate 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 not eligible)
- 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 authorities (i.e., independent of any Federal, State, Tribal, or local request) are not eligible for reimbursement]

(c) Child Care Services

FEMA reimburses State, Territorial, Tribal, and local governments for the cost of providing licensed child care 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

child care services that the eligible Applicant provides to other survivors, and beyond the period of emergency sheltering, with certification that temporary child care is necessary to meet immediate threats to life, public health and safety, or property.

Child care includes services such as:

- Day care for children
- Before- and after-school care

The Applicant may provide these services within a shelter facility or in a separate facility, as appropriate. FEMA PA staff will coordinate with IA staff to ensure there is no duplication with IHP assistance.

(d) Host-State or Host-Tribe Evacuation and Sheltering

If the impacted State or Tribe (Impact-State or Impact-Tribe)[188] 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)[189] 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 2:V.H. FEMA may also provide PA funding to a Host-State/Tribe directly, even if the Impact-State/Tribe already requested assistance directly from that Host-State/Tribe, provided that:

- The Host-State/Tribe agrees to accept evacuees based on need—without restriction;
- The Host-State/Tribe makes at least 10 percent of its normal day-to-day sheltering capacity available;
- An authorized official from the Host-State/Tribe transmits a written agreement of these two terms to FEMA; and
- 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 CFR § 206.44, FEMA-State Agreements, to establish the Host-State/Tribe as the Recipient.[190]

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 potential Host-State/Tribe has sufficient

[188] 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.
[189] 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.
[190] 44 CFR § 206.202(f)(1)(i).

capability and the Host-State/Tribe meets the three conditions described above, FEMA provides PA funding to the Host-State/Tribe directly.[191]

When FEMA provides PA funding directly to a 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[192] so that they have no 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 evacuation and sheltering costs noted in Chapter 2:VI.B.10, FEMA also reimburses Host-States/Tribes 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 a 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 not eligible 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 U.S. Department of Health and Human Services (HHS), and the patients are treated and discharged but require follow-on care while they await transport and shelters are not available, the costs that a 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 will coordinate with the Host-State/Tribe and FEMA to return evacuees, household pets, and service and 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 an 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 will reimburse up to five (5) nights of hotel lodging while awaiting return transport.

[191] 44 CFR § 206.208(c)(3).
[192] 44 CFR § 206.202(f)(1)(ii).

- FEMA will reimburse a State agency from the Impact-State/Tribe for the transportation costs and related expenses to transport deceased evacuees and accompanying family members to the Impact-State/Tribe. The costs of 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 will deduct this amount from the Host-State/Tribe's eligible cost.

Fees that a Host-State/Tribe waives for the use of State parks by self-evacuees with recreational vehicles (RVs) are not eligible. Additionally, purchase and distribution of gas cards, bus passes, cash vouchers, debit cards, food vouchers, or direct payments to evacuees are not eligible.

11. Infectious Disease Event

The HHS Centers for Disease Control and Prevention (CDC) has primary authority to enable support and assistance to States, Territorial, or Tribal Governments in response to an infectious disease event. 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 event 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.[193]

12. Mosquito Abatement

Mosquito abatement measures may be eligible when a State, Territorial, Tribal, or local 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.

13. Residential Electrical Meters

To reduce the number of survivors needing shelter, FEMA may provide limited PA funding to a State, Territorial, Tribal, or local government to repair residential electrical meters. To receive PA funding, the State, Territorial, Tribal, or local government must:

- Issue a finding of an immediate threat to safety due to loss of power caused by damaged meters or weather heads;
- 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 not eligible.

If approved, the applicable State, Territorial, Tribal, or local government will:

- 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;

[193] www.fema.gov/media-library/assets/documents/99710.

- 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 if necessary to access the damaged meter or weather head. Removal and disposal of the debris is not eligible. 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 staff will coordinate closely with IA staff to ensure FEMA does not fund the same work under both programs.

14. 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 not eligible 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.

15. Animal Carcasses

Removal and disposal of animal carcasses, including interim processing,[194] 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 State, Territorial, Tribal, or local government health department, HHS, or the U.S. Department of Agriculture (USDA) that a threat to public health and safety exists.

[194] Interim processing may include burning, incinerating, rendering, mounding, composting, or other pre-processing activities.

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 not eligible.

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.[195]

16. 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 not eligible.

If a structure is condemned prior to the incident, emergency protective measures related to that structure are not eligible.

FEMA must review the Applicant's demolition process for compliance with all applicable EHP laws, regulations, and EOs.

(a) 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.
    - 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.
- 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-

[195] 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/media-library/assets/documents/136089.

entry) and agreements to indemnify and hold harmless the Federal Government. Additionally the Applicant must provide evidence that it obtained all necessary permits and complied with EHP requirements.

(b) 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 can and will cover the cost of demolition.

(c) 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
- Performing title searches

Fees for permits, licenses, and titles issued directly by the Applicant are not eligible 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
- 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 staff will coordinate closely with IA staff to ensure FEMA does not fund the same work under both programs.

(d) 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
- 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; see Chapter 2:VI.A)

17. 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, temporarily relocation of these services to another facility is eligible.[196] 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.[197] FEMA evaluates the criticality of the service and safety of the facility to determine the need for temporary relocation.

(a) Eligible for Temporary Relocation: State, Territorial, Tribal, and Local Government Applicants

Essential community services provided by a State, Territorial, Tribal, or local government Applicant are eligible to be relocated. Services provided by these Applicants that are eligible for temporary relocation are:

- Police
- Fire protection
- Emergency services
- Medical care
- Education
- Election and polling
- Library
- Utility
- Other essential community services

Services provided in administrative and support facilities essential to the provision of the essential community service are also eligible for relocation.

If the Applicant provides the service at a leased, private facility prior to the incident, the service is still eligible to be relocated.

(b) Eligible for Temporary Relocation: PNPs

Certain essential community services provided by PNPs are eligible to be relocated, provided the PNP owns and operates the facility in which the services are provided. These services differ from the list of eligible PNP essential social services.[198] PNP services eligible for temporary relocation include:

- Alcohol and drug rehabilitation
- Child care
- Custodial care
- Fire protection and emergency services
- Education
- Homeless shelters
- Libraries

[196] Stafford Act § 403(a)(3)(D), 42 U.S.C 5170b.
[197] Stafford Act § 102(11)(B), 42 U.S.C. 5122, and 44 CFR § 206.221(e)(7).
[198] Ibid.

- Medical care
- Utilities
- Other facilities that provide public health and safety services of a governmental nature

Services provided in support facilities, such as administration buildings and hospital laundry facilities, essential to the operation of such facilities may also be eligible for relocation.

(c) Ineligible for Temporary Relocation

Facilities that do not provide essential community services are ineligible for temporary relocation. These include facilities such as museums, zoos, community centers, shelter workshops, performing arts centers, recreation and parking facilities, athletic stadiums, research and warehouse facilities, and student union buildings.[199]

(d) Determining Eligibility for 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.

[199] Ibid.

(e) Lease, Purchase, or Construct

The Applicant may lease, purchase, or construct a temporary facility. The Applicant needs to make the decision to rent or purchase space and equipment based on the most cost-effective and practical option. The Applicant must provide FEMA with a cost analysis,[200] which should include at least three proposals 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 does not mandate that the Applicant pursue a specific option for a temporary facility, but FEMA only provides PA funding for the most cost-effective option.

If the Applicant relocates a service from a facility it owns, the lease costs of a temporary facility are eligible provided that leasing is the most cost-effective 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 most cost-effective option. With the exception of modular or manufactured units, the Applicant must obtain FEMA approval prior to purchasing or constructing the facility.

(f) 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 needs to submit a written request and 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).[201]

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.

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[200] 2 CFR § 318(d).

[201] www.fema.gov/media-library/assets/documents/3140.

(g) 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
- 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
- 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.

(h) Time Limitations

The regulatory time limitation for temporary facilities (Emergency Work) is 6 months from the declaration date.[202]

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.[203] However, for temporary facilities, FEMA must approve any 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 grants 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.

(i) 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

[202] 44 CFR § 206.204(c)(1).
[203] 44 CFR § 206.204(c)(2)(ii).

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, the net proceeds of the sale may be used to offset the cost of the replacement property.

18. 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.[204] See Appendix H: Snow Assistance, for detailed information.

(a) Limited Time Period

Snow-related activities are eligible for a continuous 48-hour period to address the most critical emergency needs. Each Applicant designates the beginning of its 48-hour period. However, a State agency that conducts snow-related activities in multiple locations throughout a State, 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.

(b) Eligible Work

Eligible work includes:

- Snow-related activities (for limited time as discussed above):
  - Snow removal
  - Snow dumps
  - De-icing
  - Salting
  - 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.

[204] 44 CFR § 206.227.

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 is not eligible.

19. Emergency Berms on Beaches

If a natural or engineered beach has eroded to a point where a 5-year flood could damage improved property, cost-effective emergency protective measures on the beach that protect against damage from that flood are eligible.[205]

Eligible measures typically include the construction of emergency sand berms to protect against additional damage from a 5-year flood. 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 berm 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
- State, Territorial, Tribal, or local government regulations prohibit placement of the recovered sand.

Based on the average expected erosion for a 5-year flood, 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 elevation or the berm's pre-storm profile, whichever is less. Stillwater elevation is the maximum storm-induced water-surface elevation. In some cases, placing sand below the 5-year stillwater elevation may be necessary to provide a base for the berm. The placement of that sand is also eligible as part of the emergency protective measure.

Placement of dune grass on an emergency 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 dune grass placement cost in the berm construction cost when evaluating cost-effectiveness. Any maintenance of the dune grass after the initial installation is not eligible.

20. Temporary Emergency Repair or Stabilization

Temporary emergency repair or stabilization of an eligible facility is eligible as Emergency Work if it eliminates or lessens an immediate threat.[206] 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,[207] not Emergency Work.

Temporary emergency repair of a facility is not eligible if another Federal agency has the specific authority to provide assistance for the facility,[208] such as for:

- Federal-Aid highways – Federal Highway Administration (FHWA)

[205] 44 CFR § 206.226(j).
[206] 44 CFR § 206.201(b).
[207] 44 CFR § 206.201(j).
[208] 44 CFR § 206.226(a).

- 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 repair 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.

21. Temporary 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:

- Temporary drainage measures
- Temporary 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
- Installation of barriers to redirect debris flow

22. 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
- 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 State, Territorial, Tribal, and local 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 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
- 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
- Leaking ceiling tiles

C. Damage Caused During Performance of Emergency Work (Category A or B)

An Applicant may damage improved property, supplies, or equipment during the performance of eligible emergency response activities or debris removal operations. The repair of this damage is eligible as part of that respective project 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 not eligible, unless the replacement meets the criteria in Chapter 2:VII.H.5.

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.

For damage to private property, the repair is eligible if:

- 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 2:VI.B.18, is not eligible.

VII. 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.[209] Temporary emergency repair or stabilization for the purpose of eliminating or lessening an immediate threat is Emergency Work. All Permanent Work is subject to the eligibility of the facility as described in Chapter 2:III and shown in Figure 13.

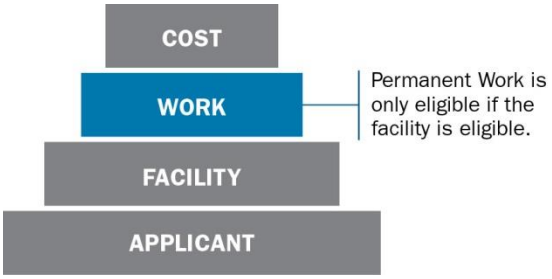

Figure 13. Permanent Work Eligibility

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.[210]

Pre-disaster function is the function for which the facility was originally designed or subsequently modified. For example, if an 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.[211]

FEMA may approve changes to the pre-disaster design or construction method (including materials) if the changes are required due to access issues, site

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 event.

Example of Restoring to Pre-disaster Function

If an 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 not eligible.

[209] 44 CFR § 206.201(j). Although this section of 44 CFR does not reference function as part of the definition of Permanent Work, 44 CFR § 206.203(d)(2) states that if the Applicant does not restore the function, it is an Alternate Project. See Chapter 2:VII.G. for discussion on Alternate Projects.
[210] 44 CFR § 206.201(k).
[211] 44 CFR § 206.226(k)(1).

conditions, or to tie in to 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.

PA funding is always based on pre-disaster size, capacity, and function. However, FEMA allows the Applicant to accept these funds as a capped amount if they wish to utilize the funds differently. Capped projects are detailed in Chapter 2:VII.G.

Hazard Mitigation Plan Requirement for Permanent Work Funding

The Recipient must have a FEMA-approved Hazard Mitigation Plan before FEMA will provide PA funding for any Permanent Work. The plan must show how the Recipient intends to reduce risks from natural hazards and must be updated every 5 years.

Tribal Governments must meet the requirements of 44 CFR § 201.7, Tribal Mitigation Plans. States must meet the requirements of 44 CFR § 201.4, Standard State Mitigation Plans.

The Recipients may also have an Enhanced Mitigation Plan that meets the requirements of 44 CFR § 201.5, Enhanced State Mitigation Plans.

Environmental and Historic Preservation Considerations

The Applicant needs to make every effort to afford FEMA the opportunity to perform EHP reviews prior to the start of construction for any Permanent Work project. Proceeding with Permanent Work before FEMA completes EHP reviews jeopardizes PA funding.[212]

Permanent Work projects that restore a damaged facility essentially to pre-disaster design are excluded from NEPA review through a STATEX.[213] All others require NEPA review. Many qualify for one of the Categorical Exclusions (CATEXs), which are actions that typically have little or no impact on the environment.[214] Although many projects are statutorily excluded from NEPA review or covered by a CATEX, most projects still 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 have adverse effects on wetlands; floodplains, flood elevations, or upstream/downstream velocities; federally listed threatened and endangered species and their critical habitats; essential fish habitats; historic properties, including archaeological resources; and other environmental or historic resources. When a project has potential to impact the environment or historic properties, it may not qualify for a STATEX or CATEX and will require a higher level of analysis. The most common higher level analysis is referred to as an environmental assessment (EA).[215] In rare circumstances, a project may require an environmental impact statement (EIS),[216] the highest level of analysis, which requires a much more detailed analysis than an EA. FEMA is

[212] Stafford Act § 316, 41 U.S.C. 5159, and 44 CFR Part 19.
[213] Stafford Act § 316, 41 U.S.C. 5159.
[214] FEMA Instruction 108-1, Section 3.2 and DHS Instruction 023-01-001-01, Appendix A.
[215] FEMA Instruction 108-1, Section 3.2.
[216] Ibid.

responsible for NEPA compliance and identifying the required level of review.[217] 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, approval, and final determination 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 is required to consult with Federal, State, Territorial, and Tribal government resource agencies before the Applicant begins work. These agencies may include the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) for impacts to federally-listed threatened and endangered species; and the SHPO or THPO for impacts to historic properties. If the Applicant begins construction work before FEMA completes its EHP review, the Applicant will jeopardize PA funding for that project. FEMA generally cannot conduct consultation with resource agencies after the Applicant initiates work on a project because those agencies lose the ability to consider alternatives that would avoid, minimize, or mitigate adverse effects to the environment or historic properties.

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 any 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 that may require EISs; 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.

A. 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.[218] This requirement applies to insurable facilities or property (buildings, contents, equipment, and vehicles). FP 206-086-1, *Public Assistance Policy on Insurance*, describes these requirements in detail.[219]

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.[220] 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 less than $5,000 in eligible costs (prior to any reductions).[221]

The Applicant may request that FEMA modify the insurance requirement when:

- The required insurance is not reasonably available,

[217] Public Law 91-190, 42 U.S.C. 4321–4347.
[218] Stafford Act § 311, 42 U.S.C. 5154, and 44 CFR 206 Subpart I.
[219] www.fema.gov/media-library/assets/documents/107564.
[220] Stafford Act § 311, 42 U.S.C. 5154, and 44 CFR 206 Subpart I.
[221] 44 CFR § 206.253(d).

- 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 Insurance Commissioner.[222] The State 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.[223]

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.[224] In some cases, with FEMA approval, the Applicant may comply with the insurance requirement using a self-insurance plan.[225]

If the Applicant does not comply with the requirement to obtain and maintain insurance, FEMA will deny or deobligate PA funds from the current disaster.

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 not eligible for PA funding in a subsequent disaster, regardless of the hazard(s) that caused the damage.[226]

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 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.

B. Codes and Standards

FEMA provides PA funding to restore facilities on the basis of pre-disaster design and function in conformity with current applicable codes, specifications, and standards.[227]

1. Eligibility Criteria

Facility repairs and new construction may "trigger" upgrade requirements established by codes or standards. Upgrades required by Federal, State, Territorial, Tribal, or local repair or replacement codes or standards are eligible only if the code or standard:[228]

- Applies to the type of restoration required;

[222] 44 CFR § 206.253(c).
[223] 44 CFR §§ 206.252(d) and 206.253(c).
[224] 44 CFR § 206.253(b)(2).
[225] Stafford Act § 311(c), 42 U.S.C. 5154 (c), and 44 CFR Part 75.
[226] Stafford Act § 311(b), 42 U.S.C. 5154 (c), and 44 CFR § 206.253(f).
[227] Stafford Act § 406(e), 42 U.S.C. 5172(e), and 44 CFR § 206.226(d).
[228] 44 CFR § 206.226(d).

- Is appropriate to the pre-disaster use of the facility;
- Is reasonable, in writing, formally adopted by the State, Territorial, Tribal, or local 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.

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 not eligible for replacement, only code-required upgrades applicable to repairs are eligible.

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.[229] 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

An 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 not eligible.

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 not eligible for a project involving repairs to discrete damaged portions of the road shoulders.

[229] 44 CFR § 206.223(a)(1).

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 be more costly than restoring the facility as a warehouse in accordance with code or standards applicable to a warehouse.

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;
- 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.

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 not eligible 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.

FEMA may determine a very large upgrade based on a very low trigger to be unreasonable.

Written, Formally Adopted, and Implemented

Codes and standards must be in writing, formally adopted by the State, Territorial, Tribal, or local government, and implemented by the Applicant on or before the declaration date, OR be a legal Federal requirement, such as a requirement of ADA or seismic safety. 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.

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 not eligible.

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 as long as 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 State, Territorial, or local governments that are not authorized to set codes or standards within the broad governmental jurisdiction of the State, Territorial, or local government.

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.

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 not eligible as it does not apply uniformly to all similar types of facilities within the Applicant's jurisdiction.

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.

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

Example of a Code or Standard that Was Not Enforced While in Effect

An Applicant requests funding to upgrade the foundation of several damaged trailers based on a code requirement applying to repairs to trailers and installation of new trailers. The Applicant installed several new trailers after the incident and did not use the code or standard-required foundation. The upgrades to the foundation of the damaged trailers are not eligible because the Applicant did not enforce the standard.

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.

2. FEMA Required Minimum Codes and Standards

If the building is eligible for repair, replacement, or is being constructed as an improved or alternate project,[230] FEMA generally requires that the Applicant incorporate the natural hazard-resistant codes and standards and related provisions referenced in the most recent published edition of the International Code Council's (ICC) International Building Code (IBC), International Existing Building Code (IEBC), or International Residential Code (IRC) into the building design and construction.[231] This includes natural hazard-resistant provisions, such as tornado, wind, seismic, and flood as identified in the IBC, IEBC, or IRC regardless of the type of incident that caused the damage. In accordance with these codes and standards, the Risk Category of the eligible building determines the applicable tornado, wind, seismic, flood, snow, ice, and rain loads.[232] FEMA provides PA funding for the eligible increased cost associated with meeting these codes and standards at the cost-share for the disaster.

Generally, the IBC, IEBC, or IRC apply when a building:

- Is substantially damaged;[233]
- Suffered substantial structural damage;[234] or
- Is eligible for replacement in accordance with 44 CFR part 206.226(f).[235]

The determination of whether a code or standard is triggered may be made by:

- A building official or inspector;
- The Recipient's or Applicant's registered design professional; or
- Other appropriate and qualified individual.

FEMA will generally accept this determination, but may review the determination to ensure it is consistent with the above codes and standards and other PA policies. FEMA may deviate from this policy in circumstances where utilization of the codes or standards would create an extraordinary burden on the applicant or would otherwise be inappropriate for the facility.

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[230] This includes Alternative Procedure Projects. Per Stafford Act § 428, 42 U.S.C. § 5189f, and 44 CFR § 206.203(d), funding for these types of projects is capped at the cost to restore the facility to its pre-disaster design and function in accordance with codes and standards, including the required codes and standards referenced in this section, that would be applicable to the building if rebuilt as it existed.

[231] FEMA determined that these codes represent the minimum adequate standards which are generally necessary to protect the Federal investment of PA funding. Stafford Act §§ 323 and 406(e), 42 U.S.C. §§ 5165a, 5172, and 44 CFR § 206.400.

[232] Risk Category is defined in the International Building Code (IBC) as a categorization of buildings and other structures for determination of flood, wind, snow, ice and seismic loads based on the risk associated with unacceptable performance.

[233] 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.

[234] Significant damage to the vertical elements of the lateral force-resisting system or the vertical gravity load-carrying components in accordance with the IBC or International Existing Building Code (IEBC).

[235] Disaster-related damage exceeds 50 percent of the cost to replace a facility to its pre-disaster design and function.

FEMA generally requires that the applicant incorporate these codes and standards in the design of eligible repair, replacement, or construction of the building even if they exceed local codes or standards or in instances where communities have not adopted a building code or standard. If the IBC, IEBC, or IRC have been adopted under another name (for example the California Building Code), it meets the natural hazard-resistant provisions in the model codes, then FEMA will consider the adopted code or standard compliant with the minimum codes and standards requirement. FEMA will evaluate the eligibility of locally adopted natural hazard-resistant building codes or standards that exceed those referenced in the IBC, IEBC, or IRC, based on the criteria found in Chapter 2:VII.B.1.[236]

When triggered by the eligible scope of work, natural hazard-specific requirements include, but are not limited to, the following:[237]

- In areas where tornado shelter design wind speeds are 250 mph or greater, the Applicant must incorporate a storm shelter or safe room (designed to ICC 500 standards) for elementary and secondary schools with an occupant load of 50 or more, EOCs, 911 call stations, fire stations, rescue stations, ambulance stations, and police stations.
- For wind-resistant requirements, the Applicant must incorporate applicable wind-resistant design and construction standards contained in the IBC, IEBC or IRC and its referenced standards [e.g., American Society of Civil Engineers (ASCE)/Structural Engineering Institute (SEI) 7].
- For seismic-resistant requirements, the Applicant must incorporate applicable seismic- resistant design and construction standards contained in the IBC, IEBC or IRC and its referenced standards (e.g., ASCE/SEI 7 and 41).[238]
- For flood-resistant requirements, the Applicant must incorporate applicable flood-resistant design and construction standards contained in the IBC, IEBC or IRC and its referenced standards (e.g., ASCE/SEI 7 and 24).[239]

FEMA also provides PA funding for costs associated with meeting the load requirements in the most recent IBC, IEBC, and IRC for snow, rain, and ice loads.

Costs related to conforming to these codes and standards are generally eligible. These codes and standards must apply to the type of restoration required (e.g., repair or construction), be appropriate to the pre-disaster use of the facility, and be reasonable.

Upon completion of the project, the Applicant must provide proof of compliance.[240] Acceptable forms of proof include, but are not limited to:

- A written certification by a registered design professional that the natural hazard-resistant design elements comply with IBC, IEBC, or IRC requirements; or
- A valid certificate of occupancy from the local building department that supports that

[236] 44 CFR § 206.226(d).
[237] See www.fema.gov/building-code-resources for additional guidance on natural hazard-specific standard requirements.
[238] These seismic-resistant requirements are also mandated by EO 13717, *Establishing a Federal Earthquake Risk Management Standard.*
[239] Eligible projects involving substantial improvement or new construction in the flood hazard area may be required to meet the floodproofing or elevation requirements as described in 44 CFR § 9.11(d), or the IBC, IEBC, or International Residential Code (IRC), whichever is higher.
[240] Stafford Act § 323, 42 U.S.C. § 5165a, and 44 CFR § 206.402.

the project was constructed or repaired as designed.

Non-compliance may result in denial or de-obligation of PA funding for the facility. Therefore, the Applicant should work with its local building department and any other authorities having jurisdiction to ensure compliance with this and other Federal, State, Territorial, Tribal, and local government code and standard requirements.

3. Ineligible Upgrades

Upgrades recommended by design standards, guidelines, policies, industry practices, or other non-mandatory provisions are not eligible if the provisions do not meet all of the criteria noted in Chapter 2:VII.B.1. Upgrades that are deemed ineligible, but enhance a facility's ability to resist similar damage in a future incident, may be eligible as hazard mitigation. See Chapter 2:VII.C for further discussion.

4. Historic Preservation Compliance

(a) 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 replacment.[241] (See discussion on repair versus replacement in Chapter 2:VII.D.)

(b) 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 2:VII.B.1. 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.

5. Floodplain Management and Wetland Protection

When providing PA funding for a project in or impacting a floodplain or wetland, the following requirements apply. The terms in this section are defined in Chapter 2:VII.F.

(a) Minimum Requirement for Structures in a Floodplain

For any structure (walled or roofed buildings, including mobile homes and gas or liquid storage tanks)[242] that is 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).[243]

If the structure houses critical actions and is in the 100-year floodplain, the Applicant must, at a minimum, elevate the lowest floor (including the basement) to or above the 500-year BFE.[244] If

[241] 44 CFR § 206.226(f)(2) and (3).
[242] 44 CFR § 9.4.
[243] 44 CFR § 9.11(d)(3)(i) and (iii).
[244] 44 CFR § 9.11(d)(3)(i).

the structure is non-residential, the Applicant may opt to floodproof to the required level instead of elevating.[245]

Similarly, if the structure houses critical actions and is in the 500-year floodplain, the Applicant must elevate the lowest floor (including the basement) to or above the 500-year flood level.[246] Again, if the structure is non-residential, the Applicant may opt to floodproof to the required level instead of elevating.[247]

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 level for critical actions) (including wave height) on open works (walls columns, piers, piles, etc.) and anchor it properly.[248] New construction is prohibited in a Coastal High Hazard Area.[249]

(b) 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.[250] 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.

[245] 44 CFR § 9.11(d)(3)(iii).
[246] 44 CFR § 9.11(d)(3)(ii).
[247] 44 CFR § 9.11(d)(3)(iii).
[248] 44 CFR § 9.11(d)(2) and (7).
[249] 44 CFR § 9.11(d)(1)
[250] 44 CFR § 60.3.

6. Americans with Disabilities Act Access Requirements

(a) Federal Requirement

The ADA requires that any public, residential, or workplace facility be accessible to and usable by disabled persons.[251] FEMA provides PA funding for costs related to Federal ADA accessibility requirements based on the criteria below.

Accessibility Triggers for ADA-Relevant Repairs

An ADA-relevant repair is a repair that affects or could affect the usability of the facility by the disabled. This is referred to as an "alteration" in the ADA.

Only ADA-relevant repairs trigger accessibility requirements; not all repairs are ADA-relevant repairs. Repairs of structural components—flooring, walls, partitions, or load-bearing elements—are considered ADA-relevant repairs.

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

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

Facilities Eligible for Replacement

When a facility is eligible for replacement, FEMA provides PA funding for compliance with reasonable accessibility requirements triggered by ADA in newly constructed facilities. FEMA provides PA funding regardless of whether the facility was in compliance prior to the incident, provided the Applicant was not cited for an ADA violation.

A new facility is not required to be fully compliant with ADA if the Applicant can demonstrate that it is structurally impractical to meet the requirements.

For some PNPs, exceptions are available for installation of elevators in small buildings less than three stories or less than 3,000 square feet per story. These exceptions do not apply to any publicly owned or operated facility.

Facilities Eligible for Repair

For ADA-relevant repairs, FEMA provides PA funding for required ADA upgrades that have a reasonable and technically supportable relationship to the damaged elements of the facility.

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.

In addition, when disaster-related and ADA-relevant repairs are made to a primary function area of the facility, FEMA provides PA funding to make the path of travel to the primary function area accessible to the maximum extent feasible, including facilities that serve the primary function area. Examples of facilities that serve the primary function area include restrooms, telephones, drinking fountains, pathways, and similar service facilities. Pathways include internal and external paths of travel, such as hallways, sidewalks, and parking lots.

[251] 42 U.S.C. 12101, et seq.

PA funding to make the path of travel and service facilities to a repaired primary function area accessible may not exceed 20 percent of the total cost of the repair of the primary function area in an ADA-compliant manner.

For calculation purposes, the total costs of the primary function area repair also 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.

If ADA-relevant repairs are made to areas that also happen to provide access to and usability of the repaired primary function area (damaged walls, stairs, corridors, and restrooms), the cost of those repairs are eligible costs as non-primary function areas and are not applied to the 20-percent capped amount.

When 20 percent is not adequate to meet ADA-accessible path-of-travel and service facility requirements, the Applicant must apply ADA access requirements to the maximum extent possible with the limited funds. The Applicant should make limited changes in the following order of priority:

- Accessible entrance
- Accessible route to the altered area
- At least one accessible restroom for each sex or single unisex restroom
- Phones
- Drinking fountain
- Other elements such as parking, storage, and alarms

If the Applicant was notified of being in violation of an ADA law or building code or standard prior to the incident and was required to bring the facility into compliance, then triggered accessibility requirements related to the violation are not eligible.

Repairs to non-primary function areas do not trigger the path-of-travel and service facility requirements. However, the Applicant must complete the repairs to the non-primary function area in an ADA-compliant manner.

The Applicant is not required by ADA to reconstruct non-damaged areas of a partially damaged facility for ADA access unless they are the path of travel or service facility to a repaired primary function area requiring ADA-relevant repairs.

If the Applicant triggers ADA requirements by engaging in repairs that are not eligible, the cost of those ADA changes are also not eligible.

Some special provisions apply when ADA requirements "threaten or destroy the historic significance of qualified historic buildings and facilities."[252] FEMA will address these provisions during its consultation with the SHPO or THPO and will incorporate them into the agreement regarding the repairs to the building.

(b) State, Territorial, Tribal, or Local Government Requirement

FEMA may provide PA funding for additional State, Territorial, Tribal, or local government ADA requirements. These requirements must meet the eligibility criteria for codes or standards, as described in Chapter 2:VII.B.1.

[252] 28 CFR § 36.405.

7. Permit Requirements

If a Federal, State, Territorial, Tribal, or local government permitting agency requires additional work based on a code or standard that does not meet the eligibility criteria in Chapter 2:VII.B.1, 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.

C. 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.[253]

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 14. 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.

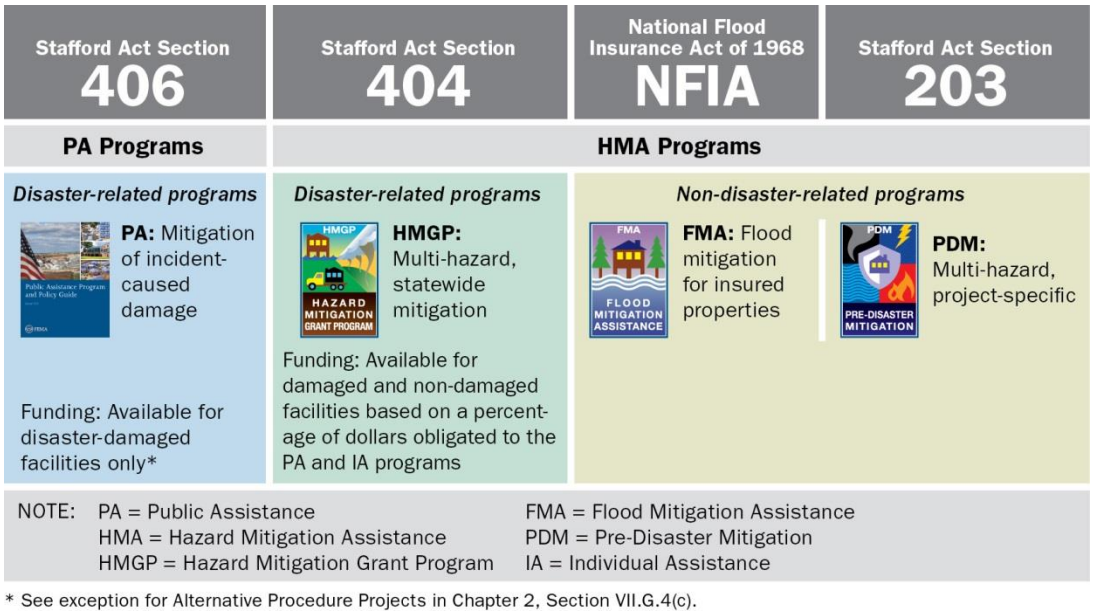

Figure 14. FEMA Hazard Mitigation Programs

FEMA commonly refers to PA-funded hazard mitigation as Section 406 hazard mitigation and mitigation funded under HMGP as Section 404 hazard mitigation. These references are based on the authorizing sections of the Stafford Act.

[253] Stafford Act § 406(e), 42 U.S.C. 5172 (e), and 44 CFR 206.226(e).

The Applicant may use both 406 and 404 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 Section 406 hazard mitigation funding under PA. FEMA's *Hazard Mitigation Assistance Guidance* provides further details on the HMA programs.[254]

Section 406 Hazard Mitigation

FEMA evaluates proposed mitigation measures for cost-effectiveness, technical feasibility, 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.

Mitigation measures must be cost-effective. FEMA considers mitigation measures to be cost-effective if any of the following criteria are met:

- 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 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.
- The Recipient or Applicant demonstrates through an acceptable benefit-cost analysis (BCA) methodology that the measure is cost-effective. FEMA's BCA software[255] 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 will work together to develop a BCA to determine whether it is cost-effective.

A BCA is based on a comparison of the total eligible cost for the mitigation measure to the total value of expected benefits. Benefits include reductions in:

- 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)

[254] www.fema.gov/media-library/assets/documents/103279.
[255] www.fema.gov/benefit-cost-analysis.

To be eligible, the mitigation measures must directly reduce the potential of future, similar damage to the facility. Generally, eligible 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
- Dry floodproofing both damaged and undamaged buildings that contain components of a system that are functionally interdependent (i.e., cases where the entire system is jeopardized if any one component of the system fails)

If FEMA determines mitigation measures to undamaged portions ineligible as 406 hazard mitigation, the Applicant may request HMGP (Section 404) funding from the State or Territory to provide protection to undamaged portions, while utilizing PA Program (Section 406) mitigation funds to provide protection to damaged portions.

Section 406 hazard mitigation opportunities usually present themselves during facility repair. However, in cases where the Applicant must 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 be eligible; however, FEMA will not provide PA funding for any duplicative work as a result of 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 if it is cost-effective and FEMA confirms compliance with applicable EHP laws, regulations, and EOs.

Section 404 Hazard Mitigation Grant Program

The Recipient manages HMGP and is responsible for soliciting applications from State, Tribal, and local 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. State, Tribal, and local government agencies should direct questions regarding HMGP to the State Hazard Mitigation Officer: www.fema.gov/state-hazard-mitigation-officers.

If FEMA approves mitigation funding and the Applicant does not complete the mitigation work, FEMA will deobligate the mitigation funds.

D. 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.[256]

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.[257]

Substantial Damage Determination

A floodplain manager's Substantial Damage determination (which is part of the NFIP eligibility process and described in Chapter 2:VII.B.5) is separate and distinct from FEMA's 50% Rule.

FEMA's eligibility determination for funding replacement is based on the 50% Rule regardless of a Substantial Damage determination.

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 calculation as the "50% Rule."

1. Calculation

The repair cost (numerator) is the cost of repairing disaster-related damage only and includes costs related to compliance with codes or standards that apply to the repair of the damaged elements only (including federally required codes and standards).[258] 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
- Emergency Work

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

[256] 44 CFR § 206.226(f).
[257] 44 CFR § 206.226(f)(1).
[258] This includes FEMA's minimum required codes and standards.

The replacement cost (denominator) is the cost of replacing the facility on the basis of 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
- Soft costs
- Contents
- Hazard mitigation measures
- Emergency Work

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. For the purpose of the 50% Rule calculation, these costs are not included in the repair cost of the calculation, but are included in the replacement cost of the calculation.

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.

2. Written Request

The Applicant should submit its request for replacement within 1 year of the Major Disaster Declaration. The request should include both repair and replacement cost estimates with supporting documentation, prepared in accordance with the requirements described in Chapter 3:II.D.

A FEMA licensed engineer/architect with cost-estimating expertise or a certified cost estimator reviews all requests for replacement and validates the estimates. For any replacement requests over $5 million, the USACE Center for Excellence for Cost Engineering performs an additional review of the repair and replacement estimates. FEMA considers the results of the USACE review prior to approving replacement.

3. Eligible Funding

If the estimated repair cost exceeds 50 percent of the estimated replacement cost,[259] 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 lower.[260]

If the repair cost does not exceed 50 percent of the replacement cost, AND upgrades to undamaged elements are triggered by codes or standards, AND the total of both is greater than 100 percent of the estimated replacement cost, FEMA caps the total eligible cost at the estimated replacement cost.

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.

[259] For repair versus replacement, the term "replacement cost" means the cost of replacement in accordance with applicable codes and standards.
[260] 44 CFR § 206.226(f)(2).

With exception of specific projects identified in Appendix J: Cost Effective Hazard Mitigation Measures, 406 hazard mitigation funding cannot be applied to replacement facilities, unless the facility is part of an Alternative Procedures Project (described in Chapter 2:VII.G.4).

As discussed in Chapter 2:VII.B.4(a), 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.[261] A historic facility is defined as one listed in, or eligible for listing in, the National Register of Historic Places.

4. 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. As long as 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 system as a whole.

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 node to node
- Water or sewer line system: a section of piping from manhole to 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 2:VII.H.4(b).

The following are examples of facilities to which FEMA applies the 50% Rule to the entire facility:

- Bridge
- Culvert
- Building
- Pumping station
- Pier
- Pool, including integral pumping
- Bath house or rest room
- Equipment
- Lighting structure
- Sign

[261] 44 CFR § 206.226(f)(3).

E. Relocation

FEMA may approve funding for and require restoration and relocation of an Applicant's destroyed (i.e., eligible for replacement) facility at a new location 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 are subject to repetitive heavy damage;
- Project approval is not barred by other regulations;[262] 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, State, or local 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) then FEMA determines whether relocation is cost-effective in the same manner as described above. If the facility is eligible for repair, FEMA may evaluate cost effectiveness using its BCA process and software[263] 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.

If relocation is not feasible or cost effective, the Applicant may request an Improved, Alternate, or Alternative Procedure project as detailed in Chapter 2.VII.G.

1. 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.[264] 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 not eligible.

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

[262] 44 CFR § 206.226(g)(1).
[263] www.fema.gov/benefit-cost-analysis.
[264] 44 CFR § 206.226(g)(2).

facilitates an open space use.[265] 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.

2. 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 CFR part 200 including disposition and reporting requirements under 2 CFR §§ 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.

F. 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.

1. 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 CFR § 9.6. As part of this process FEMA evaluates the impacts the project may have on the floodplain and practicable alternatives. FEMA evaluates environmental, social, economic, technical, and legal factors, as defined in 44 CFR § 9.4. Some alternatives may not be eligible for PA funding. FEMA considers

[265] 44 CFR § 206.226(g)(3).

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.[266]

Terminology

FEMA publishes **Flood Insurance Rate Maps (FIRMs)** that identify the following:

- **Special Flood Hazard Area (SFHA):** 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 (BFE):** 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 wave wash 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 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.

2. Facility Located in a Special Flood Hazard Area

SFHAs[267] 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).

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 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 not eligible for PA funding.

If the Applicant does not have flood insurance for the facility or carries inadequate flood insurance for the insurable facility, FEMA will reduce eligible project costs by the lesser of:

[266] 44 CFR § 9.5(c)(13).
[267] 44 CFR § 206.251.

- The maximum amount of insurance proceeds that could have been obtained from an NFIP standard flood insurance policy for the building and its contents;[268] or
- The value of the building and its contents at the time of the incident.

FEMA does not apply this reduction to PNP facilities in communities that do not participate in the NFIP.[269] 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.[270]

Terminology

A **critical action** is 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).

Critical actions are defined in 44 CFR § 9.4, Definitions, which includes examples of actions that FEMA deems critical.

If an action is not specified in 44 CFR Part 9, Floodplain Management and Protection of Wetlands, FEMA utilizes the U.S. Water Resource Council Floodplain Management Guidelines 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.
- 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.

The term "critical action" should not be confused with a PNP "critical service" or "critical facility."

G. 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 applicable and federally required codes and standards.[271]

The three capped project options are:

- Improved Project:[272] A project that restores the pre-disaster function, and at least the same capacity, of the damaged facility and incorporates improvements or changes to its pre-disaster design not required by eligible codes or standards.
- Alternate Project:[273] The use of funds toward a project that does not restore the pre-disaster function of the damaged facility. If the Applicant determines the public welfare would not be best served by restoring a damaged facility or its function, it may use the funds toward a different facility (or facilities) that benefit the same community.

[268] 44 CFR § 206.252(a).
[269] 44 CFR § 206.252(b).
[270] Ibid.
[271] This includes FEMA's minimum required codes and standards.
[272] 44 CFR § 206.203(d)(1).
[273] 44 CFR § 206.203(d)(2).

- Alternative Procedures Pilot Program for Permanent Work Project (Large Projects only):[274] The use of Large Project funds toward a project(s) that restores the facility to its pre-disaster design and function or toward a project that would otherwise be an Improved or Alternate Project, or other projects, including a combination of projects. This type of capped project offers the maximum amount of funding options to include flexibility with how the Applicant may use the funds and retention of funds not authorized under the standard Improved and Alternate Project options, including the following four alternative procedures:
    - Consolidation of multiple capped projects
    - Elimination of reduced funding for an Alternate Project
    - Retention of excess funds for approved purposes
    - Third-party expert panel[275] review for estimates with a Federal share of $5 million or greater (FEMA requires this review for estimates that exceed $25 million).

Each of these options is subject to different eligibility and process requirements, which are described in detail below. As FEMA is implementing the Alternative Procedures via a pilot program, FEMA may periodically adjust program specifics. Therefore, FEMA maintains additional policy specifics at www.fema.gov/alternative-procedures.

Capped Amount

As stated above, 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 applicable and federally required codes and standards. The capped amount may include a reasonable amount of DAC and soft costs based on the SOW to restore the facility to its pre-disaster design and function. However, the capped amount 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:

- Additional engineering and design
- EHP compliance
- Work required by applicable and federally required codes or standards

For Alternative Procedures Projects specifically, FEMA does not adjust the capped amount even if the Applicant discovers hidden damage during the course of completing previously approved work.

If the Applicant's actual costs exceed the capped amount, FEMA does not approve additional funds.

Alternative Procedures Project: Expert Panel Cost Estimate Review

For an Alternative Procedures Project with an estimated Federal share of at least $5 million, upon the Applicant's request, FEMA provides a FEMA-funded,[276] independent validation of the cost estimate. The validation is conducted by an expert panel composed of design, engineering,

[274] Stafford Act § 428, 42 U.S.C. § 5189f.
[275] FEMA utilizes the U.S. Army Corps of Engineers (USACE) Center for Excellence for Cost Engineering as the expert panel.
[276] The expert panel is fully funded by FEMA and does not require a non-Federal cost share.

construction, cost-estimating, and industry professionals retained by a contractor or another agency with which FEMA has established an agreement for the panel's services. The panel is independent of FEMA, the Recipient, and the Applicant. FEMA also has discretion to direct estimates to the panel for review. FEMA does not use this panel for appeals.

If the Applicant requests this validation, the panel:

- Conducts its review before the Applicant's acceptance and before FEMA's obligation of funds
- Limits its review to issues pertaining to the estimated cost (the panel will not make decisions related to the eligibility of the damage or SOW); however, it may make determinations with regard to incorporation of cost elements relating to project execution that could affect the SOW
- May review cost documentation for completed work, if applicable and necessary

If the estimated amount deemed appropriate by the expert panel is less than the Applicant is willing to accept as a capped amount, the Applicant may forgo the Alternative Procedures and request that FEMA process the project using standard procedures. In these cases, FEMA obligates the project based on the estimated amount determined by the expert panel and final funding is based on actual eligible costs.

Environmental and Historic Preservation Review

Capped projects may involve significant changes to the pre-disaster configuration of a facility (e.g., location, footprint, or size). As with all projects, the Applicant needs to obtain FEMA approval prior to the start of construction so that FEMA can ensure that the project complies with appropriate EHP laws, regulations, and EOs. If the Applicant starts construction prior to FEMA's completion of this review, it will jeopardize PA funding for the entire project.

Insurance

FEMA will reduce the amount of the fixed 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.

Upon completion of the project, FEMA adjusts the fixed estimate to account for actual insurance proceeds as described in Chapter 2:V.P.1.

The Applicant must obtain and maintain insurance in accordance with FP 206-086-1, *Public Assistance Policy on Insurance*.[277]

1. Capped Project Approval

Approval requirements differ for each type of capped project.

(a) Improved Project

For Improved Projects, the Applicant must obtain approval from the Recipient.[278] If the Improved Project significantly changes the pre-disaster configuration of the facility, the

[277] www.fema.gov/media-library/assets/documents/107564.
[278] 44 CFR § 206.203(d)(1).

Recipient must forward the request to FEMA to ensure that the Improved Project complies with appropriate EHP laws, regulations, and EOs.

(b) Alternate Project

For Alternate Projects, the Applicant must obtain approval from FEMA. If the Alternate Project involves construction, the Applicant must obtain FEMA approval prior to the start of construction.[279]

(c) Alternative Procedures Project

For Alternative Procedures Projects, FEMA, the Recipient, and the Applicant must reach agreement on the capped amount within 12 months of the declaration date. Upon request from the Applicant, FEMA may approve a time extension on a project-by-project basis. The Applicant's request must include the circumstances that justify the extension and demonstrate progress on reaching an agreement. In complex or catastrophic incidents, upon request from the Recipient, FEMA may approve an extension for all Applicants.

FEMA, the Recipient, and the Applicant document the agreed upon capped amount with either a Fixed Cost Agreement Letter or a Letter of Undertaking, as appropriate. Once the Applicant signs and submits either the Fixed Cost Agreement Letter or the Letter of Undertaking, it may not revert back to a project funded based on actual costs.

If FEMA, the Recipient, and the Applicant cannot agree on the fixed estimate by the deadline, the project will not be eligible for the Alternative Procedures and FEMA will process it using standard procedures.

Details regarding the process for participating in, and preparing projects under, the Alternative Procedures, along with templates of the Fixed Cost Agreement Letter and Letter of Undertaking are provided at www.fema.gov/alternative-procedures.

2. Capped Project Funding

Once FEMA caps the funding, the type of capped project impacts the maximum Federal funding the Applicant can receive.

(a) Improved Project Funding

Federal funding for an Improved Project is limited to the lesser of the following:

- The Federal share of the approved estimated cost 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.[280]

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.

[279] 44 CFR § 206.203(d)(2)(v).
[280] Ibid.

(b) Alternate Project Funding

Federal funding for an Alternate Project is capped at the lesser of:

- Ninety percent (75 percent for PNPs) of the Federal share of the estimate to restore the original facility; or
- The Federal share of the actual cost of completing the Alternate Project.[281]

Alternate Project Calculation

Project Estimate of Eligible Damage:	$100,000
10% Reduction (25% for PNPs):	x .90
New Project Amount:	$ 90,000
75% Federal Cost Share:	x .75
Maximum Federal Funding:*	$67,500

* Applicant must spend at least 90% of the project estimate to receive the maximum amount of Federal funding. PNP Applicants must spend at least 75%of the project estimate.

These reductions are not taken if the project is an Alternative Procedures Project.

(c) Alternative Procedures Project

An Alternative Procedures Project is capped at the Federal share of the estimate to restore the original facility. If the Applicant does not expend all of those funds, it may use the excess funds for approved purposes as described in Chapter 2:VII.G.3(c).

Alternative Procedures Alternate Project

The Applicant may use Alternative Procedures Project funds toward an Alternate Project. In this case, FEMA does not implement the reduction that is applied under the standard program (described in the preceding section). All other Alternate Project requirements under the standard PA Program apply to Alternative Procedures Alternate Projects, such as how the Applicant may or may not use the funds.

3. Use of Capped Project Funds

FEMA has different requirements for how the Applicant can use the funds related to each type of capped project.

(a) Use of Improved Project Funds

When restoring a damaged facility, the Applicant may decide to make improvements to the facility. A project that incorporates such improvements is an Improved Project.[282] The improved facility must have the same function and at least the same pre-disaster capacity as the damaged facility. 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
- Relocating a facility when the relocation is not required by FEMA

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

[281] 44 CFR § 206.203(d)(2)(ii) and (iii).
[282] 44 CFR § 206.203(d)(1).

grant allows such use. The Community Development Block Grant program[283] is an example of a Federal program that, in certain circumstances, allows its funding to be used to meet the non-Federal share of another Federal grant program.

(b) Use of Alternate Project Funds

An Applicant may determine that the public welfare is not best served by restoring the function of the damaged facility. When this occurs, the Applicant may request approval from FEMA to apply PA funding toward a different project(s). FEMA refers to this as an Alternate Project.[284] The Alternate Project must be a permanent project that benefits the general public, serving the same general area that was being served by the original facility. The Applicant may use Alternate Project funds to:

- Repair, expand, mitigate, or construct a facility that would otherwise be an eligible facility under the PA Program[285]
- 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 2:VII.F.2)
- Supplement funds for an Improved Project
- 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.

The Applicant may not use Alternate Project funds to:

- Meet budget shortfalls
- Create a new community plan
- Landscape
- Pay for operating expenses[286]
- Purchase supplies, furniture, or equipment costing less than $5,000 per unit
- Pay the non-Federal share of any PA project[287]
- 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

[283] http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs.
[284] 44 CFR § 206.203(d)(2).
[285] 44 CFR § 206.203(d)(2)(iv).
[286] Ibid.
[287] Ibid.

- Fund a project located in a FEMA-designated floodway

(c) Use of Alternative Procedures Project Funds

When the Applicant agrees to a capped project under the Alternative Procedures, it may utilize any one or more of the following procedures:

- Consolidation of multiple capped projects
- Elimination of reduced funding for Alternate Projects
- Retention of excess funds for approved purposes
- Third-party expert panel review for estimates with a Federal share of $5 million or greater

Example of an Alternative Procedures Project

A county road crosses a water course 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 prepares and approves a subaward with five site sheets to repair or replace each culvert crossing, including hazard mitigation measures to increase the size of the culverts. Subsequently, the Applicant requests that the aggregate funding for the five crossings be used to replace the current configuration with one bridge.

The Applicant may use Alternative Procedures Project funds to restore the pre-disaster design and function of the facility or it may use the funds to complete a project with a different design and/or function. The Applicant may use the funds to construct new facilities, purchase equipment, or conduct measures that reduce future risk.

The Applicant may not use the funds for the following:

- Facilities or equipment that are not otherwise eligible for PA funding
- To meet the local cost share for other Federal projects
- To pay down debts, cover budget shortfalls, or meet operating expenses
- To conduct planning and design that go beyond the work related to the project, such as community-wide planning

Example of an Alternative Procedures Consolidated Project

The Applicant operates 10 facilities located throughout the declared area. FEMA approves 10 subawards for restoration of each facility and the Applicant accepts 10 capped subawards. The Applicant determines that, because of changes in the local economy and population, the community is best served by re-aligning the facility footprint. The Applicant proposes to demolish four facilities, restore the remaining six, open a new facility in a different location, and construct an administrative building and a community center. As a result, the Applicant requests to consolidate the total amount of funding for all 10 capped subawards into a single subaward to restore six buildings and construct three new buildings.

<u>Consolidated Project</u>

The Applicant may combine two or more capped projects into a single project, creating a Consolidated Project. FEMA caps funding for the Consolidated Project at the aggregate amount of the eligible costs for the formerly separate, individual, capped projects. The Applicant must consolidate each individual project in its entirety (i.e., all sites from the project).

The Applicant may consolidate projects regardless of the status of construction. It may consolidate projects with different categories of Permanent Work (e.g., by combining Category C and Category E projects) or consolidate within the same category of work (e.g., multiple school-campus locations).

The Applicant may share funding across any of the facilities or sites within the Consolidated Project to meet its post-disaster recovery needs.

The Applicant must notify FEMA of the projects to be consolidated and the final SOW to be completed under the Consolidated Project within 12 months of the declaration date. Upon request from the Applicant, FEMA may approve a time extension for the Applicant to consolidate its capped projects. The Applicant's request must include the circumstances that justify the extension.

Consolidated Project Preparation

In cases where the Applicant decides, prior to obligation, that a Consolidated Project is preferred, in the interest of efficiency, the Consolidated Project can be defined during project formulation (i.e., the facilities being consolidated do not need to be prepared separately, approved, and then consolidated). The fixed funding is based on the eligible SOWs to restore the original damaged facilities to pre-disaster design and function.

Use of Excess Funds

When the Applicant completes the approved SOW of the capped project, leftover funds are excess funds and the Applicant may use these funds for specific approved purposes.

When the Applicant completes an Alternative Procedures Project for less than the capped amount, it must submit its certified final costs to FEMA (through the Recipient) within 90 days of project completion. As part of this submittal, the Applicant must describe its intended use of the excess funds, to include the SOW and project timeline. FEMA will close the original project and prepare a new project to document the approved use of the excess funds and an appropriate deadline for completion. The Applicant may use the excess funds for the following:

- Cost-effective hazard mitigation measures that will reduce the risk of damage in future incidents. The Applicant may use the funds for hazard mitigation on facilities not damaged in the incident, provided the facilities would otherwise be eligible for PA funding, and toward hazard mitigation activities on other Alternative Procedures Projects.
- Activities that improve future PA Program Permanent Work operations, such as training and planning for future disaster recovery operations.

Unacceptable uses include:

- Payment of debts
- Payment of the non-Federal share of PA projects or other Federal awards
- Operating expenses
- Cost overruns on other PA projects (that are not part of the Consolidated Project)
- Incorporation into the community's General Fund
- Restoring a facility not damaged in the declared incident (with the exception of hazard mitigation, as described in Chapter 2:VII.G.4(c))
- Restoring a facility that would not otherwise be eligible for PA funding

Obtain-and-maintain requirements for insurance apply to work funded with excess funds, as appropriate.

4. Retention of 406 Mitigation Funds

If FEMA approves mitigation funds as part of the capped amount, FEMA's allowance for the Applicant to retain those funds depends upon the type of capped project and the SOW being conducted.

(a) Improved Project

If the capped amount for an Improved Project includes mitigation funds and the Applicant either does not complete the mitigation work, or replaces or relocates the original facility, FEMA deobligates the mitigation funds.

(b) Alternate Project

If the SOW to restore a facility includes mitigation, and the Applicant elects to proceed with an Alternate Project, FEMA does not include costs related to the mitigation in the capped amount for the Alternate Project.

(c) Alternative Procedures Project

If the capped amount for an Alternative Procedures Project includes mitigation funds, FEMA may allow the Applicant to retain the mitigation funds on a case-by-case basis. The level of risk reduction achieved for the Alternative Procedures Project must equal, or exceed, the benefit that the Applicant would have achieved through completion of the approved mitigation measures.

5. Funding from a Facility with an Approved Temporary Facility

If FEMA approves a capped project for a facility for which it also approved temporary relocation of the services to a temporary facility, FEMA does not apply funds from the temporary facility toward the capped project. Additionally, continued funding for that temporary facility is restricted as described below.

(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.

(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.

6. 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.

H. 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 K: Work Eligibility Considerations by Type of Facility, for a summary of eligibility by facility type.

1. 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
- 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
- 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[288]. 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 not eligible 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).[289]

Private roads, including homeowners' association roads, are not eligible. 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 not eligible.

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. Therefore, distinguishing between pre-existing damage and damage caused by the incident is often difficult. For the repair of this type 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 normal maintenance activities.

Normal maintenance is not eligible. Work to repair potholes or fatigue cracking is generally ineligible as this type of damage is rarely caused directly by one incident.

[288] http://www.fhwa.dot.gov/programadmin/erelief.cfm
[289] http://flh.fhwa.dot.gov/programs/erfo/

2. 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
- 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
- Navigational waterways and shipping channels

(a) 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.

Documentation Supporting Pre-disaster Capacity

Survey data that is either *recent* or covers a multi-year period such that FEMA is able to determine 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.

(b) 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 not eligible.

Secondary levees riverward of a primary levee are ineligible, unless the secondary levee protects human life.

3. 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
- Furnishings

Equipment includes:

- Vehicles
- Construction equipment

Repair or replacement of buildings and equipment is eligible.

(a) Buildings

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:

- The age of the building and building systems
- Evidence of regular maintenance or pre-existing issues, such as water damage from a leaky roof
- The severity and impacts of the incident

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.

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).[290]

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

[290] www.fema.gov/media-library/assets/documents/747.

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.

(b) Equipment and Supplies

Repairing damaged—or replacing destroyed—equipment and supplies with the same number of equivalent items is eligible.[291] 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.

(c) 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
- 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
- Deciphering photocopies of damaged hard copies

[291] 44 CFR § 206.226(h).

(d) 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 actually 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 not eligible.

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.

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.

(e) 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
- A damaged specimen that is not recoverable

The animal is not eligible for replacement if a comparable animal is not available for purchase or the Applicant is unable to obtain a comparable 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 used by rehabilitation facilities as part of diagnosis or treatment
- Laboratory animals used in an active research program

Terminology

A **taxidermy specimen** is an animal that has been preserved and mounted in a lifelike representation.

The replacement of animals on loan to an eligible facility at the time they are destroyed is eligible if the Applicant is able to provide documentation that establishes 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.

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 provided 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 not eligible.

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.

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.

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
- 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.

(f) 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 not eligible.

Costs associated with the development of a treatment plan for a damaged collection or individual object are eligible.

Treatment is conducted by qualified conservation professionals with the appropriate specialty and in accordance with the American Institute for Conservation of Historic and Artistic Works Code of Ethics and Guidelines for Practice.[292]

FEMA, in consultation with the Recipient and Subrecipient, 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 not eligible.

Restoring materials, equipment, and exhibition furnishings associated with the

Documentation Supporting Classification as Collection or Individual Object

Generally, documentation of collections and individual objects include accession, catalog, and inventory documentation. Subrecipients should submit all associated documentation along with a clear title to all items.

[292] www.nps.gov/training/tel/Guides/HPS1022_AIC_Code_of_Ethics.pdf.

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
- Video and audio equipment

(g) 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.[293]

However, special library collections, including rare books, manuscripts, and other fragile materials, are only eligible for treatment, not replacement.

4. 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
- Communication systems

(a) 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 disaster-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 not eligible for FEMA funding.

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 conductors x 3 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.

(b) 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

[293] 44 CFR § 206.226(i).

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 event) 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.
- Evidence provided by a licensed Professional Engineer that demonstrates the conductor is damaged beyond repair.

Terminology

A **line section** is a group of contiguous spans selected for evaluation. A span is the distance between two poles or structures.

An 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, State, Territorial, Tribal, or

local codes or standards, including National Electrical Safety Code or Rural Utilities Service (RUS) standards.

If the Applicant prefers to reconductor 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 will provide PA funding for the work as long as the cost is less than the cost of reconductoring 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 not eligible 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 CFR §1730.25, Corrective action (RUS borrowers only).

If the Applicant is able to provide 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.

5. 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
- Other facilities that do not fit in Categories C–F

Unimproved natural features are not eligible.

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 is 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, State, Territorial, Tribal, or local code or standard or permit that meets the criteria described in Chapter 2:VII.B.7.

Long-term monitoring to ensure vegetative growth is not eligible 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.
- 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.

Beaches

Replacement of sand on beaches is only eligible under certain conditions, described below. 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;
- The beach was constructed by the placement of imported sand—of proper grain size—to a designed elevation, width, and slope;[294] and
- The Applicant has established and adhered to a maintenance program involving periodic renourishment with imported sand to preserve the original design.[295] Placement of sand under the following circumstances does not meet this requirement:
    - Emergency or "one-time" nourishment, even if to a design

Documentation Supporting Eligibility of a Beach

To document eligibility of a beach as a designed and maintained facility, the Applicant should provide the following information:

- All design studies, plans, construction documents, and as-builts for the original nourishment;
- All studies, plans, construction documents, and as-builts for every renourishment;
- Documentation and details of the maintenance plan, including how the need for renourishment is determined and funded; and
- Pre-and post-storm profiles that extend at least to the seaward edge of the sub-aqueous nearshore zone (closure depth, usually -15 to -20 feet). (See Figure 15)

[294] 44 CFR § 206.226(j)(2)(i).
[295] 44 CFR § 206.226(j)(2)(ii).

- Emergency or “as-needed” renourishments when the beach has eroded to a critical condition where all of the original nourishment is gone
- Partial renourishments or “hot-spot” nourishments
- Renourishment using material from a channel maintenance project, because dredge spoils do not meet compatibility design criteria and the amount placed is dependent on the amount dredged, not the beach design

The amount of sand eligible for replacement is limited to the amount lost as a result of the incident. FEMA uses the pre- and post-storm profiles of the beach to determine the eligible volume of sand for replacement. If pre-storm profiles are not available, FEMA estimates the amount of sand lost using design documents and renourishment history.

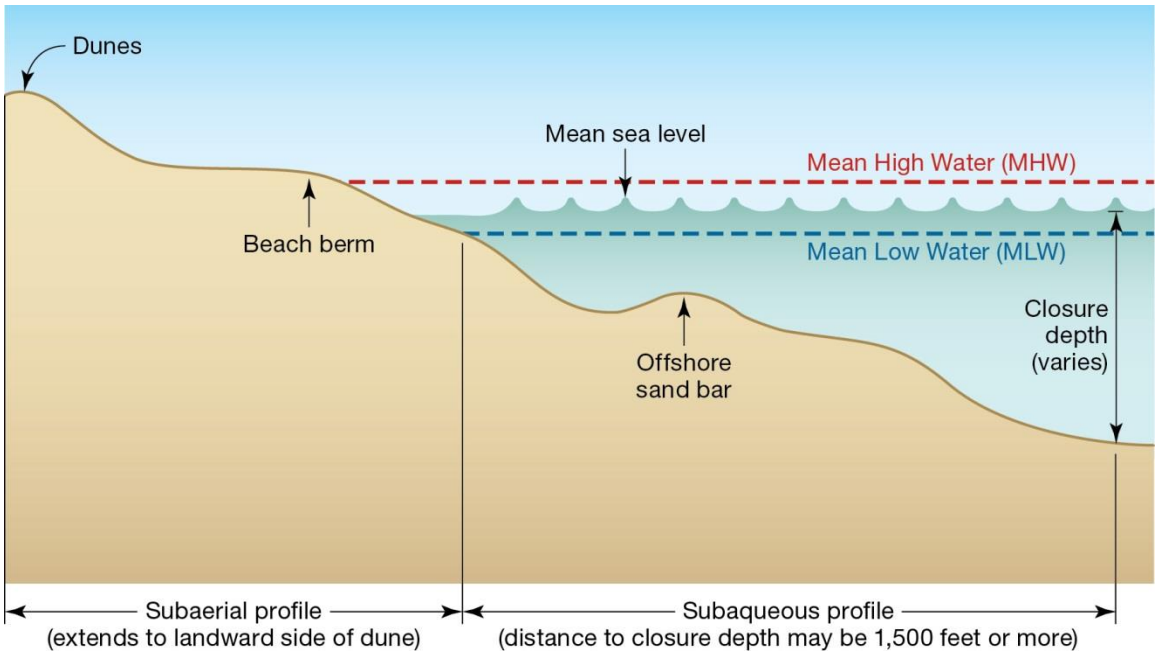

Figure 15. Typical Beach Profile

Replacing sand that eroded prior to the incident is not eligible. However, the Applicant is encouraged to renourish the project to achieve the design profile.

If removal of sand from a maintained facility is eligible, disposal of the sand spoils on a public beach may be eligible as part of that project when it is the most cost-effective method of disposal.

6. 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:

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.

- 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 not eligible. Restoration of the 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 not eligible.

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 E.

An Applicant may request an Alternate Project if restoration of the facility is not feasible because of soil instability.

CHAPTER 3: PUBLIC ASSISTANCE PROGRAM ADMINISTRATION

This chapter provides information on each phase of the Public Assistance (PA) Program implementation process, including project development and requirements for administering the PA Program award. Figure 16 provides an overview of the entire process.

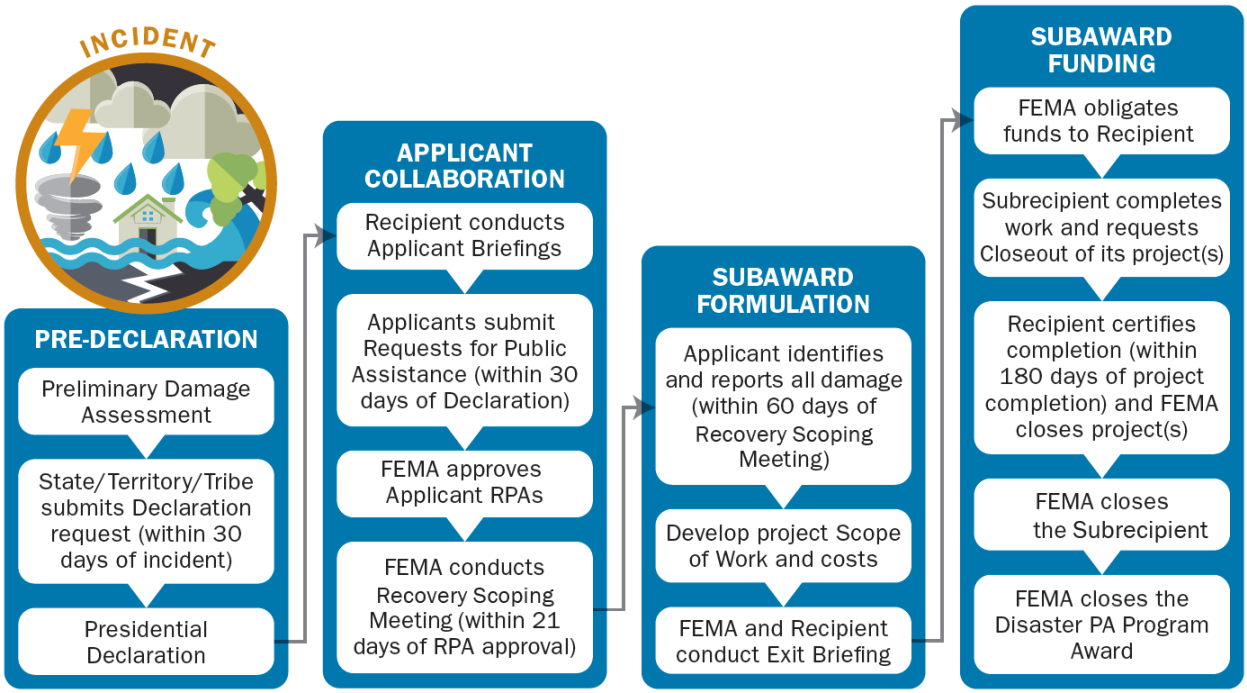

Figure 16. PA Program Implementation Process

I. Initial Collaboration

FEMA and the Recipient work in partnership to administer the PA Program.

A. Preliminary Damage Assessment

When a Tribal or local government determines an incident exceeds its capabilities to respond, it requests assistance from the State. If the State subsequently determines that the incident may exceed the combined capabilities of the State, Tribal, and local governments to respond, it requests that FEMA join the State, Tribal, and local governments to assess the impacts and magnitude of damage.[296] FEMA refers to this as a joint Preliminary Damage Assessment (PDA).[297] When a Tribal Government is applying as a Recipient, it may request a damage assessment directly from FEMA.

[296] 44 CFR § 206.33(a).
[297] 44 CFR § 206.33(b).

The Governor or Indian Tribal Chief Executive must request a declaration[298] from the President through FEMA within 30 days of the incident.

B. Applicant Briefing

As soon as possible following the President's declaration, the Recipient conducts briefings for all potential Applicants (i.e., State, Territorial, Tribal, and local government entities and private nonprofits (PNPs)).[299] The Recipient is responsible for notifying potential Applicants of the date, time, and location of the Applicant Briefing. During these briefings, the Recipient provides high-level information regarding the PA Program, such as:

- Application procedures
- Project funding
- Hazard mitigation
- Administrative requirements
- Procurement requirements
- Environmental and historic preservation (EHP) compliance requirements
- General eligibility criteria
- Documentation requirements
- 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 accounting/finance/procurement operations; and
- Designate a primary point of contact to interact with the Recipient and FEMA.

C. Request for Public Assistance

If a State, Territorial, Tribal, or local government entity or PNP wishes to seek PA funding, it must first submit a Request for Public Assistance (RPA) to FEMA, through the Recipient, within 30 days of the respective area being designated in the declaration.[300] The RPA (FEMA Form 90-49)[301] is the form to apply for the PA Program; FEMA also refers to it as a pre-application. Given the necessity to collaborate with Applicants 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 or at the conclusion of the Applicant Briefing. However, FEMA accepts RPAs up to the 30-day deadline. If a Tribal Government is its own Recipient, it submits its RPA directly to FEMA. 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.[302]

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[298] Information and forms for Presidential declaration requests are available at www.fema.gov/media-library/assets/documents/28122.
[299] 44 CFR § 206.207(b)(1)(iii)(B).
[300] 44 CFR § 206.202(c).
[301] www.fema.gov/media-library/assets/documents/10145.
[302] 44 CFR § 206.202(f)(2).

Using the RPA, the Applicant provides general information about its organization, including physical location and point of contact. The RPA must indicate the Applicant's active Dun and Bradstreet (DUNS) number. If the Applicant does not have an active DUNS number, it may request one at: www.dnb.com/get-a-duns-number.html. Table 5 indicates the RPA documentation required for PNPs.

FEMA and the Recipient review the RPA to determine whether the Applicant is eligible for assistance.[303] See Chapter 2:II for a detailed discussion on Applicant eligibility. Once FEMA approves the RPA, it assigns a PA representative to that Applicant. The PA representative is a program expert who serves as the Applicant's customer service agent on PA Program matters and manages FEMA's processing of the Applicant's projects.

Table 5. PNP RPA Documentation Requirements

PNP RPA Documentation Requirements
All PNP Applicants
☐ PNP Facility Questionnaire (FEMA Form 90-121) available at www.fema.gov/media-library/assets/documents/10579.
☐ A current ruling letter from the Internal Revenue Service granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954; OR documentation from the State substantiating it is a non-revenue producing, nonprofit entity organized or doing business under State law
☐ If the Applicant owns the facility, proof of ownership
☐ If the Applicant leases the facility, proof of legal responsibility to repair the incident-related damage
☐ List of services provided in the facility and when and to whom
Membership Organization
☐ Who is allowed membership
☐ What fees are charged
☐ Policy regarding waiving memberships
Education/School
☐ Proof that the school is accredited or recognized by the State Department of Education
Child Care Facility
☐ Proof that the State Department of Children and Family Services, Department of Human Services, or similar agency, recognizes it as a licensed child care facility
Mixed-Use Facility
☐ Proof of the established purpose of the facility with documentation such as: • Pre-disaster charter, bylaws, and amendments • Calendar of activities

D. Recovery Scoping Meeting

FEMA or the Recipient's PA representative should contact the Applicant to schedule an initial meeting (Recovery Scoping Meeting) within 10 days of receiving notice of RPA approval. If the Applicant is not contacted after 10 days, it should call the Recipient to arrange the meeting.

[303] 44 CFR § 206.207(b)(1)(iii)(C).

Unless there are extenuating circumstances, FEMA and the Recipient should conduct the Recovery Scoping Meeting within 21 days of approval of the RPA.

While the Applicant Briefing is designed to address high-level information for all potential Applicants, the Recovery Scoping Meeting is designed to address the specific needs of each eligible Applicant. At the Recovery Scoping Meeting, FEMA, the Recipient, and the Applicant discuss:

- Details of the Applicant's impacts from the incident
- Hazard mitigation opportunities
- Eligibility criteria for work and costs
- Project formulation
- Insurance requirements
- EHP compliance requirements
- Documentation requirements
- 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). The Applicant should be prepared to provide the information in Table 6 at the Recovery Scoping Meeting.

Table 6. Applicant Documentation for the Recovery Scoping Meeting

Applicant Documentation to Provide at Recovery Scoping Meeting
A list of all impacts by site, including:
☐ Map of jurisdiction showing all sites
☐ Specific location of debris impacts and facility damage using either the address or U.S. National Grid (USNG) location
☐ Facility names
☐ Documentation to support legal responsibility • Deeds • Titles • Lease agreements • Contracts for facilities under construction
☐ Whether the facility was damaged in a prior incident
☐ Pre-incident photographs of impacted site or facility, if available
☐ Photographs of debris impacts or facility damage • Estimated quantities of debris by type • Brief description of damage with dimensions
☐ Emergency Work activities
☐ Estimated costs
☐ Whether the project is high priority
☐ Proposed, or completed, repair scope of work, including hazard mitigation measures

Applicant Documentation to Provide at Recovery Scoping Meeting
☐ Whether the work is complete • Summary of actual costs for completed work, including support documentation • Professional cost estimates for uncompleted work, if available
☐ Who performed, or will perform, the work
☐ Potential environmental issues or historic preservation concerns
☐ Age of the facility
☐ Age of nearby facilities that may be affected by the project
☐ Debris reduction and disposal sites
☐ Summary of insurance coverage, including copy of policy, schedule of values, statements of loss, and settlement documents

II. Project Formulation

FEMA and the Recipient work with the Applicant to formulate incident-related damage and work into projects (i.e., subawards) based on logical groupings of the damage and work.[304] This process is a collaborative effort beginning at the Recovery Scoping Meeting and concluding with an Exit Briefing.

FEMA uses the Project Worksheet (PW) (FEMA Form 90-91)[305] as the Subaward Application. FEMA uses the PW to document details of the Applicant's project, including a detailed description of the disaster-related damage and dimensions and the associated scope of work (SOW) and costs. If the project involves multiple locations, FEMA may use site sheets to differentiate damage, work, and costs by site within the PW.[306] The disaster damage and dimensions, SOW, and costs for each site are documented on separate site sheets.

This section provides information on the project formulation process. FEMA's *Public Assistance Program Field Operations Pocket Guide* (FEMA P-1011) addresses these processes in detail.[307]

Additionally, FEMA requires documentation to support that the work is eligible in accordance with laws, regulations, Executive Orders (EOs), and policies. This chapter provides checklists of documentation that may support eligibility. These checklists are not all-inclusive lists. Documentation should provide the "who, what, when, where, why, and how much" for each item claimed. If the specific documentation discussed below is not available, FEMA and the Recipient work with the Applicant to obtain alternative documentation to support eligibility. However, it is the Applicant's responsibility to substantiate its claim as eligible. If the Applicant does not provide sufficient documentation to support its claim as eligible, FEMA cannot provide PA funding for the work.

[304] 44 CFR § 206.201(l).
[305] www.fema.gov/media-library/assets/documents/9720.
[306] 44 CFR § 206.201(l)(2).
[307] www.fema.gov/media-library/assets/documents/95650.

A. Identify and Report Damage

The Applicant is required to identify and report all of its disaster-related damage, Emergency Work activities, and debris quantities to FEMA within 60 days of the Recovery Scoping Meeting.[308] FEMA may extend the deadline for identifying and reporting damage if the Recipient submits a request in writing with justification based on extenuating circumstances beyond the Recipient's or Applicant's control.[309] For example, if a site is inaccessible, FEMA may extend the deadline for that site.

Expedited Funding

If an Applicant has an immediate need for Emergency Work funding, FEMA may provide funding based on estimated costs provided the Applicant substantiates its legal responsibility for the work and provides a detailed description of the activities, a cost summary, and sufficient documentation to substantiate that the work is eligible and the cost estimate is reasonable. If the funding is related to debris removal, the Applicant must also provide debris quantities, locations, and documentation to substantiate environmental compliance. FEMA must validate the eligibility of the debris quantities and locations. FEMA will not provide funding based on estimated costs for a debris removal project funded under the Accelerated Debris Removal Alternative Procedure (Chapter 2:VI.A.1.a).

FEMA and the Recipient conduct site inspections with the Applicant to validate, quantify, and document the cause, location, and details of the reported damage and debris impacts and identify EHP issues and hazard mitigation opportunities within this 60-day period. Table 7 lists information that FEMA may request to determine the eligibility of damage claimed.

FEMA, the Recipient, and the Applicant should reach agreement on the disaster-related damage description and dimensions, emergency protective measures, and debris impacts before proceeding with SOW development.

Table 7. Documentation to Support Damage Claim

Documentation Supporting Immediate Threats, Debris Impacts, or Damage
The following information is obtained, or validated, during the site inspection (not an all-inclusive list).
☐ The Information listed in Table 6, if not previously provided
For Emergency Work:
☐ Description of immediate threat
☐ Records demonstrating presence of immediate threat (e.g., technical reports, safety inspector report, photographs)
☐ Additionally, for debris specifically: • Actual debris quantities by type • For waterway debris, documentation supporting pre-and post-incident levels, such as waterway soundings

[308] 44 CFR § 206.202 (d)(1)(ii).
[309] 44 CFR § 206.202 (f)(2),

Documentation Supporting Immediate Threats, Debris Impacts, or Damage
For Permanent Work: ☐ Photographs of site, overall facility, and specific damage ☐ Detailed description of damage with specific dimensions ☐ Drawings, sketches, and plans (to scale) of disaster-related damage ☐ Plans and specifications showing pre-disaster design of the facility ☐ Documentation supporting pre-disaster condition of facility (e.g., facility maintenance records, inspection/safety reports) For electric transmission and distribution facility conductors specifically: • 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 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. • Construction work plans demonstrating the utility's past practices and current and future projects. • If required by the Rural Utilities Service (RUS), a copy of any corrective action plans submitted to RUS in compliance with Title 7 of the Code of Federal Regulations (CFR) § 1730.25, Corrective action (RUS borrowers only). • Staking sheets.

B. Develop Scope of Work

Once FEMA, the Recipient, and the Applicant agree on the damage description and dimensions, the Applicant provides its proposed SOW, including its hazard mitigation proposal (HMP) or, if the work is finished, the completed SOW for each of its projects.

For Emergency Work, the SOW includes work required to address immediate threats and to remove debris. For Permanent Work, the SOW includes a description of how the Applicant plans to repair, or has repaired, the damage, including repair dimensions and HMP description and dimensions.

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.

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. Once the Applicant determines its preferred method of repair, it must submit a detailed SOW and cost estimate for FEMA's review. Table 8 lists information necessary to develop the SOW.

Table 8. Information to Develop Scope of Work

Information to Develop Scope of Work
The Applicant should provide the following for each site (not an all-inclusive list):
☐ Site map showing the location of all proposed project components and the extent of ground disturbance (including any staging areas, access roads, parking, landscaping, grading, or utilities)
For emergency protective measures:
☐ Description of emergency response activities
For debris removal:
☐ Quantities of debris removed, reduced, disposed, and recycled (by type) with a representative sampling of load tickets to support quantities
☐ Debris monitor reports
☐ Pick-up locations
☐ Address and/or U.S. National Grid (USNG) location of temporary reduction sites and permanent disposal sites, including recycling locations • Copies of permits for reduction and disposal sites • Lease agreement if applicable
☐ For abandoned vehicles and vessels, documentation supporting that the Applicant followed applicable ordinances or laws for private vehicle and vessel removal
For Permanent Work:
☐ Drawings, sketches, and plans (to scale) of proposed or completed repair
☐ Applicable design requirements
☐ Applicable repair/reconstruction codes or standards and documentation to support they have been formally adopted, implemented, and uniformly applied
☐ Replacement projects: estimate for 50% Rule calculations
☐ Relocation projects: justification for relocation request
☐ HMPs, including Benefit-Cost Analyses (BCAs) when necessary
☐ Hydrologic and hydraulic studies that address potential upstream and downstream impacts (if applicable)
☐ Technical studies, reports, and assessments (including environmental assessments)
☐ Historic property designations or surveys, including archaeological surveys
☐ Copies of permits and correspondence with regulatory agencies • State, Territorial, or Tribal Historic Preservation Officer (historic properties) • U.S. Army Corps of Engineers (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, work in Coastal Barrier Resource System areas, work in or near waterways or wetlands) • National Marine Fisheries Service (federally listed threatened and endangered species, work in or near waterways or wetlands) • State, Territorial, or Tribal environmental agencies

C. Change in Scope of Work

While proceeding with the project, the Applicant must ensure that it uses PA funding only for eligible work. 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 will jeopardize PA funding.

With the exception of Permanent Work Alternative Procedures Projects, FEMA may approve revisions under any of the following circumstances (this is not an all-inclusive list):

- The Applicant discovers damage not visible during the site inspection. The Applicant must report this damage within 60 days of the Recovery Scoping Meeting.
- The Applicant discovers hidden damage during the course of completing previously approved work.
- The repair method documented in the PW is not feasible.
- Professional recommendations for repair differ from the repair documented in the PW, provided the recommendations are limited to the least costly method of repairing only the agreed upon disaster-related damage.
- The PW contains inadvertent errors or omissions.
- The Applicant wishes to pursue an Improved or Alternate Project.

A change requires a written request from the Applicant to the Recipient, including detailed justification and documentation to support the eligibility of the requested revision.[310] If the request involves previously unreported damage, the Applicant must also provide documentation demonstrating how the incident caused the damage. Table 9 indicates the information necessary for FEMA to evaluate a request for a change in SOW.

The Recipient must forward the request to FEMA with its written recommendation.[311]

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 is discovered during construction and is disaster-related

[310] 44 CFR § 206.204(e).
[311] Ibid.

Table 9. Information to Support Change in SOW

Information to Support Change in SOW
Change in SOW requests should be submitted prior to the approved project deadline and include the following (not an all-inclusive list): ☐ Detailed changes to SOW and cost estimate ☐ Reason for changes • If more cost-effective repair: both cost estimates • If original SOW not feasible: supporting documentation such as technical reports • If hidden damage (must be found during performance of eligible work): • Documentation substantiating the damage is related to the declared incident • Photographs documenting damage • Change orders ☐ Construction timeline / project schedule • Time extension, if necessary (include information in Table 11)

D. Develop Project Cost

FEMA or the Recipient prepares the PW based on actual or estimated costs as follows:

- If the Applicant has completed the SOW, the PW is prepared based on actual costs.
- If the Applicant has not completed the SOW, FEMA or the Applicant estimates the costs.

FEMA uses the Applicant's 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[312] 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; and
- Is reasonable.

If the Applicant lacks the resources, it may request technical assistance from FEMA to develop the cost estimates. Table 10 lists the information that the Applicant should submit to support costs claimed.

Small Project Preparation

In addition to FEMA or the Recipient, Applicants may also prepare Small Project PWs with FEMA validation. If the Applicant prepares its own Small Projects, it must submit them to FEMA for validation within 60 days of the Recovery Scoping Meeting. See Chapter 3:IV.B for the differentiation between Small and Large Projects.

[312] 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.

Table 10. Documentation to Support Costs Claimed

Documentation to Support Costs Claimed
The Applicant should submit the following to support costs claimed (not an all-inclusive list): **Applicant (Force Account) Labor and Prisoner Labor:** For each individual: ☐ Name ☐ Job title and function ☐ Type of employee (i.e., full-time exempt, full-time non-exempt, part-time, temporary, prisoner, etc.) ☐ Days and hours worked ☐ Pay rate(s) and fringe benefit rate(s) ☐ Description of work performed with representative sample of daily logs / activity reports, if available ☐ Representative sample of timesheets ☐ Fringe benefit calculations ☐ Pay policy **Applicant-Owned (Force Account) Equipment:** For each piece of equipment: ☐ Type of equipment and attachments used, including year, make, and model ☐ Size/capacity (e.g., horsepower, wattage) ☐ Locations and days and hours used with usage logs ☐ Operator name ☐ Schedule of rates, including rate components **Rented or Purchased Equipment:** ☐ Rental or lease agreements, invoices, receipts ☐ Days used **Supplies from Stock:** ☐ Historical cost records ☐ Inventory records ☐ Type of supplies and quantities used, with support documentation such as daily logs **Purchased Supplies:** ☐ Receipts or invoices **Contracts:** ☐ Procurement policy ☐ Procurement and bid documents ☐ For procurements in excess of the simplified acquisition threshold, a cost/price analysis ☐ Contracts, change orders, and invoices ☐ Dates worked ☐ For time and materials (T&M) contracts, monitoring documentation **Mutual aid:** ☐ Written agreement ☐ Services requested and received ☐ Same information listed for labor, equipment, and supplies above (as applicable) ☐ Invoices

Documentation to Support Costs Claimed
Donated Resources: For each individual: ☐ Name ☐ Days and hours worked ☐ Location of work and work performed Equipment: ☐ Same information listed under Applicant-Owned Equipment above ☐ Who donated each piece of equipment Supplies or materials: ☐ Quantity donated ☐ Who donated ☐ Location(s) used **Cost Estimates:** ☐ Cost estimate for the agreed-upon SOW developed with unit costs ☐ Qualifications of the company or individual who prepared the cost estimate **Cost reasonableness (if requested by FEMA):** ☐ 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 • Supply chain vendor reports For Direct Administrative Costs (DAC): ☐ Specific description of administrative task performed by individual ☐ Skill level and position description of individual performing task **Other:** ☐ Documentation regarding cash donations or other funding received ☐ Cost comparisons and source documentation, if applicable ☐ Actual insurance proceeds, if available

E. Project Documentation

The Applicant must maintain all source documentation supporting the project costs.[313] To facilitate closeout and audits, the Applicant should file all documentation pertaining to each project with the corresponding PW as the permanent record of the project.

The Recipient and the Applicant must keep all financial and program documentation for 3 years after the date of the Recipient's final Financial Status Report (FSR) (FEMA Form 112-0-1).[314] Records are subject to audit by State auditors, FEMA, the U.S. Department of Homeland Security Office of Inspector General, and the U.S. Government Accountability Office.[315]

[313] 2 CFR § 200.302.
[314] 2 CFR § 200.333; www.fema.gov/media-library/assets/documents/29496.
[315] 2 CFR § 200.336.

F. Exit Briefing

FEMA and the Recipient conduct an Exit Briefing with the Applicant when project formulation is complete and all claimed damage is documented.

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
- Review EHP compliance issues
- Transition primary point-of-contact from field personnel to the Recipient
- Discuss questions or concerns

III. Project Deadlines

FEMA only provides PA funding for work completed and costs incurred[316] within regulatory deadlines (See Figure 17). The deadline for Emergency Work is 6 months from the declaration date. The deadline for Permanent Work is 18 months from the declaration date.[317] FEMA considers these timeframes to be a project's period of performance.

Deadlines for Completion of Work	
Type of Work	Months
Emergency Work	6
Permanent Work	18

Figure 17. Regulatory Project Deadlines

If the Applicant determines it needs additional time to complete the project, including direct administrative tasks related to the project, 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.[318]

The Recipient has authority to extend deadlines for individual projects based on extenuating circumstances. It may extend Emergency Work projects by 6 months[319] and Permanent Work projects by 30 months.[320] FEMA has authority to extend individual project deadlines beyond these timeframes if extenuating circumstances justify additional time.[321]

With exception of debris removal operations funded under the Accelerated Debris Removal Procedure of the Alternative Procedures Pilot Program, 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)

[316] 2 CFR § 200.309 and 44 CFR § 206.204(d)(2).
[317] 44 CFR § 206.204(c)(1).
[318] 44 CFR § 206.204(d)(2).
[319] The Recipient may not grant time extensions on debris removal projects funded under the Accelerated Debris Removal Alternative Procedure.
[320] 44 CFR § 206.204(c)(2)(ii).
[321] 44 CFR § 206.204(d).

- Inclement weather (site access prohibited or adverse impact on construction)

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
- 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.[322] 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 11 indicates the information that the Applicant should submit to support a request for a time extension.

Table 11. Information to Support Time Extension

Information to Support Time Extension
Request should be submitted prior to current approved deadline, be specific to one project, and include the following information with supporting documentation: ☐ Dates and provisions of all previous time extensions ☐ Construction timeline / project schedule in support of requested time ☐ Basis for time extension request: • Delay in obtaining permits • Permitting agencies involved and application dates • Environmental delays or limitations (e.g., short construction window, nesting seasons) • Dates of correspondence with various agencies • Specific details • Inclement weather (prolonged severe weather conditions prohibited access to the area, or adversely impacted construction) • Specific details • Other reason for delay • Specific details

IV. Project Funding

The PW contains the information necessary for authorized FEMA personnel to review and approve the SOW and costs. If approved, FEMA obligates the Federal share of the eligible

[322] 44 CFR § 206.204(d)(2).

project cost to the Recipient.[323] Once obligated, the PW constitutes the official record of the approved SOW for the project.

Funds that FEMA has obligated are available to the Recipient via electronic transfer and reside in a Federal account until the Recipient provides the funds to the appropriate Applicant.[324] The Recipient is responsible for notifying the Applicant that funds are available.[325]

A. Strategic Funds Management

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 PW 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.[326]

B. 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 PW totals less than the minimum threshold[327] after the Applicant has accounted for all project costs—including DAC and reductions to avoid duplication of benefits—the project is not eligible.[328] This limitation applies to each PW and not to each site sheet used in one PW. Because of the administrative cost involved, FEMA does not process PWs under the minimum threshold unless the 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.

Additionally, FEMA does not combine work among several sites or projects onto one PW for the **sole** purpose of reaching 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.[329] FEMA categorizes projects as large or small based on the final approved amount of eligible costs after any cost adjustments, including insurance reductions:

- A Large Project is a PW with a cost equal to or greater than the threshold.
- A Small Project is a PW with a cost below the threshold.[330]

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 projects, FEMA adjusts any estimated costs to the actual incurred amount so that the final approved funding is

[323] 44 CFR § 206.202(e).
[324] 44 CFR § 206.200(b)(2)(ii).
[325] 44 CFR § 206.200(2)(i).
[326] www.fema.gov/media-library/assets/documents/30301.
[327] The minimum threshold is available at: www.fema.gov/public-assistance-indicator-and-project-thresholds.
[328] 44 CFR § 206.202(d)(2).
[329] The project threshold amount is available at: www.fema.gov/public-assistance-indicator-and-project-thresholds.
[330] Stafford Act § 422, 42 U.S.C. § 5189, and 44 CFR § 206.203(c).

based on actual costs.[331] For Small Projects, FEMA does not adjust estimated costs to the actual incurred amount.[332]

C. Project Reconciliation and Closeout

The purpose of closeout is for the Applicant to certify that all work has been completed.[333] FEMA closes Large Projects individually as each is completed.[334] FEMA closes all Small Projects together when the last Small Project is completed.[335] To ensure a timely closeout process, the Applicant should notify the Recipient immediately as it completes each Large Project and when it has completed its last Small Project.

The Subrecipient should include the following information with its closeout request:

- Certification that project is complete;
- Date of project completion; and
- Copies of any Recipient time extensions.

1. Large Projects

With exception of Capped Projects, the final eligible amount for a Large Project is the actual documented cost of the completed, eligible SOW.[336] Therefore, upon completion of each Large Project that FEMA obligated based on an estimated amount; the Subrecipient should provide the documentation in Tables 8 and 10 to support the actual costs.[337] If the actual costs significantly differ from the estimated amount, the Subrecipient should provide an explanation for the significant difference.[338]

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.[339] The Recipient must submit its certification of the Applicant's completion of each Large Project with the final payment of claim[340] and supporting documentation to FEMA within 180 days of the project deadline.[341] The Recipient must submit its certification of each of its own Large Projects within 180 days of the project deadline.

FEMA reviews the documentation and, if necessary, obligates additional funds or reduces funding based on actual costs to complete the eligible SOW.[342]

If the project included approved hazard mitigation measures; FEMA does not re-evaluate the cost-effectiveness of the HMP 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,

[331] 44 CFR § 206.205(b).
[332] 44 CFR § 206.205(a).
[333] 2 CFR § 200.343.
[334] 44 CFR § 206.205(b).
[335] 44 CFR § 206.205(a).
[336] 44 CFR § 206.203(c)(1).
[337] 44 CFR § 206.205(b)(1).
[338] 44 CFR § 206.204(e).
[339] 44 CFR § 206.205(b)(1).
[340] This means the final claim for PA funding for the project.
[341] 2 CFR § 200.343.
[342] 44 CFR § 206.205(b)(2).

FEMA will designate the project as an Improved Project, cap the funding at the original estimated amount, and review the additional SOW for EHP compliance.[343]

For Capped Projects, the Applicant must provide documentation to support that it used the funds in accordance with the eligibility criteria described in Chapter 2:VII.G and guidance provided at www.fema.gov/alternative-procedures.

Once FEMA completes the necessary review and funding adjustments, FEMA closes the project.

2. 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 PW based on an estimate and actual costs for completing the eligible SOW differ from the estimated amount. 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;
- The PW contains inadvertent errors or omissions; or
- Actual insurance proceeds differ from the amount deducted in the PW.

In these cases, FEMA only adjusts the specific cost items affected.

If none of the above applies, the Subrecipient may request additional funding if the total actual cost of all of its Small Projects combined exceeds the total amount obligated for all of its Small Projects. In this case, the Subrecipient must request the additional funding through the appeal process, described in Chapter 3:IV.D, within 60 days of completion of its last Small Project.[344] FEMA refers to this as a net small project overrun appeal. The appeal must include actual cost documentation, as detailed in Tables 8 and 10, for all Small Projects that FEMA originally funded based on estimate amounts.[345]

To close Small Projects, the Recipient must certify that the Subrecipient completed the approved SOWs for all of its Small Projects and complied with all EHP requirements.[346] The Recipient must submit the certification of completion of all small projects to FEMA within 180 days from the approved deadline of its last Small Project. The Recipient must submit its certification of completion of all of its Small Projects within 180 days of the approved deadline of its last small project. [347] Once FEMA receives the Recipient's certification, FEMA closes all of the Subrecipient's Small Projects.

D. Appeals

The Applicant may appeal any FEMA determination related to an application for, or the provision of, assistance under the PA Program.[348] For Alternative Procedures Projects, the

[343] 44 CFR § 206.203(d)(1).
[344] 44 CFR § 206.204(e)(2).
[345] 44 CFR § 206.204(e).
[346] 44 CFR § 206.205(a).
[347] 2 CFR § 200.343.
[348] Stafford Act § 423, 42 U.S.C. § 5189a, and 44 CFR § 206.206.

Applicant may submit an appeal only for insurance or corrective actions resulting from reviews such as an audit.

FEMA provides the Applicant with two opportunities to request FEMA reconsider a determination. The first appeal is to the FEMA RA.[349] 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.[350]

The Applicant must submit a written appeal to the Recipient within 60 days of receiving written notification of FEMA's determination.[351] The Recipient must forward the appeal with its written recommendation to FEMA within 60 days of its receipt of the appeal.[352]

FEMA reviews the appeal and, within 90 days of receiving it, takes one of two actions:

- Provides its final written decision to the Recipient; or
- Requests additional information specifying the date FEMA must receive the information (usually 30 days).[353]

E. Audits

Recipients and Subrecipients are subject to Federal and non-Federal audits.[354] 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.[355]

F. Stafford Act Section 705

Section 705 of the Stafford Act imposes a three (3) year limit on FEMA's authority to recover payments made to State, Tribal, or local government Recipients and Subrecipients unless there is evidence of fraud. Section 705 does not apply to PNPs. In order 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.[356]

V. Grant Management and Administration

This section provides information on grant management, administration, and the closeout process and requirements. FEMA's *Public Assistance Program Management and Grant Closeout Standard Operating Procedure* (SOP 9570.14) provides additional details.[357]

A. Quarterly Progress Reports

The Quarterly Progress Report 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

[349] 44 CFR § 206.206(b)(1).
[350] 44 CFR § 206.206(b)(2).
[351] 44 CFR § 206.206(c)(1).
[352] 44 CFR § 206.206(c)(2).
[353] 44 CFR § 206.206(c)(3).
[354] Stafford Act § 318, 42 U.S.C. § 5161, and 44 CFR § 206.207(c).
[355] 2 CFR § 200.501.
[356] www.fema.gov/media-library/assets/documents/115804.
[357] www.fema.gov/media-library/assets/documents/86377.

a quarterly basis.[358] Recipients need to submit Quarterly Progress Reports to FEMA no later than 30 days after the end of each quarter.

The Recipient must report the status of each open Large Project by providing the following:

- Amount of expenditures to date;
- Amount of funds the Recipient has drawn against the project to date;
- Projected project completion date;
- Time extensions granted; and
- Problems or circumstances that might delay the project.

The Subrecipient must submit the following for each uncompleted Large Project on a quarterly basis:

- Total expenditures to date for each project;
- Status of the project;
- Projected completion date; and
- Any circumstances that could delay the project.

B. Section 324 Management Costs

Section 324 management costs are indirect costs, administrative expenses, and other expenses a Recipient or Subrecipient incurs in administering and managing PA awards that are not directly chargeable to a specific project.[359] Chapter 2:V.N.1 discusses the eligibility and overall funding criteria for these costs. This section discusses the process. FEMA categorizes Recipient management costs as Category Z.

Management Cost Cap

Management cost funding is capped at a percentage of the Federal share of assistance granted.[360]

The rate for Major Disaster Declarations is 3.34 percent.[361] The rate for Emergency Declarations is 3.90 percent.[362] This rate covers management costs of both the Recipient and Subrecipients. The Recipient determines the portion it distributes to Subrecipients.[363]

FEMA determines the capped amount in three phases:

- Initial cap: 30–35 days after declaration[364]
- Interim cap: 6 months after declaration[365]
- Final cap: 12 months after declaration[366]

The Recipient may request funds upon notification of the initial cap amount and upon notification of the final cap. If the Recipient can justify a need for an interim obligation at

[358] 44 CFR § 206.204(f).
[359] Stafford Act § 324(a), 42 U.S.C. § 5165b; 44 CFR § 207.2; and 2 CFR §§ 200.56 and 200.412.
[360] 44 CFR § 207.5(b).
[361] 44 CFR § 207.5(b)(4)(i).
[362] 44 CFR § 207.5(b)(4)(iii).
[363] 44 CFR § 207.4(c) and 206.207(b)(1)(iii)(K).
[364] 44 CFR § 207.5(b)(1).
[365] 44 CFR § 207.5(b)(2).
[366] 44 CFR § 207.5(b)(3).

6 months, the Recipient may submit a request with justification to FEMA. An interim obligation does not exceed 10 percent of the 6-month cap amount.[367]

The Recipient submits its initial management cost funding request to FEMA.[368] Upon receipt of the request, FEMA obligates 25 percent of the estimated capped amount.[369]

The Recipient must submit documentation no later than 120 days after the declaration date to support costs and activities for which the projected lock-in amount will be used. In extraordinary circumstances, the Recipient may request additional time.

Documentation must include the following information:

- A description of activities, personnel requirements, and other costs for which the Recipient will use the funding throughout the incident;
- A plan for expending and monitoring funds provided and ensuring sufficient funds are budgeted for grant closeout; and
- An estimate of the percentage or amount of pass-through funds the Recipient intends to make available to Subrecipients, including the basis, criteria, or formula for determining the percentage or pass-through amounts.

FEMA approves or rejects the documentation within 30 days of receiving it. If rejected, the Recipient has 30 days from the date of the rejection letter to resubmit for approval. FEMA does not obligate the balance of the lock-in amount until after it approves the Recipient's documentation.[370]

After notification of the final cap amount, the Recipient submits a final management costs request to FEMA with any necessary revisions to the 120-day documentation it submitted. FEMA only obligates the remaining funds if it received and approved the 120-day documentation.[371]

The Recipient must retain documentation on how it spent the funds for 3 years after the date of submission of its final FSR.[372]

C. PA Award Closeout

To close the PA grant award to the Recipient, FEMA and the Recipient conduct a financial reconciliation. 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 Program 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;

[367] 44 CFR § 207.7(e).
[368] 44 CFR § 207.7(c).
[369] 44 CFR § 207.5(b)(1).
[370] 44 CFR § 207.7(d).
[371] 44 CFR §§ 207.7(f) and 207.5(b)(3).
[372] 44 CFR § 207.8(f), and 2 CFR § 200.333.

- 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.

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
CFR	Code of Federal Regulations
CWA	Clean Water Act
CZMA	Coastal Zone Management Act
DAC	Direct Administrative Costs
DFA	Direct Federal Assistance
DMP	Debris Management Plan
DUNS	Dun and Bradstreet
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
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
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
PDA	Preliminary Damage Assessment
PNP	private nonprofit
PW	Project Worksheet
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
SOW	scope of work
STATEX	Statutory Exclusion
T&M	time and materials
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
USNG	U.S. National Grid

REFERENCES AND RESOURCES

Public Assistance (PA) Program References

www.fema.gov/public-assistance-local-state-tribal-and-non-profit
Archived Policy Documents: www.fema.gov/media-library/assets/documents/128488
Archived Publications: www.fema.gov/publications-archive
Alternative Procedures Pilot Program: www.fema.gov/alternative-procedures
Appeal Procedures Manual and Directive: www.fema.gov/media-library/assets/documents/93610
Debris Estimating Field Guide (FEMA 329):
www.fema.gov/pdf/government/grant/pa/fema_329_debris_estimating.pdf
Debris Contractor Registry Tool: https://asd.fema.gov/inter/drcr/home.htm
Direct Reimbursement for Host-State Evacuation and Sheltering Costs (FEMA SOP 9570.1):
www.fema.gov/media-library/assets/documents/28328
Dun and Bradstreet (DUNS) Number: www.dnb.com/get-a-duns-number.html
Elements of a Project Worksheet (FEMA Fact Sheet 9580.5):
www.fema.gov/pdf/government/grant/pa/9580_5.pdf
Equipment Rates: www.fema.gov/schedule-equipment-rates
Infectious Disease Event Fact Sheet (FP 104-009-001): www.fema.gov/media-library/assets/documents/99710
Mission Assignments for ESF #10 (FEMA 9523.8): www.fema.gov
Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules): www.fema.gov/media-library/assets/documents/96773
PA Policy on Insurance (FP 206-086-1): www.fema.gov/media-library/assets/documents/107564
PA Field Operations Pocket Guide (FEMA P-1011): www.fema.gov/media-library/assets/documents/95650
PA Program Management and Grant Closeout (FEMA SOP 9570.14): www.fema.gov/media-library/assets/documents/86377
Project Specialist Transition at Joint Field Offices (FEMA SOP 9570.15):
www.fema.gov/media-library/assets/documents/28370
Recovery of Improper Payments (FEMA SOP 9570.16): www.fema.gov/media-library/assets/documents/92114
Recommended Post Earthquake Evaluation and Repair Criteria for Welded Steel Moment Frame Buildings (FEMA 352): www.fema.gov/media-library/assets/documents/747
Safe Rooms for Tornadoes and Hurricanes, Guidance for Community and Residential Safe Rooms (FEMA P-361): www.fema.gov/media-library/assets/documents/3140
Small Business Administration Loans: www.sba.gov/content/sba-loans
Strategic Funds Management – Implementation Procedures for the PA Program (FEMA SOP 9570.24): www.fema.gov/media-library/assets/documents/30301
Validation of Small Projects (FEMA SOP 9570.6): www.fema.gov/media-library/assets/documents/28349

Forms

Application for Federal Assistance (SF-424) and Assurances (SF 424-D):
www.grants.gov/web/grants/form-instructions/sf-424-instructions.html
www.grants.gov/web/grants/form-instructions/sf-424d-instructions.html

Financial Status Report (FSR) (FEMA Form 112-0-1): www.fema.gov/media-library-data/20130726-1856-25045-9653/sf_financial_status_report.pdf
Payment Management System Access Form and a Direct Deposit Form (SF-1199A): www.dpm.psc.gov/grant_recipient/access_procedure/access_procedure.aspx?explore.event=true
PNP Facility Questionnaire (FEMA Form 90-121): www.fema.gov/media-library/assets/documents/10579?id=2726
Request for Public Assistance (RPA) (FEMA Form 90-49): www.fema.gov/media-library/assets/documents/10145
Subaward Application / Project Worksheets (PWs) (FEMA Form 90-91): www.fema.gov/media-library/assets/documents/9720

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

Code of Federal Regulations

2 CFR, Grants and Agreements: www.ecfr.gov/cgi-bin/text-idx?SID=6bb67f6254dbbfb229adddfa247ca4eb&mc=true&tpl=/ecfrbrowse/Title02/2tab_02.tpl
2 CFR 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
7 CFR § 1730.25, Corrective action (Rural Utilities Service [RUS] borrowers only): www.ecfr.gov/cgi-bin/text-idx?SID=6bb67f6254dbbfb229adddfa247ca4eb&mc=true&node=pt7.11.1730&rgn=div5#se7.11.1730_125
15 CFR Part 774, The Commerce Control List: www.ecfr.gov/cgi-bin/text-idx?SID=6bb67f6254dbbfb229adddfa247ca4eb&mc=true&node=pt15.2.774&rgn=div5
22 CFR Part 121, The United States Munitions List: www.ecfr.gov/cgi-bin/text-idx?SID=6bb67f6254dbbfb229adddfa247ca4eb&mc=true&node=pt22.1.121&rgn=div5
40 CFR Part 261, Identification and Listing of Hazardous Waste: www.ecfr.gov/cgi-bin/text-idx?SID=6bb67f6254dbbfb229adddfa247ca4eb&mc=true&node=pt40.26.261&rgn=div5
40 CFR Parts 1500–1508, NEPA Regulations: www.ecfr.gov/cgi-bin/text-idx?SID=6bb67f6254dbbfb229adddfa247ca4eb&mc=true&tpl=/ecfrbrowse/Title40/40cfrv33_02.tpl#1500
44 CFR, Emergency Management and Assistance: www.ecfr.gov/cgi-bin/text-idx?SID=e9db96b738b11340c696c4ee451d3865&mc=true&tpl=/ecfrbrowse/Title44/44tab_02.tpl
44 CFR Part 9, Floodplain Management and Protection of Wetlands: www.ecfr.gov/cgi-bin/text-idx?SID=e9db96b738b11340c696c4ee451d3865&mc=true&node=pt44.1.9&rgn=div5
44 CFR Part 201, Mitigation Planning: www.ecfr.gov/cgi-bin/text-idx?SID=e9db96b738b11340c696c4ee451d3865&mc=true&node=pt44.1.201&rgn=div5

44 CFR Part 204, Fire Management Assistance Grant (FMAG) Program: www.ecfr.gov/cgi-bin/text-idx?SID=e9db96b738b11340c696c4ee451d3865&mc=true&node=pt44.1.204&rgn=div5
44 CFR Part 206, Federal Disaster Assistance: www.ecfr.gov/cgi-bin/text-idx?SID=e9db96b738b11340c696c4ee451d3865&mc=true&node=pt44.1.206&rgn=div5
48 CFR Subpart 2.1, Federal Acquisition Regulation: www.ecfr.gov/cgi-bin/text-idx?SID=6bb67f6254dbbfb229adddfa247ca4eb&mc=true&node=pt48.1.2&rgn=div5#sp48.1.2.2_11

Environmental Protection Laws and Executive Orders (EOs)

Clean Air Act (CAA): www.epa.gov/air/caa/
Clean Water Act (CWA): www.epa.gov/agriculture/lcwa.html
Coastal Barrier Resources Act (CBRA): www.fws.gov/ecological-services/habitat-conservation/cbra/Act/index.html
John H. Chafee Coastal Barrier Resources System (CBRS): www.fws.gov/ecological-services/habitat-conservation/coastal.html
Coastal Zone Management Act (CZMA): http://coast.noaa.gov/czm/act/
Comprehensive Environmental Response Compensation and Liability Act (CERCLA): www.epa.gov/superfund/policy/cercla.htm
Endangered Species Act (ESA): www.fws.gov/endangered/laws-policies/
Farmland Protection Policy Act (FPPA): www.nrcs.usda.gov/wps/portal/nrcs/detail/?cid=nrcs143_008275
Fish and Wildlife Coordination Act: www.fws.gov/laws/lawsdigest/fwcoord.html
Magnuson-Stevens Fishery Conservation and Management Act: www.nmfs.noaa.gov/sfa/magact/
Migratory Bird Treaty Act: www.fws.gov/laws/lawsdigest/migtrea.html
National Environmental Policy Act (NEPA): www.epa.gov/nepa
Resource Conservation and Recovery Act (RCRA): www.epa.gov/agriculture/lrca.html
Wild and Scenic Rivers Act: www.rivers.gov/wsr-act.php
EO 11988, Floodplain Management: www.fema.gov/executive-order-11988-floodplain-management
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EO 12898, Environmental Justice: www.fema.gov/executive-order-12898-environmental-justice-low-income-minority-populations-1994

Historic Preservation Laws and Tools

Advisory Council on Historic Preservation: www.achp.gov
American Institute for Conservation of Historic and Artistic Works Code of Ethics and Guidelines for Practice: www.conservation-us.org/about-us/core-documents/code-of-ethics-and-guidelines-for-practice
National Historic Preservation Act (NHPA): www.nps.gov/history/local-law/nhpa1966.htm
National Register of Historic Places: http://nps.gov/nr/

Other Laws and EOs

Americans with Disabilities Act (ADA): 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
EO 13688, Federal Support for Local Law Enforcement Equipment Acquisition: www.whitehouse.gov/sites/default/files/docs/le_equipment_wg_final_report_final.pdf

Federal Emergency Management Agency (FEMA) References

FEMA: www.fema.gov
FEMA Stafford Act Declaration Process Fact Sheet: www.fema.gov/declaration-process-fact-sheet
FMAG Program: www.fema.gov/fire-management-assistance-grant-program
    FMAG Program Guide (FEMA P-954): www.fema.gov/media-library/assets/documents/92379
Federal Insurance and Mitigation Administration (FIMA): www.fema.gov/what-mitigation/federal-insurance-mitigation-administration
    FIMA Policy (FP 306-112-1): www.fema.gov/media-library-data/52b14d2dfb254480e7cac82fa2acda58/FP_303_112_1_508.pdf
    National Flood Insurance Program (NFIP): www.fema.gov/national-flood-insurance-program
    Hazard Mitigation Assistance (HMA) Programs: www.fema.gov/hazard-mitigation-assistance
    HMA Guidance: www.fema.gov/media-library/assets/documents/103279
    Hazard Mitigation Grant Program (HMGP): www.fema.gov/hazard-mitigation-grant-program
    State Hazard Mitigation Officer: www.fema.gov/state-hazard-mitigation-officers
Individual Assistance (IA) Programs: www.fema.gov/individual-assistance-program-tools
    Individuals and Households Program (IHP): www.fema.gov/media-library/assets/documents/24945
National Disaster Recovery Framework (NDRF): www.fema.gov/national-disaster-recovery-framework
National Response Framework (NRF): www.fema.gov/national-response-framework

Other Federal Agencies

Bureau of Indian Affairs (BIA): www.indianaffairs.gov
Federal Highway Administration (FHWA): www.fhwa.dot.gov
    FHWA Emergency Relief Program (ERP): www.fhwa.dot.gov/programadmin/erelief.cfm
National Oceanic and Atmospheric Administration (NOAA): www.noaa.gov
    National Marine Fisheries Service (NMFS): www.nmfs.noaa.gov
    National Centers for Environmental Information (NCEI), formerly known as the National Climatic Data Center (NCDC): www.ncei.noaa.gov
    NWS Cooperative Network Stations: www.nws.noaa.gov/om/coop/
Natural Resources Conservation Service (NRCS): www.nrcs.usda.gov
    NRCS Emergency Watershed Protection Program (EWP): www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/landscape/ewpp
National Weather Service (NWS): www.weather.gov
U.S. Army Corps of Engineers (USACE): www.usace.army.mil

USACE Rehabilitation and Inspection Program (RIP): www.usace.army.mil/Missions/CivilWorks/LeveeSafetyProgram/LeveeInspections.aspx

U.S. Coast Guard (USCG): www.uscg.mil

U.S. Department of Agriculture (USDA): www.usda.gov

Farm Service Agency: www.fsa.usda.gov

U.S. Department of Health and Human Services (HHS): www.hhs.gov

Centers for Disease Control and Prevention (CDC): www.cdc.gov

U.S. Department of Homeland Security (DHS): www.dhs.gov

DHS Office of Inspector General (OIG): www.oig.dhs.gov

OIG Emergency Management Oversight Team: www.oig.dhs.gov/index.php?option=com_content&view=article&id=38%3Aemo&catid=5&Itemid=17

U.S. Department of Housing and Urban Development (HUD): www.hud.gov

Community Development Block Grant Program: www.hud.gov/cdbg

U.S. Department of Labor: www.dol.gov

U.S. Environmental Protection Agency (EPA): www.epa.gov

U.S. Fish and Wildlife Service (USFWS): www.fws.gov

U.S. Government Accountability Office (GAO): 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.

Direct Administrative Cost (DAC)

A cost incurred that can be identified separately and assigned to a specific project.

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 State, Territorial, Tribal, 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.

Emergency Protective Measure

An action taken by a community before, during, and after a disaster 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, 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, 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 States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

Management cost

Any indirect cost, administrative expense, and any other expense that a Recipient or Subrecipient reasonably incurs in administering and managing the Public Assistance (PA) award that is not directly chargeable to a specific project.

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.

Private nonprofit (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. 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.

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 (PNP) 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 of 1954, or satisfactory evidence from the State that the nonrevenue producing organization or entity is a nonprofit one organized or doing business under State law.

Project

A logical grouping of work required as a result of the declared major disaster or emergency.

Project Worksheet (PW)

A tool used by the Applicant and FEMA to develop projects. The PW (FEMA Form 90-91) is the primary form used to document the location, damage description and dimensions, scope of work, and cost estimate for each project.

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 State, Territorial, Tribal, 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.

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 (RPA)

The form a public entity or PNP organization uses to apply for disaster assistance.

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 CFR 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 (SFHA)

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). SFHAs 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, Executive Orders (EOs), and regulations establish requirements to protect the environment and preserve the Nation's historic and prehistoric resources. FEMA must review 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.

National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires FEMA to consider the effects a project will have on historic properties and provide the Advisory Council on Historic Preservation the opportunity to comment on the effects of the project.[373] 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.[374]

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.[375] The White House Council on Environmental Quality publishes its NEPA regulations in Title 40 of the Code of Federal Regulations (CFR) Parts 1500–1508. The U.S. Department of Homeland Security publishes NEPA requirements and provides a specific decision-making process that FEMA must follow before funding a project. The process ensures consideration of environmental consequences of the project and informs the general public.

Endangered Species Act

Section 7 of 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 consult with the U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration Fisheries, also known as the National Marine Fisheries Service (NMFS), to ensure that proposed projects will not jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat for listed species.[376]

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

[373] 16 U.S.C. § 470f.
[374] http://nps.gov/nr/.
[375] 42 U.S.C. § 4332.
[376] 16 U.S.C. § 1531, Section 7.

source into navigable waters without the appropriate CWA permits from the U.S. Army Corps of Engineers (USACE) or State regulatory agency.[377]

Clean Air Act

The Clean Air Act (CAA) protects the Nation's air through the reduction of smog and atmospheric pollution. Except for activities in non-attainment areas (defined as those areas that do not meet national standards for air quality and, therefore, require more rigorous compliance measures), air quality compliance often requires certain measures be implemented, such as dust abatement, vehicle emissions control, fuel storage, and distribution procedures.[378]

Coastal Barrier Resources Act

The Coastal Barrier Resources Act (CBRA)[379] established the John H. Chafee Coastal Barrier Resources System (CBRS), which consists of relatively undeveloped coastal barriers along the Atlantic, Gulf, and Great Lakes coasts. CBRA minimizes adverse impacts to these areas by restricting Federal assistance that encourages development within the CBRS. USFWS publishes maps designating these areas.[380] FEMA must consult with USFWS prior to providing PA funding for work within the CBRS.[381]

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.[382] FEMA consults with USFWS regarding projects likely to trigger compliance with this Act.

Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act (RCRA) established a framework for Federal, State, Territorial, and local cooperation for controlling the management of hazardous and non-hazardous solid waste. The U.S. Environmental Protection Agency's (EPA's) role is to establish minimum regulatory standards, usually implemented by the States, and to provide technical assistance. RCRA requires the safe disposal of waste materials, promotes the recycling of waste materials, and encourages cooperation with local agencies.[383]

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 and Territories. 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

[377] 33 U.S.C. § 1251 et seq.
[378] 42 U.S.C. § 7401 et seq.
[379] 16 U.S.C. § 3501 et seq.
[380] 16 U.S.C. §§ 3501 and 3503. USFWS publishes CBRS maps at: www.fws.gov/ecological-services/habitat-conservation/cbra/Maps/index.html.
[381] 16 U.S.C. § 3505.
[382] 16 U.S.C. §§ 703–712.
[383] 42 U.S.C. § 6901 et seq.

approved coastal zone management plan.[384] 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 plan's provisions.

Farmland Protection Policy Act

The Farmland Protection Policy Act minimizes the extent to which Federal programs contribute to the conversion of prime or unique farmland, or land of statewide or local importance, to non-agricultural uses and to ensure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, Territorial, 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 projects for adverse effects to such farmland and to consider alternative actions that could avoid adverse effects. For projects that have the potential to affect such farmland, FEMA must consult with the USDA Natural Resources Conservation Service (NRCS) to identify potential impacts to that farmland.[385]

Fish and Wildlife Coordination Act

The Fish and Wildlife Coordination Act protects fish and wildlife when Federal actions result in the control or modification of a natural stream or body of water. The Fish and Wildlife Coordination Act requires Federal agencies to determine whether a proposed action will result in the control or modification of a body of water. Projects involving the control or modification of any water body require Federal agencies to consult with USFWS and NMFS (as appropriate) and State wildlife agencies to develop measures to protect, develop, and improve fish and wildlife conditions.[386]

Wild and Scenic Rivers Act

The Wild and Scenic Rivers Act preserves the free-flowing State of rivers that are listed in 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. If a proposed project is located on a river included in the System, FEMA must review it for compliance with the Wild and Scenic Rivers Act and consult with the managing agency for the affected designated river.[387]

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.[388]

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[384] 16 U.S.C. § 1451 et seq.
[385] 7 U.S.C. § 4201 et seq.
[386] 16 U.S.C. §§ 661–667e.
[387] 16 U.S.C. § 1271 et seq.
[388] 16 U.S.C. §§ 1801–1884.

Executive Order 11988, Floodplain Management

EO 11988, Floodplain Management, requires Federal agencies to minimize or avoid activity that adversely affects floodplains. 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 CFR 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.[389]

Executive Order 11990, Protection of Wetlands

EO 11990, Protection of Wetlands, requires Federal agencies to minimize or avoid activity that adversely affects wetlands and to encourage the preservation and enhancement of the beneficial functions of wetlands. 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 CFR 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.

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.

[389] 44 CFR § 9.6, Decision-making process.

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 not eligible 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 battered spouses, 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 will determine eligibility and the level of assistance. Therefore, even though the entire facility is used for eligible purposes, FEMA will pro-rate 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 (CFR) § 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 pro-rated 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 is open to the general public outside the Homeowners' Association community and if it is established and primarily used as a gathering place for a variety of social, educational enrichment, and community service activities.

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 not eligible community centers." It is not necessary to calculate the percentage of time or space devoted to community activities versus athletic and recreational activities, because Westover is overwhelmingly athletic and recreational. 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 minimal fee makes it open 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 each eligible as educational facilities. As educational facilities, they are considered to provide critical services and therefore Community Church will not have to apply to SBA prior to receiving funding for permanent work on those buildings. The chapel is eligible as a house of worship. Houses of worship are considered to provide non-critical services, so Community Church will be 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 may be 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).[390]

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 not eligible 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.
- 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:

[390] 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.
- 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 not eligible.

Generally, detailed analytical or experimental studies or Level 2 evaluations as described in FEMA 352, Chapter 5, are not eligible unless FEMA provides approval before the Applicant initiates the work.

APPENDIX D: DEBRIS MANAGEMENT PLAN JOB AID

FEMA encourages State, Territorial, Tribal, and local governments to establish written procedures and guidance for managing debris in an expeditious, efficient and environmentally sound manner. FEMA refers to this as a Debris Management Plan (DMP).

The content of a DMP will vary depending on State, Territorial, Tribal, and local vulnerabilities, ordinances, zoning, critical infrastructure locations, disposal locations, and other localized factors. The following 10 elements are the basic components of a comprehensive DMP:

Overview

This section should include the following information:

- The purpose of the DMP and its overarching goals,
- How the DMP was developed and who participated in development (include all internal departments and external entities that may be involved with debris operations), and
- Whether the DMP is officially adopted by the governing body.

Incidents and Assumptions

Forecasting the type and quantity of debris is essential to the debris removal operations planning process. The DMP should include:

- Identification of the types and severity of incidents most likely to occur along with the types and anticipated quantities of debris that may be generated,
- Identification of the type of handling and equipment necessary to safely manage the debris, and
- A description of the general terrain types, land use, and accessibility for the areas that would most likely be impacted by the incident and how these characteristics may affect debris operations.

There are many types of debris with various considerations for each, as shown in the table below.

Vegetative Debris	Vegetative debris includes whole trees, stumps, trunks, branches, limbs, and other leafy material.
Construction and Demolition Debris	Construction and demolition debris includes components of buildings and structures, such as lumber and wood, gypsum wallboard, glass, metal, roofing material, tile, carpeting and other floor coverings, window coverings, pipe, concrete, asphalt, equipment, furnishings, and fixtures. The definition of construction and demolition debris may vary between jurisdictions.

Hazardous Waste	Hazardous waste is a waste that appears on one of the four hazardous waste lists in Title 40 of the Code of Federal Regulations (CFR) Part 261 or exhibits at least one of the following four characteristics: • Ignitability • Corrosivity • Reactivity • Toxicity 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. The State or Tribal environmental office and the U.S. Environmental Protection Agency (EPA) provide first response functions in cases of commercial, agricultural, industrial, and toxic waste spills. The DMP should include the contact information for both parties in case of a large contamination issue.
Household Hazardous Waste	Household Hazardous Waste (HHW) is a hazardous product or material used and disposed of by residential consumers, 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. HHW mixed with other debris types will contaminate the entire load, which necessitates special disposal methods. The overall cost of debris disposal can escalate quickly if HHW collection and disposal is not planned and executed with care. 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 should consider having emergency hazardous waste removal contracts in place with pre-qualified contractors to perform the work. After an incident, the Applicants should set-up HHW collection centers to avoid commingling of HHW with other debris.
White Goods	White goods are defined as discarded household appliances such as refrigerators, freezers, air conditioners, heat pumps, ovens, ranges, washing machines, 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 disposal or recycling. Some States and Tribal Governments also require certified technicians to extract compressor oils before disposal or recycling. 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. The DMP should identify certified recycling centers that are permitted to take white goods.
Electronic Waste	Electronic waste (e-waste) refers to electronics that contain hazardous materials, such as computer monitors, televisions, cell phones, and batteries. These products may contain minerals and chemicals that require specific disposal methods.

Soil, Mud, and Sand	Floods, landslides, winds, and storm surges often deposit soil, mud, and sand 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.
Vehicles and Vessels	Vehicles and vessels may be damaged, destroyed, displaced, or lost as a result of a disaster. 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.
Putrescent Debris	Putrescent debris is any debris that will decompose or rot, such as animal carcasses and other fleshy organic matter.
Infectious Waste	Infectious waste is waste capable of causing infections in humans and can include contaminated animal waste, human blood, blood products, medical waste, pathological waste, and discarded sharp objects (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.).
Chemical, Biological, Radiological, and Nuclear–Contaminated Debris	Chemical, biological, radiological, and nuclear–contaminated debris is any debris contaminated by chemical, biological, radiological, or nuclear materials.

Debris Collection and Removal

A debris collection strategy establishes a systematic approach for the efficient removal of debris. The clearance and collection of debris should be structured to meet response and recovery priorities. As such, the DMP should:

- Identify and prioritize facilities that may be impacted by debris;
- Define the priorities during both the response and recovery phase operations;
- Describe the coordination process with other entities responsible for managing debris;
- Identify the roles and responsibilities for all entities and departments involved; and
- Describe the methods that will be used to collect debris (e.g., curbside collection, community drop-off bins).

Debris Removal from Private Property

Debris removal from private property is generally the responsibility of the individual property owners; however, when it is in the public interest to remove debris, the Applicant may act to abate the threat. The DMP should include:

- Identification of the circumstances under which the Applicant will take such action;
- The enabling laws that allow government to intercede in private property matters;

- The process the jurisdiction will use to obtain permissions to enter onto private property; and
- The process the Applicant will undertake to recoup costs (such as insurance proceeds).

Public Information

The dissemination of debris removal information is critical to the effective and efficient removal of debris. The DMP should include a public information strategy to ensure that residents receive accurate and timely information about the parameters, rules, and guidelines for debris removal. For example, if allowing residents to place debris on the curb, information regarding the timeframe allowed and where and how to place the debris (e.g., segregated in shared piles with neighbors, not placed on sidewalks, in roadways, against fire hydrants or power lines).

Health and Safety Requirements

Debris operations can pose safety hazards and health risks to emergency workers and the public. The DMP should include specific details on safety rules and procedures to protect workers and the public and specific measures for adherence to safety rules and procedures.

Environmental Considerations and Other Regulatory Requirements

The removal and disposal of certain types of debris have impact on the human and physical environment. Successful debris operations depend on compliance with Federal, State, Territorial, Tribal, and local environmental laws. The DMP should identify all debris operations that may trigger compliance with environmental and historic preservation (EHP) laws, regulations, and Executive Orders. It should also identify how compliance will be achieved.

Temporary Debris Management Sites and Disposal Locations

The DMP should identify locations where the debris will be segregated, reduced, and disposed and whether it will be recycled.

The Applicants should avoid selecting sites in or near environmentally or historically sensitive areas such as floodplains, wetlands, critical habitats of federally endangered species, historic districts, and archaeologically sensitive areas. Debris must be staged a safe distance from property boundaries, surface water, wetlands, structures, wells, and septic tanks with leach fields. If an EHP concern is identified, the potential site should be ranked lower than others.

Environmental permits and land-use variances may be required to establish a temporary site. Several agencies may be involved in issuing permits and granting 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 DMP 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
- Burn permits

The DMP should address traffic circulation at each of the disposal sites, disposal capacity, and how debris will be managed if there is a lack of landfill capacity. The DMP should identify the final disposal site of whole, reduced, or recycled debris.

Force Account or Contract Resources and Procurement

Jurisdictions can use staff resources, contractors, or a combination of both to monitor or conduct debris removal operations. The DMP should clearly define the types of work that the Applicant will perform with staff resources versus contracted services.

The DMP should describe the process and procedure for acquiring competitively procured contracted services, provide specific contract requirements, and explain how contractor qualifications are established.

Debris Removal Contractor Registry

FEMA developed an on-line debris contractor registry tool to assist Applicants in identifying and contacting contractor resources. The registry tool can be found on FEMA's website (www.fema.gov/debris-removal-contractor-registry-information). 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 the information submitted. FEMA does not endorse, approve, or recommend any contractors, including those in the registry. State, Tribal, and local governments should perform all appropriate due diligence prior to entering into a contract. Contracting with any of the entities listed in the registry does not ensure reimbursement.

Monitoring Debris Operations

The Applicant must monitor contracted debris removal operations. It may use staff resources, contractors, or a combination of both to monitor debris removal operations. FEMA encourages the Applicant to use its own employees to monitor debris removal operations. Professional Engineers and other certified professionals are not necessary for debris monitoring. The primary role for debris monitors is to document the location and amount of debris collected. 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 DMP should include details as to how the jurisdiction will monitor its debris removal contractor at pickup sites and all disposal sites, including temporary sites and final disposal areas. The DMP should discuss who will perform the monitoring and describe each monitoring task. If the jurisdiction outsources a monitoring task, it must award the contract 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.

Debris Management Plan Checklist

Yes	No	Plan Requirements	Comment
		Overview – Does the plan describe the purpose and objectives?	
		Incidents and Assumptions – Does the plan provide information on the types and anticipated quantities of debris that will be generated from various types and sizes of incidents?	
		Debris Collection and Removal – Does the plan have a debris collection strategy? Does the plan discuss the methods that will be used to remove debris and establish priorities for clearance and removal? Does the plan outline the roles and responsibilities of the various functions involved (Public Works, Finance, and Solid Waste Departments, etc.)?	
		Debris Removal on Private Property – Does the plan address the authority and processes for private property debris removal?	
		Public Information – Does the plan include a public information strategy to ensure that residents receive accurate and timely information about debris operations?	
		Health and Safety Requirements – Does the plan describe how workers and the public will be protected and discuss the specific measures for adherence to safety rules and procedures?	
		Environmental Considerations and Other Regulatory Requirements – Does the plan identify all debris operations that will trigger compliance with environmental and historic preservation laws and how compliance will be attained?	
		Debris Management Sites and Disposal Locations – Does the plan identify where the disaster debris will be segregated, reduced, and disposed or whether debris will be hauled to a recycler?	
		Use and Force Account or Contracted Resources and Procurement – Does the plan define the types of work force account labor will accomplish and the types of debris operations that will be contracted? Does the plan describe the process and procedure for acquiring competitively procured contracted services? Does the jurisdiction identify debris contractors that it has prequalified?	
		Monitoring of Debris Operations – Does the plan describe how debris removal contractors will be monitored and who will monitor at pickup sites, Debris Management Sites / Temporary Debris Storage and Reduction Sites, and final disposal?	

APPENDIX E: STUMP CONVERSION TABLE

Diameter to Volume Capacity

FEMA quantifies the amount 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 (Inches)	Debris Volume (Cubic Yards)	Stump Diameter (Inches)	Debris Volume (Cubic Yards)
6	0.3	46	15.2
7	0.4	47	15.8
8	0.5	48	16.5
9	0.6	49	17.2
10	0.7	50	17.9
11	0.9	51	18.6
12	1	52	19.4
13	1.2	53	20.1
14	1.4	54	20.9
15	1.6	55	21.7
16	1.8	56	22.5
17	2.1	57	23.3
18	2.3	58	24.1
19	2.6	59	24.9
20	2.9	60	25.8
21	3.2	61	26.7
22	3.5	62	27.6
23	3.8	63	28.4
24	4.1	64	29.4

Stump Diameter (Inches)	Debris Volume (Cubic Yards)	Stump Diameter (Inches)	Debris Volume (Cubic Yards)
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		

APPENDIX F: HAZARDOUS STUMP WORKSHEET

Applicant: _____ Date: _____

Applicant Representative: _____ Signature: _____

FEMA Representative (if available) _____ Signature: _____

	Physical Location (i.e., Street address, road, cross streets, etc.)	Description of Facility (ROW, Park, City Hall, etc.)	Hazard		U.S. National Grid (USNG) Location	Tree Size (Diameter)	Eligible		Fill For Debris Stumps	Comments (See attached sketch, photo, etc.)
			Yes	No			Yes	No	CY	
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 State, Territorial, Tribal, or local public health officials after FEMA consults with the Centers for Disease Control and Prevention (CDC), based on:

- Evidence of:
  - Higher levels of disease transmitting mosquitoes in the disaster area following the event;
  - A significant number of disease-carrying mosquitoes in the area due to the increase in event-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 storm event, discovered during surveillance as part of mosquito abatement activities, or reported human cases in which transmission occurred prior to the storm event.
- A determination that a significant increase in the mosquito population and/or the change of biting mosquito species poses a threat to emergency workers who are required to work out-of-doors, thereby significantly hampering response and recovery efforts.

  Such evidence may include an abnormal rise in landing rates or trap counts, significant changes in species composition or estimate of infection rates, when compared to pre-disaster surveillance results.
- Verification from medical facilities within the affected area that an increase in the general public's exposure to mosquitoes has directly resulted in secondary infections, especially among those with weakened immune systems such as the elderly, the very young, or the sick.

  This may occur when increased numbers of residents in disaster areas with extended power outages are forced to open buildings for air circulation.

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.

Where possible, a determination of the need for vector control measures should be based on surveillance data provided by local agencies, or on surveillance conducted as a component of the

emergency response. Similarly, termination of control efforts should be based on mosquito density and disease transmission monitoring, and on the degree of exposure to mosquitoes of residents and responders. Information useful in determining the need for emergency mosquito control measures includes:

- 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
- 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 (PA) 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, State, Territorial, and local 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
    - 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 event results in record or near-record[391] snowfall.[392] 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 will evaluate Tribal lands 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 will accept 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. Daily snowfall reports by county are available at: 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, a county 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., will have met 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, compare 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 Tribal land has current event snowfall that meets or exceeds the current event snowfall of

[391] FEMA generally considers near record as being within 10 percent of the record snowfall.
[392] 44 CFR §206.227.

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 Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, and FEMA regulations.[393] In addition to the information required in every disaster request, requests for snow assistance must include the following information:

- Identification of core and contiguous counties[394] 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.

[393] 44 CFR §206 Subpart B (206.31–48).

[394] "Core County" means a county that has a record or near record snowfall with public assistance costs that exceed the annually established countywide per capita impact indicator and is designated for snow assistance under a major disaster declaration. "Contiguous County" means a county in the same State that shares a common border with a core county without geographic separation other than by a minor body of water, typically not exceeding one mile between the land areas of such counties.

APPENDIX I: MOLD REMEDIATION

Mold Remediation Methods

The following list describes common mold remediation methods.

Method	Application
Wet Vacuum	• Use when materials are wet • Use where water has accumulated, such as on floors, carpets and hard surfaces • Do not use when sufficient liquid is not present
Damp Wipe	• Wipe or scrub non-porous (hard) surfaces with water and detergent • Follow instructions listed on the product label
High Efficiency Particulate (HEPA) Vacuum	• Final clean-up after thoroughly dry and contaminated materials are removed • Recommended for cleanup of dust outside of the remediation area • Properly seal HEPA filter • Personal protection equipment is highly recommended; filter and contents must be disposed of in well-sealed bags
Discard	• Use for building materials and furnishings that cannot be remediated • Seal contents in two bags using 6-mil polyethylene sheeting • Cover large items in polyethylene sheeting and seal with duct tape • Sealing materials must be within containment area to limit further contamination

Summarized from Indoor Environments Division of the U.S. Environmental Protection Agency, "Mold Remediation in Schools and Commercial Buildings": 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	• Non-valuable items – discard • Valuable/important – photocopy and discard originals • Invaluable items – freeze in frost-free freezer or meat locker, or freeze dry
Carpet and backing	• Wet vacuum • Reduce ambient humidity levels with dehumidifier • Accelerate drying process with fans
Ceiling tiles	• Discard and replace
Cellulose insulation	• Discard and replace
Concrete or cinder block surfaces	• Wet vacuum • Accelerate drying process with dehumidifiers, fans, and/or heaters
Fiberglass Insulation	• Discard and replace

Water Damaged Material	Action
Hard surfaces, porous floorings (linoleum, ceramic tile, vinyl)	• Vacuum or damp wipe with water and mild detergent • Scrubbing may be necessary • Allow to dry
Upholstered furniture	• Wet vacuum • Accelerate drying process with dehumidifiers, fans, and/or heaters
Wallboard (drywall and gypsum board)	• If obvious swelling and seams are not intact – discard • If no obvious swelling and seams are intact – may be dried in place • Ventilate wall cavity
Window drapes	• Launder or clean according to manufacturer's instructions
Wood surfaces	• Remove water with wet vacuum • Accelerate drying process with dehumidifiers, fans, and/or heaters • Wet paneling – discard and ventilate wall cavity

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*.

APPENDIX J: COST-EFFECTIVE HAZARD MITIGATION MEASURES

FEMA considers the following mitigation measures to be cost-effective 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 2:VII.C: 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 upgrade (See Chapter 2:VII.B).

I. Drainage Structures:

A. Replace the structure with multiple structures or a larger structure. The Applicant may use existing State, Territorial, Tribal, or local drainage criteria for sizing replacement culverts. The Applicant must consider replacement structures with regard to a total drainage system and cannot upgrade structures without a watershed hydrology study with an emphasis on downstream effects and National Flood Insurance Program regulations.

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.

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, cast-in-place concrete, crushed stone or rock, grouted rip rap[395], 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 cribwalls, brushmattresses, 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 a total drainage system and cannot replace structures without a watershed hydrology study with an emphasis on downstream erosion effects.

[395] Projects involving grouted rip rap may be subject to an environmental assessment and may not be allowable in all instances.

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.

III. <u>Mechanical, Electrical, Plumbing (MEP) Components</u>

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 values 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. 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 with a roof covering with a secondary membrane and a fully adhered roof covering, such as modified bitumen. Mechanically fastened insulation or membranes are not acceptable.
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 non-critical 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 where 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: WORK ELIGIBILITY CONSIDERATIONS BY TYPE OF FACILITY

Work Eligibility Considerations: All Facilities		
Pages	**Topic**	**Applicability**
Chapter 2:III	**Facility Eligibility**	All Permanent Work.
Chapter 2:IV	**General Work Eligibility** ○ Result of Declared Incident ○ Within Designated Area ○ Legal Responsibility	All work.
Chapter 2:V	**Cost Eligibility**	All work.
Chapter 2:VI	**Emergency Work Eligibility**	All Emergency Work.
Chapter 2:VI.A	**Debris Removal Eligibility**	All Debris Removal Work.
Chapter 1:II.C; Chapter 2:VI and VI.A; Chapter 2:VII, VII.B.4 and 7, and VII.G; Appendix A	**Environmental and Historic Preservation (EHP) Compliance Considerations (including permit requirements)**	All work (including ground disturbance for any staging areas, access roads, parking, landscaping, grading, or utilities).
Chapter 2:VII.B	**Codes and Standards**	Upgrades to pre-disaster design required by codes or standards.
Chapter 2:VII.C and Appendix J	**Hazard Mitigation**	Work to reduce or eliminate similar damage to the facility from a future incident.
Chapter 2:III.E and VII.D	**Replacement**	When cost to repair disaster-related damage exceeds 50% of cost to replace facility.
Chapter 2:VII.E	**Permanent Relocation**	Destroyed facilities.
Chapter 2:VII.B.5 and VII.F	**Floodplain Considerations**	All Permanent Work in or impacting the floodplain
Chapter 2:VI.B.21 and VII.H.6	**Landslides and Slope Stabilization**	Facilities damaged due to a landslide or slope instability triggered by the incident.
Chapter 2:VI.B.17	**Temporary Relocation**	Certain essential community services provided in public and PNP 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 EOs that commonly apply: NEPA; NHPA, ESA, CWA, CAA, EOs 11988 and 11990; projects involving work in waterways generally require Section 404 permits – permits issued by the USACE as required by the CWA.				
Pages	**Category**	**Eligible Work (including, but not limited to):**	**Ineligible Work and Costs**	**Other Considerations**
Chapter 2:VI.A	**A**	**Debris removal and disposal to eliminate an immediate threat**		Must distinguish between incident-related debris versus debris generated by other recent events.
Chapter 2:VI.B.6	**B**	**Emergency access** ○ Debris clearance or temporary repairs to restore access.	○ Removal of debris from a privately owned access facility UNLESS no other access point exists and damage or debris impedes emergency access. ○ Emergency repairs to privately owned roads UNLESS no other access point exists, damage impedes emergency access, and repair eliminates temporary housing needs.	
Chapter 2:VI.B.20	**B**	**Temporary emergency repairs to address an immediate threat**	○ Temporary repair of Federal aid roads.	
Chapter 2:III.E V.R.1 and 2, and VII.H.1	**C**	**Restoration: Permanent repair or replacement**	○ Loss of useful service life. ○ Loss of toll revenue. ○ Construction of additional lanes even if required by a code or standard, except when code requires changing a one lane bridge to two lanes. ○ Normal maintenance. ○ Restoration of Federal aid roads.	○ Must distinguish between minor incident-related damage and damage related to age of the road, traffic flow, and frequent rain events. ○ Need date of construction for culvert and any nearby structures that may be altered or affected by the project. ○ Hydrologic and hydraulic studies to evaluate upstream and downstream impacts are necessary if replacing culvert with larger culvert.

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 commonly apply: NEPA; NHPA, ESA, CWA, EOs 11988 and 11990; projects involving work in waterways generally require Section 404 permits – permits issued by the USACE as required by the CWA.				
Pages	**Category**	**Eligible Work (including, but not limited to):**	**Ineligible Work and Costs**	**Other Considerations**
Chapter 2:VI.A.4.b	**A**	**Debris removal and disposal (from natural feature or engineered facility) to eliminate an immediate threat** ○ 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. ○ For non-navigable waterways, debris removal is only eligible to the extent that it is necessary to eliminate an immediate threat if the debris: - Obstructs, or could obstruct, intake structures; - Could cause damage to structures; or - Is causing, or could cause, flooding to property during the occurrence of a 5-year flood.	○ Removal of debris to eliminate a threat of flooding to agricultural land. ○ Random surveys to look for debris. ○ Debris removal from flood control works that are under the specific authority of NRCS.	○ Must distinguish between incident-related debris versus pre-existing debris and debris generated by other incidents. ○ Cannot duplicate funding provided by another Federal agency (e.g., USACE or NRCS).

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 commonly apply: NEPA; NHPA, ESA, CWA, EOs 11988 and 11990; projects involving work in waterways generally require Section 404 permits – permits issued by the USACE as required by the CWA.				
Chapter 2:VI.B.4 and 20	**B**	**Flood-fighting (on natural feature or engineered facility) or emergency, temporary repairs (engineered and maintained facility only) to address an immediate threat** ○ The repair of deliberate breaches or removal of flood-fighting measures is eligible as part of the Category B emergency protective measure project.	○ Emergency protective measures to reduce the threat of flooding to agricultural land. ○ Temporary emergency repair of flood control works that are under the authority of USACE or NRCS. ○ Flood-fighting measures on a flood control work that is under the authority of the NRCS. ○ Permanently increasing height or capacity of a flood control work. ○ De-watering of flooded areas primarily for the purpose of drying land. ○ Emergency repair of a secondary levee riverward of a primary levee. ○ Temporary, 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.	○ USACE can conduct flood fighting activities. USACE cannot reimburse Applicants for flood fighting efforts.
Chapter 2:VII.H.2(a) and (b)	**D**	**Debris and silt removal required to restore capacity (engineered and maintained facilities only)** ○ 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.	○ Restoration of flood control works under the authority of USACE or NRCS.	

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 commonly apply: NEPA; NHPA, ESA, CWA, EOs 11988 and 11990; projects involving work in waterways generally require Section 404 permits – permits issued by the USACE as required by the CWA.				
Chapter 2:II.D, III.C, and VII.H.2	**D**	**Restoration: Permanent Repair or Replacement** ○ PNP irrigation facilities are only eligible if they provide water for essential services of a governmental nature to the general public for fire suppression, generating and supplying electricity, and drinking water supply.	○ Restoration of natural channels, lakes, and shorelines—that is, any feature that is not improved and maintained. ○ Restoration of private non-profit irrigation systems that provide water for agricultural purposes. ○ Restoration of federally constructed coastal shoreline protective features. ○ Restoration of flood control works under the authority of USACE or NRCS.	

Work Eligibility Considerations: Buildings, Vehicles, and Equipment				
EHP laws, regulations, and EOs that commonly apply: NEPA, NHPA, CAA, ESA and EOs 11988 and 11990				
Pages	**Category**	**Eligible Work (including, but not limited to):**	**Ineligible Work and Costs**	**Other Considerations**
5Chapter 2:VI.B	**B**	**Extracting water and removing mud and silt from interior to address immediate threat of additional damage or for access for assessment.**	○ Conducted on private property UNLESS FEMA approves the work because: - The immediate threat is widespread, 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.	
Chapter 2:VII.H.3(a)	**E**	**Extracting water and removing mud, silt, or debris from interior in conjunction with repairs.**		
Chapter 2:VI.B.22	**B**	**Mold remediation to address immediate threat of additional damage** ○ Post-remediation sampling to confirm remediation is complete.	○ Mold remediation required as a result of poor facility maintenance or failure to take protective measures in a reasonable amount of time following event.	○ Pre-remediation mold sampling is only eligible when sampling reveals presence of mold.
Chapter 2:VII.H.3(a)	**E**	**Mold remediation when conducted in conjunction with restoring the facility** ○ Post-remediation sampling to confirm remediation is complete.	○ Mold remediation required as a result of poor facility maintenance or failure to take protective measures in a reasonable amount of time following event.	○ Pre-remediation mold sampling is only eligible when sampling reveals presence of mold.

Work Eligibility Considerations: Buildings, Vehicles, and Equipment				
EHP laws, regulations, and EOs that commonly apply: NEPA, NHPA, CAA, ESA and EOs 11988 and 11990				
Chapter 2:VI.B and B.20	**B**	**Emergency protective measures to address an immediate threat** ○ Buttressing, bracing, or shoring. ○ Barricading and safety fencing. ○ Flood protection, such as sandbagging. ○ Temporary emergency repairs.		
Chapter 2:VI.B.16	**B**	**Demolition to address an immediate threat** ○ Demolition of private structures may be eligible when collapse is imminent and an immediate threat exists to the general public subject to additional requirements.	○ Removal of slabs or foundations that do not present a health or safety hazard. ○ Removal or covering concrete pads and driveways. ○ Exception to both – Structures in a buyout program funded by FEMA through the HMGP.	○ If securing a damaged building to prevent access is sufficient to alleviate the threat to public safety, demolition may not be necessary or eligible.
Chapter 2:VII.D.3	**E**	**Demolition when replacing a facility** ○ Including removal and disposal of associated debris.		
Chapter 2:VI.B.14	**B**	**Safety inspections** ○ To establish whether a building is safe for entry, occupancy, and lawful use, as well as posting appropriate placards. ○ Eligible for both public and private buildings.	○ Inspections associated with: ▪ A determination of Substantial Damage under the community's floodplain management ordinance. ▪ A determination of whether the building needs to be elevated or relocated. ▪ For ensuring repairs are completed in accordance with building codes and standards.	

Work Eligibility Considerations: Buildings, Vehicles, and Equipment				
EHP laws, regulations, and EOs that commonly apply: NEPA, NHPA, CAA, ESA and EOs 11988 and 11990				
Chapter 2:V.O, VII.H.3(a), and Appendix C	**E**	**Post-earthquake inspection and evaluation of welded steel moment frames in buildings** ○ To determine the level of disaster-related damage requiring repair.	○ Preliminary assessment to determine which buildings are likely to have sustained damage to welded steel moment frame connections. ○ Detailed analytical or experimental studies. ○ Inspection that does not yield earthquake-related connection damage.	
Chapter 2:V.R.3, VII.B.6 and H.3(a) and (b)	**E**	**Restoration – Permanent repair or replacement** ○ Repair or replacement of buildings ○ Repair or replacement of building components, vehicles or equipment with items similar in age, condition, and capacity.	○ Tax assessments. ○ Additional capacity necessary due to increased population or use, even if required by code. ○ ADA upgrades related to a violation that the Applicant was notified of prior to the incident.	○ Need date of construction. ○ Check National Register of Historic Places or a State historic register. ○ Identify whether the building is located in the 100-year floodplain (500-year for critical actions). ○ FEMA provides assistance for Public Housing Authority facilities, unless Congress appropriates funds to HUD for emergency capital needs for specific PHA facilities. ○ 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. ○ Comply with federally required minimum codes and standards when repairing or replacing building. ○

Work Eligibility Considerations: Contents				
Furnishings, equipment, consumable supplies, files, records, research-related contents, animals, irreplaceable collections and individual objects, library books, and publications.				
Pages	**Category**	**Eligible Work (including, but not limited to):**	**Ineligible Work and Costs**	**Other Considerations**
Chapter 2:VI.B and VI.B.17.	**B**	**Address an immediate threat** ○ Removal and storage of contents to prevent additional damage		
Chapter 2:VII.H.3	**E**	**Restoration – Permanent repair or replacement** ○ Replacement of destroyed contents with items similar in age, condition, and capacity. ○ Recovering and stabilizing records. ○ Stabilization of irreplaceable collections and individual objects is eligible. ○ Re-shelving, cataloging, and other work incidental to the replacement of library books and publications.	○ Replacing used items with new items, unless a used replacement item is not reasonably available. ○ Establishing new information databases. ○ Manually re-entering data into new computers ○ Scanning re-established hardcopy files into computers to create digital files. ○ Deciphering photocopies of damaged hard copies. ○ Research-related contents and animal replacement, if a comparable item/animal is not available for purchase at a reasonable cost. ○ Replacement of rare books, collections, or objects.	○ Applicants may replace contents with different items used for the same general purpose. Eligible funding is capped at the estimated cost for equivalent items.

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 commonly apply: NEPA, NHPA, ESA, CAA, CWA, and EOs 11988 and 11990				
Pages	**Category**	**Eligible Work (including, but not limited to):**	**Ineligible Work and Costs**	**Other Considerations**
Chapter 2:V.G.2, and R.1, VI.B, and B.6, 13, 17, and 20	**B**	**Emergency protective measures to address an immediate threat** ○ Buttressing, bracing, or shoring. ○ Barricading and safety fencing. ○ Flood protection, such as sandbagging. ○ Temporary, emergency repairs. ○ Residential electrical meter repair	○ Revenue lost due to shutdown of a utility. ○ Increased operating costs, such as increased costs for obtaining an alternative source of power because of the shutdown of a power generation plant.	○ If repairs conducted under emergency circumstances restore the pre-disaster design and function of the facility, the repairs are not eligible as Category B, but are eligible as Category F. ○ Rural electric cooperatives, municipal utilities, and public power districts commonly use time and equipment contracts (similar to time-and-materials contracts) for power distribution system repairs. Costs under these contracts are subject to certain criteria. ○ Limited ROW clearance required to access a damaged facility may be eligible.
Chapter 2:V.H, and VII.H.4	**F**	**Restoration** ○ Permanent repair or replacement of any component of system, including buildings, structures, or systems, even if not contiguous. ○ Electrical conductor replacement subject to specific criteria. ○ Inspection or assessment of damaged components of a system. ○ 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.	○ General post-disaster surveys, inspections, and assessments, such as video inspection of sewer lines.	

Work Eligibility Considerations: Parks, Recreation, and Other				
EHP laws, regulations, and EOs that commonly apply: NEPA, NHPA, CZMA, CBRA, ESA, CWA, and EOs 11988 and 11990				
Pages	**Category**	**Eligible Work (including, but not limited to):**	**Ineligible Work and Costs**	**Other Considerations**
Chapter 2:VI.B and B.20	**B**	**Emergency protective measures to address an immediate threat** ○ Buttressing, bracing, or shoring. ○ Barricading and safety fencing. ○ Flood protection, such as sandbagging. ○ Temporary, emergency repairs.		
Chapter 2:VII.H.5	**G**	**Restoration – Permanent repair or replacement** ○ Restoration of engineered beaches is subject to specific eligibility criteria.	○ Restoration of federally constructed beaches or shoreline protection facilities. ○ Restoration of PNP parks and recreational facilities, including supporting facilities such as roads, buildings, and utilities. ○ Restoration of natural, unimproved features. ○ 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). ○ Replacement of destroyed crops; cosmetic or aesthetic vegetation.	

CITY OF RIVERSIDE

OFFICE OF EMERGENCY MANAGEMENT

EMERGENCY RESOURCE AND ASSET MANAGEMENT PROGRAM

MEMORANDUM OF UNDERSTANDING

with

Ralphs Grocery Company

PURPOSE:

For the purpose of arranging emergency resources and assets in times of extraordinary emergencies and disasters affecting the City of Riverside.

UNDERSTANDING:

This MEMORANDUM OF UNDERSTANDING is made and entered into this ___ day of _____, 2008 by and between the CITY OF RIVERSIDE, a municipal corporation of the State of California, hereinafter referred to as “City”, and RALPHS GROCERY COMPANY, hereinafter referred to as “Ralphs” with reference to the following facts:

A. City maintains Emergency Organization Staff to organize and manage emergency services in case of crisis and disaster.
B. Ralphs operates a company which commercially provides food, water, and other consumable good to the public.
C. In time of crisis or disaster, if regular and customary City disaster provisions of food, water, consumable goods, and other essential items were damaged, depleted or otherwise unavailable, it would be of great importance for City Emergency Organization Staff to have such provisions available to provide disaster care and nourishment.
D. City and Ralphs wish to enter into a Memorandum of Understanding to establish the terms and conditions for the obtaining of said provisions in the event of a crisis or disaster makes such necessary.

NOW, THEREFORE, City and Ralphs mutually agree as follows:

1. **TERM.** This Memorandum of Understanding shall commence upon the execution of this document and shall terminate on June 1, 2013, or sooner upon a 30-day written notification by either party.
2. **DUTIES OF RALPHS.** Ralphs will:
    a. In the event of an emergency, as reasonable determined by the City (an **"Emergency"**), as soon as reasonable practicable following the request of the City's Designated Person (identified below), Ralphs will sell to the City in accordance with the terms of this Memorandum any and all retail goods typically sold in Ralphs stores to the extent such goods are then contained in Ralphs Riverside distribution center **("Emergency Provisions"**).
    b. Use reasonable efforts to provide the City an opportunity to purchase Emergency Provisions 24-hours per day, 7-days per week, and 365-days per year for an Emergency.
    c. Provide after-hour contact information for Ralphs Designated Person(s).
    d. Provide the City priority access to said Emergency Provisions in the City's execution of its disaster response and relief mandates in connection with Emergencies.
3. **DUTIES OF THE CITY.** City will:
    a. Designate a delivery location for provisions arranged to be delivered by Ralphs.
    b. Designate an authorized City representative to pick up provisions arranged to be picked up by City.
    c. Pay Ralphs at the agreed cost rate per unit of goods and supplies in accordance with the City's usual accounting procedures upon receipt of an invoice detailing the type, quantity and cost of all goods received.
    d. Designate Ralphs as an important electric customer whose reliability of service is important to the City. In case of an event causing an electric distribution outage to Ralphs electric service, the City shall make all necessary efforts to restore power to Ralphs pursuant to its electrical Priority Emergency Restoration Plan.
4. **PURCHASE PRICE**. City agrees to pay Ralphs the retail purchase price for such Emergency Provisions in effect in Ralphs stores on the day immediately prior to the beginning of the Emergency (the **"Purchase Price"**).
5. **DESIGNATED PERSON (S).** City's Designated Person authorized to order emergency supplies under this memorandum of Understanding is the City Emergency Operations Manager, or in their absence, any representative of the

City's Emergency Operations Center that claims to have such authorization. Ralphs initial Designated Person authorized to receive and fill such orders of Emergency Supplies under this Memorandum of Understanding is Facility Director. The City and Ralphs will provide written Designated Person(s) information, including 24-hour contact telephone numbers as often as required to keep up to date and current. Ralphs may change its Designated Person or add additional Designated Person(s) at any time by giving the City notice thereof.

6. MEMORANDUM EXECUTION.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum to be executed on the day and year first written above.

CITY
City of Riverside
Name:_____
Title:_____
Address: _____
_____

Signed:_____

RALPHS
Ralphs Grocery Company
Name:_____
Title:_____
Address: _____
_____

Signed:_____

RALPHS
Ralphs Grocery Company
Name:_____
Title:_____
Address: _____
_____

Signed:_____

Attest:

Signed:_____
Colleen J. Nicol
City Clerk

Approved as to form:

Signed:_____
James E. Brown
Supervising Deputy City Attorney

Avoiding Total Disaster: The Law and Emergencies

Disaster Preparedness Training for Local Government Legal Advisors

Playbook Part 2

City Attorney/County Counsel

EOC Checklist

MANAGEMENT SECTION
SUPPORT DOCUMENTATION

REFERENCE DOCUMENTS BY POSITION

LEGAL OFFICER (Look in Forms Section also)

LEGAL DOCUMENTS

ORDERS AND REGULATIONS WHICH MAY BE SELECTIVELY PROMULGATED BY THE GOVERNOR DURING A STATE OF EMERGENCY MS-3

ORDERS AND REGULATIONS PROMULGATED BY THE GOVERNOR TO TAKE EFFECT UPON THE EXISTENCE OF A STATE OF WAR EMERGENCY MS-5

LOCAL AND STATE PROCLAMATIONS MS-9

EXHIBIT 1 – RESOLUTION REQUESTING GOVERNOR TO PROCLAIM A "STATE OF EMERGENCY" AND REQUEST FOR STATE AND FEDERAL ASSISTANCE MS-13

EXHIBIT 2 - RESOLUTION PROCLAIMING EXISTENCE OF A LOCAL EMERGENCY AND RENDERING CERTAIN EMERGENCY ORDERS MS-15

EXHIBIT 3 –PROCLAMATION AND ORDER OF THE DIRECTOR OF EMERGENCY SERVICES PROCLAIMING EXISTENCE OF LOCAL EMERGENCY MS-19

EXHIBIT 4 – RESOLUTION REQUESTING A PRESIDENTIAL DECLARATION AND ASKING FOR ASSISTANCE DUE TO THE EXTENT AND SEVERITY OF THE PROCLAIMED LOCAL EMERGENCY MS-21

CITY OF VENTURA EMERGENCY ORGANIZATION ORDINANCE MS-23

REPORTING TO WORK FOLLOWING A DISASTER DURING NONWORKING HOURS MS-27

CALIFORNIA DISASTER AND CIVIL DEFENSE MASTER MUTUAL AID AGREEMENT MS-29

EMERGENCY MANAGEMENT ASSISTANCE COMPACT (EMAC) MS-35

PUBLIC INFORMATION OFFICER (Look in Forms Section also)

PUBLIC NOTIFICATION SYSTEM (PNS) MS-41

EMERGENCY ALERT SYSTEM (EAS) ACTIVATION PROCEDURES MS-43

MEDIA PHONE LIST MS-45

MEDIA RELATIONS – DOs and DON'Ts MS-47

THE PUBLIC INFORMATION OFFICER (PIO) MS-49

MEDIA ACCREDITATION PROCEDURES MS-57

MEDIA ACCESS REGULATIONS MS-59

FEDERAL AVIATION REGULATIONS (PERTAINING TO THE MEDIA) MS-61

EOC COORDINATOR (Look in Forms Section also)

EOC VISITOR CONTROL PROCEDURES MS-63

FORMS SECTION

EPI RELEASE LOG MS-65

PUBLIC INFORMATION SUMMARY MS-67

EOC VISITATION REQUEST FORM MS-69

AGENCY REPRESENTATIVE REGISTRATION FORM MS-71

ACTIVITY LOG MS-73

ORDERS AND REGULATIONS WHICH MAY BE SELECTIVELY PROMULGATED BY THE GOVERNOR DURING A STATE OF EMERGENCY

Extracted from the California Emergency Plan

(Note: California Office of Emergency Services is now the California Emergency Management Agency (Cal EMA) and the Secretary of Cal EMA is the lead for this agency).

Order 1 (Employment)

It is hereby ordered that the period of employment for State Personnel Board emergency appointments, as provided in Section 19120 of the Government Code and State Personnel Board Rules 301-303, be waived for positions required for involvement in emergency and/or recovery operations. The requirements and period of employment for such appointments will be determined by the Director, California Office of Emergency Services, but shall not extend beyond the termination date of said State of Emergency.

Order 2 (Medical Supplies)

It is hereby ordered that in the area proclaimed to be in a State of Emergency and/or that specific area(s) designated by the Director, California Office of Emergency Services, outside of the proclaimed area(s) but which is (are) essential to the relief and aid of the lives and property within the proclaimed area, all drugs and medical supply stocks intended for wholesale distribution shall be held subject to the control and coordination of the Department of Health Services, Food and Drug Section. Authority imparted under this Order, and specific to the proclaimed emergency, shall not extend beyond the termination date of said State of Emergency.

Order 3 (Salary Payment)

It is hereby ordered that during the proclaimed State of Emergency appropriate parts of Sections 18020-18026 of the Government Code and State Personnel Board Rules 130-139 be waived to permit cash compensation to personnel whose work is designated by the Director, California Office of Emergency Services, as essential to expedite emergency and recovery operations for all time worked over the employee's regular workweek, at a rate of 1-1/2 times the regular rate of pay. The Director, Office of Emergency Services, will also designate the beginning and ending dates for such overtime for each individual involved. This waiver shall not extend beyond the termination date of said State of Emergency.

Order 4 (Bonding)

It is hereby ordered that, in the area proclaimed to be in a State of Emergency and/or that specific area(s) designated by the Director, California Office of Emergency Services, outside of the proclaimed area(s) but which is (are) essential to the relief and aid of the lives and property within the proclaimed area, the provisions of Sections 3247-3258 of the Civil Code relating to state contracting bonding requirements for the performance of heavy rescue, debris removal, expedient construction, preparation of mobile home sites, and related activities are suspended. This suspension shall not extend beyond the termination date of said State of Emergency.

Order 5 (Temporary Housing)

It is hereby ordered that in the area proclaimed to be in a State of Emergency and/or that specific area(s) designated by the Director, California Office of Emergency Services, outside of the proclaimed area(s) but which is (are) essential to the relief and aid of the lives and property within the proclaimed area, those zoning, public health, safety, or intrastate transportation laws, ordinances, regulations, or codes which the Director, California Office of Emergency Services, determines impair the provision of temporary housing be suspended for a time not to exceed 60 days, after the proclaimed State of Emergency and authorization by the President upon the declaration of a Major Disaster for the Temporary Housing Program as prescribed in Section 404 of Public Law 93-288 and Section 8654(a) of the Government Code.

Order 6 (Petroleum Fuels)

It is hereby ordered that in the area proclaimed to be in a State of Emergency and/or that specific area(s) designated by the Director, California Office of Emergency Services, outside of the proclaimed area(s) but which is (are) essential to the relief and aid of the lives and property within the proclaimed area, distribution of intra-state petroleum stocks including those in refinery storage, major distribution installations and pipeline terminals, shall be held subject to the control and coordination of the Energy Resources Conservation and Development Commission. Petroleum stocks may be prioritized and diverted for use into a disaster area or in support of disaster mitigation operations. Any and all actions taken shall be at the discretion and judgment of the State Fuel Allocator, California Energy Commission, for use in disaster mitigation. Such actions shall be coordinated with and prioritized by the Director, Office of Emergency Services, but shall not extend beyond the termination date of said State of Emergency.

Order 7 (Banking)

It is hereby ordered that in the area proclaimed to be in a State of Emergency and/or that specific area(s) designated by the Director, California Office of Emergency Services, outside of the proclaimed area(s) but which is (are) essential to the relief and aid of the lives and property within the proclaimed area, all banks will take emergency operating actions pursuant to Section 1916 of the Financial Code. Actions taken under this Order, and specific to the proclaimed emergency, shall not extend beyond the termination date of said State of Emergency.

ORDERS AND REGULATIONS PROMULGATED BY THE GOVERNOR TO TAKE EFFECT UPON THE EXISTENCE OF A STATE OF WAR EMERGENCY

Extracted from the California Emergency Plan

(Note: California Office of Emergency Services is now the California Emergency Management Agency (Cal EMA) and the Secretary of Cal EMA is the lead for this agency).

Order 1 (Orders and Regulations in Effect)

It is hereby ordered that the following orders and regulations, numbered 2 through 12, having been duly made in advance of a State of War Emergency, approved by the California Emergency Council, and filed with the Secretary of State and the county clerk of each county, shall take full effect upon the existence of a State of War Emergency and shall remain in full force and effect until amended or rescinded or until termination of said State of War Emergency. (See Section 8567(a), (b), and (d), State Emergency Services Act.)

Order 2 (Warning)

It is hereby ordered that, immediately upon the existence of a State of War Emergency, all counties, cities and counties, and cities of the State will immediately sound the indicated warning signal and/or take all other appropriate actions to warn residents. The warning signals necessary to effectuate this action shall be those prescribed by the Federal Government for this purpose.

Order 3 (Authority and Implementation under State of War Emergency)

It is hereby ordered that the Director of the Office of Emergency Services is authorized and directed to act on behalf of the Governor and in the name of the State of California in implementing and operating the California War Emergency Plan; and he is authorized to assume command and control of operations within the state in accordance with such plan, insofar as adherence to such plan is adequate, and to deviate from such plan, as directed by the Governor or to the extent and in such manner as he may deem necessary for the protection of life, property, and resources of or within the state against unforeseen circumstances or hazards which, by reason of their character or magnitude, are beyond the scope of such plan; and

It is further ordered that the Director of the Office of Emergency Services is authorized to delegate such powers as are herein granted, or as authorized under Article 5 of the California Emergency Services Act, to personnel of his office as he may deem necessary, and such personnel may act on behalf of and in the name of the Director of the Office of Emergency Services in carrying out any authority so delegated.

Order 4 (Personnel)

It is hereby ordered that all public employees or persons holding positions of responsibility in the State or in accredited local emergency organizations, and all registered disaster service workers, and all unregistered persons impressed into service during a State of War Emergency by a person having the authority to command the aid of citizens in the execution of his duties, are hereby declared to be members of the Statewide War-Emergency Organization; and

It is further ordered that all officials of local political subdivisions of the State and all registered disaster service workers who perform duties in the State or Regional emergency operations headquarters are hereby declared to be personnel of the State War-Emergency Organization

for the period of the State of War Emergency, subject to the direction of the Governor, the Director of the Office of Emergency Services, and/or the Manager of the regional headquarters to which such persons are assigned or attached; and

It is further ordered that all officials and registered disaster service workers heretofore designated as Coordinators or as staff personnel of Operational Area organizations, which have been ratified by the California Emergency Council, are hereby declared to be personnel of the State War Emergency Organization.

Order 5 (War Powers)

It is hereby ordered that the governmental functions for the protection of lives, property, and resources of the State and of every political subdivision thereof shall continue in full force and effect, and all duly constituted officials of the State and of every political subdivision thereof shall continue to discharge their responsibilities and shall comply with, enforce, and assume the responsibility for implementing such regulations and orders not inconsistent with or contradictory to rules, regulations, or orders issued by the President of the United States or the Commanding General, Sixth United States Army, as are now or may hereafter be promulgated by the Governor, in accordance with approved plans and procedures.

Order 6 (Sales Restrictions)

It is hereby ordered that, in accordance with national and state policy, as reflected in the General Freeze Order, Part A, California Emergency Resources Management Plan, all retail sales and transfers of consumer items are prohibited for a period of at least five days following the onset of a State of War Emergency, except for the most essential purposes as determined by federal, state, or local authorities and except for essential health items and perishables in danger of spoilage.

Order 7 (Alcohol Sales)

It is hereby ordered that the sale of alcoholic beverages shall be discontinued immediately.

Order 8 (Petroleum Sales)

It is hereby ordered that all petroleum stocks for California distribution, including those in refinery storage, major distributing installations, and pipe line terminals, shall be held subject to the control of the State Petroleum Director; and

It is further ordered that, following the period of prohibition of sales imposed by Order 6, retail outlets for petroleum products shall operate in accordance with rules and regulations prescribed by the State Petroleum organization as outlined in Part B-VII of the California Emergency Resources Management Plan.

Order 9 (Food Sales)

It is hereby ordered that all wholesale food stocks, including those under the control of processors, wholesalers, agents and brokers, be held subject to the control of the State Food Director, except that:

(1) Fresh fluid milk, fresh vegetables, and bread are not subject to this order; and

(2) Supplies necessary for immediate essential use, on the basis of 2000 calories per person per day, of persons in homes or in mass care centers, restaurants, hotels,

hospitals, public institutions, and similar establishments feeding approximately 100 persons or more per day, may be obtained from wholesale and/or retail sources upon approval by local authorities operating in accordance with existing state and federal food supply policies; and

It is further ordered that, following the period of prohibition of sales imposed by Order 6, retail outlets for food stocks shall operate in accordance with rules and regulations prescribed by the State Food Organization as outlined in Part B-III of the California Emergency Resources Management Plan.

Order 10 (Medical Supplies)

It is hereby ordered that all drugs and medical supply stocks in California, intended for wholesale distribution, shall be held subject to the control of the Chief, State Emergency Medical and Health Organization; and

It is further ordered that, following the period of prohibition of sales imposed by Order 6, retail outlets for drugs and medical supplies shall operate in accordance with rules and regulations prescribed by the State Emergency Medical and Health Organization as outlined in Part B-IV of the California Emergency Resources Management Plan.

Order 11 (Banking)

It is hereby ordered that all banks will take emergency operating actions pursuant to Sections 1915 and 1916 of the Financial Code.

Order 12 (Rent Control/Rationing)

It is hereby ordered that, pursuant to the California Emergency Resources Management Plan, Part B-II, Economic Stabilization, and in conjunction with the lifting of the General Freeze Order as referred to in Order 6, price and rent control and consumer rationing will be invoked and administered by the State Economic Stabilization Organization. Rationed items may include those identified in the list of essential survival items contained in Part A, California Emergency Resources Management Plan, and such other items as may be in short supply.

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LOCAL AND STATE EMERGENCY PROCLAMATIONS

(Note: California Office of Emergency Services is now the California Emergency Management Agency (Cal EMA) and the Secretary of Cal EMA is the lead for this agency).

When there is a condition of extreme peril or potential peril to the safety of persons and property, and the condition is beyond the capability of the local forces to control effectively, the local governing body (City Council, Board of Supervisors or a person authorized by ordinance) may proclaim that a local emergency exists. A local emergency may be proclaimed to exist due to a specific situation, such as flood, fire, storm, earthquake, epidemic, drought, sudden and severe energy shortage, or other condition. The type of disaster, date of occurrence and area affected are to be identified. (See examples of local emergency proclamations/resolutions in **Exhibits 1, 2, 3 and 4.**) A copy of the resolution must be provided to the Ventura County Operational Area for transmission to Cal EMA.

To qualify for assistance under the state California Disaster Assistance Act (CDAA), such proclamations must be made within 10 days of the event.

The governing body must review the need for continuing the Local Emergency Proclamation **at least every 21 days.**

The Proclamation of a Local Emergency:

- Gives public employees and governing bodies certain legal immunities for emergency actions taken.
- Enables local agencies to request state assistance under the State CDAA.
- Allows the chief executive or other authorized official designated by local ordinance to:
    - Establish curfews.
    - Take any measures necessary to protect and preserve public health and safety.
    - Exercise all authority granted by local ordinance.

LOCAL RESOLUTION REQUESTING STATE DIRECTOR, OFFICE OF EMERGENCY SERVICES, CONCURRENCE IN LOCAL EMERGENCIES

Following the proclamation of a local emergency and in the event public real property has been damaged or destroyed and assistance is needed in the repair and restoration, the governing body may request the Secretary of Cal EMA to concur in their proclamation of a local emergency and to provide assistance under the California Disaster Assistance Act (CDAA). The resolution must indicate the nature and date of the emergency, and the person designated to receive process and coordinate all aid. The resolution will be sent to Cal EMA through the Ventura County Operational Area.

To assist the Secretary of Cal EMA in evaluating the situation, and in making a decision on whether or not to concur in the local emergency, the following is required to accompany the resolution:

- Certified copy of Local Emergency Proclamation (see **Exhibits 1, 2, 3 or 4).**
- Damage Assessment Summary

Note: The Local Emergency proclamation must be made within 10 days of the occurrence to qualify for assistance under the California Disaster Assistance Act. Financial assistance available under the CDAA is administered by Cal EMA.
Financial assistance available:

- Assistance to repair, restore, reconstruct or replace public real property or public facilities belonging to local agencies damaged as a result of natural disasters;
- Indirect costs; and
- Direct costs of grant administration.

STATE OF EMERGENCY/PRESIDENTIAL DECLARATION

Resolution Requesting Governor to Proclaim a State of Emergency

After a proclamation of a local emergency, the governing body of the city or county, having determined that local forces are unable to mitigate the situation, may request by resolution that the Governor proclaim a state of Emergency in the area to invoke mandatory mutual aid and provide state assistance under CDAA. A copy of the request for a Governor's Proclamation, with the following supporting data, will be forwarded to the Secretary of Cal EMA through the Ventura County Operational Area.

- Certified copy of the local emergency proclamation (see **Exhibits 1, 2, 3 and 4).**
- Damage Assessment Summary (to be provided if state financial assistance under provisions of the California Disaster Assistance Act is requested).

Financial assistance available:

- Eligible disaster response costs;
- Assistance to repair, restore, reconstruct or replace public real property or public facilities belonging to local agencies damaged as a result of natural disasters;
- Indirect costs; and
- Direct costs of grant administration.

The Office of Emergency Services prepares a recommendation as to the action that should be taken by the Governor. If the action recommends a Governor's Proclamation, OES prepares the proclamation.

Presidential Declaration

Following the above procedures, the governing body of the local jurisdiction may also pass a resolution asking the Secretary of Cal EMA to recommend that the Governor request a Presidential Declaration of a Major Disaster under the authority of Public Law 93-288. The Governor's Request to the President is submitted through the Federal Emergency Management Agency (FEMA). Supplementary justification data may be required to accompany the local resolution (certified copy) and Damage Assessment Survey.

Financial assistance available:

- Individual assistance to the private sector;

- Matching fund assistance for cost sharing required under federal disaster assistance programs (subject to state eligible project criteria);
- Local agency overtime costs and the costs of supplies used during eligible disaster response projects;
- Assistance to repair, restore, reconstruct or replace public real property or public facilities belonging to local agencies damaged as a result of natural disasters;
- Indirect costs; and
- Direct costs of grant administration.

LOCAL PROCLAMATION OF TERMINATION OF LOCAL EMERGENCY

The governing body must review the need for continuing the local Emergency Proclamation **at least every 21 days,** and proclaim the termination at the earliest possible date.

EMERGENCY PROCLAMATION FORMS

Government Code Section No. 8630: "(a) A local emergency may be proclaimed only by the governing body of a city, county, or city and county, or by an official so designated by that governing body. (b) Whenever a local emergency is proclaimed by an official designated by ordinance, the local emergency shall not remain in effect for a period in excess of seven days unless it has been ratified by the governing body. (c)(1) The governing body shall review, at its regularly scheduled meetings until the local emergency is terminated, the need for continuing the local emergency. However, in no event shall a review take place more than 21 days after the previous review. (2) Not withstanding paragraph (1), if the governing body meets weekly, it shall review the need for continuing the local emergency at least every 14 days until the local emergency is terminated. (d)The governing body shall proclaim the termination of the local emergency at the earliest possible date that conditions warrant."

When a county proclaims a local emergency pursuant to Section 8630 of the Government Code, based upon conditions which include both incorporated and unincorporated territory of the county, it is not necessary for the cities to also proclaim the existence of a local emergency independently. Further, cities within a county are bound by county rules and regulations adopted by the county pursuant to Section 8634 of the Government Code during a county proclaimed local emergency when the local emergency includes both incorporated and unincorporated territory of the county even if the cities do not independently proclaim the existence of a local emergency.

Exhibit 1 - Resolution Requesting Governor to Proclaim a "State of Emergency" and a Request for State and Federal Assistance

Exhibit 2 - Resolution Proclaiming Existence of a Local Emergency and Rendering Certain Emergency Orders

Exhibit 3 - Proclamation and Order of the Director of Emergency Services Proclaiming Existence of a "Local Emergency"

Exhibit 4 - Resolution Requesting a Presidential Declaration and Asking for Assistance Due to the Extent and Severity of the Proclaimed Local Emergency

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EXHIBIT 1
RESOLUTION NO.

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN BUENAVENTURA REQUESTING GOVERNOR TO PROCLAIM A "STATE OF EMERGENCY" FOR THE CITY OF SAN BUENAVENTURA AND REQUESTING STATE AND/OR FEDERAL ASSISTANCE

WHEREAS, California Government Code section 8630 empowers the City Council ("COUNCIL") to proclaim the existence, or threatened existence, of a Local Emergency when City is affected or likely to be affected by a public calamity; and

WHEREAS, the Director of Emergency Services has requested the COUNCIL proclaim the existence of such a Local Emergency; and

WHEREAS, on _____ 20__, the City Council of the City of San Buenaventura found that conditions of extreme peril and a crippling disaster which severely impair the safety of persons and/or property had arisen within the City due to a calamity described as _____

and declared a Local Emergency existed throughout City of San Buenaventura and, in accordance with state law, by Resolution no. _____; and

WHEREAS, it has now been found that the City's and the local available public resources are unable to fully cope with the public needs, damages, costs and effects caused by said calamity and Local Emergency situation;

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Council of the City of San Buenaventura that:

1. A copy of this resolution be forwarded to the Governor of California with the request that he declare the City of San Buenaventura to be in a State of Emergency;

2. A copy of this resolution be forwarded to the Secretary of the California Emergency Services Agency with a request that he find it acceptable in accordance with provisions of the California Disaster Assistance Act; and

3. _____ [Title: _____] is hereby designated as the authorized representative for public assistance, and_____ [Title _____] of the City of San Buenaventura receive, process and coordinate all inquiries, filings and requirements necessary to obtain available state and/or federal assistance to the City for coping with said emergency.

* * * * *

PASSED AND ADOPTED this _____ Day of _____, 20__ by a roll call vote, Council Members_____ voting in favor, and _____ voting against.

_____
_____, Mayor
City of San Buenaventura, California

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT 2
RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN BUENAVENTURA PROCLAIMING EXISTENCE OF A LOCAL EMERGENCY AND RENDERING CERTAIN EMERGENCY ORDERS

WHEREAS, pursuant to California Government Code section 8642 and 54956.5 an emergency meeting of the San Buenaventura City Council (herein "COUNCIL") was called by with _____ hour telephonic notice to the Council members* and said meeting was held at _ . m. on _____ , 20__ to proclaim the existence, or threatened existence of, a Local Emergency and to render certain necessary orders or regulations; and

WHEREAS, California Government Code section 8630 empowers the City Council ("COUNCIL") to proclaim the existence or threatened existence of a Local Emergency when City is affected or likely to be affected by a public calamity, while Government Code section 8634 empowers the COUNCIL to promulgate orders and regulations to provide for the protection of life and property; and

WHEREAS, pursuant to Chapter 2.370 of the City of San Buenaventura's Municipal Code, the Director of Emergency Services has requested the COUNCIL proclaim the existence of a Local Emergency; and

WHEREAS, the COUNCIL does hereby find that conditions of extreme peril and a crippling disaster which severely impairs the safety of persons and/or property have arisen within the CITY caused by_____, said cause commencing on or about _____.m. on _____ , 20___; and

WHEREAS, the aforesaid conditions of extreme peril warrant and necessitate the proclamation of the existence of a Local Emergency.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Council of the City of San Buenaventura that:

1. The Proclamation of a Local Emergency made on _____, 20___ by the Director of Emergency Services is hereby confirmed and a Local Emergency now exists throughout the City of San Buenaventura, California;

2. During the existence of this Local Emergency, the powers, functions and duties of the Director of Emergency Services (being _____), the Disaster Council and the emergency organization of the City of San Buenaventura shall be those prescribed by state law, by the existing ordinances and resolutions of the City of Ventura, as well as this resolution and any subsequent emergency orders of the COUNCIL;

3. A request for Mutual Aid for _____ is authorized and shall be made to _____;

4. That during this Local Emergency a City wide curfew for all non-authorized persons for the hours from _____ p.m. to _____ a.m. is imposed [those exempted "authorized persons" being all law enforcement, City, County, State, utility repair, emergency service providers and fire fighting personal, as well as _____];

5. The normal City of San Buenaventura goods and service procurement requests and purchase practices and ordinances are stayed during this period of emergency;

6. The following emergency orders and/or regulations are hereby imposed:

7. _____
_____
_____
_____
_____; and
_____
_____
_____;

8. The content of this resolution shall be given widespread publicity and notice as is reasonable and feasible under these circumstances; and

9. This Local Emergency shall continue until it is terminated by proclamation of the COUNCIL. Pursuant to Section 8630 of the Government Code, the COUNCIL shall proclaim the termination of a local emergency at the earliest possible date that conditions warrant. The need for continuing this local emergency shall be reviewed within 14 days by the COUNCIL, and at each regular COUNCIL meeting thereafter.

* * * *

PASSED AND ADOPTED this _____ Day of _____, 20___ by roll call vote, Council Members _____
voting in favor, and _____ voting against.

_____
_____, Mayor
City of San Buenaventura, California

ATTEST:

_____
Clerk

APPROVED AS TO FORM:

_____

City Attorney

* Each local newspaper of general circulation [and any radio or television station, which has requested notice of special meetings pursuant to Section 54956, was notified by the _____ one hour prior to this emergency meeting, by telephone.

[OR]

* In that telephone services are not functioning, the notice requirements of section this 54956.5 are deemed waived, and the designee of the legislative body, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

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EXHIBIT 3
PROCLAMATION

DECLARATION PROCLAIMING
EXISTENCE OF A LOCAL EMERGENCY

WHEREAS, Chapter 2.370 of the San Buenaventura Municipal Code empowers the City Manager of the City of San Buenaventura, acting in his capacity as the Director of Disaster Services, to proclaim the existence or threatened existence of a local emergency when the City is affected or likely to be affected by a public calamity and the City council is not in session; and

WHEREAS, the City Manager of the City of San Buenaventura does hereby find that:

- Conditions of extreme peril to the safety or persons and property have arisen within the City caused by [_____]; and

- That the City Council of the City of San Buenaventura is not is session and cannot immediately be called into session.

NOW, THEREFORE, IT IS HEREBY PROCLAIMED that a local emergency now exists throughout the City of San Buenaventura; and,

That during this Local Emergency a city wide curfew of all non-authorized persons from p.m. to a.m. is imposed;

The normal CITY goods and service procurement requests and purchase practices are stayed during this period of emergency; and

This condition and powers of a Local Emergency shall continue for no more than seven (7) days unless this proclamation is confirmed by a resolution of the City Council pursuant to Section 8630 of the Government Code.

IT IS FURTHER PROCLAIMED AND ORDERED that during the existence of this local emergency, the powers, functions and duties of the emergency organization of the City of San Buenaventura shall be those prescribed by state law, and by the ordinances, resolutions and other duly adopted laws and polices of the City, including the SEMS Multi-hazard Functional Plan as heretofore approved by the City Council of the City.

City of San Buenaventura

_____ _____

Mark D. Watkins
City Manager and
Director of Disaster Services

Date and Time

Approved as to Form

Ariel Pierre Calonne
City Attorney

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EXHIBIT 4
RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN BUENAVENTURA REQUESTING A PRESIDENTIAL DECLARATION OF A CONDITION OF A FEDERALLY DECLARED EMERGENCY AND ASKING FOR ASSISTANCE, DUE TO THE EXTENT AND SEVERITY OF THE PROCLAIMED LOCAL EMERGENCY

WHEREAS, California Government Code section 8630 empowers the City Council ("COUNCIL") to proclaim the existence, or threatened existence, of a Local Emergency when City is affected or likely to be affected by a public calamity; and

WHEREAS, pursuant to Chapter 2.370 of the City of San Buenaventura's Municipal Code the Director of Emergency Services has requested the COUNCIL proclaim the existence of such a Local Emergency; and

WHEREAS, on _____ 20__, the City Council of the City of San Buenaventura found that conditions of extreme peril caused be a crippling disaster, which severely impair the safety of persons and/or property, had arisen within the City due to a calamity described as _____ and the COUNCIL had declared a Local Emergency existed throughout City of San Buenaventura and, in accordance with state law, by Resolution no. _____; and

WHEREAS, a request has been made and forwarded to the Governor of California that he proclaims the City of San Buenaventura to be in a state of emergency; and

WHEREAS, it has now been found that the City's available public resources as well as the state's resources are unable to fully cope with the local public needs, damages, costs and effects caused by said calamity and Local Emergency situation;

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Council of the City of San Buenaventura that:

1. Due to the extent of this Local Emergency now existing throughout the City the Governor of the State of California is request to ask for a Presidential Declaration of Emergency.

2. _____, [Title: _____], is hereby designated as the local Hazard Mitigation Coordinator of the City for the purpose of assessing damage with the City, and consulting with Federal/State survey teams about hazard mitigation actions; and is hereby designated as the authorized representative for public assistance. Said City employee is hereby designated as the authorized representative for individual assistance to the City for the

purposes of receiving notices, correspondence, processing and coordination of all inquiries and requirements necessary to obtain available federal assistance.

* * * * *

PASSED AND ADOPTED this _____ Day of _____, 20__
by roll call vote, Council Members _____
voting in favor, and _____ voting against.

_____
, Mayor
City of Ventura, California

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

CITY OF VENTURA'S EMERGENCY ORGANIZATION AND FUNCTIONS
CH. 2.370 SBMC

BE IT ORDAINED by the Council of the City of Ventura as follows:

SECTION 1: PURPOSES. The declared purposes of this ordinance are to provide for the preparation and carrying out of plans for the protection of persons and property within this City in event of an emergency; the direction of this emergency organization; and the coordination of the emergency functions of this City with all other public agencies, corporations and organizations, and affected private persons.

SECTION 2: DEFINITION. As used in this ordinance "emergency" shall mean the actual or threatened existence of conditions of disaster or of extreme peril to the safety of persons and property within this City caused by such conditions as fire, flood, storm, epidemic, riot, or earthquake, or other conditions, including conditions resulting from war or imminent threat of war, but other than conditions resulting from a labor controversy, which conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of this City, requiring the combined forces of other political subdivisions to combat.

SECTION 3: The City of Ventura disaster council is hereby created and shall consist of the following:

A. The Mayor, who shall be Chairman.
B. The City Manager (Director of Disaster Services) who shall be Vice-Chairman.
C. The Assistant Director of Disaster Services.
D. Such Chiefs of emergency service as are provided for in a current emergency plan of this City adopted pursuant to this ordinance.
E. Such representatives of civic, business, labor, veterans, professional, or other organizations having an official emergency responsibility, as may be appointed by the Director with the advice and consent of the City Council

SECTION 4: Disaster Council Powers And Duties. It shall be the duty of the City of Ventura Disaster Council, and it is hereby empowered, to develop and recommend for adoption by the City Council emergency and mutual aid plans, and agreements and such ordinances and resolutions and rules and regulations as are necessary to implement such plans and agreements. The Disaster Council shall meet upon call of the Chairman or, in his absence from the City or inability to call such meeting, upon the call of the vice-chairman.

SECTION 5: Director of Disaster Services.

(A) There is hereby created the office of Director of Emergency services. The City Manager of shall be the Director of Emergency Services.
(B) There is hereby created the office of Assistant Director of Emergency Services, who shall be appointed by the Director.

SECTION 6: Powers and Duties of the Director and Assistant Director of Emergency Services.

(A) The Director is hereby empowered to:
    1. To request the City Council to proclaim the existence or threatened existence of a "local emergency" if the City Council is in session, or to issue such proclamation if the City Council is not in session. Whenever a local

emergency is proclaimed by the Director, the City Council shall take action to ratify the proclamation within seven (7) days thereafter or the proclamation shall have no further force or effect.

2. Request the Governor to proclaim a "state of emergency" when, in the opinion of the Director, the locally available resources are inadequate to cope with the emergency.
3. Control and direct the effort of the emergency organization of this City for the accomplishment of the purposes of this ordinance.
4. Direct cooperation between and coordination of services and staff of the emergency organization of this City, and resolve questions of authority and responsibility that may arise between them.
5. Represent this City in all dealings with public or private agencies on matters pertaining to emergencies as defined herein.
6. In the event of the proclamation of a "Local emergency" as herein provided , the proclamation of a "state of emergency" by the Governor or the Director of the State Office of Emergency Services or the existence of a "state of war emergency" is hereby empowered:
    (a) To make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided, however, such rules and regulations must be confirmed at the earliest practicable time by the City Council.
    (b) To obtain vital supplies, equipment and such other property found lacking and needed for the protection of the life and property and to bind the City for the fair value thereof and, if required immediately, to commandeer the same for public use.
    (c) To require emergency services of any City officer or employee and, in the event of the proclamation of a "state of war emergency" in the County in which this City is located or the existence of a "state of war emergency," to command the aid of as many citizens of this community as he deems necessary in the execution of his duties; such persons shall be entitled to all privileges, benefits and immunities as are provided by State law for registered disaster service workers.
    (d) To requisition necessary personnel or material of any City department or agency; and
    (e) To execute all of his ordinary powers as City Manager, all of the special powers conferred upon him by this ordinance or by resolution or emergency plan adopted by the City Council, all powers conferred upon him by a statute, by an agreement approved by the City Council, and by any other lawful authority.

(B) The director shall designate the order of succession to his office subject to approval by the City Council; which shall effect in the event the director is unavailable to attend meetings and otherwise perform his duties during an emergency.

(C) The assistant director shall, under supervision of the Director and with the assistance of emergency service chiefs, develop emergency plans and manage the emergency programs of this City; and shall have such powers and duties as may be assigned by the Director.

SECTION 7: Emergency Organization. All officers and employees of this City, together with those volunteer forces enrolled to aid them during an emergency and all groups, organizations and persons who may by agreement or operation of law, be charged with duties incident to the protection of life and property in this City during such emergency, including persons impressed into service under the provisions of Section 6(A). 6 (c) or this ordinance, be charged with duties incident to the protection of life and property in this City during such emergency, shall constitute the emergency organization of the City of Ventura.

SECTION 8: Emergency Plan. The City of Ventura Disaster Council shall be responsible for development of the City of Ventura Emergency Plan, which plan shall provide for the effective mobilization of all resources of this City, both public and private, to meet any condition constituting a local emergency, state of emergency, or state of war emergency; and shall provide for the organization, powers and duties, services, and staff of the emergency organization. Such plan shall take effect upon adoption by resolution of the City Council.

SECTION 9: Expenditures. Any expenditure made in connection with emergency activities, including mutual aid activities, and emergency preparedness services provided this City under contract or agreement, shall be deemed conclusively to be for the direct protection and benefit of the inhabitants and property of the City of Ventura.

SECTION 10: Punishment of Violations. It shall be a misdemeanor, punishable by a fine of not to exceed five hundred dollars ($500), or by imprisonment for not to exceed six months, or both, for any person, during an emergency to:

(A) Willfully obstruct, hinder or delay any member of the emergency organization in the enforcement of any lawful rule or regulation issued pursuant to this ordinance, or in the performance of any duty imposed upon him by virtue of this ordinance.

(B) Do any act forbidden by any lawful rule or regulation issued pursuant to this ordinance, if such act is of such a nature as to give or likely to give, assistance to the enemy, or to imperil the lives or property of inhabitants of this City, or to prevent, hinder, or delay the defense or protection thereof.

(C) Wear, carry or display without authority, any means of identification specified by the emergency agency of the State.

SECTION 11: Repeal of Conflicting Ordinances. Ordinance No. 783 of the City of Ventura is hereby repealed, provided that it is the intent of the City Council in enacting this ordinance that it shall be considered a revision and continuation of the ordinance repealed by this ordinance, and the status of volunteers shall not be affected by such repeal; nor shall plans and agreements; rules and regulations, or resolutions adopted pursuant to such repealed ordinance be affected by such repeal until amended, modified or superseded as provided in this ordinance.

SECTION 12: Effective Date. This ordinance shall become effective thirty days from and after its passage.

SECTION 13: Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications, and to this end the provisions of this ordinance are declared to be severable.

PASSED AND ADOPTED THIS 13th day of December 1971.

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REPORTING TO WORK FOLLOWING A DISASTER DURING NONWORKING HOURS

All employees are to report to work per Rule VII, Section 11 of the City of Ventura Personnel Rules and Regulations or as otherwise outlined in Labor Memoranda of Understanding.

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CALIFORNIA DISASTER AND CIVIL DEFENSE MASTER MUTUAL AID AGREEMENT

Extracted from the California Emergency Plan

This agreement was adopted by the City of Ventura.

This agreement made and entered into by and between the STATE OF CALIFORNIA, its various departments and agencies, and the various political subdivisions, municipal corporations, and other public agencies of the State of California;

WITNESSETH:

WHEREAS, It is necessary that all of the resources and facilities of the State, its various departments and agencies, and all its political subdivisions, municipal corporations, and other public agencies be made available to prevent and combat the effect of disasters which may result from such calamities as flood, fire, earthquake, pestilence, war, sabotage, and riot; and

WHEREAS, It is desirable that each of the parties hereto should voluntarily aid and assist each other in the event that a disaster should occur, by the interchange of services and facilities, including, but not limited to, fire, law enforcement, medical and health, communication, and transportation services and facilities, to cope with the problems of rescue, relief, evacuation, rehabilitation, and reconstruction which would arise in the event of a disaster; and

WHEREAS, It is necessary and desirable that a cooperative agreement be executed for the interchange of such mutual aid on a local, county-wide, regional, state-wide, and interstate basis;

NOW, THEREFORE, IT IS HEREBY AGREED by and between each and all of the parties hereto as follows:

(I) Each party shall develop a plan providing for the effective mobilization of all its resources and facilities, both public and private, to cope with any type of disaster.

(2) Each party agrees to furnish resources and facilities and to render services to each and every other party to this agreement to prevent and combat any type of disaster in accordance with duly adopted mutual aid operational plans, whether heretofore or hereafter adopted, detailing the method and manner by which such resources, facilities, and services are to be made available and furnished, which operational plans may include provisions for training and testing to make such mutual aid effective; provided, however, that no party shall be required to deplete unreasonably its own resources, facilities, and services in furnishing such mutual aid.

(3) It is expressly understood that this agreement and the operational plans adopted pursuant thereto shall not supplant existing agreements between some of the parties hereto providing for the exchange or furnishing of certain types of facilities and services on a reimbursable, exchange, or other basis, but that the mutual aid extended under this agreement and the operational plans adopted pursuant thereto, shall be without reimbursement unless otherwise expressly provided for by the parties to this agreement

or as provided in Sections 1541, 1586, and 1587, Military and Veterans Code; and that such mutual aid is intended to be available in the event of a disaster of such magnitude that it is, or is likely to be, beyond the control of a single party and requires the combined forces of several or all of the parties to this agreement to combat.

(4) It is expressly understood that the mutual aid extended under this agreement and the operational plans adopted pursuant thereto shall be available and furnished in all cases of local peril or emergency and in all cases in which a STATE OF EXTREME EMERGENCY has been proclaimed.

(5) It is expressly understood that any mutual aid extended under this agreement and the operational plans adopted pursuant thereto, is furnished in accordance with the "California Disaster Act" and other applicable provisions of law, and except as otherwise provided by law that: "The responsible local official in whose jurisdiction an incident requiring mutual aid has occurred shall remain in charge at such incident including the direction of such personnel and equipment provided him through the operation of such mutual aid plans." (Sec. 1564, Military and Veterans Code.)

(6) It is expressly understood that when and as the State of California enters into mutual aid agreements with other states and the Federal Government that the parties to this agreement shall abide by such mutual aid agreements in accordance with law.

(7) Upon approval or execution of this agreement by the parties hereto all mutual aid operational plans heretofore approved by the State Disaster Council, or its predecessors, and in effect as to some of the parties hereto, shall remain in full force and effect as to them until the same may be amended, revised, or modified. Additional mutual aid operational plans and amendments, revisions, or modifications of existing or hereafter adopted mutual aid operational plans, shall be adopted as follows:

(a) County-wide and local mutual aid operational plans shall be developed by the parties thereto and are operative as between the parties in accordance with the provisions of such operational plans. Such operational plans shall be submitted to the State Disaster Council for approval. The State Disaster Council shall notify each party to such operational plans of its approval, and shall also send copies of such operational plans to other parties to this agreement who did not participate in such operational plans and who are in the same area and affected by such operational plans. Such operational plans shall be operative as to such other parties 20 days after receipt thereof unless within that time the party by resolution or notice given to the State Disaster Council, in the same manner as notice of termination of participation in this agreement, declines to participate in the particular operational plan.

(b) State-wide and regional mutual aid operational plans shall be approved by the State Disaster Council and copies thereof shall forthwith be sent to each and every party affected by such operational plans. Such operational plans shall be operative as to the parties affected thereby 20 days after receipt thereof unless within that time the party by resolution or notice given to the State Disaster Council, in the same manner as notice of termination of participation in this agreement, declines to participate in the particular operational plan.

(c) The declination of one or more of the parties to participate in a particular operational plan or any amendment, revision, or modification thereof, shall not affect the operation of this agreement and the other operational plans adopted pursuant thereto.

(d) Any party may at any time by resolution or notice given to the State Disaster Council, in the same manner as notice of termination of participation in this agreement, decline to participate in any particular operational plan, which declination shall become effective 20 days after filing with the State Disaster Council.

(e) The State Disaster Council shall send copies of all operational plans to those state departments and agencies designated by the Governor. The Governor may, upon behalf of any department or agency, give notice that such department or agency declines to participate in a particular operational plan.

(f) The State Disaster Council, in sending copies of operational plans and other notices and information to the parties to this agreement, shall send copies to the Governor and any department or agency head designated by him; the chairman of the board of supervisors, the clerk of the board of supervisors, and County Disaster Council, and any other officer designated by a county; the mayor, the clerk of the city council, the City Disaster Council, and any other officer designated by a city; the executive head, the clerk of the governing body, or other officer of other political subdivisions and public agencies as designated by such parties.

(8) This agreement shall become effective as to each party when approved or executed by the party, and shall remain operative and effective as between each and every party that has heretofore or hereafter approved or executed this agreement, until participation in this agreement is terminated by the party. The termination by one or more of the parties of its participation in this agreement shall not affect the operation of this agreement as between the other parties thereto. Upon approval or execution of this agreement the State Disaster Council shall send copies of all approved and existing mutual aid operational plans affecting such party which shall become operative as to such party 20 days after receipt thereof unless within that time the party by resolution or notice given to the State Disaster Council, in the same manner as notice of termination of participation in this agreement, declines to participate in any particular operational plan. The State Disaster Council shall keep every party currently advised of who the other parties to this agreement are and whether any of them has declined to participate in any particular operational plan.

(9) Approval or execution of this agreement shall be as follows:

(a) The Governor shall execute a copy of this agreement on behalf of the State of California and the various departments and agencies thereof. Upon execution by the Governor a signed copy shall forthwith be filed with the State Disaster Council.

(b) Counties, cities, and other political subdivisions and public agencies having a legislative or governing body shall by resolution approve and agree to abide by this

agreement, which may be designated as "CALIFORNIA DISASTER AND CIVIL DEFENSE MASTER MUTUAL AID AGREEMENT." Upon adoption of such a resolution, a certified copy thereof shall forthwith be filed with the State Disaster Council.

8 The executive head of those political subdivisions and public agencies having no legislative or governing body shall execute a copy of this agreement and forthwith file a signed copy with the State Disaster Council.

(10) Termination of participation in this agreement may be affected by any party as follows:

(a) The Governor, upon behalf of the State and its various departments and agencies, and the executive head of those political subdivisions and public agencies having no legislative or governing body, shall file a written notice of termination of participation in this agreement with the State Disaster Council and this agreement is terminated as to such party 20 days after the filing of such notice.

(b) Counties, cities, and other political subdivisions and public agencies having a legislative or governing body shall by resolution give notice of termination of participation in this agreement and file a certified copy of such resolution with the State Disaster Council, and this agreement is terminated as to such party 20 days after the filing of such resolution.

IN WITNESS WHEREOF this agreement has been executed and approved and is effective and operative as to each of the parties as herein provided.

/signed/ EARL WARREN
GOVERNOR
On behalf of the State of
California and all its
Departments and Agencies

ATTEST:

/signed/ FRANK M. JORDAN
Secretary of State

November 15, 1950
(GREAT SEAL)

Note:

There are references in the foregoing agreement to the California Disaster Act, State Disaster Council, and various sections of the Military and Veterans Code. Effective November 23, 1970, by enactment of Chapter 1454, Statutes 1970, the California Disaster Act (Sections 1500 ff., Military and Veterans Code) was superseded by the California Emergency Services Act (Sections 8550 ff., Government Code), and the State Disaster Council was superseded by the California Emergency Council.

Section 8668 of the California Emergency Services Act provides:

(a) Any disaster council previously accredited, the State Civil Defense and Disaster Plan, the State Emergency Resources Management Plan, the State Fire Disaster Plan, the State Law Enforcement Mutual Aid Plan, all previously approved civil defense and disaster plans, all mutual aid agreements, and all documents and agreements existing as of the effective date of this chapter, shall remain in full force and effect until revised, amended, or revoked in accordance with the provisions of this chapter.

In addition, Section 8561 of the new act specifically provides:

"Master Mutual Aid Agreement" means the California Disaster and Civil Defense Master Mutual Aid Agreement, made and entered into by and between the State of California, its various departments and agencies, and the various political subdivisions of the state, to facilitate implementation of the purposes of this chapter.

Substantially the same provisions as previously contained in Section 1541, 1564, 1586 and 1587 of the Military and Veterans Code, referred to in the foregoing agreement, are now contained in Sections 8633, 8618, 8652 and 8643, respectively, of the Government Code.

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EMERGENCY MANAGEMENT ASSISTANCE COMPACT (EMAC)

Article I - Purpose and Authorities

This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this agreement, the term "states" is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all U.S. territorial possessions.

The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the governor of the affected state(s), whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

Article II - General Implementation

Each party state entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any; individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist. The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the Federal Government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

Article III - Party State Responsibilities

A. It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this

article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

i. Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency, or enemy attack.

ii. Review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency.

iii. Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.

iv. Assist in warning communities adjacent to or crossing the state boundaries.

v. Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material.

vi. Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.

vii. Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

B. The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within 30 days of the verbal request. Requests shall provide the following information:

i. A description of the emergency service function for which assistance is needed, such as but not limited to fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.

ii. The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed.

iii. The specific place and time for staging of the assisting party's response and a point of contact at that location.

C. There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States Government, with free exchange of information, plans, and resource records relating to emergency capabilities.

Article IV – Limitations

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state.

Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect or loaned resources remain in the receiving state(s), whichever is longer.

Article V - Licenses and Permits

Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

Article VI – Liability

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

Article VII - Supplementary Agreements

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

Article VIII – Compensation

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

Article IX – Reimbursement

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this provision.

Article X – Evacuation

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the

party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

Article XI – Implementation

A. This compact shall become operative immediately upon its enactment into law by any two (2) states; thereafter, this compact shall become effective as to any other state upon its enactment by such state.

B. Any party state may withdraw from this Compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 30 days after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

C. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Federal Emergency Management Agency and other appropriate agencies of the United States Government.

Article XII – Validity

This Act shall be construed to effectuate the purposes stated in Article I hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this Act and the applicability thereof to other persons and circumstances shall not be affected thereby.

Article XIII - Additional Provisions

Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under Section 1385 of title 18, United States Code.

Ratified during the 2nd session of the 104th Congress and became Public Law 104-321, October 1996

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PUBLIC NOTIFICATION SYSTEM (PNS)

The City of Ventura can access a public notification system to notify the public of evacuation procedures. The PNS system, VC Alert, is administered by the Ventura County Sheriff's Office of Emergency Services. The distribution of messages is jointly coordinated by the City's EOC Coordinator, Public Information Officer and the Ventura County Office of Emergency Services.

For PNS activation procedures, refer to the Appendix (a restricted use document).

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EMERGENCY ALERT SYSTEM (EAS) ACTIVATION PROCEDURES

(This information has been moved to the Appendix, a restricted use of this Plan, due to the sensitive nature of the information).

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MEDIA PHONE LIST

A comprehensive list of media contacts is available on Web EOC. The following are examples.

TELEVISION

LOCAL - Ventura County

KEYT - Channel 3
805/485-7545

LOCAL - Los Angeles County

KTLA - Channel 5
General Information 213/460-5500

KCAL - Channel 9
General Information 213/467-9999

KTTV /FOX - Channel 11
General Information 310/584-2000

KCOP - Channel 13
General Information 213/883-9802

RADIO

KVEN -1450 AM (EAS STATION)	805/642-8595	Ventura
KHAY - 100.7 FM (EAS STATION) www.khay.com	805/642-8595	Ventura
KBBY - 95.1 FM (VENTURA)	805/642-8595	
KDAR - 98.3 FM (OXNARD)	805/485-8881	
KOXR - 910 AM (OXNARD)	805/240-2070	
KVEN - 1590 AM (VENTURA)	805/289-1400	
KXLM - 102.9 (OXNARD)	805/240-2070	

NEWSPAPER

Ventura County Star	805-437-0000	805-482-6167 (fax)

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MEDIA RELATIONS
Dos and Don'ts

DO	DON'T
Prepare	Lie
Assume you're being recorded	Fake it
Respect their deadlines	Go "off the record"
Know the law regarding media	Say "no comment"
Speak officially-no opinions	Use industry slang or terminology
Give the whole story	Speculate
Treat them all equally	Make flippant remarks
Highlight your priorities	Tell one news agency what another is doing
Say "I don't know"	Wear sunglasses on camera
Be there for them-return calls	Fill the "pregnant pause"
Prepare a fact sheet of frequently asked questions	Put down your detractors
	Argue with the press
Suggest interesting story ideas	Try to say everything at once
Offer tours or support information	Answer hypotheticals
Think "sound bite" or quote	Say "Ah"
Listen to the question	Respond to emotional appeals with emotion
Practice	Send a news release unless it's newsworthy
Anticipate questions	Break the connection
Correct their mistakes	
Remember you are the expert	

Speak only for your agency or level of government.

- Arrange for meetings between the media and incident (field) personnel.
- Make sure telephones, coffee, etc., are available for media representatives if possible.
- Try to stay with your prepared statement.
- Stay cool; don't let questions unnerve you.
- Be direct and **only** comment on what you know - **DO NOT SPECULATE!**
- Have information release policy pre-set with EOC Director.
- Try to make the media your friend-they can either help or hinder your operation.

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THE PUBLIC INFORMATION OFFICER (PIO)

The City has a responsibility for providing the public with accurate, timely, and consistent information in an emergency. Informing the public is a special priority during emergency incidents, and the public expects timely information about the emergency.

The objectives of Emergency Public Information are to:

- Rapidly provide the general public with information about the emergency and instructions about what they should do.
- Provide the media with accurate, timely information about the extent of the emergency and City response efforts.

To meet these objectives, Public Information Officers (PIOs) at all levels must work together and with media representatives to disseminate information and instructions to the public when emergencies occur. The PIO team should:

- Provide a PIO planning/work area in or near the EOC.
- Coordinate with the Incident Command Post staff to establish a Media Photo Site for visual access near the scene of the incident.
- Establish a Media Information Center or a Joint Information Center for briefing the news media.
- Establish a rumor control function to respond to public and media inquires.
- Coordinate with the Management Liaison Officer to handle VIP tours.

The **primary role** of the PIO is to disseminate emergency instructions and critical information in coordination with the media to the public.

A **secondary function** is to provide the public with accurate and complete information regarding incident cause, size, status, resources committed and potential short or long-term impacts, if known. For large incidents or incidents involving numerous response agencies, PIOs from all responding agencies should combine to form a public information team under the direction of the designated PIO in the EOC.

EMERGENCY NOTIFICATION

Emergency notification instructions and advisories are primarily the City's responsibility. During the initial emergency phase, the PIO will assist in alerting the public to hazards and for providing emergency instructions regarding protective actions to be taken to avoid injury and protecting property. These public notifications should be made as soon as possible through the broadcast media to provide adequate time for response.

Notifications should include local and national wire services. To notify news media of a breaking story, give the following information:

- Your name
- City of Ventura

- Type of incident
- Safety information
- Location of incident (include Thomas Brothers map coordinates).
- Any additional information for the news media (command post location, equipment on scene, best access route, etc.).

The PIOs will release emergency public information locally and provide status information to PIOs at higher levels of government. This information should be coordinated with all agencies involved in the incident.

EMERGENCY PHASE

During this phase the public information system is mobilized to provide public information of a pending hazard or to respond to media and public inquiries.

The PIO is an essential part of the field level and EOC Command Staff. The PIO function should be established as soon as possible to ensure prompt access to all current emergency response and health or safety information available. On-scene PIOs will coordinate with the PIO in the EOC.

Rapid dissemination of information is especially critical in a breaking event. The information should advise the public of the potential hazards and the nature of the hazard, area involved, evacuations and traffic control.

Rumor Control

Government is responsible for providing information and instructions to the public along with establishing an effective rumor control system. It is important to establish Rumor Control to respond to direct public and media inquiry.

MEDIA INFORMATION

Joint Information Center or Media Center

Media accommodation begins with access to the scene through a Joint Information Center or Media Center. It is important to remember that the media is an important element of emergency response as they can provide critical information to the Incident Commander/EOC Director and staff as well as the public.

On smaller incidents a Media Information Center should be established to provide warning or precautionary information and to release information:

- On general safety instructions to the public via the media.
- Relating to the response activities on scene, medical, shelter, road/street closures and damage assessment.
- On the status of the incident, deaths (**when confirmed by the Coroner**), injuries, displaced persons, damages, hospital status, school status and major problems.

The Media Information Center should be clearly marked if located within law enforcement lines. It should be staffed by qualified PIOs and open to all authorized news media representatives. The Media Information Center should be closed to the general public. Appropriate government officials and incident specialists may be brought into the Media Information Center area for interviews.

When working with the media it is important to provide:

- Location of media center(s)
- Best access routes to media center
- Location of media access photo sites
- Times of news briefings
- Airspace restrictions
- Street closures/detours
- Shelter and hospital addresses
- Hazardous materials dangers
- Language assistance for non-English speaking journalists
- Scheduled media tours of incident area (coordinate with the Liaison Officer)
- Weather information

A Joint Information Center should be established when multiple jurisdictions, agencies and level of government are involved in the response. The PIOs at the Joint Information Center will employ the Joint Information System to share and coordinate public information, whether formally or informally, to ensure delivery of accurate and timely information the public needs and wants.

Media Identification

Provisions for press passes should be determined before an incident occurs. Generally, the law enforcement agency issues press passes to representatives from legitimate news gathering agencies. Provisions for a system of temporary press passes should be addressed to cover the occasion when legitimate journalists arrive on the scene of a major incident.

As a general guideline, any person employed by a news gathering agency, be it newspaper, wire service, television or radio station, or as a free lance journalist or photojournalist, is authorized access to disaster areas under Penal Code section 409.5 (d) or PC 409.6(d). As a general rule, media representatives should not be admitted to National Defense Areas such as the crash site of a military aircraft (66 Ops. Cal. Atty. Gen. 497 (1983)).

Other means of identification are Media Vehicle Placards and Press Photographer license plates (California Vehicle Code Section 5008). The Department of Motor Vehicles, Special Plate Section states in part:

> "Any person who is regularly employed or engaged as a bona fide newspaper, newsreel, or television photographer or cameraman may apply for press photographers plates. No more than one set of the special plates will be issued to a

press photographer. Photojournalists must derive more than 50% of their personal income as a press photographer from a bona-fide news organization."

These plates can be identified by the letters PP inside a triangle shaped shield, followed by a number. These vehicle identification plates serve only to identify the vehicle as the property of a media representative and all persons inside the vehicle should be properly identified.

News Conferences and Briefings

The Media Information Center and Joint Information Center should be able to accommodate all media representatives during news conference briefings. State policy allows all media representatives equal access to information developed for release. Physical access to the media center and site could be controlled or restricted. If access is controlled or restricted, public safety personnel at perimeter/barriers must be instructed in these procedures. For access within police and fire lines, media representatives must have valid "authorized" media identification issued by public safety agency or authorization on company letterhead (67 Ops.Cal.Atty.Gen.535 (1984)).

Media briefings and press conferences should be conducted on a regular or "as needed" basis. In preparing for briefings and press conferences, PIOs shall:

- Arrange for an official spokesperson.
- Announce briefings times to all media.
- Arrange media tours, if such action will not hinder response efforts (coordinate with the liaison officer).
- Conduct tours for media pool representatives as needed.

PIOs should ensure that all information available for release is clear, concise, confirmed and approved by appropriate authority before release to the media or public. PIOs should not release unconfirmed information or speculate. Information, which is not confidential, would not hamper an investigation or jeopardize the rights and safety of an individual can and should be released.

Media Pools

The media should be allowed reasonable access. If restrictions or limitations are unavoidable, a "pool" system may be used to avoid congestion. Journalists on the scene should be permitted to select representatives from each medium (radio, television, newspaper, wire service, magazine, video and still photographers). They should also consider selecting representatives from each level of coverage (local, regional, national and international). These are then escorted into the area. These representatives will then share all information, photographs and video/audio tape with other accredited journalists. Only journalists present when the pool is activated should be allowed access to pool material. A sign-up sheet may be used to record participants.

When access by the media must be denied or severely restricted, a valid explanation must be provided. The media pool is seen as a restriction placed on the media and coverage of the

news. Media pools should be considered only as a last resort. Media representatives must be reasonably accommodated at disaster scenes.

Journalists selected as pool members must be willing and able to meet deadlines and share video, audio or still coverage, in a timely manner to all entitled to material generated by the media pool. Journalists not assigned to the media pool must obey lawful orders of public safety officers. Once the media pool is formed, only authorized pool members may have access to the immediate scene while access is limited.

Media Access Photo Sites (MAPS)

Media Access Photo Sites (MAPS) should be established for photojournalists to provide visual access. MAPS are specific locations designated for use by still and video media to provide visual access to emergency, crime, and hazardous materials scenes. The MAPS should be identified and established as a priority by the PIO or knowledgeable representative of the Incident Commander.

Criteria considered in identifying locations for Media Access Photo Sites:

- The site should be as close as possible to the incident yet not interfere with the operation of public safety officers or compromise the safety of media representatives.
- The location should be chosen to give the best visual access to all areas of interest associated with the incident.
- The need to locate video trucks and support equipment as close as possible for technical reasons should be considered.

Journalists will have access to the media photo site; however all media briefings and interviews should be conducted at the Media Information Center near the Command Post or EOC.

In the event that the incident falls under the jurisdiction of the National Transportation Safety Board (NTSB), the media photo site should be activated immediately by the PIO Function. The law enforcement agency will act as the investigator's agent when restricting access. They will decide on access. Officers are urged to treat the area as a crime scene, even though the incident may not have been the result of an obvious criminal act. Media photo sites should be placed outside the immediate crime scene area(s).

POST-EMERGENCY PHASE

Recovery

Information will continue to be released after termination of the emergency. This will include information on clean-up, possible health effects, traffic reports, restoration of essential services, extent of damage and available assistance programs available.

It is the responsibility of the PIO to:

- Advise the public of recovery efforts.
- Provide for public meetings to address public concerns.

- Continue monitoring public attitudes and revise public information strategies accordingly.
- Reduce tension by issuing news releases on a regular basis.
- Record and evaluate actions taken during incident for after action report.
- Consider contacting the media for their input into the after action report.
- Ensure that the PIO has business cards with phone numbers to give to media.

The following information should be released to the public when providing EMERGENCY public information.

Lifesaving/Health Preservation Instructions

___What to do (and why) and what **not** to do (and why)
___Information (for parents) on status and actions of schools (if in session)
___Hazardous/contaminated/congested areas to avoid
___Curfews
___Road, bridge, freeway overpass, dam conditions, and alternate routes to take
___Evacuation:
- Routes.
- Instructions (including what to do if vehicle breaks down).
- Arrangements for persons without transportation.
- Location of mass care/medical
- Coroner facilities, food, safe water. Status of hospitals.

___First aid information
___Fire fighting instructions
___Emergency telephone number (otherwise request people not to use telephone). Stress to out-of-area media that people should **NOT** telephone into the area. Lines must be kept open for emergency calls
___Instructions/precautions about utility use, sanitation, how to turn off utilities
___Essential services available: hospitals, grocery stores, banks, pharmacies, etc.
___Weather hazards/health risks (if appropriate)

Emergency Status Information

___Before release, clear all information with the EOC Director
___Verify all information before release
___Provide all hotline numbers
___Description of the emergency situation, including:
- Number of deaths and injuries
- Property damage to city and businesses and dollar value
- Persons displaced
- Magnitude of earthquake, number of fires, etc.

___Description of government and private response efforts (mass care, medical, search and rescue, emergency repair, debris clearance, fire/flood fighting, etc.)
___Any of the priority 1 information in summary form on a "nice to know" rather than "vital to know and act upon" basis
___Status of Local Proclamation, Governor's Proclamation and Presidential Declaration
___Where people should report/call to volunteer
___How people in other areas can obtain information about relatives/friends in the disaster

area (coordinate with Red Cross on release of this information). How disaster victims can locate family members

Other Useful Information

Usually this type of information will be released in the Recovery Period because of lack of time and other priorities during other phases.

- State/Federal assistance available
- Local Assistance Centers opening dates/times
- Historical events of this nature
- Charts/photographs/statistics from past events
- Human interest stories and acts of heroism
- Historical value of property damaged/destroyed
- Prominence of those killed/injured

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MEDIA ACCREDITATION PROCEDURES

During a local emergency the _____ will be used as the Joint Information Center. All media personnel requesting information should report there.

Media personnel should be prepared to present photo I.D. in the form of a valid signed and dated photo identification card issued to the bearer from the Ventura County Sheriff's Department. Additional verification may be required.

No provisions will be made to feed or house media personnel.

*Members of the media **may not** be allowed to enter the Emergency Operations Center (EOC) without authorization, as their presence may disrupt emergency operations.*

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MEDIA ACCESS REGULATIONS

The following are extracts from Government Codes and Regulations relating to the granting of access to the media to closed or restricted areas during incidents and disasters:

California Penal Code

Section 409.5 Power of peace officers to close areas during emergencies; Entering or remaining within area as misdemeanor; Exception as to newspaper representatives, etc.

(a) Whenever a menace to the public health or safety is created by a calamity such as flood, storm, fire, earthquake, explosion, accident or other disaster, officers of the California Highway Patrol, California State Police, police departments or sheriff's office, any officer or employee of the Department of Forestry designated a peace officer by subdivision (f) of Section 830.3, and any officer or employee of the Department of Parks and Recreation designated a peace officer by subdivision (I) of Section 830.3, may close the area where the menace exists for the duration thereof by means of ropes, markers or guards to any and all persons not authorized by such officer to enter or remain within the closed area. If such a calamity creates an immediate menace to the public health, the local health officer may close the area where the menace exists pursuant to the conditions which are set forth above in this section.

(b) Officers of the California Highway Patrol, California State Police, police departments, or sheriff's office or officers of the Department of Forestry designated as peace officers by subdivision (f) of Section 830.3 may close the immediate area surrounding any emergency field command post or any other command post activated for the purpose of abating any calamity enumerated in this section or any riot or other civil disturbance to any and all unauthorized persons pursuant to the conditions which are set forth in this section whether or not such field command post or other command post is located near to the actual calamity or riot or other civil disturbance.

(c) Any unauthorized person who willfully and knowingly enters an area closed pursuant to subdivision (a) or (b) and who willfully remains within such area after receiving notice to evacuate or leave shall be guilty of a misdemeanor.

(d) Nothing in this section shall prevent a duly authorized representative of any news service, newspaper, or radio or television station or network from entering the areas closed pursuant to this section.

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FEDERAL AVIATION REGULATIONS (PERTAINING TO THE MEDIA)

Subpart B - Flight Rules
Section 91.91 Temporary Flight Restrictions

(a) Whenever the Administrator determines it to be necessary in order to prevent an unsafe congestion of sight-seeing aircraft above an incident or event which may generate a high degree of public interest, or to provide a safe environment for the operation of disaster relief aircraft, a Notice to Airmen will be issued designating an area within which temporary flight restrictions apply.

(b) When a Notice to Airmen has been issued under this section, no person may operate an aircraft within the designated area unless:

(1) That aircraft is participating in disaster relief activities and is being operated under the direction of the agency responsible for relief activities;

(2) That aircraft is being operated to or from an airport within the area and is operated so as not to hamper or endanger relief activities;

(3) That operation is specifically authorized under an IFR ATC clearance;

(4) VFR flight around or above the area is impracticable due to weather, terrain, or other considerations, prior notice is given to the Air Traffic Service facility specified in the Notice to Airmen, and enroute operation through the area is conducted so as not to hamper or endanger relief activities; or,

(5) That aircraft is carrying properly accredited news representatives, or persons on official business concerning the incident or event which generated the issuance of the Notice to Airmen; the operation is conducted in accordance with 91.79 of this chapter; the operation is conducted above the altitudes being used by relief aircraft unless otherwise authorized by the agency responsible for relief activities; and further, in connection with this type of operation, prior to entering the area the operator has filed with the Air Traffic Service facility specified in the Notice to Airmen a flight plan that includes the following information:

(i) Aircraft identification, type and color.
(ii) Radio communications frequencies to be used.
(iii) Proposed types of entry and exit of the designated areas.
(iv) Name of news media or purpose of flight.
(v) Any other information deemed necessary by ATC.

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EOC VISITOR CONTROL PROCEDURES

Visitors wishing to enter the Emergency Operations Center during an actual emergency or disaster must fill out a Visitation Request Form (**See Forms Section**).

All Visitation Request Forms will be reviewed by the EOC Coordinator/Liaison Officer. Only those visitors whom the EOC Coordinator/Liaison Officer determines will benefit the emergency operations effort will be allowed into the Emergency Operations Center. This might include, but is not limited to officials, representatives from other cities, etc.

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EPI RELEASE LOG

Date	Time (24Hr)	In *	Out *	(Call Letters)		(Name) Newspaper	News Service	Other	Given By

*** T - Taped or live broadcast; P - Phone report; O - Office visit; F - Field contact; N - News release (indicate no.)**

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PUBLIC INFORMATION SUMMARY

1. INCIDENT NAME	2. TYPE	3. CAUSE	
4. LOCATION/JURISDICTION	5. INCIDENT COMMANDER	6. START TIME	7. CLOSE TIME

8. AREAS INVOLVED	14. AREAS EVACUATED
9. AGENCIES/RESOURCES COMMITTED	15. SHELTER CENTERS
10. CASUALTIES A. INCIDENT PERSONNEL — B. PUBLIC a. Injuries — a. Injuries b. Fatalities — b. Fatalities	16. HOSPITAL/CONTACT PERSON
11. DAMAGE ESTIMATES A. PUBLIC — B. PRIVATE $ — $	17. ROAD STATUS
12. WARNINGS-EXPECTED HAZARDS LOCATION — TYPE — PERIOD	18. MISCELLANEOUS
13 CURRENT WEATHER — FORCAST WEATHER	19. PIO — PHONES 20. LOCATION 21. PREPARED BY — DATE/TIME 22. APPROVED BY

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Schools	Status	Comments ☐ All Students Accounted for ☐ Number and type of injuries ☐ Missing persons, names ☐ Assistance required
PUBLIC SCHOOLS		
ELEMENTARY SCHOOLS		
MIDDLE SCHOOLS		
HIGH SCHOOLS		
ALTERNATE SCHOOLS		
PRIVATE SCHOOLS		

EOC VISITATION REQUEST FORM
(Return to EOC Coordinator)

DATE_____

NAME _____
(Please print)

ADDRESS _____

TELEPHONE (Work)_____ (Home)_____

ORGANIZATION REPRESENTED _____

_____

REASON FOR REQUEST _____

_____

_____

I understand that completion of this form does not constitute an agreement, expressed or implied, to permit me to enter the City of Ventura Emergency Operations Center (EOC).

If granted permission to enter the EOC, I agree to remain in the Visitor Control Area while in the EOC unless I am directed elsewhere by EOC staff. Further, I understand that visitation privileges may be terminated at any time and I agree to leave promptly upon notification of the termination of visitation privileges.

_____
Signature

Signature of Authorizing Employee _____

Time In ____ Time Out _____ Areas Visited _____

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AGENCY REPRESENTATIVE REGRISTRATION FORM

Welcome to the City of Ventura Emergency Operations Center, or EOC.

Our Operational Periods will be

- A Shift from _____ A.M. to _____ P.M.
- B Shift from _____ A.M. to _____ P.M.

Your point of contact will be the Liaison Officer.

Name:	EOC Desk Number:

Work with the Liaison Officer to:

- Obtain a work location and our EOC contact information
- Obtain the current situation briefing and any update briefings
- Facilitate requests for support or information that your agency can provide or requests
- Provide appropriate situation information related to your agency

Work with your agency EOC to:

- Advise them of your presence and assigned work location
- Represent your agency at our EOC planning meetings as appropriate
- Inform your agency periodically on our EOC priorities and actions that may be of interest
- Obtain your agency's briefing schedule so that you can get the latest information to share with our EOC

Please provide the following information back to the Liaison Officer. You will receive a photocopy of this document.

Name:	Title:
Agency:	Division/Department:
Location:	Desk Number:
Cell Number:	EOC Number:
Duty Supervisor:	Shift Hours:
Duty Supervisor Desk Number:	Duty Supervisor Cell Number:

ATTACH AN EOC LAYOUT AND ORG CHART
PHOTOCOPY THIS COMPLETED FORM AND GIVE ALL TO THE AGENCY REP

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ACTIVITY LOG

1. INCIDENT NAME	2. OPERATIONAL PERIOD From: To:	INDIVIDUAL LOG ICS 214a-OS
3. INDIVIDUAL NAME	4. EOC SECTION	5. Assignment/Location
6. ACTIVITY LOG		Page of

TIME	MAJOR EVENTS

TIME	MAJOR EVENTS

PART TWO - EMERGENCY ORGANIZATION FUNCTIONS
MANAGEMENT SECTION

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MANAGEMENT SECTION

PURPOSE

To direct and manage the City of San Ventura's response and recovery from an emergency in a uniformed, collective, collaborative and coordinated effort.

OVERVIEW

The Management Section is responsible for overall emergency policy and coordination through the joint efforts of governmental agencies, non-governmental agencies and private sector organizations.

The Management Section incorporates the following functions:

- EOC Director
- Public Information Officer
- EOC Coordinator
- Liaison Officer
- Safety Officer
- Security Officer
- Legal Advisor
- City Representative to the County Operational Area EOC
- Multiagency Coordination Group

OBJECTIVES

The overall objective of emergency management is to ensure the effective management of response forces and resources in preparing for and responding to situations associated with natural disasters, technological incidents and national security emergencies. To carry out its responsibilities, the Management Section will accomplish the following objectives during a disaster/emergency:

- Overall management and coordination of emergency response and recovery operations, including on-scene incident management as required.
- Provide for the protection of life, property and the environment.
- Coordinate and liaison with appropriate federal, state and other local government agencies, non-governmental agencies, as well as applicable segments of private sector entities and volunteer agencies.
- Establish priorities and resolve any conflicting demands for support.
- Prepare and disseminate emergency public information to inform, alert and warn the public.
- Disseminate damage information and other essential data.

CONCEPT OF OPERATIONS

The Management Section will operate under the following policies during a disaster/emergency as the situation dictates:

- The Standardized Emergency Management System (SEMS) and the National Incident Management System (NIMS) principles will be followed.
- All on-duty personnel are expected to remain on duty until properly relieved of duty. Off-duty personnel will be expected to return to work in accordance with adopted policies. (**See Management Support Documentation - Reporting to Work Following a Disaster During Nonworking Hours**).
- While in a disaster mode, operational periods will typically be 12 hours for the duration of the event with shift changes normally at 7 a.m. and 7 p.m. Operational periods should be event driven and may be lengthened or shortened based on available resources and incident needs.

City emergency response and recovery operations will be managed in one of three modes, depending on the magnitude of the emergency: Level 1, Level 2, or Level 3.

SECTION ACTIVATION PROCEDURES

The EOC Director is authorized to activate the Management Section.

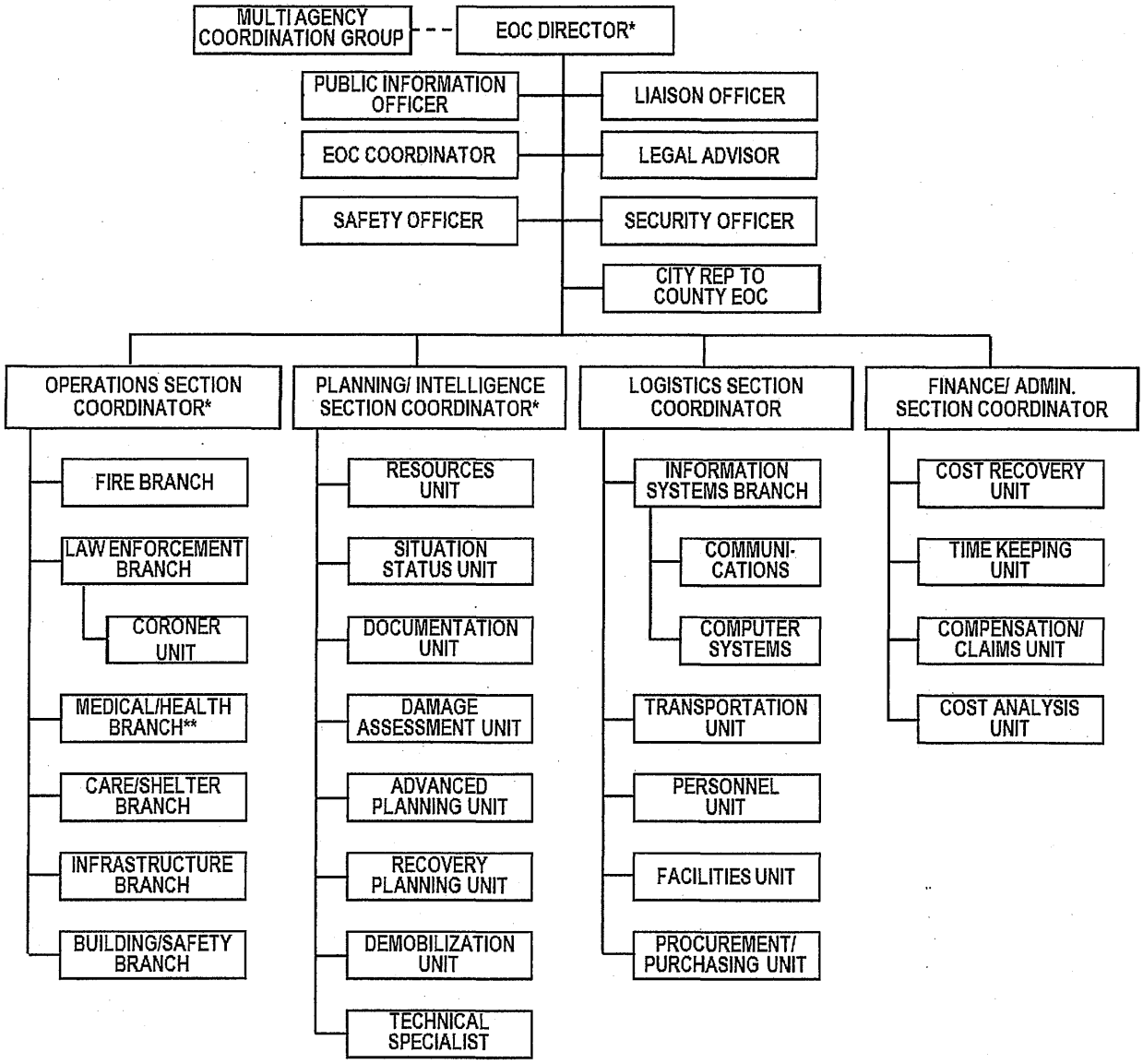
When to Activate

The Management Section may be activated when the City's Emergency Operations Center (EOC) is activated or upon the order of the EOC Director.

Where to Report

Due to the sensitive nature of the location of the EOC, this information regarding the primary and the alternate EOC is found in the restricted use section of this plan, the Appendix.

EOC ORGANIZATION CHART

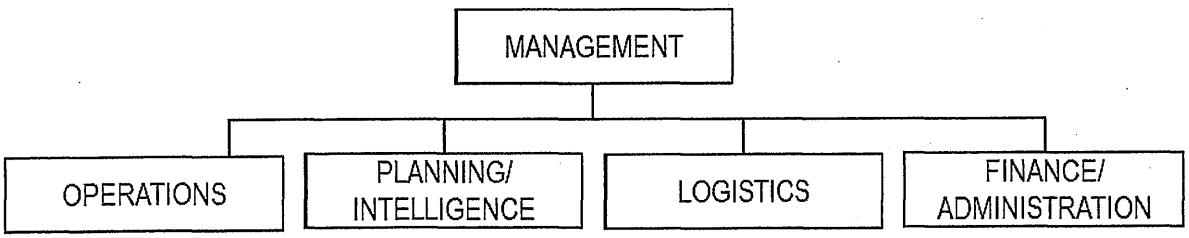


* If all elements are activated, a deputy may be appointed to provide a manageable span of control.

** Position is normally coordinated by the County, but a local coordinator may be designated, if needed

Field Units will be coordinating and communicating with each of the Branches under the Operations Section or through Departmental Operations Centers (DOC) if activated. The Incident Command System will be used in the field.

COMMON RESPONSIBILITIES CHART



Responsibilities:

Management Section
Responsible for overall emergency management policy and coordination through the joint efforts of governmental agencies, non-governmental agencies and private sector organizations. EOC Director will either activate appropriate sections or perform their functions as needed.

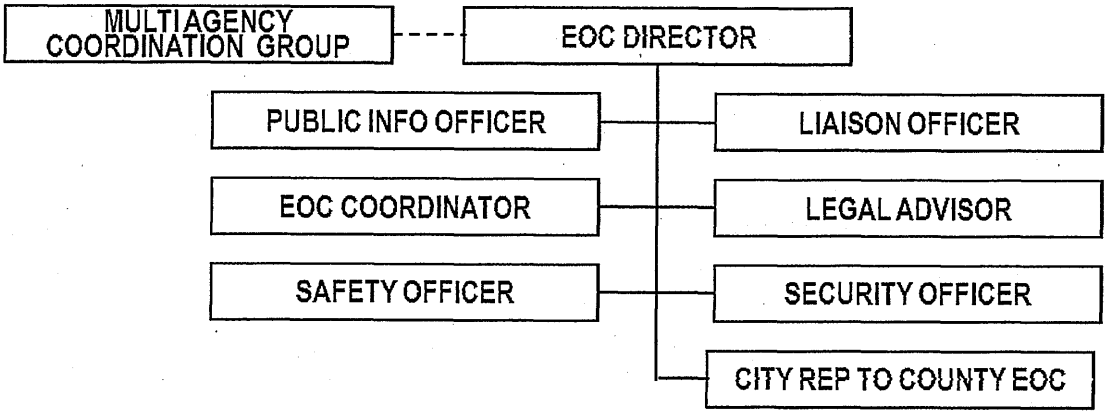
Operations Section
Responsible for coordinating all jurisdictional operations in support of the emergency response through implementation of the City's EOC Action Plan.

Planning/Intelligence Section
Responsible for collecting, evaluating and disseminating information; tracking resources; coordinating the development of the City's EOC Action Plan in coordination with other sections; initiating and preparation of the City's After-Action/Corrective Action Report and maintaining documentation.

Logistics Section
Responsible for providing communications, facilities, services, personnel, equipment, supplies and materials.

Finance/Administration Section
Responsible for financial activities and other administrative aspects, including activating and maintaining a Disaster Accounting System, providing financial resources necessary for recovery, maintaining payroll and payments, coordinating documentation for cost recovery and working with disaster agencies on cost recovery.

MANAGEMENT SECTION ORGANIZATION CHART



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MANAGEMENT SECTION STAFF

The Management Section is led by the EOC Director and is established to coordinate EOC operations. The City Manager by city ordinance will fill this position while serving as the Director of Emergency Services during a disaster/emergency. The EOC Director, the General Staff (Section Coordinators), the EOC Coordinator, the Liaison Officer and others as designated make up the EOC Management team. The Management team is responsible for advising the EOC Director on policy matters and assisting the Director of Emergency Services and EOC Director in the development of overall strategy, rules, regulations, proclamations and orders. The Management Section also includes the following staff functions required to support the Management function.

- EOC Director
- Public Information Officer
- EOC Coordinator
- Liaison Officer
- Safety Officer
- Security Officer
- Legal Advisor
- City Representative to the County Operational Area EOC
- Multiagency Coordination Group

EOC Director
The EOC Director is responsible for the overall management of the City's emergency response and recovery effort. The EOC Director determines the operational period and the priorities for the operational period.

Public Information Officer
The Public Information Officer (PIO) ensures that information support is provided on request; that information released is consistent, accurate and timely; and appropriate information is provided to all required agencies and the media.

EOC Coordinator
The EOC Coordinator facilitates the overall functioning of the EOC, coordinates with other agencies and SEMS/NIMS levels, and serves as a resource to the EOC Director.

Liaison Officer
The Liaison will serve as a point of contact for the Agency Representatives from assisting organizations and agencies outside our city government structure. The Liaison Officer aids in coordinating the efforts of these outside agencies to reduce the risk of their operating independently. This ensures each agency is doing what it does best and maximizes the effectiveness of available resources. If the County's Joint Regional Intelligence Center (JRIC) is activated, the Liaison Officer will coordinate and communicate regularly with the Terrorism

Liaison Officer at the JRIC. Any state and/or federal emergency official should make contact with the Liaison Officer to ensure continuity of operations.

Safety Officer
The Safety Officer is responsible for identifying and mitigating safety hazards and situations of potential City liability during EOC operations, as well as ensuring a safe working environment in the EOC. This position will be most needed at the beginning of and EOC activation. Once the safety of the EOC has been assessed, this position may be filled as needed.

Security Officer
The Security Officer is responsible for security of all EOC facilities and personnel including access control at the EOC.

Legal Advisor
The Legal Advisor is the City Attorney and provides legal advice to the EOC Director in all legal matters relative to the emergency and assists in the proclamation of an emergency.

City Representative to the County Operational Area EOC
The Operational Area EOC Representative will report to the Ventura County Operational Area EOC once it is activated and will serve as a representative of the City on the Inter Agency Coordinating Group.

Multiagency Coordination Group
The Multiagency Coordination Group is made up of department directors and gives support to the EOC Director.

COMMON EOC RESPONSIBILITIES

(The following is a checklist applicable to all EOC positions and is to be used in conjunction with the specific checklist for their EOC position.)

- ❑ Check-in upon arrival at the EOC.
- ❑ Report to your EOC organizational supervisor.
- ❑ Obtain a briefing on the situation.
- ❑ Determine your personal operating location and set up as necessary.
- ❑ Review your position responsibilities.
- ❑ Identify yourself by wearing your City-issued identification and wearing vest as assigned.
- ❑ Print your name on the EOC organization chart next to your assignment.
- ❑ Clarify any issues regarding your authority and assignment and what others in the organization do.
- ❑ Log into WebEOC if authorized. **(Procedures can be found in the Appendix).**
- ❑ Open and maintain a position activity log.
- ❑ Determine 24-hour staffing requirements and request additional support as required.
- ❑ Determine the need for group or unit establishment. Make required personnel assignments as staff arrives at the EOC or media center/Joint Information Center.
- ❑ Request additional resources through the appropriate Logistics Section Unit.
- ❑ Based on the situation as known or forecasted, determine likely future Section needs.
- ❑ Think ahead and *anticipate* situations and problems before they occur.
- ❑ Using WebEOC and/or your activity log, maintain all required records and documentation to support the After-Action/Corrective Action Report and the history of the emergency/disaster. Document:
  - Messages received
  - Action taken
  - Decision justification and documentation
  - Requests filled
  - EOC personnel, time on duty and assignments

Precise information is essential to meet requirements for possible reimbursement by Cal EMA and FEMA.

General Operational Duties

- ❑ Keep up to date on the situation and resources associated with your position.
- ❑ Maintain current status reports and displays.
- ❑ Keep your EOC organizational supervisor advised of your status and activity and on any problem areas that now need or will require solutions.
- ❑ Establish operating procedure with the Information Systems Branch of the Logistics Section for use of telephone, radio and data systems. Make any priorities or special requests known.

- ❑ Review situation reports as they are received. Verify information where questions exist.
- ❑ Anticipate potential situation changes in all planning (ex: aftershocks during seismic events). Develop a backup plan for all plans and procedures requiring off-site communications.
- ❑ Determine and **anticipate** support requirements and forward to your EOC organizational supervisor.
- ❑ Monitor your position activities and adjust staffing and organization to meet current needs.
- ❑ Use face-to-face communication in the EOC whenever possible and document decisions and policy.
- ❑ Ensure that your personnel and equipment time records and a record of expendable materials used are provided to your EOC organizational supervisor at the end of each operational period.
- ❑ Brief your relief at shift-change time. Ensure that in-progress activities are identified and follow-up requirements are known.

Deactivation

- ❑ Ensure that all required forms or reports are completed prior to your release and departure.
- ❑ Be prepared to provide input to the EOC After-Action/Corrective Action Report.
- ❑ Determine what follow-up to your assignment might be required before you leave.
- ❑ Deactivate your position and close out logs when authorized by your EOC organizational supervisor.
- ❑ Leave forwarding phone number where you can be reached.

EOC DIRECTOR

SUPERVISOR: **City Council**

RESPONSIBILITIES:

- Serve as the Director of Emergency Services for the City.
- Make executive decisions based on policies of the City Council.
- Develop and issue rules, regulations, proclamations and orders.
- Establish the appropriate level of organization, and continuously monitor the effectiveness of that organization. Make changes as required.
- Be prepared to form additional branches/groups/units as dictated by the situation.
- Exercise overall management responsibility for the coordination of the response efforts within the affected area. In conjunction with the General Staff, set priorities for response efforts, and ensure that all agency actions are accomplished within the priorities established.
- Ensure that multi-agency or inter-agency coordination is accomplished effectively within the EOC.

READ ENTIRE CHECKLIST AT START-UP AND AT BEGINNING OF EACH SHIFT

❑ See Common EOC responsibilities on page M-17.

Activation

❑ Establish operational period and EOC priorities. Ensure specific objectives are established for current operational period.
❑ Determine the operational status and appropriate level of activation based on situation as known.
❑ As appropriate, respond to the EOC.
❑ Mobilize appropriate personnel for initial activation of the EOC.
❑ Activate an alternate EOC if required. When there is damage to the primary EOC sufficient to render it unusable, report to the alternate EOC.
❑ Obtain briefing from local, state and federal sources available.

Position Start-Up Actions

- ❑ Direct the implementation of the City's Emergency Operations Plan. Confirm level of EOC activation and ensure that EOC positions are filled as needed.
- ❑ Notify the Ventura County Operational Area that the City EOC is activated. (Delegate the task to the EOC Coordinator).
- ❑ Assign staff to initiate check-in procedures.
- ❑ Assign person to record EOC Director actions.
- ❑ Ensure that the EOC Organization and staffing chart is posted and that arriving team members are assigned by name.
- ❑ Ensure the EOC is properly set up and ready for operations.
- ❑ Authorize activation of Auxiliary Communication Services (ACS) if necessary.
- ❑ Appoint and ensure that EOC Section Coordinators (General Staff) are in place as soon as possible and are staffing their respective sections.
  - Operations Section Coordinator
  - Planning/Intelligence Section Coordinator
  - Logistics Section Coordinator
  - Finance/Administration Section Coordinator
- ❑ Ensure that the Management Section is staffed as soon as possible at the level needed.
  - Public Information Officer
  - EOC Coordinator
  - Liaison Officer
  - Legal Advisor
  - Safety Officer
  - Security Officer
  - Multiagency Coordination Group
- ❑ Ensure WebEOC incident is created
- ❑ Request additional personnel to maintain a 24-hour operation as required.
- ❑ Brief incoming EOC Section personnel prior to their assuming their duties. Briefings should include:
  - Current situation assessment, priorities and objectives.
  - Identification of specific job responsibilities
  - Identification of co-workers within the job function and/or geographical assignment
  - Availability of communications
  - Location of work area
  - Identification of eating and sleeping arrangements as appropriate
  - Procedural instructions for obtaining additional supplies, services and personnel
  - Identification of operational period work shifts
- ❑ .
- ❑ Ensure that all EOC Management team meetings, General Staff meetings and policy decisions are documented.
- ❑ Ensure that communications with other facilities are established and tested.

- ❑ Ensure that all departments account for personnel and work assignments.
- ❑ Confirm the delegation of authority. Obtain any guidance or direction as necessary.
- ❑ Determine appropriate delegation of purchasing authority to the Procurement Unit of the Logistics Section.
- ❑ Request the Planning/Intelligence Section to schedule the next planning meeting.
- ❑ Confer with EOC Operations Section Coordinator and other General Staff to determine what representation is needed at the EOC from other agencies.
- ❑ Determine need and establish, if necessary, a deputy director position.
- ❑ Establish the frequency of briefing sessions.
- ❑ Based on the situation as known or forecasted, determine likely future EOC Management Section needs.
- ❑ Think ahead and *anticipate* situations and problems before they occur.
- ❑ Request additional resources through the appropriate EOC Logistics Section Unit.

Duties:

- ❑ In conjunction with the Safety Officer, establish and maintain a safe working environment.
- ❑ Carry out responsibilities of any EOC Section not currently staffed.
- ❑ Make a list of key issues needing to be accomplished within the next operational period.
- ❑ Ensure that all Section logs and files are maintained.
- ❑ Monitor Section activities and adjust Section organization as appropriate.
- ❑ Resolve problems that arise in conducting Section and EOC responsibilities.
- ❑ Conduct periodic briefings. Ensure that all organizational elements are aware of priorities and objectives.
- ❑ Assess situation, work in progress, resources and estimate incident duration.
- ❑ Set up EOC planning meeting schedule with all EOC Section Coordinators.
- ❑ Develop overall strategy with the EOC Section Coordinators.
- ❑ Ensure that EOC Sections are carrying out their principle duties:
  - Implementing operational objectives per the EOC Action Plan.
  - Preparing action plans and status reports.
  - Providing adequate facility and operational support.
  - Providing administrative and fiscal record keeping and support.
- ❑ Develop and issue appropriate rules, regulations, proclamations and orders.
- ❑ Initiate **Emergency Proclamations** as needed (**See Management Support Documentation - Legal Documents)**
- ❑ Establish City Hall hours of operation.
- ❑ Conduct periodic briefing sessions with the entire EOC Management team to update the overall situation.
- ❑ Conduct periodic briefing sessions with the City Council to update the overall situation.
- ❑ Set priorities for restoration of city services.

- ❑ Determine if support is required from other jurisdictions; request mutual aid from the Ventura County Operational Area via Logistics Section.
- ❑ Approve and authorize the implementation of the EOC Action Plan developed and prepared by the EOC Planning/Intelligence Section and EOC Management team.
- ❑ In conjunction with the EOC Public Information Officer (PIO), coordinate and conduct news conferences and review media releases as required. Establish procedure for information releases affecting inter-agency coordination.
- ❑ Authorize PIO to release information to the media and to access the Emergency Alert System (EAS) as needed through appropriate channels.
- ❑ Monitor performance of EOC personnel for signs of stress or under-performance; initiate Critical Incident Stress Debriefing as appropriate in coordination with Personnel Unit of the Logistics Section.
- ❑ Ensure that proper security of the EOC is maintained at all times.
- ❑ Ensure that the EOC Coordinator is providing for and maintaining positive and effective inter-agency coordination.
- ❑ Establish and maintain contacts with adjacent jurisdictions/agencies and with other organizational levels as appropriate.
- ❑ Monitor section level activities to assure that all appropriate actions are being taken.
- ❑ Brief your relief at shift change time. Ensure that in-progress activities are identified and follow-up requirements are known.

Deactivation:

- ❑ Authorize deactivation of sections, branches or units when they are no longer required.
- ❑ Notify Ventura County Operational Area, adjacent facilities and other EOC's as necessary of planned time for deactivation.
- ❑ Ensure that any open actions not yet completed will be taken care of after deactivation.
- ❑ Ensure that all required forms or reports are completed prior to deactivation.
- ❑ Be prepared to provide input to the EOC After-Action Report/Corrective Action Report.
- ❑ Deactivate the EOC and close out logs when emergency situation no longer requires activation.
- ❑ Proclaim termination of the emergency and proceed with recovery operations.

PUBLIC INFORMATION OFFICER

SUPERVISOR: **EOC Director**

RESPONSIBILITIES:

- Serve as the dissemination point for all media releases related to city impacts and activities. Other agencies wishing to release information to the public should coordinate through the Public Information function.
- Coordinate use of the City's public notification system, VC Alert, 211, and the City's Website.
- Coordinate as necessary to ensure that the public within the affected area receives complete, accurate, timely, and consistent information about lifesaving procedures, health preservation instructions, emergency status and other information, and relief programs and services. Information released should be posted in hard copy in the EOC and to WebEOC.
- Review and coordinate all related information releases, including dissemination of emergency information to city departments to keep employees apprised of the situation.
- Maintain a relationship with the media representatives and hold periodic press conferences as required.
- Provide news releases, answer questions the media may have, and arrange for tours or photo opportunities of the incident.
- If multiple agencies and/or jurisdictions are affected and response operations are expected over 24 hours, a Joint Information Center (JIC) may be activated. The JIC could also expand to include county, state and federal agencies. If a JIC is established the PIO shall coordinate with and may send a representative to the JIC.

READ ENTIRE CHECKLIST AT START-UP AND AT BEGINNING OF EACH SHIFT

❑ See Common EOC responsibilities on page M-17.

Duties:

- ❑ Secure guidance from the EOC Director regarding the release of available information, and authorization to access the Emergency Alert System (EAS), if needed. (See **Part Two, Management Support Documentation, Emergency Alert System Procedures**).
- ❑ Keep the EOC Director advised of all unusual requests for information and of all major critical or unfavorable media comments. Provide an estimate of the impact and severity and make recommendations as appropriate.
- ❑ Coordinate all media events with the EOC Director.
- ❑ Ensure that all departments, agencies and response organizations in the jurisdiction are aware that they must coordinate release of emergency information through the PIO and that all press releases must be cleared with the EOC Director before releasing information to the media.

- ❑ Establish a Media Information Center/Joint Information Center at a site away from the EOC, Command Post and incident for media use and dissemination of information. Provide necessary work space, materials, telephones and staffing. Media Information Center Location: lobby of the Police/Fire Administration Building.. Announce safe access routes to Media Information Center for media. If there are multiple local, state and federal agencies involved consider establishing a Joint Information Center (JIC) or if a JIC is established designate staff to participate at the JIC.
- ❑ Schedule and post times and locations of news briefings in the EOC, Media Information Center and other appropriate areas.
- ❑ Prepare and provide approved information to the media. Post news releases in the EOC, Media Information Center, on WebEOC, and other appropriate areas.
- ❑ Develop an information release program.
- ❑ Interact with other branches/groups/units to provide and obtain information relative to public information operations.
- ❑ Coordinate with the Situation Status Unit of the Planning/Intelligence Section and define areas of special interest for public information action. Identify means for securing the information as it is developed.
- ❑ Maintain an up-to-date picture of the situation for presentation to media.
- ❑ Obtain, process, and summarize information in a form usable in presentations.
- ❑ Provide periodic briefings and press releases about the disaster situation throughout the affected areas. Refer media representatives to incident level PIOs for specific information.
- ❑ As required, periodically prepare briefings for the jurisdiction executives or elected officials.
- ❑ Develop a fact sheet for field personnel to distribute to residences and local businesses (include information about water and electrical outages/shortages, water supply stations, health services, etc.).
- ❑ Respond to information requests from the EOC Director and EOC Management team.
- ❑ Ensure that a rumor control function is established as necessary, and has the means for identifying false or erroneous information. Develop procedure to be used to counter such information.
- ❑ Provide sufficient staffing and telephones to efficiently handle incoming media and public calls and to gather status information.
- ❑ Consider establishing/staffing a hot-line to answer inquiries from the public as needed.
- ❑ Prepare, update and distribute to the public a Disaster Assistance Information Directory containing locations to obtain food, shelter, supplies, health services, etc.
- ❑ Contact cable channels to disseminate emergency information/updates on cable channels either through message board or live taping of Mayor or EOC Director.
- ❑ Arrange for meetings between media and city officials or incident personnel.
- ❑ Prepare a briefing sheet to be distributed to all employees at the beginning of each shift so they can answer questions from the public, such as shelter locations, water distribution sites, Local Assistance Centers, etc. (**See Part Two, Management Support Documentation**).

- ❑ Provide escort service to the media and VIPs; arrange for tours and photo opportunities when available staff and time permit. Coordinate VIP tours with EOC Coordinator, Liaison Officer, and City Council.
- ❑ Assist in making arrangements with adjacent jurisdictions for media visits.
- ❑ Determine which radio and TV stations are operational. (**See Part Two, Management Support Documentation**).
- ❑ Determine requirements for support to the emergency public information function at other EOC levels.
- ❑ Monitor broadcast media, and use information to develop follow-up news releases and rumor control.
- ❑ When federal emergency response teams respond, coordinate activities through the Ventura County Operational Area to ensure coordination of local, state and federal public information activities. If a federal Joint Information Center (JIC) is established, designate a City representative to the JIC.
- ❑ Ensure that announcements, information and materials are translated and prepared for populations with access and functional needs (non-English speaking; non-readers; elderly; deaf, hard of hearing, sight and mobility impaired; etc.).
- ❑ Prepare materials that describe the health risks associated with each hazard, the appropriate self-help or first aid actions and other appropriate survival measures.
- ❑ Prepare instructions for people who must evacuate from a high-risk area, including the following information for each threat: evacuation routes; suggestions on types and quantities of clothing, food, medical items, etc. the evacuees should bring; location of shelters.
- ❑ During periods of increased national readiness, or in time of need, prepare materials that address national security survival tips.
- ❑ Issue timely and consistent advisories and instructions for life safety, health and assistance:
  - What **to do** and **why.**
  - What **not to do** and **why.**
  - Hazardous areas and structures to stay away from.
  - Evacuation routes, instructions and arrangements for persons without transportation or with access and function needs (non-ambulatory, sight-impaired, etc.).
  - Location of mass care shelters, first aid stations, food/water distribution points, etc.
  - Location where volunteers can register and be given assignments.
  - Street, road, bridges and freeway overpass conditions, congested areas to avoid and alternate routes to take.
  - Instructions from the coroner and public health officials pertaining to dead bodies, potable water, human waste and spoiled food disposal.
  - Curfew information
  - School information (The School District should issue specific information. The City PIO can issue general information authorized by the School District).
  - Weather hazards when appropriate.
  - Public information hotline numbers.

- Status of Local Proclamation, Governor's Proclamation or Presidential Declaration.
- Local, state and federal assistance available; locations and times to apply.
- Local Application Center (LAC) locations, opening dates and times.
- How and where people can obtain information about relatives/friends in the emergency/disaster area. **(Coordinate with the Red Cross on the release of this information).**

❑ Warn all non-English speaking, deaf and hard of hearing persons of the emergency situation/hazard by:

- Using bilingual employees whenever possible.
- Translating all warnings, written and spoken, into appropriate languages.
- Contacting media outlets (radio/television) that serve the languages you need.
- Using pre-identified lists and non-governmental agencies to reach populations with access and functional needs
- Utilizing 9-1-1 translation services to contact the deaf and hard of hearing.
- Using pre-identified lists of disabled and deaf persons for individual contact."

❑ Issue other information pertaining to the emergency/disaster (acts of heroism, historical property damaged or destroyed, prominence of those injured or killed, other human interest stories)

❑ Through the Operations and Planning Sections, coordinate with local, state, federal or private sector agencies to get technical information (health risks, weather, etc.) for release to the public and media.

❑ Ensure file copies are maintained of all information released and posted in the EOC.

❑ Provide copies of all releases to the EOC Director.

❑ Prepare final news releases and advise media representatives of points-of-contact for follow-up stories.

EOC COORDINATOR

SUPERVISOR: **EOC Director**

RESPONSIBILITIES:

- Interact with other sections and branches/groups/units within the EOC to obtain information.
- Assist in coordination and ensure the proper flow of information.
- Assist and serve as an advisor to EOC Director and General Staff as needed.
- Provide information and guidance to the EOC Director.
- Maintain contact with the Ventura County Operational Area EOC Liaison Officer.
- Temporarily serve as a Section Coordinator if assigned by EOC Director.
- Coordinate all visits to the EOC.

READ ENTIRE CHECKLIST AT START-UP AND AT BEGINNING OF EACH SHIFT

❑ See Common EOC responsibilities on page M-17.

Duties:

❑ Assist the General Staff and EOC Director in developing an overall strategy, including:
- Assess the situation
- Define the problem
- Establish priorities
- Determine the need for evacuation
- Estimate the incident duration
- Determine if there is a need to make an "Emergency Proclamation"

❑ Coordinate with Legal Advisor and advise EOC Director about proclamations, emergency ordinances and other legal documents required by the City Council and EOC Director.

❑ Assist the Planning/Intelligence Section in the development, continuous updating and execution of the EOC Action Plan.

❑ Ensure safe and efficient operating procedures within the EOC. Assist any function in addressing any issues that might arise.

❑ Monitor performance of EOC personnel for signs of stress or under-performance; advise EOC Director of condition.

❑ Ensure that all documentation is being properly maintained by EOC personnel.

❑ Facilitate and attend periodic briefing sessions conducted by EOC Director.

❑ Advise EOC Director of any issues that need to be addressed and of any responsibilities that need to be assigned.

❑ Liaise with other agencies (Operational Area, State and Federal) as required. Ensure that all notifications are made to the Ventura County Operational Area. As necessary, verify with

Operational Area that requests for assistance have been addressed or forwarded to the State Regional EOC.

- ❑ Coordinate with the PIO to ensure that all necessary communications have been established.
- ❑ Coordinate with Security Officer and monitor all EOC visitations.
- ❑ Coordinate all EOC functions with neighboring jurisdictions, the Ventura County Operational Area and other support and response organizations
- ❑ Assist in shift change issues.
- ❑ Arrange and coordinate VIP tours with PIO, and City Council members.

LIAISON OFFICER

SUPERVISOR: **EOC Director**

RESPONSIBILITIES:

- Coordinate with Agency Representatives assigned to the EOC and handle requests from other agencies for sending Agency Representative personnel to other EOCs.
- Function as a central point of contact for incoming Agency Representatives, provide workspace and arrange for support as necessary.
- Interact with other sections and branches/groups/units within the EOC to obtain information.
- Ensure that all developed guidelines, directives, action plans and appropriate situation information is disseminated to Agency Representatives.
- Liaise with outside public jurisdictions and internal departments.
- Provide information and guidance to the EOC Director.
- Maintain contact with the Ventura County Operational Area EOC Liaison Officer.

READ ENTIRE CHECKLIST AT START-UP AND AT BEGINNING OF EACH SHIFT

❑ See Common EOC responsibilities on page M-17.

Duties:

❑ Liaison with other agencies (Operational Area, State and Federal) as required. Ensure that all notifications are made to the Ventura County Operational Area. As necessary, verify with Operational Area that requests for assistance have been addressed or forwarded to the State Regional EOC.

❑ If the County's Joint Regional Intelligence Center is activated, ensure coordination with the County's Terrorism Liaison Officer.

❑ Arrange and coordinate VIP tours with the PIO, EOC Coordinator, and City Council.

❑ Contact all on-site Agency Representatives. Make sure:
- They have signed into the EOC
- They completed and returned the Agency Representative Registration Sheet (return a copy to them)
- They understand their assigned function
- They know their work location
- They understand EOC organization and floor plan (provide both)
- They have clear communications with their home agency

❑ Determine if an outside liaison is required with other agencies such as:
- Local/county/state/federal agencies
- Schools

- Volunteer organizations (ACS, CERT)
- Non-governmental agencies (ARC, United Way, etc.)
- Private sector organizations
- Utilities not already represented

❑ Determine status and resource needs and availability of other agencies.
❑ Regularly brief Agency Representatives on current situation, priorities and EOC Action Plan.
❑ Request Agency Representatives to contact their agency, determine level of activation of agency facilities, and obtain any intelligence or situation information that may be useful to the EOC.
❑ Notify and coordinate with adjacent jurisdictions on facilities and/or dangerous conditions that may pose risk across boundaries.
❑ Respond to requests for liaison personnel from other agencies.
❑ Act as liaison with state or federal emergency response officials and appropriate city personnel.
❑ Determine if there are communication problems in contacting outside agencies. Provide information to the Information Systems Branch of the EOC Logistics Section.
❑ Know the working location of Agency Representatives assigned to a branch/ group/unit.
❑ Compile list of Agency Representatives (agency, name, EOC phone) and make available to all Section and Branch/Group/Unit Coordinators.
❑ Respond to requests from sections and branches/groups/units for Agency information. Direct requesters to appropriate Agency Representatives.
❑ Provide periodic update briefings to Agency Representatives as necessary.

SAFETY OFFICER

SUPERVISOR: **EOC Director**

RESPONSIBILITIES:

- Ensure that all facilities used in support of EOC operations have safe operating conditions.
- Monitor all EOC facility activities to ensure that they are being conducted in as safe a manner as possible under the circumstances that exist.
- Stop or modify all unsafe operations.

READ ENTIRE CHECKLIST AT START-UP AND AT BEGINNING OF EACH SHIFT

❑ See Common EOC responsibilities on page M-17.

Duties:

❑ Advise EOC Security Officer of your function. Secure information regarding emergency conditions.
❑ Support Safety Officers in the field to ensure safety of field operations for employees and volunteers.
❑ Tour the EOC facility area and determine the scope of on-going operations.
❑ Evaluate conditions and advise the EOC Director of any conditions and actions which might result in liability—e.g. oversights, improper response actions, etc.
❑ Coordinate with the Personnel Unit of the Logistics Section to ensure that training for personnel includes safety and hazard awareness and is in compliance with OSHA requirements.
❑ Study the facility to learn the location of all fire extinguishers, fire hoses and emergency pull stations.
❑ Be familiar with particularly hazardous conditions in the facility.
❑ Ensure that the EOC location is free from environmental threats (i.e., radiation exposure, air purity, water potability, etc.)
❑ If the event that caused activation is an earthquake, provide guidance regarding actions to be taken in preparation for aftershocks.
❑ Coordinate with EOC Security to obtain assistance for any special safety requirements.
❑ Keep the EOC Director advised of safety conditions.
❑ Coordinate with Legal Advisor on any personnel injury claims or records preparation as necessary for proper case evaluation and closure.

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SECURITY OFFICER

SUPERVISOR: **EOC Director**

RESPONSIBILITIES:

- Provide twenty-four hour a day security for EOC facilities.
- Control personnel access to facilities in accordance with policies established by the EOC Director.

READ ENTIRE CHECKLIST AT START-UP AND AT BEGINNING OF EACH SHIFT

❑ See Common EOC responsibilities on page M-17.

Duties:

❑ Determine current security requirements and establish staffing as needed.
❑ Determine needs for special communications. Make needs known to the Information Systems Branch of the EOC Logistics Section.
❑ Complete a radio or communications check with all on-duty security personnel as appropriate.
❑ Establish or relocate security positions as dictated by the situation.
❑ Determine needs for special access facilities. Consider need for vehicle traffic control plan. Develop if required.
❑ Assist in any EOC evacuation.
❑ Assist in sealing off any dangerous areas. Provide access control as required.
❑ As requested, provide security for any EOC critical facilities, supplies or materials.
❑ Provide executive security as appropriate or required.
❑ Provide security input and recommendations as appropriate to conditions to EOC Director.

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LEGAL ADVISOR

SUPERVISOR: **EOC Director**

RESPONSIBILITIES:

- Prepare proclamations, emergency ordinances and other legal documents and provide legal services as required.
- Maintain legal information, records and reports relative to the emergency. **(See Management Support Documentation – Legal Documents).**
- Commence legal proceedings as needed.
- Participate as a member of the EOC Management Team when requested by EOC Director.

READ ENTIRE CHECKLIST AT START-UP AND AT BEGINNING OF EACH SHIFT

❑ See Common EOC responsibilities on page M-17.

Duties:

- ❑ Prepare proclamations, emergency ordinances and other legal documents required by the City Council and the EOC Director.
- ❑ Develop rules, regulations and laws required for the acquisition and/or control of critical resources.
- ❑ Develop emergency ordinances and regulations to provide a legal basis for evacuation and/or population control.
- ❑ Commence civil and criminal proceedings as necessary and appropriate to implement and enforce emergency actions.
- ❑ Advise the EOC Director on areas of legal responsibility and identify potential liabilities.
- ❑ Advise the City Council, EOC Director and management personnel of the legality and/or legal implications of contemplated emergency actions and/or policies.
- ❑ Prepare documents relative to the demolition of hazardous structures or conditions.

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CITY REPRESENTATIVE AT COUNTY OPERATIONAL AREA EOC

SUPERVISOR: **EOC Director**

RESPONSIBILITIES:

- Report to the Operational Area EOC to represent the City.
- Speak for the City within established limits.

READ ENTIRE CHECKLIST AT START-UP AND AT BEGINNING OF EACH SHIFT

❑ See Common EOC responsibilities on page M-17.

Duties:

- ❑ Check-in upon arrival at the EOC.
- ❑ Report to Liaison Officer/EOC Coordinator if that position has been activated. If not activated, report to the EOC Director.
- ❑ Obtain a briefing on the situation.
- ❑ Unpack any kit materials you may have brought with you and set up your assigned work station.
- ❑ Obtain EOC organization chart, floor plan and telephone listing. Review the locations and general duties of all sections and branches/groups/units that have been activated.
- ❑ Clarify any issues regarding your authority and assignment and what other in the organization do.
- ❑ Establish communications link(s) with the City. If unable to communicate, notify the Information Systems Branch of the Logistics Section in the Operational Area EOC.
- ❑ If necessary, clarify your decision making authority with the City.
- ❑ Obtain current situation briefing from person you are relieving, or from the Liaison Officer/EOC Coordinator.
- ❑ If the Inter-Agency Coordinating Group is activated, report to their work station.
- ❑ Facilitate requests for support or information that they City can provide.
- ❑ Keep up-to-date on the general status of resources and activity associated with the City.
- ❑ Provide appropriate situation information to the Situation Status Unit of the Planning/Intelligence Section.
- ❑ Represent the City at planning meetings as appropriate. Be prepared to provide update briefings about the City's activities and priorities at these meetings.
- ❑ Inform the City periodically on jurisdiction/EOC priorities and actions that may be of interest.

Demobilization

- ❑ Coordinate deactivation with Liaison Officer/EOC Coordinator. Ensure the City's representation is no longer needed prior to leaving.
- ❑ Determine what follow-up to your assignment might be required before you leave.
- ❑ Leave forwarding phone number where you can be reached.

MULTIAGENCY COORDINATION GROUP

SUPERVISOR: **EOC Director/City Manager**

RESPONSIBILITIES:

- Participate as a member of the City's Multiagency Coordination Group supporting the Director of Emergency Services.
- Ensure that the Director of Emergency Services (City Manager and/or his designee) has clear policy direction.
- Assist in making executive decisions based on policies of the City Council.
- Assist the EOC Director in the development of priorities and objectives, rules, regulations, proclamations and orders.
- Ensure Continuity of Government and Continuity of Operations.

READ ENTIRE CHECKLIST AT START-UP AND AT BEGINNING OF EACH SHIFT

❑ See Common EOC responsibilities on page M-17.

Activation

❑ As appropriate, report to the City Manager for a briefing.
❑ Mobilize appropriate personnel for initial activation of the EOC.
❑ Obtain briefing from whatever sources are available.

Position Start-Up Actions

❑ Upon arrival, identify yourself as a member of the Multiagency Coordination Group.
❑ Review your position responsibilities.
❑ Identify yourself by putting on the vest and wearing City-issued identification. Print your name on the EOC organizational chart next to your assignment.
❑ Determine if all **your** key Department personnel or alternates have been notified or are en-route to the EOC as necessary.
❑ Obtain a briefing or preliminary survey of the emergency/disaster from **your** staff and impact on **your** Department's operational capability.
❑ Receive incident briefing from the EOC Director.
❑ Provide the EOC Director with a status report of **your** Department.
❑ Request additional personnel to maintain a 24-hour operation as required.
❑ Assist the EOC Director in the preparation of the Action Plan.
❑ Determine information needs and advise the EOC Director of those needs.
❑ Assign Department staff to the EOC as needed.

- ❑ Advise and assist the EOC Director in the release of information to the public and the media, requests for additional resources, requests for release of resources and plans for recovery, reconstruction and demobilization.
- ❑ In consultation with the Director of Emergency Services, develop temporary emergency policies for managing the strategic aspects of the emergency.
- ❑ Ensure Continuity of Government and Continuity of Operations and prepare the EOC for transition to a recovery organization to restore the City to pre-disaster conditions as quickly and effectively as possible.

Demobilization

- ❑ Assist with recovery operations.

1. Incident Name	2. Operational Period (Date / Time) From: To:	INDIVIDUAL LOG ICS 214a-OS

3. Individual Name	4. ICS Section	5. Assignment / Location

6. Activity Log	Page of

Time	Major Events

7. Prepared by:	Date / Time

INDIVIDUAL LOG (ICS FORM 214a-OS)

Special Note. This optional ICS form 214a-OS is a log for individual use, and ICS form 214-OS is designed to log activities for an entire unit.

Purpose. The Individual Log, while not required, records details of each individual's activities. These logs provide a basic reference from which to extract information for inclusion in any after-action report.

Preparation. An Individual Log can be initiated and maintained by each member of the ICS. Completed logs are forwarded to supervisors who provide copies to the Documentation Unit.

Distribution. The Documentation Unit maintains a file of all Individual Logs. The original of each log MUST be submitted to the Documentation Unit.

Item #	Item Title	Instructions
1.	Incident Name	Enter the name assigned to the incident.
2.	Operational Period	Enter the time interval for which the form applies. Record the start and end date and time.
3.	Individual Name	Enter the name of the individual.
4.	ICS Section	Enter the ICS Section to which the individual is assigned.
5.	Assignment/Location	Enter the assignment or location for the individual.
6.	Activity Log	Enter the time and briefly describe each significant occurrence or event (e.g., task assignments, task completions, injuries, difficulties encountered, etc.)
7.	Prepared By	Enter name and title of the person completing the log. Provide log to immediate supervisor, at the end of each operational period.
	Date/Time	Enter date (month, day, year) and time prepared (24-hour clock).

24-HOUR CLOCK CONVERSION SHEET
(MILITARY TIME)

STANDARD	24-HOUR	STANDARD	24-HOUR
12 MIDNIGHT	**2400**	**12 NOON**	**1200**
12:01 AM	0001	12:01 PM	1201
12:15 AM	0030	12:30 PM	1230
12:45 AM	0045	12:45 PM	1245
1 AM	0100	1 PM	1300
2 AM	0200	2 PM	1400
3 AM	0300	3 PM	1500
4 AM	0400	4 PM	1600
5 AM	0500	5 PM	1700
6 AM	0600	6 PM	1800
7 AM	0700	7 PM	1900
8 AM	0800	8 PM	2000
9 AM	0900	9 PM	2100
10 AM	1000	10 PM	2200
11 AM	1100	11 PM	2300

Statute or Exec. Order	Scope	Authority
Declaration of Emergency (Governor) – 10-9-17	"State statutes, rules, regulations and requirements are hereby suspended to the extent they apply to the following activities: (a) removal, storage, transportation, and disposal of hazardous and non-hazardous solid waste and debris resulting from these fires that have burned and continues to burn in areas that are subject to the jurisdiction of agencies within the California Environmental Protection Agency and the California Natural Resources Agency; and (b) necessary restoration and rehabilitation of timberland, streams, rivers, and other waterways. Such statutes, rules, regulations and requirements are hereby suspended only to the extent necessary for expediting the removal and cleanup of debris from these fires, and for implementing any restoration plan. Individuals who desire to conduct activities under this suspension of statutes, rules, regulations, and requirements shall first request that the appropriate Agency Secretary, or his delegate, make a determination that the proposed activities are eligible to be conducted under this suspension. The Secretary for the California Environmental Protection Agency and the Secretary for the California Natural Resources Agency shall use sound discretion in applying this Executive Order to ensure that the suspension serves the purpose of accelerating cleanup and recovery, while at the same time protecting public health and the environment. This order shall apply to, but is not necessarily limited to: solid waste facility permits; waste discharge requirements for storage and disposal; emergency timber harvesting; emergency construction activities; and waste discharge requirements and/or Water Quality Certification for	Gov. Code §§ 8558(b), 8567, 8571 [During a state of emergency the Governor may suspend any regulatory statute, or statute prescribing the procedure for conduct of state business, or the orders, rules, or regulations of any state agency, including subdivision (d) of Section 1253 of the Unemployment Insurance Code, where the Governor determines and declares that strict compliance with any statute, order, rule, or regulation would in any way prevent, hinder, or delay the mitigation of the effects of the emergency.]

	discharges of fill material or pollutants. To the extent it is within their administrative authority, the boards, departments and offices within the California Environmental Protection Agency and the California Natural Resources Agency shall expedite the granting of other authorizations, waivers or permits necessary for the removal, storage, transportation, and disposal of hazardous and non-hazardous debris resulting from these fires, and for other actions necessary for the protection of public health and the environment."	
Declaration of Disaster Area (President) – 10-10-17	"I have determined that the damage in certain areas of the State of California resulting from wildfires beginning on October 8, 2017, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of California. "In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses. "You are authorized to provide assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs). Direct Federal assistance is authorized. "Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford	Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. Executive Order 12148, as amended

	Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act. "Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act." Applies to: Butte, Lake, Mendocino, Napa, Nevada, Sonoma, and Yuba Counties for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program. All areas within the State of California are eligible for assistance under the Hazard Mitigation Grant Program.	
ESA	Exemption for repair or replacement of public facilities (substantially as they previously existed) in areas that have been declared a disaster area by the President: "In any area which has been declared by the President to be a major disaster area under the Disaster Relief and Emergency Assistance Act [42 U.S.C.A. s 5121 et seq.], the President is authorized to make the determinations required by subsections (g) and (h) of this section for any project for the repair or replacement of a public facility substantially as it existed prior to the disaster under section 405 or 406 of the Disaster Relief and Emergency Assistance Act [42 U.S.C.A. ss 5171 or 5172], and which the President determines (1) is necessary to prevent the recurrence of such a natural disaster	Section 7(p) of the Endangered Species Act (ESA) of 1973

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	and to reduce the potential loss of human life, and (2) to involve an emergency situation which does not allow the ordinary procedures of this section to be followed."	
ESA	Emergency consultation for federal agency actions (including state/local agency actions using federal funding) not covered by 7(p) exemption: "(a) Where emergency circumstances mandate the need to consult in an expedited manner, consultation may be conducted informally through alternative procedures that the Director determines to be consistent with the requirements of sections 7(a)-(d) of the Act. This provision applies to situations involving acts of God, disasters, casualties, national defense or security emergencies, etc. (b) Formal consultation shall be initiated as soon as practicable after the emergency is under control. The Federal agency shall submit information on the nature of the emergency action(s), the justification for the expedited consultation, and the impacts to endangered or threatened species and their habitats. The Service will evaluate such information and issue a biological opinion including the information and recommendations given during the emergency consultation."	50 C.F.R. § 402.05. Sample template to request emergency consultation (from Southeast FWS regional office): https://www.fws.gov/southeast/pdf/guidelines/request-emergency-consultation-sample.pdf
CESA	No statutory provision for an emergency exemption, but actions related to "restoration and rehabilitation of timberland, streams, rivers, and other waterways" are covered by suspension of state statutes in Governor's declaration of emergency.	Planning & Conservation League v. Dep't of Fish & Game, 55 Cal. App. 4th 479 (1997) [no CESA provision authorized issuance of CESA permit for Emergency Management Measures], review granted, depublished, Planning & Conservation League v. Department of Fish & Game, 65 Cal. Rptr. 2d 346, 1997 Cal. LEXIS 3551, review dismissed, Planning & Conservation League v. Department of Fish & Game, 71 Cal. Rptr.

		2d 212, 1997 Cal. LEXIS 8058. Declaration of Emergency.
Clean Water Act	Limited emergency exemption for reconstruction of damaged parts of serviceable structures without changing character, size or scope of fill: "Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. Maintenance does not include any modification that changes the character, scope, or size of the original fill design. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption." 2 exceptions to the exemption: (1) Any discharge of dredged or fill material resulting from the above activities which contains any toxic pollutant listed under Section 307 of the Clean Water Act shall be subject to any applicable toxic effluent standard or prohibition, and shall require a permit. (2) Any discharge of dredged or fill material into waters of the United States incidental to the above activities must have a permit if it is part of an activity whose purpose is to convert an area of the waters of the United States into a use to which it was not previously subject, where the flow or circulation of waters of the United States may be impaired or the reach of such waters reduced. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration. A discharge which elevates the bottom of waters of the United States without converting it to dry land does not thereby reduce the reach of, but may alter the flow or circulation of, waters of the United States.	33 CFR 323.4(a)(2) Sacramento field office memo on scope of emergency maintenance exemption: http://www.spk.usace.army.mil/Portals/12/documents/regulatory/references/404-exemptions/Exempt-Maintenance.pdf

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Porter-Cologne Water Quality Control Act	"Upon notification of the appropriate regional board of the discharge or proposed discharge, . . . the provisions of subdivisions (a) and (c) of Section 13260, subdivision (a) of Section 13263, and subdivision (a) of Section 13264 do not apply to a discharge resulting from any of the following emergency activities: (1) Immediate emergency work necessary to protect life or property or immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor; (2) Emergency projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide within one year of the damage. This paragraph does not exempt from this section any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide." This exemption "is not a limitation of the authority of a regional board . . . to determine that any provision of this division shall not be waived or to establish conditions of a waiver." The exemption "shall not apply to the extent that it is inconsistent with any waiver or other order or prohibition issued under this division."	Water Code § 13269(c), (d).
Streambed Alteration Act	Exempts the following types of emergency actions, but requires notice to be given to the CDFW within 14 days of commencing the work:	Fish & Game Code § 1610; Fish & Game Code § 1601, incorporating Pub. Res. Code § 21060.3's definition of "emergency"

	(1) Immediate emergency work necessary to protect life or property. (2) Immediate emergency repairs to public service facilities necessary to maintain service in disaster-stricken areas where the Governor has declared a state of emergency. 3) Emergency projects carried out by a public agency to maintain, restore, or repair an existing highway (not including official state scenic highways), damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. The entity performing the emergency work "shall notify the department [of Fish & Game] of the work, in writing, within 14 days of beginning the work. Any work described in the emergency notification that does not meet the criteria for the emergency work described in subdivision (a) is a violation of this chapter if the entity did not first notify the department in accordance with Section 1602 or 1611." "Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. "Emergency" includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage. Projects to expand or widen a highway damaged by the above causes are not exempt from Section 1601.	
Forest Practices Act – Declaration of Emergency	For 2015 fires in Amador, Calaveras, Lake and Trinity counties, with identical language in Governor's Executive Order declaring emergency, Natural Resources Agency interpreted the emergency declaration to authorize landowners to remove trees "when necessary for restoration and	Declaration of Emergency; Pub. Res. Code § 4527(a)(2) [def'n of "for commercial purposes"]. CNA publication interpreting Declaration of

	rehabilitation of their land when such removal is necessary for expediting cleanup of debris from the fires and for implementing any restoration plan." More stringent rules applied when the landowners proposed to use the removed trees for "commercial purposes," as defined in the Forest Practice Act (ref.).	Emergency for 2015 fires: http://calfire.ca.gov/resource_mgt/downloads/EO_33-15_WhatsNew.pdf Contact: Heather Baugh, Deputy General Counsel The Natural Resources Agency heather.baugh@resources.ca.gov 916-653-5656
Forest Practices Act – Drought Mortality Exemption	Emergency regulations adopted by the Board of Forestry and Fire Protection in June 2015 authorized specified forest management activities, including the cutting or removal of trees that are dead or dying as a result of the drought conditions. Areas > 20 acres cumulatively across an ownership require a Registered Professional Forester (RPF) to prepare, sign, and submit an exemption form to CAL FIRE. Areas < 20 acres do not require an RPF, but can be submitted by the timberland owner, timber owner, Licensed Timber Operator or an RPF on the new form.	14 C.C.R. § 1038(k). CalFIRE publication on drought harvest regulations: http://calfire.ca.gov/resource_mgt/downloads/New_Drought_Mortality_Exemption.pdf
Forest Practices Act – Fuelbreak Exemption	Emergency regulations adopted by the Board of Forestry and Fire Protection in June 2015 authorized specified forest management activities, including the cutting or removal of trees between 150' and 300' of an Approved and Legally Permitted Habitable Structure. The new language allows for the removal of trees between 150' and 300' of a Habitable Structure that complies with the California Building Code for the purpose of reducing flammable materials and maintaining a fuelbreak. A	14 C.C.R. § 1038(c). CalFIRE publication on fuelbreak harvesting: http://calfire.ca.gov/resource_mgt/downloads/New_Structure_Protection_Exemption.pdf

	Registered Professional Forester (RPF) must prepare, sign, and submit the new form to CAL FIRE when trees will be removed between 150' and 300' of Habitable Structures. (The previous exemption form requirements for "Removal of Fire hazard Trees Within 150 Feet of a Structure Exemption" pursuant to 14 CCR § 1038(c), have been combined with the new language of 14 CCR §.1038(c)(6) into one new exemption form.)	
CEQA	Emergency projects on facilities damaged or destroyed in a disaster, for which the Governor has proclaimed a state of emergency, are statutorily exempt from CEQA.	State CEQA Guidelines § 15269 (14 C.C.R. § 15269)
NEPA	"Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review."	40 C.F.R. § 1506.11 Post-Katrina outline of NEPA procedures in emergency situations: https://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-EmergencyGuidance.pdf
Commandeering private property	"In the exercise of the emergency powers hereby vested in him during a state of war emergency or state of emergency, the Governor is authorized to commandeer or utilize any private property or personnel deemed by him necessary in carrying out the responsibilities hereby vested in him as Chief Executive of the state and the state shall pay the reasonable value thereof."	Gov. Code § 8572.

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GOVERNOR'S OFFICE
OF EMERGENCY SERVICES

CALIFORNIA EMERGENCY SERVICES ACT

CALIFORNIA DISASTER ASSISTANCE ACT

EMERGENCY COMPACTS

- INTERSTATE CIVIL DEFENSE AND DISASTER COMPACT (1951)
- EMERGENCY MANAGEMENT ASSISTANCE COMPACT (2005)

CALIFORNIA DISASTER AND CIVIL DEFENSE MASTER MUTUAL AID AGREEMENT

Edmund G. Brown, Jr.
Governor

2015 Edition

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GOVERNOR'S OFFICE
OF EMERGENCY SERVICES

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Article 1 – Purpose

§ 8550. Findings and Declaration

The state has long recognized its responsibility to mitigate the effects of natural, manmade, or war-caused emergencies which result in conditions of disaster or in extreme peril to life, property, and the resources of the state, and generally to protect the health and safety and preserve the lives and property of the people of the state. To ensure that preparations within the state will be adequate to deal with such emergencies, it is hereby found and declared to be necessary:

(a) To confer upon the Governor and upon the chief executives and governing bodies of political subdivisions of this state the emergency powers provided herein; and to provide for state assistance in the organization and maintenance of the emergency programs of such political subdivisions.

(b) To provide for a state agency to be known and referred to as the Office of Emergency Services, within the office of the Governor, and to prescribe the powers and duties of the director of that office.

(c) To provide for the assignment of functions to state entities to be performed during an emergency and for the coordination and direction of the emergency actions of those entities.

(d) To provide for the rendering of mutual aid by the state government and all its departments and agencies and by the political subdivisions of this state in carrying out the purposes of this chapter.

(e) To authorize the establishment of such organizations and the taking of such actions as are necessary and proper to carry out the provisions of this chapter.

It is further declared to be the purpose of this chapter and the policy of this state that all emergency services functions of this state be coordinated as far as possible with the comparable functions of its political subdivisions, of the federal government including its various departments and agencies, of other states, and of private agencies of every type, to the end that the most effective use may be made of all manpower, resources, and facilities for dealing with any emergency that may occur.

§ 8551. Short title

This chapter may be cited as the "California Emergency Services Act."

Article 2 – General Definitions

§ 8555. Definitions governing construction

Unless the provision or context otherwise requires, the definitions contained in this article govern the construction of this chapter.

§ 8556. "Governor" defined

"Governor" means the Governor or the person upon whom the powers and duties of the office of Governor have devolved pursuant to Section 10 of Article V of the California Constitution.

§ 8557. Definitions

(a) "State agency" means any department, division, independent establishment, or agency of the executive branch of the state government.

(b) "Political subdivision" includes any city, city and county, county, district, or other local governmental agency or public agency authorized by law.

(c) "Governing body" means the legislative body, trustees, or directors of a political subdivision.

(d) "Chief executive" means that individual authorized by law to act for the governing body of a political subdivision.

(e) "Disaster council" and "disaster service worker" have the meaning prescribed in Chapter 1 (commencing with Section 3201) of Part 1 of Division 4 of the Labor Code.

(f) "Public facility" means any facility of the state or a political subdivision, which facility is owned, operated, or maintained, or any combination thereof, through moneys derived by taxation or assessment.

(g) "Sudden and severe energy shortage" means a rapid, unforeseen shortage of energy, resulting from, but not limited to, events such as an embargo, sabotage, or natural disasters, and which has statewide, regional, or local impact.

§ 8558. Conditions or degrees of emergency; "state of war emergency", "state of emergency", and "local emergency" defined

Three conditions or degrees of emergency are established by this chapter:

(a) "State of war emergency" means the condition which exists immediately, with or without a proclamation thereof by the Governor, whenever this state or nation is attacked by an enemy of the United States, or upon receipt by the state of a warning from the federal government indicating that such an enemy attack is probable or imminent.

(b) "State of emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an

earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy or conditions causing a "state of war emergency," which, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission.

(c) "Local emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city, caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy, which are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission.

§ 8559. "Mutual aid region" and "operational area" defined

(a) A "mutual aid region" is a subdivision of the state emergency services organization, established to facilitate the coordination of mutual aid and other emergency operations within an area of the state consisting of two or more county operational areas.

(b) An "operational area" is an intermediate level of the state emergency services organization, consisting of a county and all political subdivisions within the county area.

§ 8560. "Emergency plans" and "State Emergency Plan" defined

(a) "Emergency plans" means those official and approved documents which describe the principles and methods to be applied in carrying out emergency operations or rendering mutual aid during emergencies. These plans include such elements as continuity of government, the emergency services of governmental agencies, mobilization of resources, mutual aid, and public information.
(b) "State Emergency Plan" means the State of California Emergency Plan as approved by the Governor.

§ 8561. "Master Mutual Aid Agreement" defined

"Master Mutual Aid Agreement" means the California Disaster and Civil Defense Master Mutual Aid Agreement, made and entered into by and between the State of California, its various departments and agencies, and the various political subdivisions of the state, to facilitate implementation of the purposes of this chapter.

Article 3 – Powers of the Governor

§ 8565. Additional powers

The Governor shall have the powers granted by this article, which powers shall be in addition to any other powers granted to him by this chapter.

§ 8565.1. Establishment of committee or board by Governor

Nothing in this chapter shall operate to prevent the Governor from establishing a committee or board composed of heads of state

agencies, should the Governor deem it necessary to aid him or her in obtaining information or advice, assisting in developing or carrying out plans, or otherwise acting in accomplishment of the purposes of this chapter.

§ 8566. Expenditures

The Governor is empowered to expend any appropriation for support of the California Emergency Services Act to carry out the provisions of this chapter.

§ 8567. Orders and regulations

(a) The Governor may make, amend, and rescind orders and regulations necessary to carry out the provisions of this chapter. The orders and regulations shall have the force and effect of law. Due consideration shall be given to the plans of the federal government in preparing the orders and regulations. The Governor shall cause widespread publicity and notice to be given to all such orders and regulations, or amendments or rescissions thereof.

(b) Orders and regulations, or amendments or rescissions thereof, issued during a state of war emergency or state of emergency shall be in writing and shall take effect immediately upon their issuance. Whenever the state of war emergency or state of emergency has been terminated, the orders and regulations shall be of no further force or effect.

(c) All orders and regulations relating to the use of funds pursuant to Article 16 (commencing with Section 8645) shall be prepared in advance of any commitment or expenditure of the funds. Other orders and regulations needed to carry out the provisions of this chapter shall, whenever practicable, be prepared in advance of a state of war emergency or state of emergency.

(d) All orders and regulations made in advance of a state of war emergency or state of emergency shall be in writing, shall be

exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2. As soon thereafter as possible they shall be filed in the office of the Secretary of State and with the county clerk of each county.

§ 8568. Administration of State Emergency Plan by each political subdivision

The State Emergency Plan shall be in effect in each political subdivision of the state, and the governing body of each political subdivision shall take such action as may be necessary to carry out the provisions thereof.

§ 8569. Coordination of State Emergency Plan

The Governor shall coordinate the State Emergency Plan and those programs necessary for the mitigation of the effects of an emergency in this state; and he shall coordinate the preparation of plans and programs for the mitigation of the effects of an emergency by the political subdivisions of this state, such plans and programs to be integrated into and coordinated with the State Emergency Plan and the plans and programs of the federal government and of other states to the fullest possible extent.

§ 8570. Powers for mitigating of effects of emergency

The Governor may, in accordance with the State Emergency Plan and programs for the mitigation of the effects of an emergency in this state:

(a) Ascertain the requirements of the state or its political subdivisions for food, clothing, and other necessities of life in the event of an emergency.
(b) Plan for, procure, and pre-position supplies, medicines, materials, and equipment.

(c) Use and employ any of the property, services, and resources of the state as necessary to carry out the purposes of this chapter.
(d) Provide for the approval of local emergency plans.
(e) Provide for mobile support units.
(f) Provide for use of public airports.
(g) Institute training programs and public information programs.
(h) Make surveys of the industries, resources, and facilities, both public and private, within the state, as are necessary to carry out the purposes of this chapter.
(i) Plan for the use of any private facilities, services, and property and, when necessary, and when in fact used, provide for payment for that use under the terms and conditions as may be agreed upon.
(j) Take all other preparatory steps, including the partial or full mobilization of emergency organizations in advance of an actual emergency; and order those test exercises needed to insure the furnishing of adequately trained and equipped personnel in time of need.

§ 8570.3. Update of State Emergency Plan; best practices to mobilize and evacuate people with disabilities

On or before July 31, 2015, the Office of Emergency Services shall update the State Emergency Plan to include best practices for local governments and nongovernmental entities to use to mobilize and evacuate people with disabilities and others with access and functional needs during an emergency or natural disaster.

§ 8570.5. Agriculture-related disasters; guidance document of State Emergency Plan

The Office of Emergency Services shall develop a guidance document to the State Emergency Plan to specify the response of the state and its political subdivisions to agriculture-related disasters. This document shall be completed by January 2002, and updated by

January 2009, and shall include, but not be limited to, all of the following:

(a) The roles and responsibilities of the county agricultural commissioners.
(b) The roles and responsibilities of the Department of Agriculture and other relevant state agencies that are involved in the response to agriculture-related disasters.
(c) Coordination of initial and ongoing crop damage assessments.
(d) Disaster assistance between the time of the request for a federal disaster declaration and issuance of a federal declaration.
(e) State assistance available if a requested federal declaration is not issued.
(f) State assistance under a United States Department of Agriculture designation rather than a federal declaration.
(g) State assistance for long-term unemployment in areas with high unemployment rates prior to an emergency.
(h) Provision for the removal and elimination of extraordinary numbers of dead livestock for purposes of protecting public health and safety.
(i) Strategies to assist in the development of an integrated and coordinated response by community-based organizations to the victims of agriculture-related disasters.
(j) Procedures for the decontamination of individuals who have been or may have been exposed to hazardous materials, which may vary depending on the hazards posed by a particular hazardous material. The report shall specify that individuals shall be assisted in a humanitarian manner.
(k) Integration of various local and state emergency response plans, including, but not limited to, plans that relate to hazardous materials, oil spills, public health emergencies, and general disasters.

§ 8571. Suspension of statutes, rules and regulations

During a state of war emergency or a state of emergency the Governor may suspend any regulatory statute, or statute prescribing the procedure for conduct of state business, or the orders, rules, or regulations of any state agency, including subdivision (d) of Section 1253 of the Unemployment Insurance Code, where the Governor determines and declares that strict compliance with any statute, order, rule, or regulation would in any way prevent, hinder, or delay the mitigation of the effects of the emergency.

§ 8571.5. Seizure or confiscation of firearms or ammunition not authorized; disarming of firearm for protection of officer; returning firearm

Nothing in this article shall authorize the seizure or confiscation of any firearm or ammunition from any individual who is lawfully carrying or possessing the firearm or ammunition, or authorize any order to that effect, provided however, that a peace officer who is acting in his or her official capacity may disarm an individual if the officer reasonably believes it is immediately necessary for the protection of the officer or another individual. The officer shall return the firearm to the individual before discharging the individual, unless the officer arrests that individual or seizes the firearm as evidence pursuant to an investigation for the commission of a crime.

§ 8572. Commandeering private property or personnel

In the exercise of the emergency powers hereby vested in him during a state of war emergency or state of emergency, the Governor is authorized to commandeer or utilize any private property or personnel deemed by him necessary in carrying out the responsibilities hereby vested in him as Chief Executive of the state and the state shall pay the reasonable value thereof.

Notwithstanding the provisions of this section, the Governor is not authorized to commandeer any newspaper, newspaper wire service,

or radio or television station, but may, during a state of war emergency or state of emergency, and if no other means of communication are available, utilize any news wire services, and the state shall pay the reasonable value of such use. In so utilizing any such facilities, the Governor shall interfere as little as possible with their use for the transmission of news.

§ 8573. Cooperation with federal officials and agencies

The Governor may cooperate with the President and the heads of the armed forces and other agencies of the United States, and with officers and agencies of other states, on matters pertaining to emergencies; and he may take any steps he deems necessary to put into effect any rules, regulations, or suggestions made by such persons or agencies.

§ 8574. Chapter not to limit constitutional or statutory powers

None of the provisions of this chapter shall limit, modify, or abridge the powers vested in the Governor under the Constitution or statutes of the state by proclamation, to declare any county, city and county, or city, or any portion thereof to be in a state of insurrection or to proclaim the existence of martial law and to exercise all the powers vested in him thereunder independent of, or in conjunction with, any of the provisions of this chapter.

Article 3.5 – Oil Spills

§ 8574.1. California oil spill contingency plan; establishment by Governor

In addition to any other authority conferred upon the Governor by this chapter, the Governor shall establish a California oil spill contingency plan pursuant to this article.

§ 8574.2. Provision for integrated and effective state procedure to combat oil spills

Any plan established pursuant to this article shall provide for an integrated and effective state procedure to combat the results of major oil spills within the state. Such plan shall provide for specified state agencies to implement the plan.

§ 8574.3. State agencies with authority to implement plan; volunteer workers

State agencies granted authority to implement a plan adopted under this article may use volunteer workers. The volunteers shall be deemed employees of the state for the purpose of workers' compensation under Article 2 (commencing with Section 3350) of Chapter 2 of Part 1 of Division 4 of the Labor Code. Any payments for workers' compensation under this section shall be made from the account specified in Section 8574.4.

§ 8574.4. State expenditures; accounting; payments; liability of party responsible for spill

State agencies designated to implement the contingency plan shall account for all state expenditures made under the plan with respect to each oil spill. Expenditures accounted for under this section from an oil spill in waters of the state shall be paid from the Oil Spill Response Trust Fund created pursuant to Section 8670.46. All other expenditures accounted for under this section shall be paid from the State Water Pollution Cleanup and Abatement Account in the State Water Quality Control Fund provided for in Article 3 (commencing with Section 13440) of Chapter 6 of Division 7 of the Water Code. If the party responsible for the spill is identified, that party shall be liable for the expenditures accounted for under this section, in addition to any other liability which may be provided for by law, in an action brought by the Attorney General. The proceeds from any such

action for a spill in marine waters shall be paid into the Oil Spill Response Trust Fund.

§ 8574.7. Marine oil spills; inclusion in contingency plan; elements

The Governor shall require the administrator, not in conflict with the National Contingency Plan, to amend the California oil spill contingency plan to provide for the best achievable protection of the waters of the state. "Administrator" for purposes of this section means the administrator appointed by the Governor pursuant to Section 8670.4. The plan shall consist of all of the following elements:

(a) A state response element that specifies the hierarchy for state and local agency response to an oil spill. The element shall define the necessary tasks for oversight and control of cleanup and removal activities associated with an oil spill and shall specify each agency's particular responsibility in carrying out these tasks. The element shall also include an organizational chart of the state oil spill response organization and a definition of the resources, capabilities, and response assignments of each agency involved in cleanup and removal actions in an oil spill.

(b) A regional and local planning element that shall provide the framework for the involvement of regional and local agencies in the state effort to respond to an oil spill, and shall ensure the effective and efficient use of regional and local resources in all of the following:

    (1) Traffic and crowd control.
    (2) Firefighting.
    (3) Boating traffic control.
    (4) Radio and communications control and provision of access to equipment.
    (5) Identification and use of available local and regional equipment or other resources suitable for use in cleanup and removal actions.

(6) Identification of private and volunteer resources or personnel with special or unique capabilities relating to marine oil spill cleanup and removal actions.
(7) Provision of medical emergency services.
(8) Consideration of the identification and use of private working craft and mariners, including commercial fishing vessels and licensed commercial fishing men and women, in containment, cleanup, and removal actions

(c) A coastal protection element that establishes the state standards for coastline protection. The administrator, in consultation with the Coast Guard and Navy and the shipping industry, shall develop criteria for coastline protection. If appropriate, the administrator shall consult with representatives from the States of Alaska, Washington, and Oregon, the Province of British Columbia in Canada, and the Republic of Mexico. The criteria shall designate at least all of the following:
(1) Appropriate shipping lanes and navigational aids for tankers, barges, and other commercial vessels to reduce the likelihood of collisions between tankers, barges, and other commercial vessels. Designated shipping lanes shall be located off the coastline at a distance sufficient to significantly reduce the likelihood that disabled vessels will run aground along the coast of the state.
(2) Ship position reporting and communications requirements.
(3) Required predeployment of protective equipment for sensitive environmental areas along the coastline.
(4) Required emergency response vessels that are capable of preventing disabled tankers from running aground.

(5) Required emergency response vessels that are capable of commencing oil cleanup operations before spilled oil can reach the shoreline.

(6) An expedited decision making process for dispersant use in coastal waters. Prior to adoption of the process, the administrator shall ensure that a comprehensive testing program is carried out for any dispersant proposed for use in California marine waters. The testing program shall evaluate toxicity and effectiveness of the dispersants.

(7) Required rehabilitation facilities for wildlife injured by spilled oil.

(8) An assessment of how activities that usually require a permit from a state or local agency may be expedited or issued by the administrator in the event of an oil spill.

(d) An environmentally and ecologically sensitive areas element that shall provide the framework for prioritizing and ensuring the protection of environmentally and ecologically sensitive areas. The environmentally and ecologically sensitive areas element shall be developed by the administrator, in conjunction with appropriate local agencies, and shall include all of the following;

(1) Identification and prioritization of environmentally and ecologically sensitive areas in state waters and along the coast. Identification and prioritization of environmentally and ecologically sensitive areas shall not prevent or excuse the use of all reasonably available containment and cleanup resources from being used to protect every environmentally and ecologically sensitive area possible. Environmentally and ecologically sensitive areas shall be prioritized through the evaluation of criteria, including, but not limited to, all of the following:

(A) Risk of contamination by oil after a spill.

(B) Environmental, ecological, recreational, and economic importance.

(C) Risk of public exposure should the area be contaminated.

(2) Regional maps depicting environmentally and ecologically sensitive areas in state waters or along the coast that shall be distributed to facilities and local and state agencies. The maps shall designate those areas that have particularly high priority for protection against oil spills.

(3) A plan for protection actions required to be taken in the event of an oil spill for each of the environmentally and ecologically sensitive areas and protection priorities for the first 24 to 48 hours after an oil spill shall be specified.

(4) The location of available response equipment and the availability of trained personnel to deploy the equipment to protect the priority environmentally and ecologically sensitive areas.

(5) A program for systematically testing and revising, if necessary, protection strategies for each of the priority environmentally and ecologically sensitive areas.

(6) Any recommendations for action that cannot be financed or implemented pursuant to existing authority of the administrator, which shall also be reported to the Legislature along with recommendations for financing those actions.

(e) A reporting element that requires the reporting of oil spills of any amount of oil in or on state waters.

§ 8574.8. Revised oil spill contingency plans

(a) The administrator shall submit to the Governor and the Legislature an amended California oil spill contingency plan required, pursuant to Section 8574.7, by January 1, 1993. The administrator shall thereafter submit revised plans every three years, until the amended plan required pursuant to subdivision (b) is submitted.

(b) The administrator shall submit to the Governor and the Legislature an amended California oil spill contingency plan required pursuant to Section 8574.7, by January 1, 2017, that addresses marine and inland oil spills. The administrator shall thereafter submit revised plans every three years.

Article 3.7 – Toxic Disasters

§ 8574.16. State contingency plan

The Governor shall establish a state toxic disaster contingency plan pursuant to this article.

§ 8574.17. Integrated and effective state procedure; highway toxic disasters; notice; reports

(a)

(1) A state toxic disaster contingency plan established pursuant to this article shall provide for an integrated and effective state procedure to respond to the occurrence of toxic disasters within the state. The plan shall provide for the designation of a lead agency to direct strategy to ameliorate the effects of a toxic disaster, for specified state agencies to implement the plan, for interagency coordination of the training conducted by state agencies pursuant to the plan, and for on-scene coordination of response actions.

(2) Notwithstanding any provision of the plan, the authority for the management of the scene of an on-highway toxic spill or disaster shall be vested in the appropriate law enforcement agency having primary traffic investigative authority on the highway where the incident occurs or in a local fire protection agency as provided by Section 2454 of the Vehicle Code. During the preparation of the toxic disaster contingency plan, the Office of Emergency Services shall adopt the recommendations of the Department of the California Highway Patrol in developing response and on-scene procedures for toxic disasters which occur upon the highways, based upon previous studies for such procedures, insofar as the procedures are not inconsistent with the overall plan for initial notification of toxic disasters by public agencies and for after-incident evaluation and reporting.

(b) The Office of Emergency Services shall establish a central notification and reporting system to facilitate operation of the state toxic disaster response procedures designated by the toxic disaster contingency plan.

§ 8574.18. "Toxic disaster" and "toxic substances": defined; listing of toxic substances

(a) For purposes of this article, a "toxic disaster" means an occurrence where toxic substances are dispersed in the environment in such a manner as to cause, or potentially cause, injury or death to a significant number of persons or significant harm to the natural environment, as determined by the implementing state agency, through direct or indirect contact with such toxic substances.

(b) The toxic disaster contingency plan shall provide a listing of the kinds of toxic substances which pose potential hazards to

human health and the environment and which could be the subject of a toxic disaster.

For purposes of this article, "toxic substances" means, for highway transportation purposes, substances and materials designated as hazardous by the United States Department of Transportation for purposes of Parts 172, 173, and 177 of Title 49 of the Code of Federal Regulations.

Article 3.8 – Hazardous Substances Emergency Response Training

§ 8574.19. Legislative findings, declarations and intent; "program" defined

(a) The Legislature hereby finds and declares that, in order to protect the public health and safety and the environment, and to reduce personal injury and property loss resulting from the sudden release of hazardous substances into the environment, it is necessary to establish a single, coordinated, and standardized hazardous substances incident response training and education plan for firefighters and law enforcement, emergency rescue, and environmental health personnel. A standardized hazardous substances incident response training and education program is necessary to ensure a coordinated emergency response capability throughout the state, and to eliminate duplicative and inconsistent hazardous substances emergency response training and education programs.

(b) In enacting this article, the Legislature recognizes that it is necessary to designate a single state agency to be responsible for the development of minimum standards relative to course content and subject matter for training and education of hazardous substance incident response personnel in order to avoid duplication of effort and inconsistent applications of safety procedures and protocols.

The Legislature does not intend, by enacting this article, to preempt or nullify any hazardous substance incident response procedures and protocols which take into account existing conditions peculiar to a locality or region.

(c) For purposes of this article, "program" means the California Hazardous Substances Incident Response Training and Education Program established pursuant to Section 8574.20.

§ 8574.20. Training and education program established; implementation of program

The Office of Emergency Services shall manage the California Hazardous Substances Incident Response Training and Education Program to provide approved classes in hazardous substance response, taught by trained instructors, and to certify students who have completed these classes. To carry out this program, the Office of Emergency Services shall do all of the following:

(a) Adopt regulations necessary to implement the program.

(b) Establish a training and education program by developing the curriculum to be used in the program in colleges, academies, the California Specialized Training Institute, and other educational institutions, as specified in Section 8574.21.

(c) Establish recommended minimum standards for training emergency response personnel and instructors, including, but not limited to, fire, police, and environmental health personnel.

(d) Make available a training and education program in the use of hazardous substances emergency rescue, safety, and monitoring equipment, on a voluntary basis, at the California Specialized Training Institute.

(e) Train and certify instructors at the California Specialized Training Institute according to standards and procedures developed by the curriculum development advisory committee, as specified in Section 8588.10.

(f) Approve classes, as meeting the requirements of the program, if the classes meet the curriculum developed by the Office of Emergency Services pursuant to Section 8574.21 and the instructor received training and certification at the California Specialized Training Institute, as specified in subdivision (e).

(g) Certify students who have successfully completed a class approved as meeting the requirements of the program.

(h) Review and revise, as necessary, the program.

(i) Establish and collect admission fees and other fees that may be necessary to be charged for advanced or specialized training given at the California Specialized Training Institute. These fees shall be used to offset costs incurred pursuant to this article.

§ 8574.21. Curriculum and instructor training; standards; curriculum development advisory committee

(a) The Office of Emergency Services shall develop the curriculum to be used in classes that meet the program requirements and shall adopt standards and procedures for training instructors at the California Specialized Training Institute.

(b) The curriculum for the training and education program established pursuant to this article shall include all of the following aspects of hazardous substance incident response actions:

  (1) First responder training.

  (2) On-scene manager training.

  (3) Hazardous substance incident response training for management personnel.

  (4) Hazardous materials specialist training that equals or exceeds the standards of the National Fire Protection Association.

  (5) Environmental monitoring.

(6) Hazardous substance release investigations.
(7) Hazardous substance incident response activities at ports.

(c) The curriculum development advisory committee described in Section 8588.10 shall advise the Office of Emergency Services on the development of course curricula and the standards and procedures specified in subdivision (a). In advising the Office of Emergency Services, the committee shall do the following:
(1) Assist, and cooperate with, representatives of the Board of Governors of the California Community Colleges in developing the course curricula.
(2) Ensure that the curriculum developed pursuant to this section is accredited by the State Board of Fire Services.
(3) Define equivalent training and experience considered as meeting the initial training requirements as specified in subdivision (a) that existing employees might have already received from actual experience or formal education undertaken, and which would qualify as meeting the requirements established pursuant to this article.

(d) This article does not affect the authority of the State Fire Marshal granted pursuant to Section 13142.4 or 13159 of the Health and Safety Code.

(e) Upon completion of instructor training and certification pursuant to subdivision (e) of Section 8574.20 by any employee of the Department of the California Highway Patrol, the Commissioner of the California Highway Patrol may deem any training programs taught by that employee to be equivalent to any training program meeting the requirements established pursuant to this article.

§ 8574.22. Professional and clerical staff

The Office of Emergency Services may hire professional and clerical staff pursuant to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2). However, any person employed pursuant to this section shall be employed only at the California Specialized Training Institute.

Article 4 –State Disaster Council

§ 8575. Office of Emergency Services; service as State Disaster Council

For the purposes of the California Disaster and Civil Defense Mutual Aid Agreement, the Office of Emergency Services will serve as the State Disaster Council.

Article 4.5 – Urban Heavy Rescue Act

§ 8584. Short title

This article shall be known and may be cited as the Urban Heavy Rescue Act of 1988.

§ 8584.1. Legislative intent; acquisition and maintenance of units and gear by fire and rescue division; positioning and availability; personnel training

(a) It is the intent of the Legislature that the state have an urban heavy rescue capability in the event of a major earthquake. It is also the intent of the Legislature that the Office of Emergency Services and the State Fire Marshal's Office pursue the necessary funding to carry out this article through the normal budget process.

(b) The Fire and Rescue Division of the Office of Emergency Services shall acquire and maintain urban heavy rescue units and transportable caches of search and rescue gear, including hand tools and protective gear. The division shall

position the units and caches to ensure a rapid response of personnel and equipment anywhere in the state, and ensure that a unit will be available on the scene within one hour of a major earthquake.

(c) The State Fire Marshal's Office shall coordinate the training of personnel in the use of the units and equipment in cooperation with the Office of Emergency Services.

Article 5 – The Office of Emergency Services

§ 8585. Office of Emergency Services; establishment; duties and powers

(a)

(1) There is in state government, within the office of the Governor, the Office of Emergency Services. The Office of Emergency Services shall be under the supervision of the Director of Emergency Services, who shall have all rights and powers of a head of an office as provided by this code, and shall be referred to as the Director of Emergency Services.

(2) Unless the context clearly requires otherwise, whenever the term "California Emergency Management Agency" appears in any statute, regulation, or contract, or in any other code, it shall be construed to refer to the Office of Emergency Services, and whenever the term "Secretary of Emergency Management" or the "Secretary of the Emergency Management Agency" appears in statute, regulation, or contract, or in any other code, it shall be construed to refer to the Director of Emergency Services.

(3) Unless the context clearly requires otherwise, whenever the term "Director of Homeland Security" or "Office of Homeland Security" appears in any statute, regulation, or contract, or in any other code,

it shall be construed to refer to the Office of Emergency Services, and whenever the term "Director of Homeland Security" or "Director of the Office of Homeland Security" appears in any statute, regulation, or contract, or in any other code, it shall be construed to refer to the Director or Emergency Services.

(b)

(1) The Office of Emergency Services and the Director of Emergency Services shall succeed to and are vested with all the duties, powers, purposes, responsibilities, and jurisdiction vested in the California Emergency Management Agency and the Secretary of Emergency Management, respectively.

(2) The Office of Emergency Services and the Director of Emergency Services shall succeed to and are vested with all the duties, powers, purposes, responsibilities, and jurisdiction vested in the Office of Homeland Security and the Director of Homeland Security, respectively.

(c) The Office of Emergency Services shall be considered a law enforcement organization as required for receipt of criminal intelligence information pursuant to subdivision (f) of Section 6254 of the Government Code by persons employed within the office whose duties and responsibilities require the authority to access criminal intelligence information.

(d) Persons employed by the Office of Emergency Services whose duties and responsibilities require the authority to access criminal intelligence information shall be furnished state summary criminal history information as described in Section 11105 of the Penal Code, if needed in the course of their duties.

(e) The Office of Emergency Services shall be responsible for the state's emergency and disaster response services for natural, technological, or manmade disasters and emergencies,

including responsibility for activities necessary to prevent, respond to, recover from, and mitigate the effects of emergencies and disasters to people and property.

(f) Notwithstanding any other provision of law, nothing in this section shall authorize an employee of the Office of Emergency Services to access criminal intelligence information under subdivision (c) or (d) for the purpose of determining eligibility for, or providing access to, disaster-related assistance and services.

§ 8585.05. Definitions

Unless the context otherwise requires, for purpose of this article, the following definitions apply:

(a) "Agency" or "office" means the Office of Emergency Services.

(b) "California Emergency Management Agency" means the Office of Emergency Services.

(c) "Director" or "Secretary" means the Director of Emergency Services.

§ 8585.1. Director of Emergency Services; appointment; salary; deputy director; positions existing in predecessor agencies

(a) The director shall be appointed by, and hold office at the pleasure of, the Governor. The appointment of the director is subject to confirmation by the Senate. The director shall coordinate all state disaster response, emergency planning, emergency preparedness, disaster recovery, disaster mitigation, and homeland security activities.

(b) The director shall receive an annual salary as set forth in Section 11552.

(c) The Governor may appoint a deputy director of the office. The deputy director shall hold office at the pleasure of the Governor.

(d) All positions exempt from civil service that existed in the predecessor agencies shall be transferred to the office.

(e) Neither state nor federal funds may be expended to pay the salary or benefits of any deputy or employee who may be appointed by the director or deputy director pursuant to Section 4 of Article VII of the California Constitution.

§ 8585.2. Civil service employee transfer rights and status; property related to functions of agency; funds; transfer to office

(a) All employees serving in state civil service, other than temporary employees, who are engaged in the performance of functions transferred to the office or engaged in the administration of law, the administration of which was vested in the former California Emergency Management Agency, are transferred to the office. The status, positions, and rights of those persons shall not be affected by their transfer and shall continue to be retained by them pursuant to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5), except as to positions the duties of which are vested in a position exempt from civil service. The personnel records of all transferred employees shall be transferred to the office.

(b) The property of any agency or department related to functions formerly transferred to, or vested in the California Emergency Management Agency, is transferred to the office. If any doubt arises as to where that property is transferred, the Department of General Services shall determine where the property is transferred.

(c) All unexpended balances of appropriations and other funds available for use in connection with any function or the

administration of any law transferred to the California Emergency Management Agency shall be transferred to the office for use for the purpose for which the appropriation was originally made or the funds were originally available. If there is any doubt as to where those balances and funds are transferred, the Department of Finance shall determine where the balances and funds are transferred.

§ 8585.5. Classes of disaster service workers; determination of class; scope of duties

The office shall establish by rule and regulation various classes of disaster service workers and the scope of the duties of each class. The office shall also adopt rules and regulations prescribing the manner in which disaster service workers of each class are to be registered. All of the rules and regulations shall be designed to facilitate the payment of workers' compensation.

§ 8585.7. Certification of accredited status of local disaster councils

The office may certify the accredited status of local disaster councils, subject to the requirements of Section 8612.

§ 8586. Assignment by Governor of powers and duties to Office of Emergency Services

The Governor shall assign all or part of his or her powers and duties under this chapter to the Office of Emergency Services.

§ 8587. Coordination by director of emergency operations; cooperation of state officers and agencies; delegation of powers by Governor

(a) During a state of war emergency, a state of emergency, or a local emergency, the director shall coordinate the emergency activities of all state agencies in connection with

that emergency, and every state agency and officer shall cooperate with the director in rendering all possible assistance in carrying out the provisions of this chapter.

(b) In addition to the powers designated in this section, the Governor may delegate any of the powers vested in him or her under this chapter to the director except the power to make, amend, and rescind orders and regulations, and the power to proclaim a state of emergency.

§ 8587.5. City research program to test effectiveness of installation of signal emitters and sensors in emergency response vehicles in reducing accidents and injuries; federal funding

(a) The Department of Transportation shall, in cooperation with interested cities with Traffic Signal Override Systems, apply to the United States Secretary of Transportation for federal funding to conduct a research program in one or more cities to test the effectiveness of the installation of signal emitters and sensors in emergency response vehicles in reducing accidents and injuries.

(b) The project shall study the reduction in accidents and injuries involving emergency response vehicles in the program areas, shall, if possible, assess any reduction in response times by emergency response vehicles in the program areas, and may study other valuable data as deemed appropriate.

(c) The application shall seek full federal funding for the project, including the evaluation component. If the United States Secretary of Transportation requires a nonfederal share of funding, the participating local governments shall pay this share equally.

(d) The department shall apply for federal funding within six months of the effective date of this section unless good cause exists to apply later or not to apply.

§ 8587.7. Schools; nonstructural earthquake hazards

(a) The Office of Emergency Services, in cooperation with the State Department of Education, the Department of General Services, and the Seismic Safety Commission, shall develop an educational pamphlet for use by grades Kindergarten to 14 personnel to identify and mitigate the risks posed by nonstructural earthquake hazards.

(b) The office shall print and distribute the pamphlet to the governing board of each school district and community college district in the state, along with a copy of the current edition of the office's school emergency response publication. The office shall also make the pamphlet or the current edition of the office's school emergency response publication available to a private elementary or secondary school upon request.

(c) The office, as soon as feasible, shall make the pamphlet and the current edition of the office's school emergency response publication available by electronic means, including, but not limited to, the Internet.

§ 8587.8. Comprehensive statewide earthquake early warning system; features; compliance review; funding

(a) The Office of Emergency Services, in collaboration with the California Institute of Technology (Caltech), the California Geological Survey, The University of California, the United States Geological Survey, the Alfred E. Alquist Seismic Safety Commission, and other stakeholders, shall develop a comprehensive statewide earthquake early warning system in California through a public-private partnership, which shall include, but not be limited to, the following features:

(1) Installation of field sensors.

(2) Improvement of field telemetry.

(3) Construction and testing of central processing and notification centers.

(4) Establishment of warning notification distribution paths to the public.

(5) Integration of earthquake early warning education with general earthquake preparedness efforts.

(b) In consultation with stakeholders, the Office of Emergency Services shall develop an approval mechanism to review compliance with earthquake early warning standards as they are developed. The development of the approval mechanism shall include input from a broad representation of earthquake early warning stakeholders. The approval mechanism shall accomplish the following:

(1) Ensure the standards are appropriate.

(2) Determine the degree to which the standards apply to providers and components of the system.

(3) Determine methods to ensure compliance with the standards.

(4) Determine requirements for participation in the system.

(c) The Office of Emergency Services shall identify funding for the system described in subdivision (a) through single or multiple sources of revenue that shall be limited to federal funds, funds from revenue bonds, local funds, and private grants. The Office of Emergency Services shall not identify the General Fund as a funding source for the purposes of establishing the system described in subdivision (a), beyond the components or programs that are currently funded.

(d) Subdivisions (a) and (b) shall not become operative until the Office of Emergency Services identifies funding pursuant to subdivision (c).

(e)

(1) If funding is not identified pursuant to subdivision (c) by January 1, 2016, this section is repealed unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

(2) The Office of Emergency Services shall file with the Secretary of State its determination that funding was not identified pursuant to subdivision (c) by January 1, 2016.

§ 8588. Proclamation of state of emergency; gubernatorial ratification or termination

Whenever conditions exist within any region or regions of the state that warrant the proclamation by the Governor of a state of emergency and the Governor has not acted under the provisions of Section 8625, by reason of the fact that the Governor has been inaccessible, the director may proclaim the existence of a state of emergency in the name of the Governor as to any region or regions of the state. Whenever the has so proclaimed a state of emergency, that action shall be ratified by the Governor as soon as the Governor becomes accessible, and in the event the Governor does not ratify the action, the Governor shall immediately terminate the state of emergency as proclaimed by the director.

§ 8588.1. Voluntary participation of private businesses and nonprofit organizations in emergency preparedness programs

(a) The Legislature finds and declares that this state can only truly be prepared for the next disaster if the public and private sector collaborate.

(b) The office may, as appropriate, include private businesses and nonprofit organizations within its responsibilities to prepare the state for disasters under this chapter. All participation by businesses and nonprofit associations in this program shall be voluntary.

(c) The office may do any of the following:

(1) Provide guidance to business and nonprofit organizations representing business interests on how to integrate private sector emergency

preparedness measures into governmental disaster planning programs.

(2) Conduct outreach programs to encourage business to work with governments and community associations to better prepare the community and their employees to survive and recover from disasters.

(3) Develop systems so that government, businesses, and employees can exchange information during disasters to protect themselves and their families.

(4) Develop programs so that businesses and government can work cooperatively to advance technology that will protect the public during disasters.

(d) The office may share facilities and systems for the purposes of subdivision (b) with the private sector to the extent the costs for their use are reimbursed by the private sector.

(e) Proprietary information or information protected by state or federal privacy laws shall not be disclosed under this program.

(f) Notwithstanding Section 11005, donations and private grants may be accepted by the office and shall not be subject to Section 11005.

(g) The Disaster Resistant Communities Fund is hereby created in the State Treasury. Upon appropriation by the Legislature, the office may expend the money in the account for the costs associated within this section.

(h) This section shall be implemented only to the extent that in-kind contributions or donations are received from the private sector, or grant funds are received from the federal government, for these purposes.

§ 8588.2. Statewide registry of private businesses and nonprofit organizations in donation of goods and services

(a) The office may establish a statewide registry of private businesses and nonprofit organizations that are interested in donating services, goods, labor, equipment, resources, or dispensaries or other facilities to further the purposes of Section 8588.1.

(b) If the office establishes a statewide registry pursuant to subdivision (a), the office shall create and implement protocols and procedures for inclusion onto the statewide registry that do, but are not limited to, all of the following:

(1) Establish eligibility requirements for a private business or nonprofit organization to be included on the statewide registry.

(2) Require the services, goods, labor, equipment, resources, or dispensaries or other facilities donated by a private business or nonprofit organization included on the statewide registry to be provided at no cost to state governmental entities or the victims of emergencies and disasters.

(3) Require the services, goods, labor, equipment, resources, or dispensaries or other facilities donated by a private business or nonprofit organization included on the statewide registry to be safely collected, maintained, and managed.

(4) Require that federal, state, and local governmental entities and nonprofit organizations that are engaged in assisting communities prepare for, respond to, or recover from emergencies and disasters have access to the statewide registry.

(c) A private business or nonprofit organization included on the statewide registry shall reasonably determine all of the following:

(1) Donated services, goods, labor, equipment, resources, or dispensaries or other facilities comply with all applicable federal and state safety laws and licensing requirements.
(2) Donated services, goods, labor, equipment, resources, or dispensaries or other facilities have not been altered, misbranded, or stored under conditions contrary to the standards set forth under federal or state laws or by the product manufacturer.
(3) Donated medicine shall be unopened, in tamper-resistant packaging or modified unit dose containers that meet United States Pharmacopeia standards, and show lot numbers and expiration dates. Medicine that does not meet these standards shall not be donated.

§ 8588.3. Legislative findings and declarations

(a) The Legislature finds and declares that it is the responsibility of the State of California to protect and preserve the right of its citizens to a safe and peaceful existence. To accomplish this goal and to minimize the destructive impact of disasters and other massive emergencies, the actions of numerous public agencies must be coordinated to effectively manage all four phases of emergency activity: preparedness, mitigation, response, and recovery. In order to ensure that the state's response to disasters or massive emergencies is effective, specialized training is necessary.
(b) The California Specialized Training Institute of the office of the Adjutant General is hereby transferred to the Office of Emergency Services. The institute shall assist the Governor in providing, pursuant to subdivision (f) of Section 8570, training to state agencies, cities, and counties in their planning and preparation for disasters.

(c) The director may solicit, receive, and administer funds or property from federal, state, or other public agency sources for the support and operation of the institute.

(d) The director may solicit and receive firearms, other weaponry, explosive materials, chemical agents, and other items confiscated by or otherwise in the possession of law enforcement officers as donations to the institute if he or she deems them to be appropriate for the institute's training purposes.

(e) Any moneys received by the director from charges or fees imposed in connection with the operation of the institute shall be deposited in the General Fund.

§ 8588.5. Disaster search dog teams; training; recruitment; reimbursement

To promote an increase in the number of trained disaster search dog teams, the office shall do all of the following:

(a) Provide instruction to California disaster dog trainers in Swiss techniques.

(b) Work to secure authorization to conduct training for disaster search dog teams at existing facilities operated by the California National Guard and the Department of Transportation on the grounds of Camp San Luis Obispo.

(c) Engage in recruiting activities for the purpose of increasing the number of disaster search dog teams in southern California.

(d) Reimburse disaster search dog handlers and instructors for the costs of their travel and that of their dogs to training facilities within California.

§ 8588.7. Mobile communication translators for mutual-aid emergency response agencies

(a) The Office of Emergency Services shall procure mobile communication translators to enable mutual-aid emergency response agencies to communicate effectively while operating on incompatible frequencies.

(b) Translators shall be located in the San Francisco Bay Area and the Los Angeles metropolitan area, made ready for use by local public safety officials by the Office of Emergency Services, and provided to the appropriate state-established mutual-aid region pursuant to Section 8600.

(c) The Office of Emergency Services shall implement this section only to the extent that funds are appropriated to the office for this purpose in the Budget Act or in other legislation.

§ 8588.10. Curriculum Development Advisory Committee; establishment; committee membership

(a) The director shall establish a Curriculum Development Advisory Committee to advise the office on the development of course curricula, as specified by the director.

(b) The committee shall be chaired by the director, who will appoint members as appropriate. In appointing members to the committee, the director shall include representatives from the following:

(1) State public safety, health, first responder, and emergency services departments or agencies, as deemed appropriate by the director.

(2) Local first responder agencies.

(3) Local public safety agencies.

(4) Nonprofit organizations, as deemed appropriate by the director.

(5) Any other state, local, tribal, or nongovernmental organization determined by the director to be appropriate.

(c) The committee shall consult with the Commission on Peace Officer Standards and training.

§ 8588.11. Development of fire specific course of instruction on responsibilities of first responders to terrorism incidents; contents and criteria of course; contract for development; training for consequence management

(a) The office shall contract with the California Fire Fighter Joint Apprenticeship Program to develop a fire service specific course of instruction on the responsibilities of first responders to terrorism incidents. The course shall include the criteria for the curriculum content recommended by the Curriculum Development Advisory Committee established pursuant to Section 8588.10 to address the training needs of both of the following:
   (1) Firefighters in conformance with the standards established by the State Fire Marshal.
   (2) Paramedics and other emergency medical services fire personnel in conformance with the standards established by the Emergency Medical Services Authority.

(b) The course of instruction shall be developed in consultation with individuals knowledgeable about consequence management that addresses the topics of containing and mitigating the impact of a terrorist incident, including, but not limited to, a terrorist act using hazardous materials, as well as weapons of mass destruction, including any chemical warfare agent, weaponized biological agent, or nuclear or radiological agent, as those terms are defined in Section 11417 of the Penal Code, by techniques including, but not limited to, rescue, firefighting, casualty treatment, and hazardous materials response and recovery.

(c) The contract shall provide for the delivery of training by the California Fire Fighter Joint Apprenticeship Program through

reimbursement contracts with the state, local, and regional fire agencies who may, in turn, contract with educational institutions.

(d) To maximize the availability and delivery of training, the California Fire Fighter Joint Apprenticeship Program shall develop a course of instruction to train the trainers in the presentation of the first responder training of consequence management for fire service personnel.

§ 8588.12. Terrorism Awareness Curriculum; development and implementation for emergency response personnel and volunteers

(a) The Curriculum Development Advisory Committee, described in Section 8588.10, shall recommend criteria for terrorism awareness curriculum content to meet the training needs of state and local emergency response personnel and volunteers. In addition, the committee shall identify any additional training that would be useful and appropriate, but that may not be generally available in California, and shall make recommendations pertaining to the need for training oversight agencies for first responder disciplines to expedite their curriculum approval processes.

(b) Basic terrorism awareness training shall include, but not be limited to, the following:
   (1) An overview of conventional, chemical, biological, radiological, and nuclear threats.
   (2) Threat and hazard recognition, with an emphasis on ability to determine local vulnerabilities.
   (3) Understanding the structure and function of an incident command system.
   (4) Initial response actions, including preliminary assessment notifications, resource needs, and safety considerations.
   (5) Coordination with other emergency service first responders.
   (6) Gathering, verifying, assessing, and communicating incident information.

(7) Understanding mass casualty implications and decontamination requirements.
(8) Balancing lifesaving activities with evidence preservation.
(9) General awareness and additional training for each of the first responder categories specific to each discipline.

(c) (1) The Legislature finds and declares that training on terrorism awareness for first responders is of critical importance to the people of California.

(2) Every agency responsible for development of terrorism awareness training and every agency that employs or uses first responders shall give a high priority to the completion of that training.

§ 8588.15. Appointment of representatives from disabilities community to serve on Standardized Emergency Management Systems committees; disabled community needs

(a) The director shall appoint representatives from the disabilities community to serve on the evacuation, sheltering, communication, recovery, and other pertinent Standardized Emergency Management System committees, including one representative to the Technical Working Group. Representatives of the disabled community shall, to the extent practicable, be from the following groups:
    (1) Persons who are blind or visually impaired.
    (2) Persons with sensory or cognitive disabilities.
    (3) Persons with physical disabilities.

(b) Within the Standardized Emergency Management System structure, the director shall ensure, to the extent practicable, that the needs of the disabled community are met by ensuring all committee recommendations regarding preparedness, planning, and procedures relating to emergencies include the needs of people with disabilities.

(c) The director shall prepare and disseminate sample brochures and other relevant materials on preparedness, planning, and

procedures relating to emergency evacuations that include the needs of the disabled community, and shall work with nongovernmental associations and entities to make them available in accessible formats, including, but not limited to Braille, large print, and electronic media.

(d) The director and the State Fire Marshal's office shall seek research funding to assist in the development of new technologies and information systems that will assist in the evacuation of the groups designated in subdivision (a) during emergency and disaster situations.

(e) It is the intent of the Legislature for the purpose of implementing this section and to the extent permitted by federal law, that funds may be used from the Federal Trust Fund from funds received from the federal Department of Homeland Security for implementation of homeland security programs.

§ 8589. Use of all state and local fair properties

The Office of Emergency Services shall be permitted the use of state and local fair properties as conditions require.

§ 8589.1. State Computer Emergency Data Exchange Program (SCEDEP); establishment and responsibilities; participating agencies; duties

(a) The Office of Emergency Services shall plan to establish the State Computer Emergency Data Exchange Program (SCEDEP) which shall be responsible for collection and dissemination of essential data for emergency management.

(b) Participating agencies in SCEDEP shall include the Department of Water Resources, Department of Forestry and Fire Protection, Department of the California Highway Patrol, Department of Transportation, Emergency Medical Services Authority, the State Fire Marshal, State Department of Public Health, and any other state agency that collects

critical data and information that affects emergency response.

(c) It is the intent of the Legislature that the State Computer Emergency Data Exchange Program facilitate communication between state agencies and that emergency information be readily accessible to city and county emergency services offices. The Office of Emergency Services shall develop policies and procedures governing the collection and dissemination of emergency information and shall recommend or design the appropriate software and programs necessary for emergency communications with city and county emergency services offices.

§ 8589.2. Statewide plan for delivery of hazardous material mutual aid; "hazardous material emergency response" and "hazardous material" defined

(a) The Office of Emergency Services, in consultation with the California Highway Patrol and other state and local agencies, shall establish a statewide plan for the delivery of hazardous material mutual aid.

(b) Within 180 days of the adoption of a plan by the Office of Emergency Services, an entity shall only be considered a candidate for training or equipment funds provided by the state for hazardous material emergency response when that entity is a signatory to the plan established under this section.

(1) For the purpose of this chapter "hazardous material emergency response" includes, but is not limited to, assessment, isolation, stabilization, containment, removal, evacuation, neutralization, transportation, rescue procedures, or other activities necessary to ensure the public safety during a hazardous materials emergency.

(2) For the purpose of this chapter, "hazardous material" is defined as in Section 25501 of the Health and Safety Code.

(c) Entities providing hazardous material emergency response services under this chapter shall be exempt from the fee restriction of Section 6103.

§ 8589.3. Property within special flood hazard area; disclosure to prospective transferee; methods; agents

(a) A person who is acting as an agent for a transferor of real property that is located within a special flood hazard area (any type Zone "A" or "V") designated by the Federal Emergency Management Agency, or the transferor if he or she is acting without an agent, shall disclose to any prospective transferee the fact that the property is located within a special flood hazard area.

(b) Disclosure is required pursuant to this section only when one of the following conditions is met:

(1) The transferor, or the transferor's agent, has actual knowledge that the property is within a special flood hazard area.

(2) The local jurisdiction has compiled a list, by parcel, of properties that are within the special flood hazard area and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the parcel list.

(c) In all transactions that are subject to Section 1103 of the Civil Code, the disclosure required by subdivision (a) of this section shall be provided by either of the following means:

(1) The Local Option Real Estate Disclosure Statement as provided in Section 1102.6a of the Civil Code.

(2) The Natural Hazard Disclosure Statement as provided in Section1103.2 of the Civil Code.

(d) For purposes of the disclosure required by this section, the following persons shall not be deemed agents of the transferor:
  (1) Persons specified in Section 1103.11 of the Civil Code.
  (2) Persons acting under a power of sale regulated by Section 2924 of the Civil Code.

(e) Section 1103.13 of the Civil Code shall apply to this section.

(f) The specification of items for disclosure in this section does not limit or abridge any obligation for disclosure created by any other provision of law or that may exist in order to avoid fraud, misrepresentation, or deceit in the transfer transaction.

(g) A notice shall be posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the special flood hazard area map, any relevant Letters of Map Revision from the Federal Emergency Management Agency, and any parcel list compiled by the local jurisdiction.

§ 8589.4. Property within area of potential flooding; disclosure to prospective transferee; methods; conditions; agents

(a) A person who is acting as an agent for a transferor of real property that is located within an area of potential flooding shown on an inundation map designated pursuant to Section 8589.5, or the transferor if he or she is acting without an agent, shall disclose to any prospective transferee the fact that the property is located within an area of potential flooding.

(b) Disclosure is required pursuant to this section only when one of the following conditions is met:

(1) The transferor, or the transferor's agent, has actual knowledge that the property is within an inundation area.

(2) The local jurisdiction has compiled a list, by parcel, of properties that are within the inundation area and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the parcel list.

(c) In all transactions that are subject to Section 1103 of the Civil Code, the disclosure required by subdivision (a) of this section shall be provided by either of the following means:

(1) The Local Option Real Estate Disclosure Statement as provided in Section 1102.6a of the Civil Code.

(2) The Natural Hazard Disclosure Statement as provided in Section 1103.2 of the Civil Code.

(d) For purposes of the disclosure required by this section, the following persons shall not be deemed agents of the transferor:

(1) Persons specified in Section 1103.11 of the Civil Code.

(2) Persons acting under a power of sale regulated by Section 2924 of the Civil Code.

(e) Section 1103.13 of the Civil Code shall apply to this section.

(f) The specification of items for disclosure in this section does not limit or abridge any obligation for disclosure created by any other provision of law or that may exist in order to avoid fraud, misrepresentation, or deceit in the transfer transaction.

§ 8589.5. Inundation maps; filing by dam owners; designation of unsafe areas; emergency procedures; elements; waiver; notice

(a) Inundation maps showing the areas of potential flooding in the event of sudden or total failure of any dam, the partial or total failure of which the Office of Emergency Services determines, after consultation with the Department of Water Resources, would result in death or personal injury, shall be prepared and submitted as provided in this subdivision within six months after the effective date of this section, unless previously submitted or unless the time for submission of those maps is extended for reasonable cause by the Office of Emergency Services. The local governmental organization, utility, or other public or private owner of any dam so designated shall submit to the Office of Emergency Services one map that shall delineate potential flood zones that could result in the event of dam failure when the reservoir is at full capacity, or if the local governmental organization, utility, or other public or private owner of any dam shall determine it to be desirable, he or she shall submit three maps that shall delineate potential flood zones that could result in the event of dam failure when the reservoir is at full capacity, at median-storage level, and at normally low-storage level. After submission of copies of the map or maps, the Office of Emergency Services shall review the map or maps, and shall return any map or maps that do not meet the requirements of this subdivision, together with recommendations relative to conforming to the requirements. Maps rejected by the Office of Emergency Services shall be revised to conform to those recommendations and resubmitted. The Office of Emergency Services shall keep on file those maps that conform to the provisions of this subdivision. Maps approved pursuant to this subdivision shall also be kept on file with the Department of Water Resources. The owner of a dam shall submit final copies of those maps to the Office of Emergency Services that shall immediately submit identical copies to the

appropriate public safety agency of any city, county, or city and county likely to be affected.

(b)

(1) Based upon a review of inundation maps submitted pursuant to subdivision (a) or based upon information gained by an onsite inspection and consultation with the affected local jurisdiction when the requirement for an inundation map is waived pursuant to subdivision (d), the Office of Emergency Services shall designate areas within which death or personal injury would, in its determination, result from the partial or total failure of a dam. The appropriate public safety agencies of any city, county, or city and county, the territory of which includes any of those areas, may adopt emergency procedures for the evacuation and control of populated areas below those dams. The Office of Emergency Services shall review the procedures to determine whether adequate public safety measures exist for the evacuation and control of populated areas below the dams, and shall make recommendations with regard to the adequacy of those procedures to the concerned public safety agency. In conducting the review, the Office of Emergency Services shall consult with appropriate state and local agencies.

(2) Emergency procedures specified in this subdivision shall conform to local needs, and may be required to include any of the following elements or any other appropriate element, in the discretion of the Office of Emergency Services:

(A) Delineation of the area to be evacuated.

(B) Routes to be used.

(C) Traffic control measures.

(D) Shelters to be activated for the care of the evacuees.

(E) Methods for the movement of people without their own transportation.

(F) Identification of particular areas or facilities in the flood zones that will not require evacuation because of their location on high ground or similar circumstances.

(G) Identification and development of special procedures for the evacuation and care of people from unique institutions.

(H) Procedures for the perimeter and interior security of the area, including such things as passes, identification requirements, and antilooting patrols.

(I) Procedures for the lifting of the evacuation and reentry of the area.

(J) Details as to which organizations are responsible for the functions described in this paragraph and the material and personnel resources required.

(3) It is the intent of the Legislature to encourage each agency that prepares emergency procedures to establish a procedure for their review every two years.

(c) "Dam," as used in this section, has the same meaning as specified in Sections 6002, 6003, and 6004 of the Water Code.

(d) Where both of the following conditions exist, the Office of Emergency Services may waive the requirement for an inundation map:

(1) Where the effects of potential inundation in terms of death or personal injury, as determined through onsite inspection by the Office of Emergency

Services in consultation with the affected local jurisdictions, can be ascertained without an inundation map.

(2) Where adequate evacuation procedures can be developed without benefit of an inundation map.

(e) If development should occur in any exempted area after a waiver has been granted, the local jurisdiction shall notify the Office of Emergency Services of that development. All waivers shall be reevaluated every two years by the Office of Emergency Services.

(f) A notice may be posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map, and of any information received by the county subsequent to the receipt of the map regarding changes to inundation areas within the county.

§ 8589.6. Disaster registry programs; model guidelines

(a) The Office of Emergency Services shall develop model guidelines for local government agencies and community-based organizations planning to develop a disaster registry program. Adoption of the model guidelines shall be voluntary. Local governmental agencies or community-based organizations wishing to establish a disaster registry program may consult with the Office of Emergency Services for further guidance.

(b) The guidelines required by subdivision (a) shall address, at a minimum, all of the following issues:

(1) A purpose statement specifying that the intent of the registry is not to provide immediate assistance during a local, state, or national disaster, to those who are registered, but to encourage that those registered will receive a telephone call or visit from neighborhood disaster volunteers or other organizations specified in the final local plan as soon as possible after the disaster in order to check on

their well-being and ask if they need assistance. This statement shall also specify that persons registered should be prepared to be self-sufficient for at least 72 hours.

(2) A list of persons eligible for the registry. This list shall include, but not be limited to, disabled persons, including those with developmental disabilities, the elderly, those for whom English is not a first language, persons who are unskilled or deficient in the English language, long- term health care facilities, residential community care facilities, and residential care facilities for the elderly.

(3) A statement specifying that the party responsible for responding to those registered will not be held liable for not responding.

(4) A plan for ensuring that hard data is available if computers shut down.

(5) A recommendation for those persons or organizations that would be appropriate to respond to persons on the disaster registry, and a plan for training the responsible party.

(6) A plan for community outreach to encourage those eligible to participate.

(7) A plan for distribution of preparedness materials to those eligible to participate in the disaster registry.

(8) Recommendations and assistance for obtaining federal and state moneys to establish a disaster registry.

(9) A recommendation that organizations currently providing services to persons who are eligible for the disaster registry program be encouraged to alter their information form to include a space on the form where the person has the option of registering for the program. By checking the box and giving approval to be registered for the program the

person waives confidentiality rights. Despite this waiver of confidentiality rights, local government agencies and community-based organizations planning to develop a disaster registry are encouraged to do everything possible to maintain the confidentiality of their registries. Organizations that currently have lists of people who would be eligible to register for the program should be encouraged to share this information with persons establishing a disaster registry.

§ 8589.7. Hazardous materials; reporting of spills and releases, or of ruptures, explosions and fires involving pipelines; public agency notification

(a) In carrying out its responsibilities pursuant to subdivision (b) of Section 8574.17, the Office of Emergency Services shall serve as the central point in state government for the emergency reporting of spills, unauthorized releases, or other accidental releases of hazardous materials and shall coordinate the notification of the appropriate state and local administering agencies that may be required to respond to those spills, unauthorized releases, or other accidental releases. The Office of Emergency Services is the only state agency required to make the notification required by subdivision (b).

(b) Upon receipt of a report concerning a spill, unauthorized release, or other accidental release involving hazardous materials, as defined in Section 25501 of the Health and Safety Code, or concerning a rupture of, or an explosion or fire involving, a pipeline reportable pursuant to Section 51018, the Office of Emergency Services shall immediately inform the following agencies of the incident:

    (1) For an oil spill reportable pursuant to Section 8670.25.5, the Office of Emergency Services shall inform the administrator for oil spill response, the

State Lands Commission, the California Coastal Commission, and the California regional water quality control board having jurisdiction over the location of the discharged oil.

(2) For a rupture, explosion, or fire involving a pipeline reportable pursuant to Section 51018, the Office of Emergency Services shall inform the State Fire Marshal.

(3) For a discharge in or on any waters of the state of a hazardous substance or sewage reportable pursuant to Section 13271 of the Water Code, the Office of Emergency Services shall inform the appropriate California regional water quality control board.

(4) For a spill or other release of petroleum reportable pursuant to Section 25270.8 of the Health and Safety Code, the Office of Emergency Services shall inform the local administering agency that has jurisdiction over the spill or release.

(5) For a crude oil spill reportable pursuant to Section 3233 of the Public Resources Code, the Office of Emergency Services shall inform the Division of Oil, Gas, and Geothermal Resources and the appropriate California regional water quality control board.

(c) This section does not relieve a person who is responsible for an incident specified in subdivision (b) from the duty to make an emergency notification to a local agency, or the 911 emergency system, under any other law.

(d) A person who is subject to Section 25507 of the Health and Safety Code shall immediately report all releases or threatened releases pursuant to that section to the appropriate local administering agency and each local administering agency shall notify the Office of Emergency Services and businesses in their jurisdiction of the appropriate emergency telephone number that can be used for emergency notification to the administering agency on a

24-hour basis. The administering agency shall notify other local agencies of releases or threatened releases within their jurisdiction, as appropriate.

(e) No facility, owner, operator, or other person required to report an incident specified in subdivision (b) to the Office of Emergency Services shall be liable for any failure of the Office of Emergency Services to make a notification required by this section or to accurately transmit the information reported.

Article 5.5 – State Assistance for Fire Equipment Act

§ 8589.8. Citation of article

This article shall be known and may be cited as the State Assistance for Fire Equipment Act.

§ 8589.9. Legislature findings and declarations

(a) The Legislature finds and declares that there is a growing need to find new ways to acquire firefighting apparatus and equipment for use by local agencies. Local agencies, particularly those that serve rural areas, have had and are likely to continue to have, difficulty acquiring firefighting apparatus and equipment. The Legislature further finds and declares that this situation presents a statewide problem for the protection of the public safety.

(b) In enacting this article, the Legislature intends to create new ways for the Office of Emergency Services to help local agencies acquire firefighting apparatus and equipment. Through the identification of available apparatus and equipment, the acquisition of new and used apparatus and equipment, the refurbishing and resale of used apparatus and equipment, and assisting the financing of resales, the

Office of Emergency Services will help local agencies meet public safety needs.

§ 8589.10. Definitions

As used in this article:

(a) "Acquire" means acquisition by purchase, grant, gift, or any other lawful means.
(b) "Office" means the Office of Emergency Services.
(c) "Firefighting apparatus and equipment" means any vehicle and its associated equipment that is designed and intended for use primarily for firefighting. "Firefighting apparatus and equipment" does not include vehicles that are designed and intended for use primarily for emergency medical services, rescue services, communications and command operations, or hazardous materials operations.
(d) "Indirect expenses" means those items that are identified as indirect costs in the federal Office of Management and Budget, Circular A-87 on January 1, 1985.
(e) "Local agency" means any city, county, special district, or any joint powers agency composed exclusively of those agencies, that provides fire suppression services. "Local agency" also includes a fire company organized pursuant to Part 4 (commencing with Section 14825) of Division 12 of the Health and Safety Code.
(f) "Rural area" means territory that is outside of any urbanized area designated by the United States Census Bureau from the 1980 federal census.
(g) "Director" means the Director of Emergency Services.

§ 8589.11. Acquisition of equipment; repair of used equipment by Prison Industry Authority; resale price

The office may acquire new or used firefighting apparatus and equipment for resale to local agencies. If the apparatus or equipment is in a used condition, the office may contract with the Prison

Industry Authority to repair or refurbish the apparatus or equipment to acceptable fire service standards before resale. The resale price shall recover the office's cost of acquisition, repairing, refurbishing, and associated indirect expenses.

§ 8589.12. State-owned equipment; purchase price

If a state agency, including the office, proposes to make firefighting apparatus or equipment which is currently owned and operated by the state available to the office for use under this article, the Department of General Services shall determine whether there is any immediate need by any state agency for the apparatus or equipment. If there is no immediate need, the Department of General Services shall release the apparatus or equipment to the office. If the office acquires firefighting apparatus or equipment from another state agency, the office shall pay the fair market value of the apparatus or equipment, as determined by the Department of General Services, unless the state agency agrees to a lesser payment.

§ 8589.13. Contract for resale of firefighting apparatus and equipment; priority; interest; terms; loan insurance

(a) The office shall give first priority for the sale of new or used firefighting apparatus and equipment to a local agency that serves a rural area, and is authorized to contract with a local agency that serves a rural area for this purpose. The office shall give second priority for the sale of new or used firefighting apparatus and equipment to any local agency. If after reasonable efforts by the office to sell new or used firefighting apparatus and equipment to any local agency, and not less than 90 days after providing notice to these local agencies, the office may sell any remaining firefighting apparatus and equipment to public agencies outside of California, the federal government, and Indian tribes, subject to any applicable federal requirements.

(b) If a contract for the sale of new or used firefighting apparatus and equipment under subdivision (a) provides for the local agency to pay the sale price in more than one installment, the local agency shall pay interest at a rate specified in the contract, which shall not exceed 1 percent less than the rate earned by the Pooled Money Investment Board, and the term of a contract shall not exceed five years.

(c) If a contract for the sale of new or used firefighting apparatus and equipment under subdivision (a) provides for a local agency to obtain a loan from another source, the office may insure the other loan.

§ 8589.14. Information system

The office shall operate an information system which is capable of identifying firefighting apparatus and equipment which is available for acquisition, and local agencies which are interested in acquiring apparatus and equipment.

§ 8589.15. Contracting with Prison Industry Authority

The office may contract with the Prison Industry Authority to perform any of the responsibilities or services required or authorized by this article.

§ 8589.16. State Assistance for Fire Equipment Account

There is hereby created in the General Fund the State Assistance for Fire Equipment Account, which, notwithstanding Section 13340, is continuously appropriated to the office for the purposes of Sections 8589.11and 8589.13. All proceeds from the resale of firefighting apparatus and equipment shall be paid to the account.

§ 8589.17. Local agency mutual aid agreements; resale contracts

Every contract with a local agency for the resale of firefighting apparatus and equipment shall specify that the local agency shall make the apparatus or equipment available to other local agencies in the same county as part of a mutual aid agreement. The apparatus or equipment shall be available for mutual aid responses for the length of the term of the contract with the office.

§ 8589.18. Local agency default

If a local agency defaults on a contract for the resale of firefighting apparatus and equipment, the office may either renegotiate the contract or take possession of the apparatus or equipment for subsequent resale to another local agency.

§ 8589.19. Rules and regulations; equipment types; resale contracts; preferences

(a) After consultation with the California Emergency Management Agency Fire Advisory Committee, hereafter to be referred to as the Office of Emergency Services Fire Advisory Committee, the director shall adopt rules and regulations governing the operation of the programs created by this article pursuant to the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3.

(b) The rules and regulations adopted pursuant to subdivision (a) shall include, but not be limited to, all of the following:

  (1) The specific types of firefighting apparatus and equipment which may be acquired, rehabilitated, and resold.

  (2) The amount and terms of resale contracts.

  (3) The time, format, and manner in which local agencies may apply for resale contracts.

  (4) Priorities for assisting local agencies which shall give preference to local agencies which meet all of the following:

(A) Demonstrated need for primary response firefighting apparatus and equipment.

(B) Will be adequately able to operate and maintain the firefighting apparatus and equipment.

(C) Have already used other means of financing the firefighting apparatus and equipment.

§ 8589.20. Cooperation by state agencies

All state agencies, boards, and commissions shall cooperate with the office in implementing the programs created by this article.

§ 8589.21. Scope of director responsibility with respect to programs under the article

The director shall be responsible for the programs created by this article which, except as provided by Sections 8589.12 and 8589.15, shall not be subject to the requirements of the State Equipment Council or the Office of Fleet Administration of the Department of General Services.

Article 5.7 – Firefighting Thermal Imaging Equipment Act of 2001

§ 8590. Title of article

This article shall be known and may be cited as the Firefighting Thermal Imaging Equipment Act of 2001.

§ 8590.1. Definitions

As used in this article, the following words have the following meanings:

(a) "Agency" or "office" means the Office of Emergency Services.

(b) "Local agency" means any city, county, city and county, fire district, special district, or joint powers agency that provides fire suppression services. "Local agency" also includes a fire company organized pursuant to Part 4 (commencing with Section 14825) of Division 12 of the Health and Safety Code.
(c) "Secretary" or "Director" means the Director of Emergency Services.
(d) "State agency" means any state agency providing residential or institutional fire protection, including, but not limited to, the California Department of Forestry and Fire Protection.

§ 8590.2. Thermal imaging equipment purchasing program

There is established in the office a thermal imaging equipment purchasing program under which the office shall acquire firefighting thermal imaging equipment on behalf of local and state agencies that are interested in obtaining this equipment.

§ 8590.3. Director duties in administering purchasing program

In administering the purchasing program, the director shall do all of the following:

(a) No later than 45 days after the effective date of this article, establish an advisory committee, which shall be comprised of representatives of organizations including, but not limited to, the California Fire Chiefs Association, the Fire Districts Association of California, the California Professional Firefighters, the CDF Firefighters, and the California State Firefighters Association, Inc. The committee shall meet no later than 30 days after all members are appointed.
(b) Consult with the advisory committee regarding equipment specifications and other matters relating to the acquisition of thermal imaging equipment, and require the advisory committee to formulate specifications no later than 120 days after its initial meeting.

(c) Notify all local and state agencies about the purchasing program, including the opportunity to purchase additional units at the contract price, and determine whether those agencies are interested in obtaining thermal imaging equipment.

(d) Purchase thermal imaging equipment at the lowest possible price from a reliable vendor that meets specified requirements. It is the intent of the Legislature that the director enter into a multiyear contract for this purpose no later than 180 days after the committee formulates specifications pursuant to subdivision (b).

(e) Include a provision in the vendor contract allowing any local or state agency to purchase additional units directly from the vendor at the contract price.

(f) Any local agency that elects to participate in the thermal imaging equipment purchasing program shall pay one-half of the contract price for each piece of equipment purchased on its behalf by the state.

§ 8590.4. Funding for program; distribution of equipment

(a) The director shall seek funding for the program from the private sector, grant programs, and other appropriate sources.

(b) The director, after consultation with the advisory commission, shall distribute equipment purchased under the program in order to maximize its utilization by firefighters based on consideration of the following factors:

  (1) Ability to share or move the equipment to fire locations.

  (2) Availability of existing thermal imaging equipment.

  (3) Geography.

  (4) Need based on frequency of fires.

Article 6 – Advisory Committees

§ 8591. Recognition of committees or boards established by or with segments of private sector or public agencies

Nothing in this chapter shall operate to prevent the Governor or Office of Emergency Services from formally recognizing committees or boards established by or with segments of the private sector, public agencies, or both the private sector and public agencies, that control facilities, resources, or the provision of services essential to the mitigation of the effects of an emergency or recovery therefrom, or from assigning administrative authority or responsibility to those committees or boards or to members thereof with respect to the provision and effective utilization of those resources to meet needs resulting from an emergency.

Article 6.2 – Public Safety Communication Act of 2002

§ 8592. Short title

This article shall be known and may be cited as the Public Safety Communication Act of 2002.

§ 8592.1. Definitions

For purposes of this article, the following terms have the following meanings:

(a) "Backward compatibility" means that the equipment is able to function with older, existing equipment.
(b) "Committee" means the Public Safety Radio Strategic Planning Committee, which was established in December 1994 in recognition of the need to improve existing public radio systems and to develop interoperability among public safety departments, and between state public safety departments and local or federal entities and which consists of representatives of the following state entities:

(1) The Office of Emergency Services, who shall serve as chairperson.
(2) The Department of the California Highway Patrol.
(3) The Department of Transportation.
(4) The Department of Corrections and Rehabilitation.
(5) The Department of Parks and Recreation.
(6) The Department of Fish and Wildlife.
(7) The Department of Forestry and Fire Protection.
(8) The Department of Justice.
(9) The Department of Water Resources.
(10) The State Department of Public Health.
(11) The Emergency Medical Services Authority.
(12) The Department of Technology.
(13) The Military Department.
(14) The Department of Finance.

(c) "First response agencies" means public agencies that, in the early stages of an incident, are responsible for, among other things, the protection and preservation of life, property, evidence, and the environment, including, but not limited to, state fire agencies, state and local emergency medical services agencies, local sheriffs' departments, municipal police departments, county and city fire departments, and police and fire protection districts.

(d) "Nonproprietary equipment or systems" means equipment or systems that are able to function with another manufacturer's equipment or system regardless of type or design.

(e) "Open architecture" means a system that can accommodate equipment from various vendors because it is not a proprietary system.

(f) "Public safety radio subscriber" means the ultimate end user. Subscribers include individuals or organizations, including, for example, local police departments, fire departments, and other operators of a public safety radio system. Typical subscriber equipment includes end

instruments, including mobile radios, hand-held radios, mobile repeaters, fixed repeaters, transmitters, or receivers that are interconnected to utilize assigned public safety communications frequencies.

(g) "Public safety spectrum" means the spectrum allocated by the Federal Communications Commission for operation of interoperable and general use radio communication systems for public safety purposes within the state.

§ 8592.2. Primary responsibility of committee in state government; consultation with regional planning committee and other entities; meetings

(a) The committee shall have primary responsibility in state government for both of the following:
   (1) Developing and implementing a statewide integrated public safety communication system that facilitates interoperability among state public safety departments listed in subdivision (b) of Section 8592.1 and other first response agencies, as the committee deems appropriate.
   (2) Coordinating other shared uses of the public safety spectrum consistent with decisions and regulations of the Federal Communications Commission.

(b) In order to facilitate effective use of the public safety spectrum, the committee shall consult with any regional planning committee or other federal, state, or local entity with responsibility for developing, operating, or monitoring interoperability of the public safety spectrum.

(c) The committee shall meet at least twice a year, of which one meeting shall be a joint meeting with the California Statewide Interoperability Executive Committee to enhance coordination and cooperation at all organizational levels and a cohesive approach to communications interoperability.

§ 8592.3. Consultation with other organizations and entities; standard memorandum of understanding

(a) The committee shall consult with the following organizations and entities:
   (1) California State Peace Officers Association.
   (2) California Police Chiefs Association.
   (3) California State Sheriffs' Association.
   (4) California Professional Firefighters.
   (5) California Fire Chiefs Association.
   (6) California State Association of Counties.
   (7) League of California Cities.
   (8) California State Firefighters Association.
   (9) California Coalition of Law Enforcement Associations.
   (10) California Correctional Peace Officers Association.
   (11) CDF Firefighters.
   (12) California Union of Safety Employees.

(b) Each organization or entity listed in subdivision (a) may designate a representative to work with the committee to develop agreements for interoperability or other shared use of the public safety spectrum between the state public safety departments listed in subdivision (b) of Section 8592.1 and local or federal agencies that operate a communication system on the public safety spectrum and that have capacity and technical ability for interoperability or other shared use.

(c) The committee shall develop a model memorandum of understanding that sets forth general terms for interoperability or other shared uses among jurisdictions, which may be modified as necessary for a particular agreement entered into pursuant to subdivision (b).

(d) A local agency may not be required to adopt the model memorandum of understanding developed pursuant to subdivision (c).

§ 8592.4. Purchase of new or upgraded communication equipment; establishment of program; committee recommendations; public safety radio subscriber equipment

(a) The committee shall determine which state public safety departments listed in subdivision (b) of Section 8592.1 need new or upgraded communication equipment and shall establish a program for equipment purchase. In establishing this program, the committee shall recommend the purchase of public safety radio subscriber equipment that will enable state agencies to commence conforming to industry and governmental standards for interoperability as set forth in Section 8592.5. As technology continues to evolve, the committee shall recommend the purchase of nonproprietary equipment or systems that have open architecture and backward compatibility, and that are in compliance with paragraphs (1) and (2) of subdivision (a) of Section 8592.5.

(b) The committee may recommend to any other federal, state, regional, or local entity with responsibility for developing, operating, or monitoring interoperability of the public safety spectrum, the purchase of public safety radio subscriber equipment that will enable first response agencies to commence conforming to industry and governmental standards for interoperability as set forth in paragraphs (1) and (2) of subdivision (a) of Section 8592.5. As technology continues to evolve, the committee may recommend the purchase of nonproprietary equipment or systems that have open architecture and backward compatibility, and that are in compliance with paragraphs (1) and (2) of subdivision (a) of Section 8592.5.

(c) This section does not mandate that a state or local governmental agency affected by this section is required to compromise its immediate mission or ability to function and carry out its existing responsibilities.

§ 8592.5. Compliance of public safety radio communication equipment purchased by a state department with certain standards

(a) Except as provided in subdivision (c), a state department that purchases public safety radio communication equipment shall ensure that the equipment purchased complies with applicable provisions of the following:

(1) The common system standards for digital public safety radio communications commonly referred to as the "Project 25 Standard," as that standard may be amended, revised, or added to in the future jointly by the Associated Public-Safety Communications Officials, Inc., National Association of State Telecommunications Directors and agencies of the federal government, commonly referred to as "APCO/NASTD/FED."

(2) The operational and functional requirements delineated in the Statement of Requirements for Public Safety Wireless Communication and Interoperability developed by the SAFECOM Program under the United States Department of Homeland Security.

(b) Except as provided in subdivision (c), a local first response agency that purchases public safety radio communication equipment, in whole or in part, with state funds or federal funds administered by the state, shall ensure that the equipment purchased complies with paragraphs (1) and (2) of subdivision (a).

(c) Subdivision (a) or (b) shall not apply to either of the following:

(1) Purchases of equipment to operate with existing state or local communications systems where the latest applicable standard will not be compatible, as verified by the Office of Emergency Services.

(2) Purchases of equipment for existing statewide low-band public safety communications systems.

(d) This section may not be construed to require an affected state or local governmental agency to compromise its immediate mission or ability to function and carry out its existing responsibilities.

§ 8592.7. Budget proposals for support of new or modified radio systems; submission of technical project plan; contents; review of plan

(a) A budget proposal submitted by a state agency for support of a new or modified radio system shall be accompanied by a technical project plan that includes all of the following:
   (1) The scope of the project.
   (2) Alternatives considered.
   (3) Justification for the proposed solution.
   (4) A project implementation plan.
   (5) A proposed timeline.
   (6) Estimated costs by fiscal year.

(b) The committee shall review the plans submitted pursuant to subdivision (a) for consistency with the statewide integrated public safety communication strategic plan.

(c) The Department of Technology shall review the plans submitted pursuant to subdivision (a) for consistency with the technical requirements of the statewide integrated public safety communication strategic plan.

Article 6.5 – Accessibility to Emergency Services Information

§ 8593. Improvement of communication with deaf and hearing-impaired persons during emergencies; open captioning on television

The Office of Emergency Services shall work with advocacy groups representing the deaf and hearing impaired, including, but not limited to, the California Association of the Deaf and the Coalition of Deaf Access Providers, California television broadcasters, city and county emergency services coordinators, and, as appropriate, the Federal Emergency Management Agency and the Federal Communications Commission, to improve communication with deaf and hearing-impaired persons during emergencies, including the use of open captioning by California television broadcasters when transmitting emergency information.

§ 8593.1. Digital emergency broadcast system; investigation of feasibility

The Office of Emergency Services shall investigate the feasibility of, and the funding requirements for, establishing a "Digital Emergency Broadcast System" network, to be used by local and state government agencies for the provision of warnings and instructions in digital or printed form to California broadcast outlets for relay to the public both orally and visually, through television, and orally, through radio, during emergencies.

§ 8593.2. Toll-free 800 telephone hotline for inquiries about emergency preparedness and disaster status; investigation of feasibility

The Office of Emergency Services shall investigate the feasibility of establishing a toll-free 800 telephone hotline, including TDD (telecommunications device for the deaf) accessibility, which would be accessible to the public, including deaf, hearing-impaired, and non-English speaking persons, for use during nonemergency and emergency periods to respond to inquiries about emergency preparedness and disaster status.

§ 8593.6. Assessment of technologies available for expanding the transmission of emergency alerts to the public

(a) No later than six months after securing funding for the purposes of this section, the Director of Emergency Services shall convene a working group for the purpose of assessing existing and future technologies available in the public and private sectors for the expansion of transmission of emergency alerts to the public through a public-private partnership. The working group shall advise the director and assist in the development of policies, procedures, and protocols that will lay the framework for an improved warning system for the public.

(b)

(1) The working group shall consist of the following membership, to be appointed by the director:

(A) A representative of the Office of Emergency Services.

(B) A representative of the Attorney General's office.

(C) A representative of the State Department of Public Health.

(D) A representative of the State Emergency Communications Committee.

(E) A representative of the Los Angeles County Office of Emergency Management, at the option of that agency.

(F) A representative or representatives of local government, at the option of the local government or governments.

(G) Representatives of the private sector who possess technology,

experience, or insight that will aid in the development of a public-private partnership to expand an alert system to the public, including, but not limited to, representatives of providers of mass communication systems, first responders, and broadcasters.

(H) Additional representatives of any public or private entity as deemed appropriate by the director.

(2) In performing its duties, the working group shall consult with the Federal Communications Commission, and with respect to grants and fiscal matters, the Office of Emergency Services.

(c) The working group shall consider and make recommendations with respect to all of the following:

(1) Private and public programs, including pilot projects that attempt to integrate a public-private partnership to expand an alert system.

(2) Protocols, including formats, source or originator identification, threat severity, hazard description, and response requirements or recommendations, for alerts to be transmitted via an alert system that ensures that alerts are capable of being utilized across the broadest variety of communication technologies, at state and local levels.

(3) Protocols and guidelines to prioritize assurance of the greatest level of interoperability for first responders and families of first responders.

(4) Procedures for verifying, initiating, modifying, and canceling alerts transmitted via an alert system.

(5) Guidelines for the technical capabilities of an alert system.

(6) Guidelines for technical capability that provides for the priority transmission of alerts.
(7) Guidelines for other capabilities of an alert system.
(8) Standards for equipment and technologies used by an alert system.
(9) Cost estimates.
(10) Standards and protocols in accordance with, or in anticipation of, Federal Communications Commission requirements and federal statutes or regulations.
(11) Liability issues.

(d) The director may accept private monetary or in-kind donations for the purposes of this section.

§ 8594. Child abductions; activation of the emergency alert system; requirements for activation; development of policies and procedures; review of Amber Plan as adopted by other states and Orange County's child abduction regional emergency alert program; development of child abduction education system to educate children to deter abductions

(a) If an abduction has been reported to a law enforcement agency and the agency determines that a child 17 years of age or younger, or an individual with a proven mental or physical disability, has been abducted and is in imminent danger of serious bodily injury or death, and there is information available that, if disseminated to the general public, could assist in the safe recovery of the victim, the agency, through a person authorized to activate the Emergency Alert System, shall, absent extenuating investigative needs, request activation of the Emergency Alert System within the appropriate local area. A law enforcement agency shall only request activation of the Emergency Alert System for an abduction if these requirements are met. The Emergency Alert System is not intended to be used for abductions resulting from custody disputes that are not reasonably believed to endanger the life or physical health of a child.
The California Highway Patrol, if requested by a law enforcement agency, shall activate the system.

(b) The California Highway Patrol, in consultation with the Department of Justice, as well as a representative from the California State Sheriffs' Association, the California Police Chiefs' Association, and the California Peace Officers' Association, shall develop policies and procedures providing instruction specifying how law enforcement agencies, broadcasters participating in the Emergency Alert System, and any other intermediate emergency agencies that may

institute activation of the Emergency Alert System, and, where appropriate, other supplemental warning systems, shall proceed after a qualifying abduction has been reported to a law enforcement agency. Those policies and procedures shall include, but not be limited to:

(1) Procedures for transfer of information regarding the abducted victim and abduction from the law enforcement agency to the broadcasters.

(2) Specification of the event code or codes that should be used if the Emergency Alert System is activated to report a qualifying child abduction.

(3) Recommended language for an abduction alert.

(4) Specification of information that must be included by the reporting law enforcement agency, including which agency a person with information relating to the abduction should contact and how the person should contact the agency.

(5) Recommendations on the extent of the geographical area to which a child abduction emergency alert should be broadcast.

(c) The California Highway Patrol, in consultation with the Department of Justice, shall review the Amber Plan as adopted by other states and Orange County's Child Abduction Regional Emergency Alert Program for guidance in developing appropriate policies and procedures for use of the Emergency Alert System and, where appropriate, other supplemental warning systems to report qualifying events.

(d) The California Highway Patrol, in conjunction with the Department of Justice, shall develop a comprehensive child abduction education plan to educate children in the state on the appropriate behavior to deter abduction. The California Highway Patrol shall convene a group consisting of a representative from the California State Sheriffs' Association, the California Police Chiefs' Association, and the California Peace Officers' Association, representatives of advocacy

groups, and the Department of Education to assist in the development of a plan.

§ 8594.5. Law enforcement officers attacked or killed; activation of emergency alert system and issuance of blue alerts; conditions; technologies utilized; information on California Highway Patrol's Internet Web site describing blue alerts

(a) For purposes of this section, "blue alert" means a quick response system designed to issue and coordinate alerts following an attack upon a law enforcement officer as described in subdivision (b).

(b) In addition to the circumstances described in Section 8594, upon the request of an authorized person at a law enforcement agency that is investigating an offense described in paragraph (1), the California Highway Patrol shall activate the Emergency Alert System and issue a blue alert if all of the following conditions are met:

(1) A law enforcement officer has been killed, suffers serious bodily injury, or is assaulted with a deadly weapon, and the suspect has fled the scene of the offense.

(2) A law enforcement agency investigating the offense has determined that the suspect poses an imminent threat to the public or other law enforcement personnel.

(3) A detailed description of the suspect's vehicle or license plate is available for broadcast.

(4) Public dissemination of available information may help avert further harm or accelerate apprehension of the suspect.

(5) The California Highway Patrol has been designated to use the federally authorized Emergency Alert System for the issuance of blue alerts.

(c) The blue alert system incorporates a variety of notification resources and developing technologies that may be tailored to the circumstances and geography of the underlying attack. The blue alert system shall utilize the state-controlled Emergency Digital Information System, local digital signs, focused text, or other technologies, as appropriate, in addition to the federal Emergency Alert System, if authorized and under conditions permitted by the federal government.

(d) On or before December 31, 2011, the California Highway Patrol shall augment the department's public Internet Web site to include a blue alert link that describes the "blue alert" process, objectives, and available quick responses. The Internet Web site shall explain that the term blue alert will communicate that a law enforcement officer has been attacked or killed and that the scope of an alert will be tailored to the circumstances of the offense and available technologies.

§ 8594.10. Silver alert notification system for persons 65 years of age or older reported missing; activation by California Highway Patrol; conditions

(a) For purposes of this section, "Silver Alert" means a notification system, activated pursuant to subdivision (b), designed to issue and coordinate alerts with respect to a person who is 65 years of age or older, developmentally disabled, or cognitively impaired, and who is reported missing.

(b)

(1) If a person is reported missing to a law enforcement agency, and that agency determines that the requirements of subdivision (c) are met, the agency may request the California Highway Patrol to activate a Silver Alert. If the California Highway Patrol concurs that the requirements of subdivision (c) are met, it shall activate a Silver Alert within the geographical area requested by the investigating law enforcement agency.

(2) Radio, television, and cable and satellite systems are encouraged to, but not required to, cooperate with disseminating the information contained in a Silver Alert.

(3) Upon activation of a Silver Alert, the California Highway Patrol shall assist the investigating law enforcement agency by issuing a be-on-the-lookout alert, an Emergency Digital Information Service message, or an electronic flyer.

(c) A law enforcement agency may request a Silver Alert be activated if that agency determines that all of the following conditions are met in regard to the investigation of the missing person:

(1) The missing person is 65 years of age or older, developmentally disabled, or cognitively impaired.

(2) The investigating law enforcement agency has utilized all available local resources.

(3) The law enforcement agency determines that the person has gone missing under unexplained or suspicious circumstances.

(4) The law enforcement agency believes that the person is in danger because of age, health, mental or physical disability, environment or weather conditions, that the person is in the company of a potentially dangerous person, or that there are

other factors indicating that the person may be in peril.

(5) There is information available that, if disseminated to the public, could assist in the safe recovery of the missing person.

(d) For the purposes of this section, the following definitions have the following meanings:

(1) "Developmentally disabled" means affected by a developmental disability, as defined in subdivision (a) of Section 4512 of the Welfare and Institutions Code.

(2) "Cognitively impaired" means affected by a cognitive impairment, as defined in Section 14522.4 of the Welfare and Institutions Code.

Article 7 – Other State Agencies

§ 8595. Assignment of duties by the Governor

The Governor may assign to a state agency any activity concerned with the mitigation of the effects of an emergency of a nature related to the existing powers and duties of such agency, including interstate activities, and it shall thereupon become the duty of such agency to undertake and carry out such activity on behalf of the state.

§ 8596. Assistance by state agencies; cooperation; victim assistance; use of personnel; equipment and facilities

(a) Each department, division, bureau, board, commission, officer, and employee of this state shall render all possible assistance to the Governor and to the Director of Emergency Services in carrying this chapter.

(b) In providing that assistance, state agencies shall cooperate to the fullest possible extent with each other and with political subdivisions, relief agencies, and the American National Red Cross, but nothing contained in this chapter shall be construed to limit or in any way affect the

responsibilities of the American National Red Cross under the federal act approved January 5, 1905 (33 Stat. 599), as amended.

(c) Entities providing disaster-related services and assistance shall strive to ensure that all victims receive the assistance that they need and for which they are eligible. Public employees shall assist evacuees and other individuals in securing disaster-related assistance and services without eliciting any information or document that is not strictly necessary to determine eligibility under state and federal laws. Nothing in this subdivision shall prevent public employees from taking reasonable steps to protect the health or safety of evacuees and other individuals during an emergency.

(d) State personnel, equipment, and facilities may be used to clear and dispose of debris on private property only after the Governor finds: (1) that the use is for a state purpose; (2) that the use is in the public interest, serving the general welfare of the state; and (3) that the personnel, equipment, and facilities are already in the emergency area.

§ 8597. Peace officers

Whenever a state of emergency is proclaimed to exist within any region or area, or whenever a state of war emergency exists, the following classes of state employees who are within the region or area proclaimed or who may be assigned to duty therein shall be peace officers and shall have the full powers and duties of those officers for all purposes as provided by Section 830.1 of the Penal Code, and shall perform those duties and exercise any powers which are appropriate or which may be directed by their superior officers:

(a) All peace officers of the Department of the California Highway Patrol.

(b) All deputies of the Department of Fish and Game who have been appointed to enforce the provisions of the Fish and Game Code pursuant to Section 851 of that code.

(c) The Director of Forestry and Fire Protection and the classes of the Department of Forestry and Fire Protection who are designated by the Director of Forestry and Fire Protection as having the powers of peace officers pursuant to Section 4156 of the Public Resources Code.

(d) Peace officers who are state employees within the provisions of Section 830.5 of the Penal Code.

§ 8598. Local emergency within region or area; peace officers

Whenever a local emergency exists within a region or area of the state and the Department of the California Highway Patrol or the Department of Corrections or the Department of the Youth Authority employing any peace officer within Section 830.5 of the Penal Code is requested by properly constituted local authorities to assist local law enforcement, the officers assigned to assist within the designated regions or areas shall have the full powers of peace officers within the meaning of Section 830.1 of the Penal Code and shall perform those duties and exercise those powers as are appropriate or as may be directed by their superior officers.

Article 7.5 – Statewide Natural Disaster Volunteer Corps Program

§ 8599. Volunteer resources plan; development

The Office of Emergency Services shall develop a plan for state and local governmental agencies to utilize volunteer resources during a state of emergency proclaimed by the Governor. The office shall consult with appropriate state and local governmental agencies and volunteer organizations in the development of this plan.

§ 8599.2. Volunteer resources plan; issues; contents

The plan required by Section 8599 shall address, at a minimum, all of the following issues:

(a) A formal system for the utilization of volunteer resources by state and local governmental agencies during a proclaimed state of emergency.
(b) A definition of volunteer resources.
(c) The identification and listing of volunteer resources in California.
(d) An education program for volunteer resources on the needs and use of volunteers by state and local governmental agencies during a proclaimed state of emergency.
(e) An education program for state and local governmental agencies on the availability and utilization of volunteer resources during a proclaimed state of emergency.
(f) The coordination of volunteer resources during a proclaimed state of emergency.
(g) Definition and identification of volunteer skills and resources typically required by state and local governmental agencies during a proclaimed state of emergency.
(h) A volunteer resources emergency management system for responding to needs of state and local governmental agencies during a proclaimed state of emergency.
(i) A notification procedure of volunteer resources for participation in the plan.
(j) Communication needs of volunteer resources responding during a proclaimed state of emergency.
(k) Predisaster agreements for utilization of volunteer resources by state and local governments during a proclaimed state of emergency.

Article 8 – Mutual Aid Regions

§ 8600. Division of state into mutual aid regions

The Governor with the advice of the Office of Emergency Services is hereby authorized and empowered to divide the state into mutual aid regions for the more effective application, administration, and coordination of mutual aid and other emergency-related activities.

Article 9 – Operational Areas

§ 8605. Designation of counties as operational areas; organization; use

Each county is designated as an operational area. In a state of war emergency each operational area shall serve as a link in the system of communications and coordination between the state's emergency operating centers and the operating centers of the political subdivisions comprising the operational area.

The governing bodies of each county and of the political subdivisions in the county may organize and structure their operational area.

An operational area may be used by the county and the political subdivisions comprising the operational area for the coordination of emergency activities and to serve as a link in the communications system during a state of emergency or a local emergency.

Article 9.5 – Disaster Preparedness

§ 8607. Public water systems with 10,000 or more service connections; review of disaster preparedness plans; assessments of emergency responses and recommendations; coordination between multiple jurisdictions

(a) The Office of Emergency Services, in coordination with all interested state agencies with designated response roles in the State Emergency Plan and interested local emergency management agencies shall jointly establish by regulation a standardized emergency management system for use by all emergency response agencies. The public water systems identified in Section 8607.2 may review and comment on these regulations prior to adoption. This system shall be applicable, but not limited to, those emergencies or disasters referenced in the State Emergency Plan. The standardized emergency management system shall include all of the following systems as a framework for responding to and managing emergencies and disasters involving multiple jurisdictions or multiple agency responses:

(1) The Incident Command Systems adapted from the systems originally developed by the FIRESCOPE Program, including those currently in use by state agencies.

(2) The multiagency coordination system as developed by the FIRESCOPE Program.

(3) The mutual aid agreement, as defined in Section 8561, and related mutual aid systems such as those used in law enforcement, fire service, and coroners operations.

(4) The operational area concept, as defined in Section 8559.

(b) Individual agencies' roles and responsibilities agreed upon and contained in existing laws or the State Emergency Plan are not superseded by this article.

(c) The Office of Emergency Services, in coordination with the State Fire Marshal's Office, the Department of the California Highway Patrol, the Commission on Peace Officer Standards and Training, the Emergency Medical Services Authority, and all other interested state agencies with designated response roles in the state emergency plan, shall jointly develop an approved course of instruction for use in training all emergency response personnel, consisting of the concepts and procedures associated with the standardized emergency management system described in subdivision (a).

(d) All state agencies shall use the standardized emergency management system as adopted pursuant to subdivision (a), to coordinate multiple jurisdiction or multiple agency emergency and disaster operations.

(e)

(1) Each local agency, in order to be eligible for any funding of response-related costs under disaster assistance programs, shall use the standardized emergency management system as adopted pursuant to subdivision (a) to coordinate multiple jurisdiction or multiple agency operations.

(2) Notwithstanding paragraph (1), local agencies shall be eligible for repair, renovation, or any other nonpersonnel costs resulting from an emergency.

(f) The Office of Emergency Services shall, in cooperation with involved state and local agencies, complete an after- action report within 120 days after each declared disaster. This report shall review public safety response and disaster recovery activities and shall be made available to all interested public safety and emergency management organizations.

§ 8607.1. Fire hydrants; statewide system; color coding; uniform coupling sizes; funding of mutual aid fire response related costs; City and County of San Francisco

(a) It is the intent of the Legislature that a statewide system for fire hydrants be adopted so that all firefighters can respond to emergencies calling for the use of water at any location in the state. Without this statewide standardized system, the lives of firefighters and those they serve would be put in serious jeopardy in a mutual aid fire response effort stretching across city and county boundaries.

(b) By January 1, 1994, the State Fire Marshal shall establish a statewide uniform color coding of fire hydrants. In determining the color coding of fire hydrants, the State Fire Marshal shall consider the national system of coding developed by the National Fire Protection Association as Standard 291 in Chapter 2 on Fire Flow Testing and Marking of Hydrants. The uniform color coding shall not preempt local agencies from adding additional markings.

(c) Compliance with the uniform color coding requirements of subdivision (b) shall be undertaken by each agency that currently maintains fire hydrants throughout the state as part of its ongoing maintenance program for its fire hydrants. Alternatively, an agency may comply with the uniform color coding requirements by installing one or more reflector buttons in a mid-street location directly adjacent to the fire hydrant in the appropriate color that would otherwise be required for the hydrant and a curb marking as near to the hydrant as practicable in that same color.

(d) By July 1, 1994, the State Fire Marshal shall develop and adopt regulations establishing statewide uniform fire hydrant coupling sizes. The regulations adopted pursuant to this section shall include provisions that permit the use of an adapter mounted on the hydrant as a means of achieving uniformity. In determining uniform fire hydrant coupling

sizes, the State Fire Marshal shall consider any system developed by the National Fire Protection Association, the National Fire Academy, or the Federal Emergency Management Agency.

(e) By December 1, 1996, each local agency, city, county, city and county, or special district in order to be eligible for any funding of mutual aid fire response related costs under disaster assistance programs, shall comply with regulations adopted pursuant to this section. Compliance may be met if at least one coupling on the hydrant is of the uniform size.

(f) Subdivision (d) shall not be applicable to the City and County of San Francisco due to the existing water system.

§ 8607.2. Public water systems with 10,000 or more service connections; review of disaster preparedness plans; assessments of emergency responses and recommendations; coordination with the Office of Emergency Services

(a) All public water systems, as defined in subdivision (f) of Section 116275 of the Health and Safety Code, with 10,000 or more service connections shall review and revise their disaster preparedness plans in conjunction with related agencies, including, but not limited to, local fire departments and the Office of Emergency Services to ensure that the plans are sufficient to address possible disaster scenarios. These plans should examine and review pumping station and distribution facility operations during an emergency, water pressure at both pumping stations and hydrants, and whether there is sufficient water reserve levels and alternative emergency power, including, but not limited to, on site backup generators and portable generators.

(b) All public water systems, as defined in subdivision (f) of Section 116275 of the Health and Safety Code, with 10,000 or more service connections following a declared state of

emergency shall furnish an assessment of their emergency response and recommendations to the Legislature within six months after each disaster, as well as implementing the recommendations in a timely manner.

(c) The Office of Emergency Services shall establish appropriate and insofar as practical, emergency response and recovery plans, including mutual aid plans, in coordination with public water systems, as defined in subdivision (f) of Section 116275 of the Health and Safety Code, with 10,000 or more service connections.

§ 8608. California Animal Response Emergency System (CARES) program; incorporation into standardized emergency management system

The Office of Emergency Services shall approve and adopt, and incorporate the California Animal Response Emergency System (CARES) program developed under the oversight of the Department of Food and Agriculture into the standardized emergency management system established pursuant to subdivision (a) of Section 8607.

Article 9.8 - Disaster Preparedness

§ 8609. Agencies, committees, and organizations authorized to use volunteers; volunteers deemed disaster service workers

State agencies granted authority by the Governor, the Business Continuity Task Force, the Emergency Preparedness Task Force, or the Executive Committee established by Executive Order D-3-99 to implement any type of disaster, contingency, or business continuity plan may use volunteer workers. The volunteers shall be deemed disaster service workers for the purpose of workers' compensation under Chapter 3 (commencing with Section 3600) of Part 1 of Division 4 of the Labor Code.

§ 8609.1. Disaster preparedness or response officials; identification in disaster plans

Any disaster preparedness or response official may be specifically identified by name and title in any disaster, contingency, or business continuity plan developed pursuant to Executive Order D-3-99 if such a plan incorporates aspects of any contingency plan previously developed regarding potential oil spills or toxic disasters pursuant to Article 3.5 (commencing with Section 8574.1) and Article 3.7 (commencing with Section 8574.16).

Article 10 – Local Disaster Councils

§ 8610. Creation; plans; powers; rules and regulations for dealing with local emergencies

Counties, cities and counties, and cities may create disaster councils by ordinance. A disaster council shall develop plans for meeting any condition constituting a local emergency or state of emergency, including, but not limited to, earthquakes, natural or manmade disasters specific to that jurisdiction, or state of war emergency; those plans shall provide for the effective mobilization of all of the resources within the political subdivision, both public and private. The disaster council shall supply a copy of any plans developed pursuant to this section to the Office of Emergency Services. The governing body of a county, city and county, or city may, in the ordinance or by resolution adopted pursuant to the ordinance, provide for the organization, powers and duties, divisions, services, and staff of the emergency organization. The governing body of a county, city and county, or city may, by ordinance or resolution, authorize public officers, employees, and registered volunteers to command the aid of citizens when necessary in the execution of their duties during a state of war emergency, a state of emergency, or a local emergency.

Counties, cities and counties, and cities may enact ordinances and resolutions and either establish rules and regulations or authorize disaster councils to recommend to the director of the local emergency organization rules and regulations for dealing with local emergencies that can be adequately dealt with locally; and further may act to carry out mutual aid on a voluntary basis and, to this end, may enter into agreements.

§ 8610.3. Emergency planning zones for nuclear powerplant emergency preparedness; revision of response plans; legislative findings

The Legislature hereby finds and declares as follows:

(a) The Office of Emergency Services, in consultation with the State Department of Health Services and affected counties, investigated the consequences of a serious nuclear powerplant accident for each of the nuclear powerplants in California with a generating capacity of 50 megawatts or more.

(b) This study culminated in the establishment of emergency planning zones for nuclear powerplant emergency preparedness.

(c) All state and local government nuclear powerplant emergency response plans have been revised to reflect the information provided in the study.

§ 8610.5. Reimbursement of state and local costs; Nuclear Planning Assessment Special Account

(a) For purposes of this section, the following definitions shall apply:

(1) "Agency" or "office" means the Office of Emergency Services.

(2) "Previous fiscal year" means the fiscal year immediately prior to the current fiscal year.

(3) "Utility" means an "electrical corporation" as defined in Section 218 of the Public Utilities Code, and "utilities" means more than one electrical corporation.

(b)

(1) State and local costs to carry out activities pursuant to this section and Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code that are not reimbursed by federal funds shall be borne by utilities operating nuclear powerplants with a generating capacity of 50 megawatts or more.

(2) The Public Utilities Commission shall develop and transmit to the office an equitable method of assessing the utilities operating the powerplants for their reasonable pro rata share of state agency costs specified in paragraph (1).

(3) Each local government involved shall submit a statement of its costs specified in paragraph (1), as required, to the office.

(4) Upon each utility's notification by the office, from time to time, of the amount of its share of the actual or anticipated state and local agency costs, the utility shall pay this amount to the Controller for deposit in the Nuclear Planning Assessment Special Account, which is continued in existence, for allocation by the Controller, upon appropriation by the Legislature, to carry out activities pursuant to this section and Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code. The Controller shall pay from this account the state and local costs relative to carrying out this section and Chapter 4 (commencing with Section 114650) of Part 9 of

Division 104 of the Health and Safety Code, upon certification thereof by the office.

(5) Upon appropriation by the Legislature, the Controller may disburse up to 80 percent of a fiscal year allocation from the Nuclear Planning Assessment Special Account, in advance, for anticipated local expenses, as certified by the office pursuant to paragraph (4). The office shall review program expenditures related to the balance of funds in the account and the Controller shall pay the portion, or the entire balance, of the account, based upon those approved expenditures.

(c)

(1) The total annual disbursement of state costs from the utilities operating the nuclear powerplants within the state for activities pursuant to this section and Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code, shall not exceed the lesser of the actual costs or the maximum funding levels established in this section, subject to subdivisions (e) and (f), to be shared equally among the utilities.

(2) Of the annual amount of two million forty-seven thousand dollars ($2,047,000) for the 2009-10 fiscal year, the sum of one million ninety- four thousand dollars ($1,094,000) shall be for support of the office for activities pursuant to this section and Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code, and the sum of nine hundred fifty-three thousand dollars ($953,000) shall be for support of the State Department of Public Health for activities pursuant to this section and Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code.

(d)

(1) The total annual disbursement for each fiscal year, commencing July 1, 2009, of local costs from the utilities shall not exceed the lesser of the actual costs or the maximum funding levels established in this section, in support of activities pursuant to this section and Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code. The maximum annual amount available for disbursement for local costs, subject to subdivisions (e) and (f), shall, for the fiscal year beginning July 1, 2009, be one million seven hundred thirty-two thousand dollars ($1,732,000) for the Diablo Canyon site and one million six hundred thousand dollars ($1,600,000) for the San Onofre site.

(2) The amounts paid by the utilities under this section shall be allowed for ratemaking purposes by the Public Utilities Commission.

(e)

(1) Except as provided in paragraph (2), the amounts available for disbursement for state and local costs as specified in this section shall be adjusted and compounded each fiscal year by the percentage increase in the California Consumer Price Index of the previous fiscal year.

(2) For the Diablo Canyon site, the amounts available for disbursement for state and local costs as specified in this section shall be adjusted and compounded each fiscal year by the larger of the percentage change in the prevailing wage for San Luis Obispo County employees, not to exceed 5 percent, or the percentage increase in the California Consumer Price Index from the previous fiscal year.

(f) Through the inoperative date specified in subdivision (g), the amounts available for disbursement for state and local costs as specified in this section shall be cumulative biennially. Any unexpended funds from a year shall be carried over for one year. The funds carried over from the previous year may be expended when the current year's funding cap is exceeded.

(g) This section shall become inoperative on July 1, 2019, and, as of January 1, 2020, is repealed, unless a later enacted statute, which becomes effective on or before July 1, 2019, deletes or extends the dates on which it becomes inoperative and is repealed.

(h) Upon inoperation of this section, any amounts remaining in the special account shall be refunded pro rata to the utilities contributing thereto, to be credited to the utility's ratepayers.

§ 8611. Test exercises

Counties, cities and counties, and cities may provide for the calling of test exercises, either singularly or jointly, whenever, in the opinion of such political subdivisions, such test exercises are needed; provided, however, that with respect to any such test exercise no one shall have the power to command the assistance of any private citizen, and the failure of a citizen to obey any order or regulation pertaining to a test exercise shall not constitute a violation of any law.

§ 8612. Certification by the office

Any disaster council that both agrees to follow the rules and regulations established by the Office of Emergency Services pursuant to Section 8585.5 and substantially complies with those rules and regulations shall be certified by the office. Upon that certification, and not before, the disaster council becomes an accredited disaster council.

§ 8613. Revocation of certification; grounds

Should an accredited disaster council fail to comply with the rules and regulations of the Office of Emergency Services in any material degree, the office may revoke its certification and, upon the act of revocation, the disaster council shall lose its accredited status. It may again become an accredited disaster council in the same manner as is provided for a disaster council that has not previously been accredited.

§ 8614. Assistance to Governor and to Director of Emergency Services; emergency powers subordinate to power of Governor; continuation of ordinances and regulations

(a) Each department, division, bureau, board, commission, officer, and employee of each political subdivision of the state shall render all possible assistance to the Governor and to the Director of Emergency Services in carrying out the provisions of this chapter.

(b) The emergency power that may be vested in a local public official during a state of war emergency or a state of emergency shall be subject or subordinate to the powers vested in the Governor under this chapter when exercised by the Governor.

(c) Ordinances, orders, and regulations of a political subdivision shall continue in effect during a state of war emergency or a state of emergency except as to any provision suspended or superseded by an order or regulation issued by the Governor.

Article 11 - Mutual Aid

§ 8615. Purpose; mutual aid operational plans

It is the purpose of the Legislature in enacting this article to facilitate the rendering of aid to areas stricken by an emergency and to make unnecessary the execution of written agreements customarily entered into by public agencies exercising joint powers. Emergency plans duly adopted and approved as provided by the Governor shall be effective as satisfying the requirement for mutual aid operational plans provided in the Master Mutual Aid Agreement.

§ 8616. Rendition of aid in accordance with approved emergency plans; cooperation by public officials

During any state of war emergency or state of emergency when the need arises for outside aid in any county, city and county, or city, such aid shall be rendered in accordance with approved emergency plans.

It shall be the duty of public officials to cooperate to the fullest possible extent in carrying out such plans.

§ 8617. Exercise of mutual aid in periods other than state of emergency

In periods other than a state of war emergency, a state of emergency, or a local emergency, state agencies and political subdivisions have authority to exercise mutual aid powers in accordance with the Master Mutual Aid Agreement and local ordinances, resolutions, agreements, or plans therefor.

§ 8618. Officer in charge of incident requiring mutual aid

Unless otherwise expressly provided by the parties, the responsible local official in whose jurisdiction an incident requiring mutual aid has occurred shall remain in charge at such incident, including the

direction of personnel and equipment provided him through mutual aid.

§ 8619. Authority of Governor to enter into reciprocal aid agreements or compacts with other states and federal government

The Governor may on behalf of this state enter into reciprocal aid agreements or compacts, mutual aid plans, or other interstate arrangements for the protection of life and property with other states and the federal government, either on a statewide basis or a political subdivision basis. Prior to committing the personnel, equipment, or facilities of any political subdivision of this state, the Governor shall consult with the chief executive or governing body of such political subdivision. Such mutual aid arrangements may include the furnishing or exchange, on such terms and conditions as are deemed necessary, of supplies, equipment, facilities, personnel, and services.

Article 12 – State of War Emergency

§ 8620. Complete authority of Governor; rules and regulations

During a state of war emergency the Governor shall have complete authority over all agencies of the state government and the right to exercise within the area or regions designated all police power vested in the state by the Constitution and laws of the State of California in order to effectuate the purposes of this chapter. In exercise thereof he shall promulgate, issue, and enforce such orders and regulations as he deems necessary for the protection of life and property, in accordance with the provisions of Section 8567.

§ 8621. Compliance with lawful orders and regulations of Governor; refusal as misdemeanor; suspension from duties

During a state of war emergency every department, commission, agency, board, officer, and employee of the state government and of every political subdivision, county, city and county, or city, public district, and public corporation of or in the state is required to comply with the lawful orders and regulations of the Governor made or given within the limits of his authority as provided for herein. Every such officer or employee who refuses or willfully neglects to obey any such order or regulation of the Governor, or who willfully resists, delays, or obstructs the Governor in the discharge of any of his functions hereunder, is guilty of a misdemeanor. In the event that any such officer or employee shall refuse or willfully neglect to obey any such order or regulation, the Governor may by his order temporarily suspend him from the performance of any and all the rights, obligations, and duties of his office or position for the remainder of the period of the state of war emergency, and the Governor may thereupon designate the person who shall carry on the rights, obligations, and duties of the office or position for the duration of such suspension.

§ 8622. Exercise of powers outside territorial limits of state

During a state of war emergency, the Governor, any state agency, or any agency acting under the authority of this chapter may exercise outside the territorial limits of this state any of the powers conferred upon him or it by or pursuant to this chapter.

§ 8623. Rendition of aid by person licensed in another state

During a state of war emergency, any person holding a license, certificate, or other permit issued by any state evidencing the meeting of the qualifications of such state for professional, mechanical, or other skills, may render aid involving such skill to meet the emergency as fully as if such license, certificate, or other permit had been issued in this state if a substantially similar license,

certificate, or other permit is issued in this state to applicants possessing the same professional, mechanical, or other skills.

§ 8624. State of war emergency; termination of Governor's emergency powers

All of the powers granted the Governor by this chapter with respect to a state of war emergency shall terminate when:

(a) The state of war emergency has been terminated by proclamation of the Governor or by concurrent resolution of the Legislature declaring it at an end; or
(b) The Governor has not within 30 days after the beginning of such state of war emergency issued a call for a special session of the Legislature for the purpose of legislating on subjects relating to such state of war emergency, except when the Legislature is already convened with power to legislate such subjects.

Article 13 – State of Emergency

§ 8625. Proclamation by Governor; grounds

The Governor is hereby empowered to proclaim a state of emergency in an area affected or likely to be affected thereby when:

(a) He finds that circumstances described in subdivision (b) of Section 8558 exist; and either
(b) He is requested to do so (1) in the case of a city by the mayor or chief executive, (2) in the case of a county by the chairman of the board of supervisors or the county administrative officer; or
(c) He finds that local authority is inadequate to cope with the emergency.

§ 8626. Written proclamation; effective date; filing; publicity and notice

Such proclamation shall be in writing and shall take effect immediately upon its issuance. As soon thereafter as possible such proclamation shall be filed in the office of the Secretary of State. The Governor shall cause widespread publicity and notice to be given such proclamation.

§ 8627. Complete authority of Governor; orders and regulations

During a state of emergency the Governor shall, to the extent he deems necessary, have complete authority over all agencies of the state government and the right to exercise within the area designated all police power vested in the state by the Constitution and laws of the State of California in order to effectuate the purposes of this chapter. In exercise thereof, he shall promulgate, issue, and enforce such orders and regulations as he deems necessary, in accordance with the provisions of Section 8567.

§ 8627.5. Authority of Governor; nonsafety regulations on delivery of food products; pharmaceuticals; and other emergency necessities; form of orders and regulations; effect; duration

(a) The Governor may make, amend, or rescind orders and regulations during a state of emergency that temporarily suspend any state, county, city, or special district statute, ordinance, regulation, or rule imposing nonsafety related restrictions on the delivery of food products, pharmaceuticals, and other emergency necessities distributed through retail or institutional channels, including, but not limited to, hospitals, jails, restaurants, and schools. The Governor shall cause widespread publicity and notice to

be given to all of these orders and regulations, or amendments and rescissions thereof.

(b) The orders and regulations shall be in writing and take effect immediately on issuance. The temporary suspension of any statute, ordinance, regulation, or rule shall remain in effect until the order or regulation is rescinded by the Governor, the Governor proclaims the termination of the state of emergency, or for a period of 60 days, whichever occurs first.

§ 8628. Use of state personnel, equipment and facilities

During a state of emergency the Governor may direct all agencies of the state government to utilize and employ state personnel, equipment, and facilities for the performance of any and all activities designed to prevent or alleviate actual and threatened damage due to the emergency; and he may direct such agencies to provide supplemental services and equipment to political subdivisions to restore any services which must be restored in order to provide for the health and safety of the citizens of the affected area. Any agency so directed by the Governor may expend any of the moneys which have been appropriated to it in performing such activities, irrespective of the particular purpose for which the money was appropriated.

§ 8629. Termination of state of emergency; proclamation

The Governor shall proclaim the termination of a state of emergency at the earliest possible date that conditions warrant. All of the powers granted the Governor by this chapter with respect to a state of emergency shall terminate when the state of emergency has been terminated by proclamation of the Governor or by concurrent resolution of the Legislature declaring it at an end.

Article 14 – Local Emergency

§ 8630. Proclamation by local governing body; review; termination

(a) A local emergency may be proclaimed only by the governing body of a city, county, or city and county, or by an official designated by ordinance adopted by that governing body.
(b) Whenever a local emergency is proclaimed by an official designated by ordinance, the local emergency shall not remain in effect for a period in excess of seven days unless it has been ratified by the governing body.
(c) The governing body shall review the need for continuing the local emergency at least once every 30 days until the governing body terminates the local emergency.
(d) The governing body shall proclaim the termination of the local emergency at the earliest possible date that conditions warrant.

§ 8631. Authority of political subdivisions to render mutual aid

In periods of local emergency, political subdivisions have full power to provide mutual aid to any affected area in accordance with local ordinances, resolutions, emergency plans, or agreements therefor.

§ 8632. Authority of state agencies to provide mutual aid

State agencies may provide mutual aid, including personnel, equipment, and other available resources, to assist political subdivisions during a local emergency or in accordance with mutual aid agreements or at the direction of the Governor.

§ 8633. Cost of extraordinary services as charge against state

In the absence of a state of war emergency or state of emergency, the cost of extraordinary services incurred by political subdivisions in executing mutual aid agreements shall constitute a legal charge against the state when approved by the Governor in accordance with orders and regulations promulgated as prescribed in Section 8567.

§ 8634. Orders and regulations; curfew

During a local emergency the governing body of a political subdivision, or officials designated thereby, may promulgate orders and regulations necessary to provide for the protection of life and property, including orders or regulations imposing a curfew within designated boundaries where necessary to preserve the public order and safety. Such orders and regulations and amendments and rescissions thereof shall be in writing and shall be given widespread publicity and notice.

The authorization granted by this chapter to impose a curfew shall not be construed as restricting in any manner the existing authority of counties and cities and any city and county to impose pursuant to the police power a curfew for any other lawful purpose.

Article 15 – Preservation of Local Government

§ 8635. Legislative findings; purpose; applicability of article

The Legislature recognizes that if this state or nation were attacked by an enemy of the United States, many areas in California might be subjected to the effects of an enemy attack and some or all of these areas could be severely damaged. During such attacks and in the reconstruction period following such attacks, law and order must be preserved and so far as possible government services must be continued or restored. This can best be done by civil government. To help to preserve law and order and to continue or restore local

services, it is essential that the local units of government continue to function.

In enacting this article the Legislature finds and declares that the preservation of local government in the event of enemy attack or in the event of a state of emergency or a local emergency is a matter of statewide concern. The interdependence of political subdivisions requires that, for their mutual preservation and for the protection of all the citizens of the State of California, all political subdivisions have the power to take the minimum precautions set forth in this article. The purpose of this article is to furnish a means by which the continued functioning of political subdivisions will be assured. Should any part of this article be in conflict with or inconsistent with any other part of this chapter, the provisions of this article shall control.

Nothing in this article shall prevent a city or county existing under a charter from amending said charter to provide for the preservation and continuation of its government in the event of a state of war emergency.

§ 8636. "Unavailable" defined

As used in this article, "unavailable" means that an officer is either killed, missing, or so seriously injured as to be unable to attend meetings and otherwise perform his duties. Any question as to whether a particular officer is unavailable shall be settled by the governing body of the political subdivision or any remaining available members of said body (including standby officers who are serving on such governing body).

§ 8637. Succession of officers

Each political subdivision may provide for the succession of officers who head departments having duties in the maintenance of law and order or in the furnishing of public services relating to health and safety.

§ 8638. Standby officers; appointment; vacancies; designations

To provide for the continuance of the legislative and executive departments of the political subdivision during a state of war emergency or a state of emergency or a local emergency the governing body thereof shall have the power to appoint the following standby officers:

(a) Three for each member of the governing body.
(b) Three for the chief executive, if he is not a member of the governing body.

In case a standby office becomes vacant because of removal, death, resignation, or other cause, the governing body shall have the power to appoint another person to fill said office.

Standby officers shall be designated Nos. 1, 2, and 3 as the case may be.

§ 8639. Qualifications of standby officers; examination; investigation

The qualifications of each standby officer should be carefully investigated, and the governing body may request the Director of Emergency Services to aid in the investigation of any prospective appointee. No examination or investigation shall be made without the consent of the prospective appointee.

Consideration shall be given to places of residence and work, so that for each office for which standby officers are appointed there shall be the greatest probability of survivorship. Standby officers may be residents or officers of a political subdivision other than that to which they are appointed as standby officers.

§ 8640. Oath of office; term; removal

Each standby officer shall take the oath of office required for the officer occupying the office for which he stands by. Persons appointed as standby officers shall serve in their posts as standby officers at the pleasure of the governing body appointing them and may be removed and replaced at any time with or without cause.

§ 8641. Duties

Each standby officer shall have the following duties:

(a) To inform himself or herself of the duties of the office for which the officer stands by. Officers and employees of the political subdivision shall assist the standby officer and each political subdivision shall provide each standby officer with a copy of this article.

(b) To keep informed of the business and affairs of the political subdivision to the extent necessary to enable the standby officer to fill his or her post competently. For this purpose the political subdivision may arrange information meetings and require attendance.

(c) To immediately report himself or herself ready for duty in the event of a state of war emergency or in the event of a state of emergency or a local emergency at the place and in the method previously designated by the political subdivision.

(d) To fill the post for which he or she has been appointed when the regular officer is unavailable during a state of war emergency, a state of emergency or a local emergency. Standby officers Nos. 2 and 3 shall substitute in succession for standby officer No. 1 in the same way that standby officer No. 1 is substituted in place of the regular officer. The standby officer shall serve until the regular officer becomes available or until the election or appointment of a new regular officer.

§ 8642. Meeting of governing body whenever emergency exists

Whenever a state of war emergency a state of emergency or a local emergency exists the governing body of the political subdivision shall meet as soon as possible. The place of meeting need not be within the political subdivision. The meeting may be called by the chief executive of the political subdivision or by a majority of the members of the governing body. Should there be only one member of the governing body, he may call and hold said meeting and perform acts necessary to reconstitute the governing body.

§ 8643. Duties of governing body

During a state of war emergency a state of emergency or a local emergency the governing body shall:

(a) Ascertain the damage to the political subdivision and its personnel and property. For this purpose it shall have the power to issue subpoenas to compel the attendance of witnesses and the production of records.
(b) Proceed to reconstitute itself by filling vacancies until there are sufficient officers to form the largest quorum required by the law applicable to that political subdivision. Should only one member of the governing body or only one standby officer be available, that one shall have power to reconstitute the governing body.
(c) Proceed to reconstitute the political subdivision by appointment of qualified persons to fill vacancies.
(d) Proceed to perform its functions in the preservation of law and order and in the furnishing of local services.

§ 8644. Temporary officers

Should all members of the governing body, including all standby members, be unavailable, temporary officers shall be appointed to serve until a regular member or a standby member becomes available or until the election or appointment of a new regular or standby member. Temporary officers shall be appointed as follows:

(a) By the chairman of the board of supervisors of the county in which the political subdivision is located, and if he is unavailable,
(b) By the chairman of the board of supervisors of any other county within 150 miles of the political subdivision, beginning with the nearest and most populated county and going to the farthest and least populated, and if he is unavailable,
(c) By the mayor of any city within 150 miles of the political subdivision, beginning with the nearest and most populated city and going to the farthest and least populated.

Article 16 – General Fiscal Provisions

§ 8645. Authority of Governor to make expenditures

In addition to any appropriation made to support activities contemplated by this chapter, the Governor is empowered to make expenditures from any fund legally available in order to deal with actual or threatened conditions of a state of war emergency, state of emergency, or local emergency.

§ 8646. Other duties of Governor

In carrying out the provisions of this chapter, the Governor may:

(a) Procure and maintain offices in such parts of the state as may be necessary or convenient;
(b) Acquire property, real or personal, or any interest therein;

(c) Cooperate and contract with public and private agencies for the performance of such acts, the rendition of such services, and the affording of such facilities as may be necessary and proper;

(d) Do such other acts and things as may be necessary and incidental to the exercise of powers and the discharge of duties conferred or imposed by the provisions of this chapter.

§ 8647. Acceptance by Governor of services, equipment, and supplies

(a) Whenever the federal government or any agency or officer thereof shall offer to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purposes of the mitigation of the effects of an emergency, the state, acting through the Governor, or such political subdivision, acting with the consent of the Governor and through its chief executive or governing body, may accept such offer.

(b) Whenever any person, firm, or corporation shall offer to the state or to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purposes of the mitigation of the effects of an emergency, the state, acting through the Governor, or such political subdivision, acting through its chief executive or governing body, may accept such offer.

(c) Upon acceptance, the Governor of the state or the chief executive or governing body of such political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision, subject to the terms of the offer and subject to the rules and regulations, if any, of a federal agency making such offer.

§ 8648. Reimbursement of state agencies by Governor

The Governor may reimburse any state agency for funds expended in the performance of any and all activities as set forth in Section 8628 in accordance with orders and regulations promulgated as prescribed in Section 8567. Such reimbursement shall be subject to the provisions of Section 8649.

§ 8649. Use or personnel, property, equipment and appropriations by state agency with approval of Department of Finance

Subject to the approval of the Department of Finance, any state agency may use its personnel, property, equipment, and appropriations for carrying out the purposes of this chapter, and in that connection may loan personnel to the Office of Emergency Services. The Department of Finance shall determine whether reimbursement shall be made to any state agency for expenditures heretofore or hereafter made or incurred for those purposes from any appropriation available for the Office of Emergency Services, except that as to any expenditure made or incurred by any state agency the funds of which are subject to constitutional restriction that would prohibit their use for those purposes, that reimbursement shall be provided and the original expenditure shall be considered a temporary loan to the General Fund.

§ 8650. Deposit by state agencies of funds received as reimbursement for services or supplies

Any funds received by state agencies as reimbursement for services or supplies furnished under the authority of this chapter shall be deposited to the credit of the appropriation or appropriations from which the expenditures were made.

§ 8651. Authority of Director of Emergency Services to procure federal surplus equipment, apparatus, supplies, and storage facilities

The Director of Emergency Services may procure from the federal government or any of its agencies such surplus equipment, apparatus, supplies, and storage facilities therefor as may be necessary to accomplish the purposes of this chapter.

§ 8652. Claims for taking or damaging private property

Before payment may be made by the state to any person in reimbursement for taking or damaging private property necessarily utilized by the Governor in carrying out his or her responsibilities under this chapter during a state of war emergency or state of emergency, or for services rendered at the instance of the Governor under those conditions, the person shall present a claim to the California Victim Compensation and Government Claims Board in accordance with the provisions of the Government Code governing the presentation of claims against the state for the taking or damaging of private property for public use, which provisions shall govern the presentment, allowance, or rejection of the claims and the conditions upon which suit may be brought against the state. Payment for property or services shall be made from any funds appropriated by the state for that purpose.

§ 8653. Cities, counties or cities and counties; performance of duties by officers, employees or agencies outside territorial limits; claims for property damaged or destroyed

In the event that the Governor, during a state of war emergency or a state of emergency and in the exercise of the emergency powers vested in him, shall order the officers, employees, or agencies of any county, city and county, city, or district to perform duties outside of the territorial limits of their respective agencies, any services performed or expenditures made in connection therewith by any

such agency shall be deemed conclusively to be for the direct protection and benefit of the inhabitants and property of such agency. During a state of war emergency or a state of emergency in the event that any equipment owned, leased, or operated by any county, city and county, city, or district, is damaged or destroyed while being used outside of the territorial limits of the public agency owning such equipment, the public agency suffering loss shall be entitled to file a claim for the amount thereof against the State of California in the manner provided in Section 8652. Such agency shall have no claim against the state for services of such personnel or for the rental, use, or ordinary wear and tear of such equipment, except such extraordinary services incurred by local governmental agencies in executing mutual aid agreements.

§ 8654. State of emergency; powers of Governor

(a) Whenever the Governor has proclaimed a state of emergency and the President has declared an emergency or a major disaster to exist in this state, the Governor may do any of the following:

(1) Enter into purchases, leases, or other arrangements with any agency of the United States for temporary housing units to be occupied by disaster victims and make those units available to any political subdivision for that purpose.

(2) Assist any political subdivision within which temporary housing for disaster victims is proposed to be located to acquire sites necessary for that temporary housing and to do all things required to prepare those sites to receive and utilize temporary housing units by advancing or lending any funds available to the Governor from any appropriation made by the Legislature or from any other source, by transmitting any funds made available by any public or private agency, or by acting in cooperation with the political subdivision for the execution and

performance of any project for temporary housing for disaster victims, and for those purposes to pledge the credit of the state on terms as the Governor declares necessary under the circumstances, having due regard for current financial obligations of the state.

(3) Under regulations as the Governor shall make, temporarily suspend or modify for not to exceed 60 days any public health, safety, zoning, or intrastate transportation law, ordinance, or regulation when by proclamation he or she declares the suspension or modification essential to provide temporary housing for disaster victims.

(4) Upon his or her determination that financial assistance is essential to meet disaster-related necessary expenses or serious needs of individuals or households adversely affected by a Presidential declaration of a major disaster or emergency that cannot be otherwise adequately met from other means of assistance, accept assistance in the form of grants by the federal government to fund that financial assistance, subject to those terms and conditions as may be imposed upon the grant.

(5) Enter into an agreement with the federal government, or any officer or agency thereof, pledging the state to participate in the funding of any grant accepted pursuant to paragraph (1), in an amount not to exceed 25 percent thereof, and, if state funds are not otherwise available to the Governor, accept an advance of the state share from the federal government to be repaid when the state is able to do so.

(6) Notwithstanding any other provision of law, make financial grants available to meet disaster-related necessary expenses or serious needs of individuals

or households adversely affected by a Presidential declaration of a major disaster or emergency in accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act and Sections 13600 and 13601 of the Welfare and Institutions Code.

(b) Whenever the President at the request of the Governor declares a major disaster to exist in this state, the Governor may do any of the following:

(1) Upon his or her determination that a local government will suffer a substantial loss of tax and other revenues from a major disaster and has demonstrated a need for financial assistance to perform its governmental functions, apply to the federal government, on behalf of the local government, for a loan, and receive and disburse the proceeds of that loan to the local government.

(2) Determine the amount needed by a local government to restore or resume its governmental functions, and certify that amount to the federal government. However, that amount shall not exceed 25 percent of the annual operating budget of the local government for the fiscal year in which the major disaster has occurred.

(3) Recommend to the federal government, after reviewing the matter, the cancellation of all or any part of a loan made pursuant to paragraph (2) when during the period of three full fiscal years immediately following the major disaster, the revenues of the local government are insufficient to meet its operating expenses, including disaster-related expenses incurred by the local government.

(c) The Governor shall make those regulations as are necessary in carrying out the purposes of paragraphs (4), (5), and (6) of subdivision (a), including, but not limited to: standards of

eligibility for persons applying for benefits; procedures for application and administration; methods of investigation, processing, and approving applications; formation of local or statewide review boards to pass upon applications; and procedures for appeals.

(d) Any political subdivision is expressly authorized to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for disaster victims, and to enter into whatever arrangements (including purchase of temporary housing units and payment of transportation charges) are necessary to prepare or equip the sites to utilize the housing units.

(e) Any person who fraudulently makes any misstatement of fact in connection with an application for financial assistance under this section shall, upon conviction of each offense, be guilty of a misdemeanor punishable by a fine of not more than five thousand dollars ($5,000), or imprisonment for not more than one year, or both.

(f) The terms "major disaster," "emergency," and "temporary housing," as used in this section, shall have the same meaning as those terms are defined or used in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288, as amended by P.L. 100-707). It is the intent of the Legislature in enacting this section that it shall be liberally construed to effectuate the purposes of that federal act.

§ 8654.1. Northridge earthquake; federal fund advances; repayment

(a) The Legislature finds and declares that financial assistance is essential to meet disaster-related necessary expenses of the state and local governments and the serious needs of individuals or families affected by the Northridge earthquake which occurred January 17, 1994. The Legislature further finds and declares that the federal government will advance to the state, and will authorize local entities to advance from

specified federal funds made available to them, the nonfederal share of the costs of this financial assistance.

(b) In order to implement the advance of the nonfederal share from federal funds, in accordance with subdivision (a), the Director of Finance may enter into agreements for the acceptance of these advances, subject to the following:

(1) Funds may be obtained directly from agencies of the federal government or from funds provided to local agencies by the federal government.

(2) Advances may be accepted beginning in the 1994-95 fiscal year, and in no event later than the 1997-98 fiscal year.

(3) The cumulative amount of advances accepted shall not exceed three hundred million dollars ($300,000,000), unless additional amounts are authorized subject to the 30-day notification of the Joint Legislative Budget Committee under Section 28 of the 1994 Budget Act and any substantially similar provision of subsequent budget acts. The state shall accept as advances only so much as may be needed to pay the expenses incurred herein and as may be repaid, consistent with this section, in a short period of time, having due regard for the current financial obligations of the state.

(4) Funds received by the state shall be deposited in the Special Deposit Fund, subject to Article 2 (commencing with Section 16370) of Chapter 2 of Part 2 of Division 4, and may be expended, allocated, or transferred, upon order of the Department of Finance, only to meet the nonfederal share of disaster assistance costs incurred by state or local agencies as a result of the Northridge earthquake.

(5) Funds received under this section, together with interest at a rate agreed upon by the state and

federal or local agencies involved, shall be repaid, upon order of the Director of Finance, to the federal government or advancing local agency, from the General Fund as soon as the state is able to do so, but in no event shall any advance remain outstanding after July 31, 1997. The state shall repay no less than one-third of the funds advanced in each of the 1995-96, 1996-97 and 1997-98 fiscal years.

Article 17 – Privileges and Immunities

§ 8655. Liability of state or political subdivisions for discretionary functions

The state or its political subdivisions shall not be liable for any claim based upon the exercise or performance, or the failure to exercise or perform, a discretionary function or duty on the part of a state or local agency or any employee of the state or its political subdivisions in carrying out the provisions of this chapter.

§ 8655.5. Donor of community warning system

(a) As used in this section, the following terms have the following meanings:

(1) "Community warning program" means any broadcast or notification program conducted by or at the direction of a public agency of a county of the ninth class that is intended to facilitate the agency's ability to warn residents of an actual or a threatened hazardous materials release or other emergency or natural disaster, and to coordinate the dissemination of information through various media and other warning devices of any nature, including, but not limited to, sirens, television, radio, 911 service, and public address systems.

(2) "Community warning system" means any combination of equipment, hardware, and software used in a community warning program by a county of the ninth class.

(3) "Donor organization" means a California nonprofit public benefit corporation, and its officers, directors, employees, members, and contributors, that has donated in whole or in part a community warning system to a county of the ninth class.

(b) A donor organization is immune from suit and claims of liability for any injury arising out of the design, development, installation, maintenance, operation, and use of a community warning program or community warning system. This section shall be cumulative with, and does not affect in any way, any immunity from suit and claims of liability, privileges, defenses, or exemptions otherwise enjoyed by any person or entity. This immunity shall not apply to the management, operation, or maintenance of a community warning system by a donor organization after a donor organization donates a community warning system to a county of the ninth class, but shall apply to (1) the installation by a donor organization of alert receiver equipment and initiation box equipment, or (2) the operation or maintenance, or both, by a donor organization of stationary terminal equipment and related initiation box equipment, and alert receiver equipment, or both (1) and (2), for communications and operations, provided that the installation, operation, or maintenance, or all of these, by the donor organization is undertaken without compensation, and in accordance with the direction of, or under contract with, a county of the ninth class, whether before or after the donation.

(c)

(1) Except as expressly provided in subdivision (b), this section does not negate or impair any duty or cause

of action, whether civil or criminal, against a donor organization.

(2) Without limiting the generality of paragraph (1), this section is not intended to, nor shall it be construed to, (A) relieve the manufacturer, designer, developer, installer, or supplier of equipment or software for a community warning system from any obligation or liability under any applicable statute or rule of law, or (B) relieve any donor organization from any liability for the intentional wrongful use of a community warning system or any part thereof.

(3) Notwithstanding any other provision of this section or of any law relating to indemnity, joint and several liability, or several liability, no claim for contribution or indemnity arises against a donor organization based on the design, development, installation, maintenance, operation, or use of a community warning system for which the donor organization is otherwise immune under the section.

(4) Notwithstanding any other provision of this section or of any law relating to indemnity, joint and several liability, or several liability, no person who is otherwise liable for damages shall be entitled to seek or assert any allocation of any percentage of fault or liability for the purpose of the reduction of damages for personal injury, property damage, or wrongful death, based on the participation of a donor organization or a county of the ninth class or its officials or employees in the design, development, installation, maintenance, operation, or use of a community warning system.

§ 8656. Applicability of existing privileges and immunities to extraterritorial performance of functions and duties

All of the privileges and immunities from liability; exemptions from laws, ordinances, and rules; all pension, relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any political subdivision when performing their respective functions within the territorial limits of their respective political subdivisions, shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extraterritorially under this chapter.

§ 8657. Privileges and immunities of volunteers and unregistered persons impressed into service; liability of political subdivisions, officers, employees, etc., for personal injury or property damage

(a) Volunteers duly enrolled or registered with the Office of Emergency Services or any disaster council of any political subdivision, or unregistered persons duly impressed into service during a state of war emergency, a state of emergency, or a local emergency, in carrying out, complying with, or attempting to comply with, any order or regulation issued or promulgated pursuant to the provisions of this chapter or any local ordinance, or performing any of their authorized functions or duties or training for the performance of their authorized functions or duties, shall have the same degree of responsibility for their actions and enjoy the same immunities as officers and employees of the state and its political subdivisions performing similar work for their respective entities.

(b) No political subdivision or other public agency under any circumstances, nor the officers, employees, agents, or duly enrolled or registered volunteers thereof, or unregistered persons duly impressed into service during a state of war emergency, a state of emergency, or a local emergency,

acting within the scope of their official duties under this chapter or any local ordinance shall be liable for personal injury or property damage sustained by any duly enrolled or registered volunteer engaged in or training for emergency preparedness or relief activity, or by any unregistered person duly impressed into service during a state of war emergency, a state of emergency, or a local emergency and engaged in such service. The foregoing shall not affect the right of any such person to receive benefits or compensation which may be specifically provided by the provisions of any federal or state statute nor shall it affect the right of any person to recover under the terms of any policy of insurance.

(c) The California Earthquake Prediction Evaluation Council, an advisory committee established pursuant to Section 8590 of this chapter, may advise the Governor of the existence of an earthquake or volcanic prediction having scientific validity. In its review, hearings, deliberations, or other validation procedures, members of the council, jointly and severally, shall have the same degree of responsibility for their actions and enjoy the same immunities as officers and employees of the state and its political subdivisions engaged in similar work in their respective entities. Any person making a presentation to the council as part of the council's validation process, including presentation of a prediction for validation, shall be deemed a member of the council until the council has found the prediction to have or not have scientific validity.

§ 8657.5. Private business included on statewide registry; civil liability; exclusions

(a)

(1) A private business included on the statewide registry pursuant to Section 8588.2 that voluntarily and without expectation and receipt of compensation donates services, goods, labor,

equipment, resources, or dispensaries or other facilities, in compliance with Section 8588.2, during a declared state of war, state of emergency, or state of local emergency shall not be civilly liable for a death, injury, illness, or other damage to a person or property caused by the private business's donation of services, goods, labor, equipment, resources, or dispensaries or other facilities.

(2) A private business included on the statewide registry that voluntarily and without expectation and receipt of compensation donates services, goods, labor, equipment, resources, or dispensaries or other facilities, in compliance with Section 8588.2, during an emergency medical services training program conducted by the Office of Emergency Services and a city, a county, or a city and county shall not be civilly liable for damages alleged to have resulted from those training programs, as described in Section 1799.100 of the Health and Safety Code.

(b)

(1) A nonprofit organization included on the statewide registry pursuant to Section 8588.2 that voluntarily and without expectation and receipt of compensation from victims of emergencies and disasters donates services, goods, labor, equipment, resources, or dispensaries or other facilities, in compliance with Section 8588.2, during a declared state of war, state of emergency, or state of local emergency shall not be civilly liable for a death, injury, illness, or other damage to a person or property caused by the nonprofit organization's donation of services, goods, labor, equipment, resources, or dispensaries or other facilities.

(2) A nonprofit organization included on the statewide registry that voluntarily and without expectation and receipt of compensation donates services, goods, labor, equipment, resources, or dispensaries or other facilities, in compliance with Section 8588.2, during an emergency medical services training program conducted by the Office of Emergency Services and a city, a county, or a city and county, shall not be civilly liable for damages alleged to have resulted from those training programs, as described in Section 1799.100 of the Health and Safety Code.

(c) A private business or nonprofit organization that discriminates against a victim of an emergency or disaster based on a protected classification under federal or state law shall not be entitled to the protections in subdivision (a) or (b).

(d) This section shall not relieve a private business or nonprofit organization from liability caused by its grossly negligent act or omission, or willful or wanton misconduct.

§ 8658. Removal of inmates from penal or correctional institution; immunity from liability

In any case in which an emergency endangering the lives of inmates of a state, county, or city penal or correctional institution has occurred or is imminent, the person in charge of the institution may remove the inmates from the institution. He shall, if possible, remove them to a safe and convenient place and there confine them as long as may be necessary to avoid the danger, or, if that is not possible, may release them. Such person shall not be held liable, civilly or criminally, for acts performed pursuant to this section.

§ 8659. Physicians, surgeons, hospitals, pharmacists, respiratory care practitioners, nurses and dentists, veterinarians and registered veterinary technicians; immunity from liability for services requested; exception

(a) Any physician or surgeon (whether licensed in this state or any other state), hospital, pharmacist, respiratory care practitioner, nurse, or dentist who renders services during any state of war emergency, a state of emergency, or a local emergency at the express or implied request of any responsible state or local official or agency shall have no liability for any injury sustained by any person by reason of those services, regardless of how or under what circumstances or by what cause such injuries are sustained; provided, however, that the immunity herein granted shall not apply in the event of a willful act or omission.

(b) Any veterinarian or registered veterinary technician who renders services during any state of war emergency, a state of emergency, or a local emergency at the express or implied request of any responsible state or local official or agency shall have no liability for any injury sustained by any animal by reason of those services, regardless of how or under what circumstances or by what cause those injuries are sustained; provided, however, that the immunity herein granted shall not apply in the event of a willful act or omission.

§ 8660. Other states rendering aid in state; immunity from liability

No other state or its officers or employees rendering aid in this state pursuant to any interstate arrangement, agreement, or compact shall be liable on account of any act or omission in good faith on the part of such state or its officers or employees while so engaged, or on account of the maintenance or use of any equipment or supplies in connection with an emergency.

Article 18 – Political Activity

§ 8661. Prohibition

No organization established under the authority of this chapter shall participate in any form of political activity nor shall it be employed directly or indirectly for political purposes.

Article 19 – Penalties and Severability

§ 8665. Violations; punishment

Any person who violates any of the provisions of this chapter or who refuses or willfully neglects to obey any lawful order or regulation promulgated or issued as provided in this chapter, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a fine of not to exceed one thousand dollars ($1,000) or by imprisonment for not to exceed six months or by both such fine and imprisonment.

§ 8666. Severability

If any section, subdivision, subsection, sentence, clause, or phrase in this chapter, or the application thereof to any person or circumstances, is for any reason held invalid, the validity of the remainder of the chapter, or the application of such provision to other persons or circumstances, shall not be affected thereby. The Legislature hereby declares that it would have passed this chapter and each section, subdivision, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subdivisions, subsections, sentences, clauses, or phrases, or the application thereof to any person or circumstance, be held invalid.

Article 20 – Effect Upon Existing Matters

§ 8668. Effect on prior plans, mutual aid agreements, and authority of cities and counties

(a) Any disaster council previously accredited, the State Civil Defense and Disaster Plan, the State Emergency Resources Management Plan, the State Fire Disaster Plan, the State Law Enforcement Mutual Aid Plan, all previously approved civil defense and disaster plans, all mutual aid agreements, and all other documents and agreements existing as of the effective date of this chapter, shall remain in full force and effect until revised, amended, or revoked in accordance with the provisions of this chapter.

(b) Nothing in this chapter shall be construed to diminish or remove any authority of any city, county, or city and county granted by Section 7 of Article XI of the California Constitution.

California Disaster Assistance Act

Government Code

Chapter 7.5 of Division 1 of Title 2

Article I – General Provisions and Definitions

§ 8680. Short title

This chapter shall be known and may be cited as the California Disaster Assistance Act.

§ 8680.1. Construction of chapter

Unless the provision or context otherwise requires, the definitions contained in this article govern the construction of this chapter.

§ 8680.2. "Local agency" defined

"Local agency" means any city, city and county, county, county office of education, community college district, school district, or special district.

§ 8680.3. "Disaster" defined

"Disaster" means a fire, flood, storm, tidal wave, earthquake, terrorism, epidemic, or other similar public calamity that the Governor determines presents a threat to public safety.

§ 8680.4. "Project" defined

"Project" means the repair or restoration, or both, other than normal maintenance, or the replacement of, real property of a local agency used for essential governmental services, including, but not limited to, buildings, levees, flood control works, channels, irrigation works,

streets, roads, bridges, highways, and other public works, that are damaged or destroyed by a disaster. "Project" also includes those activities and expenses allowed under subdivisions (a), (c), (d), and (e) of Section 8685. Except as provided in Section 8686.3, the completion of all or part of a project prior to application for funds pursuant to this chapter shall not disqualify the project or any part thereof.

§ 8680.5. "Project application" defined

"Project application" means the written application made by a local agency to the director for state financial assistance, which shall include all damage to public real property that resulted from a disaster within the total jurisdiction of the local agency making application and other activities and expenses as allowed in Section 8685.

§ 8680.7. "Director" defined

"Director" means the Director of Emergency Services.

§ 8680.8. "State agency" defined

"State agency" means the Department of Transportation, the Department of Water Resources, the Department of General Services, the Department of Health, the Department of Finance, or other state agency or office including, but not limited to, the University of California. The Department of Transportation's area of responsibility concerns streets, roads, bridge and mass transit repairs. The Department of Water Resources' area of responsibility concerns dams, levees, flood control works, channels, irrigation works, and other similar projects. The Department of General Services' area of responsibility concerns buildings, sewer, water systems, and district road and access facility construction, alteration, repair and improvement thereof, and all other projects. The director shall assign applications to the appropriate agencies for investigation.

§ 8680.9. "Local emergency" defined

"Local emergency" means a condition of extreme peril to persons or property proclaimed as such by the governing body of the local agency affected, in accordance with Section 8630.

Article 2 – Administration

§ 8682. Administration by Director; delegation of powers or duties

The director shall administer this chapter. The director may delegate any power or duty vested in him or her under this chapter to a state agency or to any other officer or employee of the Office of Emergency Services.

§ 8682.2. State agencies; services and duties

To the extent that funds are allocated therefor, a state agency, when requested by the director, shall render services and perform duties within its area of responsibility when considered necessary to carry out the purposes of this chapter.

§ 8682.6. Hold harmless provision; benefit of state

The project proposal executed between a local agency and the director pursuant to Section 8685.6 shall contain a provision under which the local agency agrees to hold the state harmless from damages due to the work for which funds are allocated.

§ 8682.8. Claims of local agencies

When certified by the director, claims of local agencies for payment shall be presented to the Controller for payment out of funds made available therefor. The director may request the Controller to audit any claim to ensure that funds were expended in accordance with the requirements and purposes of this chapter.

§ 8682.9. Regulations; adoption

The director shall adopt regulations, as necessary, to govern the administration of the disaster assistance program authorized by this chapter in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1of Division 3). These regulations shall include specific project eligibility requirements, a procedure for local governments to request the implementation of programs under this chapter, and a method for evaluating these requests by the Office of Emergency Services.

Article 3 – Allocations to State Agencies

§ 8683. Investigations, estimates, reports and training; federal aid; allocations for agencies performing extraordinary emergency measures

(a) Whenever funds are available for purposes of this chapter, the director shall make allocations from the funds available in the amounts that he or she determines to be necessary to state agencies for expenditure for making the investigations, estimates, and reports required by this chapter. Those allocations may also be made to provide for preliminary investigations, estimates, reports, training of state agency personnel, or to reimburse the state agencies for expenditures made in anticipation of actual applications by local agencies. Allocations may also be made for the purpose of making any investigations, estimates, and reports that may be necessary to enable local agencies to obtain federal aid for disaster relief purposes, regardless of whether or not that aid is available for projects that are eligible for state allocations pursuant to this chapter. The director may make allocations to any state agency or office from those funds, or other funds available therefor, in the amounts that are necessary to administer this chapter.

(b) When a proclamation of a state of emergency has been issued by the Governor under the California Emergency Services Act (Chapter 7 (commencing with Section 8550)) and funds are available for purposes of this chapter, the director may make allocations from the funds available in the amounts that the director determines necessary to state agencies for expenditures incurred performing extraordinary emergency measures. An allocation pursuant to this subdivision is at the discretion of the director, but an allocation shall not reimburse either of the following:

(1) Employee costs related to emergency work activities.

(2) Any permanent repairs to the agency's own facilities.

§ 8684.2. Disaster relief assistance; emergency interim loan guarantees; directives and requirements; report to Legislature

(a) It is the intent of the Legislature:

(1) To provide the Governor with appropriate emergency powers in order to enable utilization of available emergency funding to provide guarantees for interim loans to be made by lending institutions, in connection with relief provided for those persons affected by disasters or a state of emergency in affected areas during periods of disaster relief assistance, for the purpose of supplying interim financing to enable small businesses to continue operations pending receipt of federal disaster assistance.

(2) That the Governor should utilize this authority to prevent business insolvencies and loss of employment in areas affected by these disasters.

(b) In addition to the allocations authorized by Section 8683 and the loan guarantee provisions of Section 63089.90, the

Governor may allocate funds made available for the purposes of this chapter, in connection with relief provided, in affected areas during the period of federal disaster relief, to the Small Business Expansion Fund for use by the California Infrastructure and Economic Development Bank, pursuant to chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code and chapter 6 (commencing with Section 63088) of Division 1 of Title 6.7 of this code, to provide guarantees for low-interest interim loans to be made by lending institutions for the purpose of providing interim financing to enable small businesses that have suffered actual physical damage or significant economic losses, as a result of the disaster or state of emergency for which funding under this section is made available, to continue or resume operations pending receipt of loans made or guaranteed by the federal Small Business Administration. The maximum amount of any loan guarantee funded under this paragraph shall be limited by the directives and requirements. Each loan guarantee shall not exceed 95 percent of the loan amount, except that a loan guarantee may be for 100 percent of the loan amount if the applicant can demonstrate that access to business records pertinent to the loan application has been precluded by official action prohibiting necessary reentry into the affected business premises or that those business records pertinent to the loan application have been destroyed. The term of the loan shall be determined by the lending institution providing the loan or shall be made payable on the date the proceeds of a loan made or guaranteed by the federal Small Business Administration with respect to the same damage or loss are made available to the borrower, whichever event first occurs.

(c) Loan guarantees for which the initial 12-month term has expired and for which an application for disaster assistance funding from the federal Small Business Administration is

still pending maybe extended until the Small Business Administration has reached a final decision on the application. Applications for interim loans shall be processed in an expeditious manner. Wherever possible, lending institutions shall fund nonconstruction loans within 60 calendar days of application. Loan guarantees for loans that have been denied funding by the federal Small Business Administration, may be extended by the financial institution provided that the loan is for no longer than a maximum of seven years, if the business demonstrates the ability to repay the loan with an extended loan term, and a new credit analysis is provided. All loans extended under this provision shall be repaid in installments of principal and interest, and be fully amortized over the term of the loan. Nothing in this section shall preclude the lender from charging reasonable administrative fees in connection with the loan.

(d) Allocations pursuant to this section shall, for purposes of all provisions of law, be deemed to be for extraordinary emergency or disaster response operation costs, as provided in Section 8690.6, incurred by state employees assigned to work on the guarantees authorized by this section.

(e) The California Infrastructure and Economic Development Bank, which is located within the Governor's Office of Business and Economic Development, may adopt directives and requirements to implement the disaster loan guarantee program authorized by this section.

(f) As long as there are any outstanding small business disaster loan guarantees, as authorized by Section 8684.2 or 63089.90, the bank shall provide a report to the Legislature on loan guarantees approved and rejected by gender, ethnic group, type of business and location, and each participating loan institution. The report may be combined with report required in Section 63089.98.

Article 4 – Allocations to Local Agencies

§ 8685. Allocation of funds to meet cost of projects; submission of applications; use of funds

From any moneys appropriated for that purpose, and subject to the conditions specified in this article, the director shall allocate funds to meet the cost of any one or more projects as defined in Section 8680.4. Applications by school districts shall be submitted to the Superintendent of Public Instruction for review and approval, in accordance with instructions or regulations developed by the Office of Emergency Services, prior to the allocation of funds by the director.

Moneys appropriated for the purposes of this chapter may be used to provide financial assistance for the following local agency and state costs:

(a) Local agency personnel costs, equipment costs, and the cost of supplies and materials used during disaster response activities, incurred as a result of a state of emergency proclaimed by the Governor, excluding the normal hourly wage costs of employees engaged in emergency work activities.
(b) To repair, restore, reconstruct, or replace facilities belonging to local agencies damaged as a result of disasters as defined in Section 8680.3. Mitigation measures performed pursuant to subdivision (b) of Section 8686.4 shall qualify for funding pursuant to this chapter.
(c) Matching fund assistance for cost sharing required under federal disaster assistance programs, as otherwise eligible under this act.
(d) Indirect administrative costs and any other assistance deemed necessary by the director.
(e) Necessary and required site preparation costs for mobile homes, travel trailers, and other manufactured housing units

provided and operated by the Federal Emergency Management Agency.

§ 8685.2. Proclamation of local emergency

An allocation may be made to a local agency for a project when, within 10 days after the actual occurrence of a disaster, the local agency has proclaimed a local emergency and that proclamation is acceptable to the director or upon the order of the Governor when a state of emergency proclamation has been issued, and if the Legislature has appropriated money for allocation for purposes of this chapter.

§ 8685.4. Application for state assistance; time; investigation and report; unusual circumstances

A local agency shall make application to the director for state financial assistance within 60 days after the date of the proclamation of a local emergency. The director may extend the time for this filing only under unusual circumstances. No financial aid shall be provided until a state agency, upon the request of the director, has first investigated and reported upon the proposed work, has estimated the cost of the work, and has filed its report with the director within 60 days from the date the local agency made application, unless the director extends the time because of unusual circumstances. The estimate of cost of the work may include expenditures made by the local agency for the work prior to the making of the estimate. If the reporting state agency fails to report its findings within the 60-day period, and time is not extended by the director, the director may complete the investigation and recover a proportionate amount allocated to the state agency for the balance of the investigation. "Unusual circumstances," as used above, are unavoidable delays that result from recurrence of a disaster, prolonged severe weather within a one-year period, or other conditions beyond the control of the applicant. Delays resulting from administrative procedures are not unusual circumstances which warrant extensions of time.

§ 8685.6. Acceptance of project proposal and cost-sharing by local agency

No money shall be allocated for a project until the local agency has indicated in writing its acceptance of the project proposal and the cost- sharing related thereto in such form as the director prescribes. The project proposal shall provide for the performance of the work by the local agency, or by the state agency in whose area of responsibility such work falls, if the local agency and such state agency determine that the work should be performed by the state agency. The project proposal shall also provide for the methods of handling the funds allocated and the matching funds provided by the local agency. It shall also contain such other provisions as are deemed necessary to assure completion of the work included in the project and the proper expenditure of funds as provided herein.

§ 8685.7. State Contract Act; law governing local agency work

Any work performed by a state agency at the request of a local agency shall be agreed upon in writing and be subject to the State Contract Act. Work performed by a local agency shall be subject to the law governing the performance of that work by the local agency and applicable state and federal laws or regulations. Neither the state nor any officer or employee thereof shall have any responsibility in connection with any work performed by a local agency.

§ 8685.8. Advance of funds to local agency

Under procedures to be prescribed by the director, a local agency may receive an advance of funds to initiate a project. Such advances shall be limited to not more than 90 percent of the estimated state's share of the project, as determined pursuant to Section 8686.

§ 8685.9. Limitation of state share to percentage of eligible costs; exception

Notwithstanding any other provision of law, including Section 8686, for any eligible project, the state share shall not exceed 75 percent of total state eligible costs unless the local agency is located within a city, county, or city and county that has adopted a local hazard mitigation plan in accordance with the federal Disaster Mitigation Act of 2000 (P.L. 106-390) as part of the safety element of its general plan adopted pursuant to subdivision (g) of Section 65302. In that situation, the Legislature may provide for a state share of local costs that exceeds 75 percent of total state eligible costs.

§ 8686. State share; limitation of payment to percentage of eligible costs; exceptions; minimum qualifying amount

(a) For any eligible project, the state share shall amount to no more than 75 percent of total state eligible costs.

(b) Notwithstanding subdivision (a), the state share shall be up to 100 percent of total state eligible costs connected with the following events:

  (1) The October 17, 1989, Loma Prieta earthquake.

  (2) The October 20, 1991, East Bay fire.

  (3) The fires that occurred in southern California from October 1, 1993, to November 30, 1993, inclusive.

  (4) The January 17, 1994, Northridge earthquake.

  (5) Storms that occurred in California during the periods commencing January 3, 1995, and February 13, 1995, as specified in agreements between this state and the United States for federal financial assistance.

  (6) The storms that occurred in California in December of 1996 and early January of 1997, as specified in agreements between this state and the United States for federal financial assistance.

(7) The winter storms and flooding that occurred from February 1, 1998, to April 30, 1998, inclusive, as specified in agreements between this state and the United States for federal financial assistance.

(8) The wildfires that occurred in southern California commencing October 21, 2003, as specified in agreements between this state and the United States for federal financial assistance.

(9) The December 22, 2003, San Simeon earthquake, as specified in agreements between this state and the United States for federal financial assistance.

(10) The severe storms, flooding, debris flows, and mud slides that occurred during December 27, 2004, to January 11, 2005, inclusive, in southern California, as specified in agreements between this state and the United States for federal financial assistance.

(11) The severe storms, flooding, landslides, and mud and debris flows that occurred in southern California during the period from February 16 to February 23, 2005, inclusive, as specified in agreements between this state and the United States for federal financial assistance.

(12) The severe storms, flooding, mud slides, and landslides that occurred in northern California during the period from December 17, 2005, to January 3, 2006, inclusive, as specified in agreements between this state and the United States for federal financial assistance.

(13) The severe storms and flooding that occurred in northern and central California during the period from March 29, 2006, to April16, 2006, inclusive, as specified in agreements between this state and the United States for federal financial assistance.

(c) For any federally declared disaster subsequent to January 1, 1995, that the Legislature has designated in subdivision (b),

the state shall assume the increased share specified in subdivision (b) in those cases where the Federal Emergency Management Agency or another applicable federal agency has approved the federal share of costs.

(d) The state shall make no allocation for any project application resulting in a state share of less than two thousand five hundred dollars ($2,500) under this section.

§ 8686.1. Events for which state share of state eligible cost is 100%; Middle River levee break

(a) Notwithstanding subdivision (a) of Section 8686, the state share shall be up to 100 percent of total state eligible costs connected with the Middle River levee break in San Joaquin County that occurred in June 2004.

(b) For the disaster that the Legislature has designated in subdivision (a), the state shall assume the increased share specified in subdivision (a) if the Federal Emergency Management Agency or another applicable federal agency has approved the federal share of costs.

(c) The state shall make no allocation for any project application resulting in a state share of less than two thousand five hundred dollars ($2,500) under this section.

§ 8686.2. Federal funds; deduction from costs

When the United States or any agency thereof is to provide disaster relief funds for any portion of the cost of a project, the amount so provided shall be deducted from the cost of the project in determining the amount to be allocated by the state and the amount to be contributed by the local agency under Section 8686. It shall not be required that the disaster relief funds to be provided from federal sources shall be paid into the State Treasury, but the director shall, if state funds are available, authorize the work to be commenced when the director has received assurance, adequate in his or her opinion, that the federal disaster relief matching funds will be made available

for expenditure for the work, or for payment to the state for performance thereof.

§ 8686.3. Recovery of maximum federal funds

Local agencies shall undertake to recover maximum federal participation in funding projects. No funds allocated under this chapter shall be used to supplant federal funds otherwise available in the absence of state financial relief. State contributions for such projects as determined by Section 8686 will be reduced by an amount equal to the amount local agencies would have recovered from federal disaster relief sources if they had applied for that funding and had executed the eligible projects in conformity with federal requirements. When a local agency applies for federal disaster relief funds, the director shall inform the agency of available state funds.

§ 8686.4. Replacement of damaged or destroyed facility instead of repair or restoration; mitigation measures

(a) Whenever the local agency and the director determine for projects that the general public and state interest will be better served by replacing a damaged or destroyed facility with a facility that will more adequately serve the present and future public needs than would be accomplished merely by repairing or restoring the damaged or destroyed facility, the director shall authorize the replacement, including, in the case of a public building, an increase in the square footage of the building replaced, but the cost of the betterment of the facility, to the extent that it exceeds the cost of repairing or restoring the damaged or destroyed facility, shall be borne and contributed by the local agency, and the excess cost shall be excluded in determining the amount to be allocated by the state. The state contribution shall not exceed the net cost of restoring each facility on the basis of the design of the facility as it existed immediately

prior to the disaster in conformity with current codes, specifications, and standards.

(b) Notwithstanding subdivision (a), when the director determines there are mitigation measures that are cost effective and that substantially reduce the risk of future damage, hardship, loss, or suffering in any area where a state of emergency has been proclaimed by the Governor, the director may authorize the implementation of those measures.

§ 8686.8. Financial ability of local agency; loan of state funds; deferred payments; interest

If the director determines that a local agency is financially unable to meet the matching requirements set forth in Section 8686, or unable to provide funds for replacement of a facility pursuant to Section 8686.4, the director may, if that loan would not result in a violation of Section 18 of Article XVI of the California Constitution and out of any state money made available for purposes of this chapter, lend funds, for the completion of a project or projects. The local agency shall be required by the director to make its contribution by means of deferred payments. The deferred payments shall be made in the amounts and at the times provided by the agreement executed in connection with the application, but in any event providing full repayment within 10 years, and shall include a charge to be fixed by the director in an amount estimated by him or her to equal the revenue that the state would have derived by investing the total amounts loaned at the interest rate prevailing for legal state investments as of the date of the loan.

§ 8687. Deferred payments by local agency

Deferred payments made by a local agency pursuant to Section 8686.8 shall be made by the agency:

(a) Out of the current revenues of the local agency.

(b) If the current revenues of a city, county, or city and county, prove insufficient to enable the agency to meet the payments, the director may order the State Controller to withhold from the local agency funds that the local agency would be entitled from the state, including, as to street and highway projects as defined by Sections 590 and 592 of the Vehicle Code, from the Motor Vehicle License Fee Fund to the extent necessary to meet the deficiency.

Those sums shall be credited to the funds in the State Treasury from which the loans were made.

§ 8687.2. Exhaustion of financial resources of local agency; public facilities project; state allocation

Notwithstanding Section 8686, whenever the director determines that a local agency to which funds are proposed to be allocated for a public facilities project is financially unable to meet the matching requirements set forth in Section 8686 due to exhaustion of its financial resources because of disaster expenditures, the provisions of Section 8686 may be suspended, and the director may allocate funds to pay all of the cost of the project on that portion of the cost which the director determines is necessary to accomplish the project, taking into consideration the financial ability of the local agency to meet the matching requirements of Section 8686 and the public benefit of the proposed work, less any money provided by the United States or any agency thereof for any portion of the cost of the project.

§ 8687.4. Payment of portion of cost of project where director determines local agency is unable to finance project due to exhaustion of its financial resources because of disaster expenditures

Whenever the director determines that a local agency which would otherwise be eligible for funds under the formula of Section 8686 is

unable to finance a project due to exhaustion of its financial resources because of disaster expenditures, the director may allocate funds to pay such portion of the cost of the project as the director determines is necessary to accomplish the projects.

§ 8687.6. Counties; exhaustion of resources; contribution equal to highway users tax apportionment

If the local agency, under Section 8687.4, is a county, the amount contributed by the county shall not be reduced to less than an amount of money equal to the amount allocated to the county for the fiscal year prior to the disaster proclamation pursuant to Section 2110.5 of the Streets and Highways Code.

§ 8687.7. Establishment of model process to assist community in recovering from emergency proclaimed by Governor; inclusions; definitions

(a) As used in this section, the following terms have the following meanings:
    (1) "Agency" or "office" means the Office of Emergency Services.
    (2) "Community" means a geographic area impacted by an emergency proclaimed by the Governor that includes the jurisdiction of one or more local agencies.
    (3) "Community recovery partners" means local, state, and federal agencies, private nonprofit organizations, nongovernmental agencies, faith-based organizations, and other private entities.

(b) The office may establish a model process that would be made available to assist a community in recovering from an emergency proclaimed by the Governor. The model process may include the following:
    (1) The role of the office in the community recovery process.

(2) Procedures for the office to have representation on site as soon as practicable after the Governor proclaims a state of emergency.

(3) The role of the office to facilitate the use of temporary services, including, but not limited to, direct assistance to individuals, families, and businesses, crisis counseling, disaster unemployment assistance, food and clothing vouchers, communications systems, replacement of personal identification documents, provision of potable water, housing, farm service assistance, tax relief, insurance, and legal services.

(4) The role of the office to facilitate the establishment of temporary structures, including local assistance centers, showers and bathroom facilities, and temporary administrative offices.

(5) Measures to encourage the participation of nongovernmental organizations in the community recovery process to supplement recovery activities undertaken by federal or local agencies.

(6) The office may refer the model process to the Standardized Emergency Management System (SEMS) Advisory Board, or any other advisory board it deems appropriate, for review and modifications.

(7) It is the intent of the Legislature that the model process assists and complements local procedures. The model process should allow the office to offer additional assistance when that assistance is needed but not available through local agencies.

§ 8687.8. Counties; exhaustion of resources; reduction if maximum property tax for highway purposes not levied

If the local agency, under Section 8687.4, is a county, the director, in determining whether the county's financial resources are exhausted, shall ascertain whether the county has levied, during the then

current year (the year of the disaster), the maximum property tax for highway purposes authorized by Section 1550 of the Streets and Highways Code in the road district in which the work is proposed, and if such tax is being levied at less than the maximum rate authorized by Section 1550, the amount to be allocated by the director under this section shall be reduced by an amount equivalent to the difference between the revenue derived from the property tax being levied for highway purposes in such road district and the revenue which would have been derived from such tax at the maximum rate authorized by Section 1550. In determining if a county has levied sufficient taxes, amounts to be received from other taxes levied by that county and used for road purposes shall be included.

§ 8687.9. Funding provided to local governments in response to an emergency

Funding and financial assistance provided to local governments in response to an emergency, as that term is used in Section 8558, is not subject to the eligibility restrictions of Section 1782 of the Labor Code.

Article 5 – Funds

§ 8690.25. Disaster Assistance Fund

The Disaster Assistance Fund, referred to as "fund" in this article, is hereby created as a special fund in the State Treasury. This fund and its subsidiary account, the Earthquake Emergency Investigations Account, are continuously appropriated, without regard to fiscal years, for purposes of this act.

§ 8690.45. Earthquake Emergency Investigations Account

The Controller shall establish the following special account in the Disaster Assistance Fund.

The Earthquake Emergency Investigations Account, into which shall be paid all moneys appropriated by the Legislature to the Seismic Safety Commission for allocation for the purpose of enabling immediate investigation of damaging earthquakes. Allocations may be made by the commission to assist organizations that have incurred expenses in the course of conducting earthquake investigations. Allocations may be made to cover the following expenses:

(a) Travel, meals, and lodging.
(b) Publishing of findings.
(c) Contractor assistance in the investigation.
(d) Other expenses that the commission may allow as necessary to assist the investigation.

The unpredictable nature of earthquakes necessitates immediate access to funds for investigative purposes. For this reason, notwithstanding any other provision of law, funds in the Earthquake Emergency Investigations Account shall be available for expenditure without regard to fiscal years.

§ 8690.5. Expenditure, transfer and allocation of moneys

Income from investment of moneys in the fund and all payments by local agencies in reimbursement of moneys disbursed from the fund, including deferred payments with changes, and all other moneys deposited therein pursuant to law, shall be available for expenditure, transfer and allocation pursuant to this chapter.

§ 8690.6. Disaster Response-Emergency Operations Account; establishment and allocation of funds for state of emergency; legislative intent; conditions and notification; authorizations for acquisitions, relocations, and environmental mitigations; federal funds; amount of assistance; public entities

(a) The Disaster Response-Emergency Operations Account is hereby established in the Special Fund for Economic Uncertainties. Notwithstanding Section 13340, moneys in the account are continuously appropriated, subject to the limitations specified in subdivisions (c) and (d), without regard to fiscal years, for allocation by the Director of Finance to state agencies for disaster response operation costs incurred by state agencies as a result of a proclamation by the Governor of a state of emergency, as defined in subdivision (b) of Section 8558. These allocations may be for activities that occur within 120 days after a proclamation of emergency by the Governor.

(b) It is the intent of the Legislature that the Disaster Response-Emergency Operations Account have an unencumbered balance of one million dollars ($1,000,000) at the beginning of each fiscal year. If this account requires additional moneys to meet claims against the account, the Director of Finance may transfer moneys from the Special Fund for Economic Uncertainties to the account in an amount sufficient to pay the amount of the claims that exceed the unencumbered balance in the account.

(c) Funds shall be allocated from the account subject to the conditions of this section and upon notification by the Director of Finance to the Chairperson of the Joint Legislative Budget Committee and the chairpersons of the fiscal committees in each house.

(d) Notwithstanding any other law, authorizations for acquisitions, relocations, and environmental mitigations

related to activities, as described in subdivision (a), shall be authorized pursuant to this section. However, these funds shall be authorized only for needs that are a direct consequence of the proclaimed emergency if failure to undertake the project may interrupt essential state services or jeopardize public health or safety. In addition, any acquisition accomplished under this subdivision shall comply with any otherwise applicable law, except as provided in the first sentence of this subdivision.

(e) Funds allocated under this section shall not be used to supplant federal funds otherwise available in the absence of state financial relief.

(f) The amount of financial assistance provided to an individual, business, or governmental entity under this section, or pursuant to any other program of state-funded disaster assistance, shall be deducted from sums received in payment of damage claims asserted against the state, its agents, or employees, for causing or contributing to the effects of the proclaimed disaster.

(g) Any public entity administering disaster assistance to individuals shall not receive funds under this section unless it administers that assistance pursuant to the following criteria:

  (1) All applications, forms, and other written materials presented to persons seeking assistance shall be available in English and in the same language as that used by the major non-English-speaking group within the disaster area.

  (2) Bilingual staff who reflect the demographics of the disaster area shall be available to applicants.

(h) Notwithstanding any other law, funds in the Disaster Response-Emergency Operations Account shall not be expended for conditions in the state's prisons, medical facilities, or youth correctional facilities resulting solely from

the action or inaction of the Department of Corrections and Rehabilitation in administering those facilities.

(i) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

§ 8690.7. Liability of counties; distribution of funds

Any county which distributed funds to other local agencies pursuant to Chapter 16 of the Statutes of 1986 shall not be held financially liable for those funds or responsible for any collection of those funds.

This section shall not preclude the state or any county from collecting funds distributed pursuant to Chapter 16 of the Statutes of 1986 from local agencies.

Article 6. Nonprofit Organizations

§ 8692. State assistance for distribution of supplies and other assistance activities resulting in extraordinary cost; eligibility

(a) If a state of emergency is proclaimed, an eligible private nonprofit organization may receive state assistance for distribution of supplies and other disaster or emergency assistance activities resulting in extraordinary cost.

(b) A private nonprofit organization is eligible for assistance under this section if it is eligible for disaster assistance under the federal Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Sec. 5121).

(c) An organization is not eligible for assistance under this section if it employs religious content in the provision of emergency assistance.

(d) Any grant of assistance under this section shall comply with Section 4 of Article I and Section 5 of Article XVI of the California Constitution, state and federal civil rights laws, and

the First Amendment to the United States Constitution in regard to the funding of religious organizations and activities. These legal constraints include prohibitions on the discrimination against beneficiaries and staff based on protected categories, on the use of public funds for proselytizing of religious doctrine, religious instruction, or worship, and on the use of other religious means to accomplish programmatic goals.

(e) The Office of Emergency Services shall adopt regulations to implement this section.

Emergency Compacts

Government Code
Sections 177–178.5

Interstate Civil Defense and Disaster Compact (1951)

§ 177. Ratification and approval

The Interstate Civil Defense and Disaster Compact as set forth in Section 178 executed between the State of California, through its then Governor, Earl Warren, on December 10, 1951, and other states which are parties to the compact, is hereby ratified and approved.

§ 178. Provisions

The provisions of the Interstate Civil Defense and Disaster Compact between the State of California and other states which are parties to the compact referred to in Section 177 are as follows:

The State of California, through its Governor, duly authorized, solemnly agrees with any other state or territory of the United States which is or may become a party to this compact, as follows:

Article 1

The purpose of this compact is to provide mutual aid among the states in meeting any emergency or disaster from enemy attack or other cause (natural or otherwise) including sabotage and subversive acts and direct attacks by bombs, shell fire, and atomic, radiological, chemical, bacteriological means, and other weapons. The prompt, full and effective utilization of the resources of the respective states, including such resources as may be available from the United States Government or any other source, are essential to the safety, care and welfare of the people thereof in the event of enemy action or other

emergency, and any other resources, including personnel, equipment or supplies, shall be incorporated into a plan or plans of mutual aid to be developed among the civil defense agencies or similar bodies of the states that are parties hereto. The directors of civil defense of all party states shall constitute a committee to formulate plans and take all necessary steps for the implementation of this compact.

Article 2

It shall be the duty of each party state to formulate civil defense plans and programs for application within such state. There shall be frequent consultation between the representatives of the states and with the United States Government and the free exchange of information and plans, including inventories of any materials and equipment available for civil defense. In carrying out such civil defense plans and programs the party states shall so far as possible provide and follow uniform standards, practices and rules and regulations including:

(a) Insignia, arm bands and any other distinctive articles to designate and distinguish the different civil defense services;
(b) Blackouts and practice blackouts, air raid drills, mobilization of civil defense forces and other tests and exercises;
(c) Warnings and signals for drills or attacks and the mechanical devices to be used in connection therewith;
(d) The effective screening or extinguishing of all lights and lighting devices and appliances;
(e) Shutting off water mains, gas mains, electric power connections and the suspension of all other utility services;
(f) All materials or equipment used or to be used for civil defense purposes in order to assure that such materials and equipment will be easily and freely interchangeable when used in or by any other party state;
(g) The conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic, prior, during, and subsequent to drills or attacks;

(h) The safety of public meetings or gatherings; and
(i) Mobile support units.

Article 3

Any party state requested to render mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state. Each party state shall extend to the civil defense forces of any other party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, privileges and immunities as if they were performing their duties in the state in which normally employed or rendering services. Civil defense forces will continue under the command and control of their regular leaders but the organizational units will come under the operational control of the civil defense authorities of the state receiving assistance.

Article 4

Whenever any person holds a license, certificate or other permit issued by any state evidencing the meeting of qualifications for professional, mechanical or other skills, such person may render aid involving such skill in any party state to meet an emergency or disaster and such state shall give due recognition to such license, certificate or other permit as if issued in the state in which aid is rendered.

Article 5

No party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged, or

on account of the maintenance or use of any equipment or supplies in connection therewith.

Article 6

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that appropriate among other states party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or states. Such supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons, and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, equipment and supplies.

Article 7

Each party state shall provide for the payment of compensation and death benefits to injured members of the civil defense forces of that state and the representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such state.

Article 8

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to, or expense incurred in the operation of, any equipment answering a request for aid, and for the cost incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further

that any two or more party states may enter into supplementary agreements establishing a different allocation of costs as among those states. The United States Government may relieve the party state receiving aid from any liability and reimburse the party state supplying civil defense forces for the compensation paid to and the transportation, subsistence and maintenance expenses of such forces during the time of the rendition of such aid or assistance outside the state and may also pay fair and reasonable compensation for the use or utilization of the supplies, materials, equipment or facilities so utilized or consumed.

Article 9

Plans for the orderly evacuation and reception of the civilian population as the result of an emergency or disaster shall be worked out from time to time between representatives of the party states and the various local civil defense areas thereof. Such plans shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees shall be reimbursed generally for the out- of-pocket expenses incurred in receiving and caring for such evacuees, and for expenditures for transportation, food, clothing, medicines and medical care and like items. Such expenditures shall be reimbursed by the party state of which the evacuees are residents, or by the United States Government under plans approved by it. After the termination of the emergency or disaster the party state of which the evacuees are resident shall assume the responsibility for the ultimate support or repatriation of such evacuees.

Article 10

This compact shall be available to any state, territory or possession of the United States, and the District of Columbia. The term "state" may also include any neighboring foreign country or province or state thereof.

Article 11

The committee established pursuant to Article 1 of this compact may request the Civil Defense Agency of the United States Government to act as an informational and coordinating body under this compact, and representatives of such agency of the United States Government may attend meetings of such committee.

Article 12

This compact shall become operative immediately upon its ratification by any state as between it and any other state or states so ratifying and shall be subject to approval by Congress unless prior congressional approval has been given. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Civil Defense Agency and other appropriate agencies of the United States Government.

Article 13

This compact shall continue in force and remain binding on each party state until the Legislature or the Governor of such party state takes action to withdraw therefrom. Such action shall not be effective until 30 days after notice thereof has been sent by the Governor of the party state desiring to withdraw to the Governors of all other party states.

Article 14

This compact shall be construed to effectuate the purposes stated in Article 1 hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected thereby.

Done at the State Capitol in Sacramento, this 10th day of December in the year of our Lord one thousand nine hundred and fifty one.

IN WITNESS WHEREOF I hereby affix my signature, pursuant to the authority vested in me by law as Governor of the State of California.

Signed Earl Warren, Governor

§ 178.5. Article XV; provisions; authority of Governor

In addition to any other authority conferred upon him, the Governor is authorized and may execute for, on behalf of, and in the name of the State of California, the provisions of Article XV to the Interstate Civil Defense and Disaster Compact, which provisions provide as follows:

Article XV.

(a) This article shall be in effect only as among those states which have enacted it into law or in which the governors have adopted it pursuant to constitutional or statutory authority sufficient to give it the force of law as part of this compact. Nothing contained in this article or in any supplementary agreement made in implementation thereof shall be construed to abridge, impair or supersede any other provision of this compact or any obligation undertaken by a state pursuant thereto, except that if its terms so provide a supplementary agreement in implementation of this article

may modify, expand or add to any such obligation as among the parties to the supplementary agreement.

(b) In addition to the occurrences, circumstances and subject matters to which preceding articles of this compact make it applicable, this compact and the authorizations, entitlements and procedures thereof shall apply to:

(1) Searches for and rescue of persons who are lost, marooned, or otherwise in danger.

(2) Action useful in coping with disasters arising from any cause or designed to increase the capability to cope with any such disasters.

(3) Incidents, or the imminence thereof, which endanger the health or safety of the public and which require the use of special equipment, trained personnel or personnel in larger numbers than are locally available in order to reduce, counteract or remove the danger.

(4) The giving and receiving of aid by subdivisions of party states.

(5) Exercises, drills or other training or practice activities designed to aid personnel to prepare for, cope with or prevent any disaster or other emergency to which this compact applies.

(c) Except as expressly limited by this compact or a supplementary agreement in force pursuant thereto, any aid authorized by this compact or such supplementary agreement may be furnished by any agency of a party state, a subdivision of such state, or by a joint agency providing such aid shall be entitled to reimbursement therefor to the same extent and in the same manner as a state. The personnel of such a joint agency, when rendering aid pursuant to this compact shall have the same rights, authority and immunity as personnel of party states.

(d) Nothing in this article shall be construed to exclude from the coverage of Articles I-XIV of this compact any matter which,

in the absence of this article, could reasonably be construed to be covered thereby.

(e) Nothing in subsection (a) shall be construed to limit previous or future entry into the Interstate Civil Defense and Disaster Compact of this state with other states.

Emergency Management Assistance Compact (2005)

Government Code
Sections 179–179.9

§ 179. Legislative intent; ratification and approval of Emergency Management Assistance Compact

(a) It is the intent of the State of California to continue its long history of sharing emergency response resources with other states during times of disaster. Californians have benefited from the assistance provided by the firefighters, law enforcement officers, emergency medical personnel and other emergency staff received from other states during our calamitous fires, earthquakes, winter storms, and other disasters. We must now join our sister states in ensuring we are prepared to aid our people during emergencies by entering into the Emergency Management Assistance Compact as it was adopted by Congress.

(b) The Emergency Management Assistance Compact as set forth in Section 179.5 is hereby ratified and approved.

§ 179.5. Provisions of Emergency Management Assistance Compact

The provisions of the Emergency Management Assistance Compact between the State of California and other states that are parties to the compact referred to in Section 179 are as follows:

Article 1 – Purposes and Authorities

This compact is made and entered into by and between the participating member states which enact this compact, hereafter called party states. For the purposes of this agreement, the term

"states" is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all United States territorial possessions.

The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the governor of the affected state, whether arising from natural disaster, technological hazard, manmade disaster, civil emergency aspects of resource shortages, community disorders, insurgency, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

Article 2 – General Implementation

Each party state entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential

to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood. On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

Article 3 – Party State Responsibilities

(a) It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

(1) Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, manmade disaster, emergency aspects of resource shortages, civil disorders, insurgency, or enemy attack.

(2) Review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency.

(3) Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.

(4) Assist in warning communities adjacent to or crossing the state boundaries.

(5) Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material.

(6) Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.

(7) Provide, to the extent authorized by law, for temporary suspension of any statutes.

(b) The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the quest shall be confirmed in writing within 30 days of the verbal request. Requests shall provide the following information:

(1) A description of the emergency service function for which assistance is needed, including, but not limited to, fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.

(2) The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed.

(3) The specific place and time for staging of the assisting party's response and a point of contact at that location.

(c) There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States Government, with free exchange of information, plans, and resource records relating to emergency capabilities.

Article 4 – Limitations

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state. Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving state, whichever is longer.

Article 5 – Licenses and Permits

Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

Article 6 – Liability

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes. No party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

Article 7 – Supplementary Agreements

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation, and communications personnel, and equipment and supplies.

Article 8 – Compensation

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

Article 9 – Reimbursement

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article 8 expenses shall not be reimbursable under this provision.

Article 10 – Evacuation

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines, and medical care, and like items. Such expenditures shall be reimbursed

as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

Article 11 – Implementation

(a) This compact shall become operative immediately upon its enactment into law by any two states. Thereafter, this compact shall become effective as to any other state upon its enactment by such state.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 30 days after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

(c) Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Federal Emergency Management Agency and other appropriate agencies of the United States Government.

Article 12 – Validity

This act shall be construed to effectuate the purposes stated in Article 1 hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this act and the applicability thereof to other persons and circumstances shall not be affected thereby.

Article 13 – Additional Provisions

Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized bylaw to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under Section 1385 of Title 18 of the United States Code.

§ 179.7. Indemnification and defense

(a) Notwithstanding Article 6 of the Emergency Management Assistance Compact, as set forth in Section 179.5, the state shall indemnify and make whole any officer or employee who is a resident of California, or his or her heirs, if the officer or employee is injured or killed in another state when rendering aid pursuant to the compact, as if the act or acts occurred in California, less any recovery obtained under the provisions of Article 6 of the Emergency Management Assistance Compact.

(b) Local government or special district personnel who are officially deployed under the provisions of the Emergency Management Assistance Compact pursuant to an assignment of the Office of Emergency Services shall be defended by the Attorney General or other legal counsel provided by the state, and shall be indemnified subject to the same conditions and limitations applicable to state employees.

§ 179.8. Labor controversy; prohibition on giving or receiving assistance

Notwithstanding the provisions of the Emergency Management Assistance Compact, as set forth in Section 179.5, the state shall not deploy any personnel under the compact to render aid to a party state for any conditions resulting from a labor controversy, and the

state shall not receive aid from a party state for conditions resulting from a labor controversy.

§ 179.9. Inoperative and repeal dates

This article shall become inoperative on March 1, 2018, and, as of January 1, 2019, is repealed.

California Disaster and Civil Defense Master Mutual Aid Agreement

This agreement made and entered into by and between the STATE OF CALIFORNIA, its various departments and agencies, and the various political subdivisions, municipal corporations, and other public agencies of the State of California;

WITNESSETH:

WHEREAS, it is necessary that all of the resources and facilities of the State, its various departments and agencies, and all its political subdivisions, municipal corporations, and other public agencies be made available to prevent and combat the effect of disasters which may result from such calamities as flood, fire, earthquake, pestilence, war, sabotage, and riot; and

WHEREAS, it is desirable that each of the parties hereto should voluntarily aid and assist each other in the event that a disaster should occur, by the interchange of services and facilities, including, but not limited to, fire, police, medical and health, communication, and transportation services and facilities, to cope with the problems of rescue, relief, evacuation, rehabilitation, and reconstruction which would arise in the event of a disaster; and

WHEREAS, it is necessary and desirable that a cooperative agreement be executed for the interchange of such mutual aid on a local, countywide, regional, statewide, and interstate basis;

NOW, THEREFORE, IT IS HEREBY AGREED by and between each and all of the parties hereto as follows:

1. Each party shall develop a plan providing for the effective mobilization of all its resources and facilities, both public and private, to cope with any type of disaster.

2. Each party agrees to furnish resources and facilities and to render services to each and every other party to this agreement to prevent and combat any type of disaster in accordance with duly adopted mutual aid operational plans, whether heretofore or hereafter adopted, detailing the method and manner by which such resources, facilities, and services are to be made available and furnished, which operational plans may include provisions for training and testing to make such mutual aid effective; provided, however, that no party shall be required to deplete unreasonably its own resources, facilities, and services in furnishing such mutual aid.
3. It is expressly understood that this agreement and the operational plans adopted pursuant thereto shall not supplant existing agreements between some of the parties hereto providing for the exchange or furnishing of certain types of facilities and services on a reimbursable, exchange, or other basis, but that the mutual aid extended under this agreement and the operational plans adopted pursuant thereto, shall be without reimbursement unless otherwise expressly provided for by the parties to this agreement or as provided in Sections 1541, 1586, and 1587, Military and Veterans Code; and that such mutual aid is intended to be available in the event of a disaster of such magnitude that it is, or is likely to be, beyond the control of a single party and requires the combined forces of several or all of the parties to this agreement to combat.
4. It is expressly understood that the mutual aid extended under this agreement and the operational plans adopted pursuant thereto shall be available and furnished in all cases of local peril or emergency and in all cases in which a STATE OF EXTREME EMERGENCY has been proclaimed.
5. It is expressly understood that any mutual aid extended under this agreement and the operational plans adopted pursuant thereto, is furnished in accordance with the "California Disaster Act" and other applicable provisions of

law, and except as otherwise provided by law that: "The responsible local official in whose jurisdiction an incident requiring mutual aid has occurred shall remain in charge at such incident including the direction of such personnel and equipment provided him through the operation of such mutual aid plans." (Section 1564, Military and Veterans Code.)

6. It is expressly understood that when and as the State of California enters into mutual aid agreements with other states and the Federal Government, the parties to this agreement shall abide by such mutual aid agreements in accordance with the law.
7. Upon approval or execution of this agreement by the parties hereto all mutual aid operational plans heretofore approved by the State Disaster Council, or its predecessors, and in effect as to some of the parties hereto, shall remain in full force and effect as to them until the same may be amended, revised, or modified. Additional mutual aid operational plans and amendments, revisions, or modifications of existing or hereafter adopted mutual aid operational plans, shall be adopted as follows:
    a. Countywide and local mutual aid operational plans shall be developed by the parties thereto and are operative as between the parties thereto in accordance with the provisions of such operational plans. Such operational plans shall be submitted to the State Disaster Council for approval. The State Disaster Council shall notify each party to such operational plans of its approval, and shall also send copies of such operational plans to other parties to this agreement who did not participate in such operational plans and who are in the same area and affected by such operational plans. Such operational plans shall be operative as to such other parties 20 days after receipt thereof unless within that time the party by resolution or notice given to the State

Disaster Council, in the same manner as notice of termination of participation in this agreement, declines to participate in the particular operational plan.

b. Statewide and regional mutual aid operational plans shall be approved by the State Disaster Council and copies thereof shall forthwith be sent to each and every party affected by such operational plans. Such operational plans shall be operative as to the parties affected thereby 20 days after receipt thereof unless within that time the party by resolution or notice given to the State Disaster Council, in the same manner as notice of termination of participation in this agreement, declines to participate in the particular operational plan.

c. The declination of one or more of the parties to participate in a particular operational plan or any amendment, revision or modification thereof, shall not affect the operation of this agreement and the other operational plans adopted pursuant thereto.

d. Any party may at any time by resolution or notice given to the State Disaster Council, in the same manner as notice of termination of participation in this agreement, decline to participate in any particular operational plan, which declination shall become effective 20 days after filing with the State Disaster Council.

e. The State Disaster Council shall send copies of all operational plans to those state departments and agencies designated by the Governor. The Governor may, upon behalf of any department or agency, give notice that such department or agency declines to participate in a particular operational plan.

f. The State Disaster Council, in sending copies of operational plans and other notices and information to the parties to this agreement, shall send copies to

the Governor and any department or agency head designated by him; the chairman of the board of supervisors, the clerk of the board of supervisors, the County Disaster Council, and any other officer designated by a county; the mayor, the clerk of the city council, the City Disaster Council, and any other officer designated by a city; the executive head, the clerk of the governing body, or other officer of other political subdivisions and public agencies as designated by such parties.

8. This agreement shall become effective as to each party when approved or executed by the party, and shall remain operative and effective as between each and every party that has heretofore or hereafter approved or executed this agreement, until participation in this agreement is terminated by the party. The termination by one or more of the parties of its participation in this agreement shall not affect the operation of this agreement as between the other parties thereto. Upon approval or execution of this agreement the State Disaster Council shall send copies of all approved and existing mutual aid operational plans affecting such party which shall become operative as to such party 20 days after receipt thereof unless within that time the party by resolution or notice given to the State Disaster Council, in the same manner as notice of termination of participation in this agreement, declines to participate in any particular operational plan. The State Disaster Council shall keep every party currently advised of who the other parties to this agreement are and whether any of them has declined to participate in any particular operational plan.

9. Approval or execution of this agreement shall be as follows:
    a. The Governor shall execute a copy of this agreement on behalf of the State of California and the various departments and agencies thereof. Upon execution by the Governor a signed copy shall forthwith be filed with the State Disaster Council.
    b. Counties, cities, and other political subdivisions and public agencies having a legislative or governing body shall by resolution approve and agree to abide by this agreement, which may be designated as "CALIFORNIA DISASTER AND CIVIL DEFENSE MASTER MUTUAL AID AGREEMENT." Upon adoption of such a resolution, a certified copy thereof shall forthwith be filed with the State Disaster Council.
    c. The executive head of those political subdivisions and public agencies having no legislative or governing body shall execute a copy of this agreement and forthwith file a signed copy with the State Disaster Council.
10. Termination of participation in this agreement may be effected by any party as follows:
    a. The Governor on behalf of the State and its various departments and agencies, and the executive head of those political subdivisions and public agencies having no legislative or governing body, shall file a written notice of termination of participation in this agreement with the State Disaster Council and this agreement is terminated as to such party 20 days after the filing of such notice.
    b. Counties, cities, and other political subdivisions and public agencies having a legislative or governing body shall by resolution give notice of termination of participation in this agreement and file a certified copy of such resolution with the State Disaster Council, and this agreement is terminated as to such party 20 days after the filing of such resolution.

IN WITNESS WHEREOF this agreement has been executed and approved and is effective and operative as to each of the parties as herein provided.

Signed by: EARL WARREN GOVERNOR

On behalf of the State of California and all its Departments and Agencies

ATTEST:

November 15, 1950 Signed by: FRANK M. JORDAN

SECRETARY OF STATE

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Emergency Situations That May Affect The Conduct of Elections in California – January 2013

In the event of a natural disaster or other emergency that may affect the ability to conduct an election in compliance with state law, there are legal options California elections officials and the Governor can exercise.

The following information does not replace any existing emergency or disaster plans already established by the State and county elections officials. Rather, it is a menu of election-related actions that can be taken depending on the circumstances of a particular natural disaster or other emergency. In any emergency situation, it is vital that the Governor, the Secretary of State, the Legislature, local elections officials, and the public communicate clearly and frequently.

A. Actions Permitted Under Existing Law

The California Elections Code gives local elections officials and voters some flexibility should an issue arise shortly before or on Election Day.

- After the 7th day before the election, any voter who, for specified reasons cannot go to their assigned polling place, may request in a written statement, signed under penalty of perjury, that a ballot be delivered to him or her. (Elections Code § 3021)

- Any vote-by-mail voter may vote in person at the county elections office on or before the close of the polls on Election Day. (Elections Code § 3018(a))

- Elections officials may set up satellite voting locations with 14 days notice or, in the case of a declared emergency or disaster in a county, 48 hours notice. A waiver of this law would be required if a satellite voting location has to be established less than 48 hours before the start of Election Day voting. (Elections Code § 3018(b))

- Elections officials may designate a replacement polling place as late as on Election Day. The new polling place must be as close as possible to the original polling place, and a notice must be posted at the original polling place directing voters to the new location. If there is sufficient time, the elections official must also mail a notice to affected voters. (Elections Code § 12281)

- Elections officials may create a new polling place in any contiguous precinct if one cannot be created within a specific precinct. (Elections Code § 12327)

- If one or more poll workers do not show up for work at the opening of the polls on Election Day, voters who are present at the polling place, and any members of the precinct board who are present, may appoint a voter to fill any vacancy. (Elections Code § 12313)

- A precinct inspector may appoint a voter to replace any poll worker who cannot perform his or her duties on Election Day. (Elections Code § 12314)

- A majority of the remaining poll workers may appoint a substitute if a precinct inspector cannot perform his or her duties on Election Day. (Elections Code § 12315)

- If there are not enough ballots at a polling place, each county has alternative voting procedures that have been approved by the Secretary of State. (Elections Code § 14299) These procedures may be found on the Secretary of State's website at www.sos.ca.gov/elections/ccrov/pdf/2012/october/12293jl.pdf.

- Existing laws require the county elections official to begin processing voted ballots and deliver those ballots to receiving centers as soon as possible after the polls close. Should some event cause a delay in the processing and return of voted ballots, Elections Code section 15213 allows the elections official to direct that the ballots be counted at the precinct. If the ballots are to be counted at the precinct, the procedures are set forth in Elections Code sections 15270 through 15281.

B. Actions Not Permitted Under Current Law

Under Government Code § 8571, the Governor has the authority to declare a state of emergency and issue an executive order waiving or suspending certain laws.

Government Code § 8567 authorizes the Governor during a declared state of emergency to make, amend, and rescind orders and regulations that have the force of law necessary to carry out a State Emergency Plan.

Following are the most likely election scenarios during an emergency or disaster, and the laws the Governor may wish to waive or suspend.

1. Extend Voting Times and Accept Ballots After the Deadline

If a polling place must be moved using existing law, voting hours may need to be extended, which would require either a gubernatorial executive order or a court order.

If voting hours are extended by a court order, Elections Code § 14402.5 requires that all votes after 8:00 p.m. be cast on provisional ballots. If there is a statewide court order, the Governor may waive the provisional ballot requirement for votes cast after 8:00 p.m.

If the Governor wants to extend voting hours or accept vote-by-mail ballots beyond 8:00 p.m. on Election Day without a court order, the following laws may need to be waived or suspended.

- Elections Code § 14212 requires polls to be open from 7:00 a.m. to 8:00 p.m. on Election Day.
- Elections Code § 14213 requires the precinct board to proclaim aloud that the polls are open before receiving any ballots.
- Elections Code § 14401 requires the precinct board to proclaim aloud that the polls are closing before closing them. When making the proclamation, anyone in line waiting to vote must be allowed to vote.
- Elections Code § 14402.5 requires that, if voting hours are extended by a court order, all votes after 8:00 p.m. be cast on provisional ballots.
- Elections Code § 3017(a) and (d) and Elections Code § 3020 require all vote-by-mail ballots to be received before the close of the polls on Election Day.

2. Permit Out-of-County Voting

Elections Code § 14313 provides that upon the declaration of a state of emergency by the Governor, and the issuance of an executive order, emergency workers outside of their home precincts may cast a provisional ballot that is identical to the provisional ballots offered to other voters in that county.

If the Governor wants to allow all voters to return vote-by-mail ballots or to cast ballots outside of the county where they are registered to vote, the following laws may need to be waived or suspended.

- Elections Code § 3017(a) and 3018 require a voted vote-by-mail ballot to be returned to any polling location, elections office, or satellite location within the county where the voter is registered to vote.

- Elections Code § 3020 requires county elections officials to receive vote-by-mail ballots by the time the polls close on Election Day.

- Elections Code § 14279 allows a voter to apply for and receive a ballot only in that voter's precinct. Elections Code § 14311 provides an exception to this law to allow a voter to apply for a provisional ballot outside the home precinct but within the home county.

- Elections Code § 14310 sets the rules for provisional voting and handling of those ballots.

3. Require the Election to be Conducted Entirely by Mail

If the Governor wants to eliminate polling places altogether and conduct the entire election by mail, the following laws would need to be amended by the Legislature.

- Elections Code § 4000 provides conditions for conducting an all-mail-ballot local, special, or consolidated election. This section does not apply to statewide elections, so legislative action would be required.

Elections Code § 4100 through 4108 provide the procedures for conducting an all-vote-by-mail election. These sections can be used as a model to establish a statewide all-vote-by-mail election.

- Elections Code § 1500 sets election dates for all-mail-ballot elections.

4. Cancel and Reschedule the Election

In the case of emergency or disaster, Government Code § 8571 gives the Governor the power to cancel and reschedule an election.

To reschedule an election, the Governor would need to waive Elections Code § 12000 and establish a new election date.

Elections Code § 15101 permits elections officials to begin processing vote-by-mail ballots seven business days before Election Day. If the election might be cancelled, it is advisable that this law be waived at least seven business days before Election Day to ensure that vote-by-mail ballots that have already been cast are not prematurely counted and reported.

5. Close the Polls and Transport Ballots

The following Elections Code sections set procedures that must begin upon the closure of polls. County elections officials have procedures for returning ballots and polling place supplies in the event of an emergency or disaster. If these procedures cannot be followed at the time polls close, the following laws may need to be waived or suspended.

- Elections Code § 14420 requires precinct workers to begin processing ballots as soon as the polls close.
- Elections Code § 14433 requires that, if ballots are counted at the precinct, the precinct board must immediately transmit to the county elections office an unsealed statement that shows the voting results for that polling place.
- Elections Code § 14421 requires precinct workers to deliver ballots and other materials as soon as possible to county elections offices.
- Elections Code § 14430 requires precinct workers to return all supplies to county elections offices as soon as possible after the polls are closed.
- Elections Code § 14431 requires all voted, spoiled, canceled, or unused ballots to be sealed in one or more packages.
- Elections Code § 14432 requires tally sheets, rosters of voters, the copy of the index used as the voting record, the challenge list, and the assisted voters list be sealed in one or two packages.
- Elections Code § 14434 requires the items noted in Elections Code § 14432 to be delivered unopened without delay to the county elections office.

6. Change the Canvass Procedures

Elections Code § 15150 requires county elections officials to begin the semifinal official canvass as soon as the polls close. In the event of an emergency or disaster during the seven days before the election or on Election Day, Elections Code § 15101 may also need to be waived.

If the official canvass and transmission of results have begun pursuant to Elections Code § 15150 and 15151, then the following laws may need to be waived or suspended:

- Chapter 3 (Semifinal Official Canvass) Elections Code 15150-15290
- Chapter 4 (Official Canvass) Elections Code 15300-15376
- Chapter 5 (Announcement of Results) Elections Code 15400-15402
- Chapter 6 (Determination of Elected or Nominated Candidates) Elections Code 15450-15490
- Chapter 7 (Duties of the Secretary of State) Elections Code 15500-15505

Avoiding Total Disaster: The Law and Emergencies

Disaster Preparedness Training for Local Government Legal Advisors

Playbook Part 3

Disaster Ordinance

COUNTY COUNSELS' ASSOCIATION

LEAGUE OF CALIFORNIA CITIES

Chapter 2.370 - City Emergency Organization and Functions[8]

Sec. 2.370.010. - Purpose.

This chapter is adopted for the purpose of establishing the city's emergency response organization, and to provide for the preparation, adoption and implementation of city emergency response plans in the event of emergency conditions caused by fire, flood, storms, earthquakes, epidemic, riots or war or other events.

Sec. 2.370.020. - Definitions.

The following definitions shall govern the meaning of the various words and phases used in this chapter:

1. The term "emergency" shall mean the actual or threatened existence of conditions of disaster or of extreme peril to the safety of persons and property within the city caused by such conditions as fire, flood, storm, earthquakes, epidemic, riot or war, including conditions that are likely to be beyond the control of the services, personnel, equipment, and facilities of the city, requiring the combined forces of other political subdivisions to combat.
2. The term "Standardized Emergency Management System (SEMS)" shall mean the state-wide emergency response structure and protocols that have been established pursuant the provisions of Chapter 1, Division 2, Title 19 of the California Code of Regulation in order to manage responses to multi-agency and multi-jurisdictional emergencies and to facilitate communications and coordination between all levels of the system and all responding agencies.

Sec. 2.370.030. - Disaster council.

A City Disaster Council is hereby created and shall consist of the following:

1. The City Manager who shall be the chairperson of the City Disaster Council;
2. The City Fire Chief or such other city officer or employee as may be designated in writing by the City Manager, who shall serve as the vice chairperson of the City Disaster Council;

3. The city officers or employees designated to serve on the Disaster Council in various capacities in the city emergency response plan adopted in the manner hereinafter provided in this chapter; and

4. Representatives of civic, business, labor, veterans, professional, or other organizations that have emergency responsibilities, and that may be appointed to the Disaster Council by the City Manager.

Sec. 2.370.040. - Disaster council powers and duties.

The City Disaster Council shall develop and recommend for adoption by the City Council emergency response plans and mutual aid plans, as well as the rules, regulations and agreements that are necessary to implement such plans. The Disaster Council shall meet upon call of the chairperson, or upon the call of the vice chairperson in the event of the chairperson's absence from the city or inability to call such meeting.

Sec. 2.370.050. - Director of disaster services.

The City Manager shall also serve as the Director of Disaster Services, and in that capacity shall have the additional power and responsibility to:

1. Request the City Council to proclaim the existence or threatened existence of a "local emergency" if the City Council is in session, or to issue such proclamation if the City Council is not in session. However, whenever the Director of Disaster Services proclaims the existence of a local emergency, the City Council shall take action to ratify the proclamation within seven days thereafter or the proclamation shall have no further force or effect.

2. Request the Governor to proclaim a "state of emergency" when, in the opinion of the Director of Disaster Services, the locally available resources are inadequate to cope with the emergency.

3. Control and direct the effort of the emergency organization of the city for the accomplishment of the purposes of this Chapter.

4. Direct cooperation between and coordination of services and staff of the emergency organization of the city, and resolve questions of authority and responsibility that may arise between them.

5. Represent the city in all dealings with public or private agencies on matters pertaining to emergencies as defined herein.

6. In the event of the proclamation a state of emergency by the Governor or the Director of the State Office of Emergency Services:

(a) To make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided, however, such rules and regulations must be confirmed at the earliest practicable time by the City Council.

(b) To obtain vital supplies, equipment and such other property found lacking and needed for the protection of the life and property and to bind the city for the fair value thereof and, if required immediately, to commandeer the same for public use.

(c) To require emergency services of any city officer or employee and command the aid of as many citizens of this community as the Director of Disaster services deems necessary in the execution of his or her duties, which persons shall be entitled to all privileges, benefits and immunities as are provided by state law for registered disaster service workers.

(d) To requisition necessary personnel or material of any city department or agency; and

(e) To execute all of all of the special powers conferred upon the Director of Disaster Services by this Chapter or by resolution or emergency plan adopted by the City Council, and all powers conferred upon him or her by a statute, by an agreement approved by the City Council and by any other lawful authority.

Sec. 2.370.070. - Assistant director of disaster services.

The City Fire Chief or such other city officer or employee as may be designated in writing by the City Manager shall serve as the Assistant Director of Disaster Services, and in that capacity shall be shall be responsible for the development of emergency plans, the management of the city's emergency programs, and the performance of such other duties and responsibilities as may to assigned to him or her by the Director of Disaster Services.

The Assistant Director of Disaster Services shall also Act as the Director of Disaster Services in the event the Director is absent from the city or otherwise unavailable to perform his or her duties during an emergency.

Sec. 2.370.080. - Emergency response organization.

All officers and employees of the city, together with those volunteer forces enrolled to aid them during an emergency, and all groups, organizations and persons who may by agreement or operation of law, be charged with duties incident to the protection of life and property in the city during such emergency, including persons impressed into service under the provisions of this chapter, shall be charged with duties incident to the protection of life and property in the city during such emergency, shall constitute the emergency response organization of the city.

In the event of an emergency and the activation of the city's emergency operations center, the city emergency response organization shall fulfill the roles and have the duties and responsibilities provided for in the City Emergency Response Plans adopted by resolution of the City Council

Sec. 2.370.090. - Emergency response plan.

The City Disaster Council shall develop a proposed Emergency Response Plan that provides for the effective mobilization of all resources of this City, both public and private, to meet any condition constituting an emergency. Such plan shall provide for the organization, powers and duties, services, and staff of the city's emergency response organization, and shall conform in all material respects to the requirements of the statewide Standardized Emergency Management System (SEMS). The City Emergency Response Plan shall take effect when approved and adopted by resolution of the City Council.

Sec. 2.370.100. - Emergency expenditures.

Any expenditures made in connection with emergency activities, including mutual aid activities, and emergency preparedness services provided to the city under contract or agreement, shall be deemed conclusively to be for the direct protection and benefit of the inhabitants and property of the city.

Sec. 2.370.110. - Violations.

It shall be a misdemeanor, punishable by a fine of not to exceed $500.00, or by imprisonment for not to exceed six months, or both, for any person, during an emergency to:

1. Willfully obstruct, hinder or delay any member of the city's emergency response organization in the enforcement of any lawful rule or regulation issued pursuant to this Chapter, or in the

performance of any duty imposed upon him or her by virtue of this Chapter.

2. Do any act forbidden by any lawful rule or regulation issued pursuant this Chapter, if such act is of such a nature as to give or likely to give assistance to the enemy, or to imperil the lives or property of inhabitants of the city, or to prevent, hinder, or delay the defense or protection thereof.

3. Wear, carry or display without authority, any means of identification specified by the emergency agency of the State.