



OHIO DEPARTMENT  
OF PUBLIC SAFETY  
EDUCATION • SERVICE • PROTECTION

# Public Assistance Program Handbook

Ohio Emergency Management Agency  
Disaster Recovery Branch

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August 2012

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# ACRONYMS

CEF	Cost Estimating Format
CFR	Code of Federal Regulations
DNR	Department of Natural Resources
DUNS	Data Universal Numbering System
EMA	Emergency Management Agency
EPA	Environmental Protection Agency
FEMA	Federal Emergency Management Agency
GAR	Governor's Authorized Representative
INF	Immediate Needs Funding
NEPA	National Environmental Protection Act
NHPA	National Historic Preservation Act
OIG	Office of Inspector General
ORC	Ohio Revised Code
P.4.	Project Completion and Certification Report P.4.
PA	Public Assistance
PDA	Preliminary Damage Assessment
PNP	Private Non-Profit Organization
PS	Project Specialist
PW	Project Worksheet
QPR	Quarterly Progress Report
RPA	Request for Public Assistance
SBA	Small Business Administration
SHPO	State Historic Preservation Office

# **DEFINITIONS**

1. Alternate Project: Project type where an applicant decides to abandon a damaged facility and use eligible funding towards another project. For example, abandoning a damaged road and utilizing funds towards expansion of a public building.
2. Applicant: A state agency, local government, eligible private non-profit organization, as identified in Subpart H of FEMA regulations, submitting an application to the Governor's Authorized Representative (GAR) for assistance under the Public Assistance Grant.
3. Applicant's Briefing: The briefing held for all potential applicants to the PA Grant Program. All aspects of the Program are explained.
4. Authorized Agent: The person named by the local head of government to execute on their behalf all necessary documents related to the PA Program. This person assures the scope of work is accomplished and all documentation related to each work site is maintained for audit purposes.
5. Categories of Work: Method by which FEMA separates out type of work performed. There are seven categories of work: Category A, Debris Removal; Category B, Emergency Protective Measures; Category C, Roads and Bridges; Category D, Water Control Facilities; Category E, Buildings and Contents; Category F, Utilities; Category G, Park, Recreation and Other.
6. Cost Estimating Format: The CEF is a forward-pricing model that allows FEMA to account for all possible costs associated with projects for which the base costs of labor, materials, and equipment meet or exceed the large project threshold.
7. Critical Private Non-Profit Organization: Those PNP's providing critical services:
  - Power: Facilities for generation, transmission and distribution of electric power.
  - Water: (including water provided by an irrigation organization or facility) Facilities for the treatment, transmission, and distribution of potable water or water for fire protection or electricity generation.
  - Sewer and Wastewater Treatment: Facilities for collection, transmission and treatment of wastewater.
  - Communications: Facilities for transmission, switching and distribution of telephone traffic.
  - Emergency Medical Care: Emergency rooms (trauma centers), and facilities within them, and rescue vehicles used by emergency medical technicians are critical service facilities.
8. Direct Administrative Costs: The cost related to grant administration that can be directly tied to a specific Project Worksheet.
9. Emergency Work: That work done immediately to save lives and to protect improved property and public health and safety, or to avert or lessen the threat of a major disaster.
10. FIPS No: This is also referred to as your PA-ID Number. This is the number that FEMA uses to identify your Public Assistance Grant.
11. Force Account Work: An applicant's own labor forces, equipment and materials.
12. Governor's Authorized Representative (GAR): The person named by the Governor in the FEMA/State Agreement to execute on behalf of the State all necessary documents for disaster assistance and to evaluate and transmit local government, eligible private non-profit organizations, and state agency requests for assistance to the Regional Director following a

major disaster or emergency declaration. Under normal circumstances, the Governor names the Executive Director of the Emergency Management Agency.

13. Grant: An award of financial assistance. The grant award is based on the total eligible federal share of all approved projects.
14. Grantee: The government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. For purpose of this regulation, except as noted in Section 206.202, the State (Ohio EMA) is the Grantee.
15. Immediate Needs Funding (INF): An advance of grant funds to assist with payment of emergency work within the first 60 days after a disaster strikes. The amount of funding is normally 50% of the federal share of emergency costs as identified during the preliminary damage assessment.
16. Improved Project: Project type where an applicant decides to make repairs/replacement of a permanent facility that goes beyond the original design, function and capacity of the damage facility. For example, during replacement of a destroyed public building, increases square footage of the facility.
17. Improved Property: A structure, facility, or item of equipment that was built, constructed, and manufactured. Land used for agricultural purposes is not improved property.
18. Kick-off Meeting: The initial meeting between an applicant and the FEMA Project Specialist (PS). At this working session, the applicant provides a list of damages and receives comprehensive information about the Public Assistance Program and detailed guidance for their specific circumstances.
19. Large Project: Project whose approved amount is above a certain dollar threshold that is determined by FEMA every October 1. Funded and closed differently than a small project.
20. Management Costs: Grant management costs that are indirect or cannot be tied directly to a specific Project Worksheet.
21. Permanent Work: That restorative work performed through repairs or replacement, to restore an eligible facility on the basis of its pre-disaster design and current applicable standards.
22. Preliminary Damage Assessment (PDA): A Joint federal, state and local verification of local damage assessment. The PDA is a required step in the declaration process.
23. Private Non-Profit Organization (PNP): Any private non-profit educational, utility, emergency, medical, or custodial care facility, including a facility for the aged or disabled, and other facility providing health and safety type services, and such facilities on Indian reservations. Further definitions are as follows:
  - Educational Facilities: means classrooms plus related supplies, equipment, machinery, and utilities of an educational institution necessary or appropriate for instructional, administrative, and support purposes, but does not include buildings, structures, and related items used primarily for religious purposes or instruction.
  - Irrigation: means water for essential services of a governmental nature to the general public, such as fire suppression, generating and supplying electricity and drinking water supply, but does not include water for agricultural purposes.
  - Utility: means buildings, structures, or systems of energy, communication, water supply, sewage collection and treatment, or other similar public service facilities.
  - Emergency Facility: means those buildings, structures, equipment or systems used to provide emergency services, such as fire protection, ambulance, or rescue, to the general

public, including the administrative and support facilities essential to the operation of such emergency facilities even if not contiguous.

- Medical Facility: means any hospital, outpatient facility, rehabilitation facility, or facility for long term care as such terms are defined in Section 645 of the Public Health Service Act (42 U.S.C. 2910) and any similar facility offering diagnosis or treatment of mental or physical injury or disease, including the administrative and support facilities essential to the operation of such medical facilities even if not contiguous.
- Custodial Care Facility: means those buildings, structures, or systems including those for essential administration and support, which are used to provide institutional care for persons who require close supervision and some physical constraints on their daily activities for their self-protection, but do not require day-do-day medical care.
- Other Essential Governmental Services Facility: means facilities such as community centers, libraries, homeless shelters, senior citizen centers, shelter workshops and similar facilities which are open to the general public.

In addition: Any governmental agency or entity that currently has:

- An effective ruling letter from the U.S. Internal Revenue Service, granting tax exemption under Section 501(c), (d), or (e) of the Internal Revenue Code of 1954.
  - Satisfactory evidence from the State that the non-revenue producing organization or entity is a non-profit one organized or doing business under state law.
21. Project Formulation: The process of documenting the eligible facility, the eligible work and the eligible cost for damages resulting from the declared event.
  22. Project Specialist (PS): A federal employee who assists applicants in writing Project Worksheets.
  23. Project Worksheet (PW): Identifies the scope of work to be accomplished and the estimated amount of money for project costs.
  25. Request for Public Assistance (RPA): The official notification of intent to apply for Public Assistance monies following declaration of a disaster. It is a short form that asks for general identifying information about an applicant.
  26. Schedule of Equipment Rates: FEMA's cost listing for various pieces of equipment which identifies the cost for operating equipment; rates include maintenance and fuel.
  27. Small Project: Project whose approved amount is below a certain dollar threshold that is determined by FEMA every October 1. Funded and closed differently than a large project.
  28. Source Documentation: Support for accounting records that includes items such as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.
  29. Special Considerations: Factors that must be addressed before federal grant money can be obligated to repair or restore damaged facilities. These factors include, but are not limited to, insurance, historic preservation, environmental protection, and hazard mitigation.
  30. Subgrant: Award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee.
  31. Subgrantee: The government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of funds provided.
  32. Validation: A pre-funding verification to confirm the eligibility, compliance, accuracy, and reasonableness of small projects formulated by an applicant.

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# **INTRODUCTION TO PUBLIC ASSISTANCE**

The Public Assistance (PA) Program provides reimbursement to state and local governments and eligible Private Non-Profit Organizations (PNP's) for debris removal; emergency protective measures; and the repair or reconstruction of public facilities that are owned and operated by the eligible applicant.

The PA Program is administered by the Ohio Emergency Management Agency (Ohio EMA, herein referred to as the State), Disaster Recovery Branch, as the grantee for all funds related to the Program. The Governor's Authorized Representative (GAR) is the authorized agent of this grant for the State. Eligible applicants to the Program are subgrantees.

The Federal Emergency Management Agency (FEMA) provides the majority of the funding for this Program and is the final authority for approving/disallowing costs as well as other relevant Program topics.

The federal share of the PA Program is no less than 75% of the total eligible cost. The State may contribute to the non-federal share. Those not eligible for a state share are State Agencies and Private Non-Profit Organizations.

An Applicant's Briefing on all aspects of the PA Program is held as soon as possible after receipt of the declaration. Every local government and eligible PNP in the declared disaster area sends a representative to the briefing. The individual attending this meeting may become the subgrantee's Authorized Agent and should be qualified to speak officially for the local government or PNP they are representing. It is recommended that a fiscal and public works person also attend the briefing (if not being designated as the Authorized Agent).



The following sections address all information relative to the PA Program and outline responsibilities of the subgrantees. The chart on the next page illustrates the Program sequence of events.

Please remember that we are always available to assist you with any questions, tasks, or concerns that you may have regarding the Public Assistance Program and your grant. You may reach the Public Assistance Program at (614) 799-3665, fax (614) 791-0018 and address: Ohio EMA, 2855 West Dublin Granville Road, Columbus, Ohio 43235.

**PUBLIC ASSISTANCE SEQUENCE OF EVENTS**

**DAMAGE OCCURS**



**FEMA PRELIMINARY DAMAGE ASSESSMENT**



**PRESIDENTIAL DISASTER DECLARATION**



**APPLICANT'S BRIEFING**



**KICKOFF MEETING**



**FORMULATION AND VALIDATION OF PROJECT WORKSHEETS**



**APPROVED PROJECT WORKSHEETS DISTRIBUTED**



FEDERAL SHARE OF SMALL PROJECTS PAID IMMEDIATELY    ⇐ **FUNDING** ⇒ REIMBURSEMENT/ADVANCES FOR LARGE PROJECTS



**QUARTERLY PROGRESS REPORTS**



RANDOM INSPECTION FOR SMALL PROJECTS    ⇐ **VERIFICATION** ⇒ ALL LARGE PROJECTS INSPECTED/FEMA APPROVED



**AUDITS**

## ***DECLARATION PROCESS***

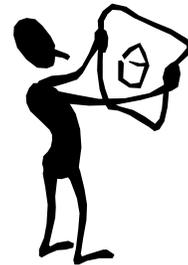
The Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, Public Law 93-288, as amended, authorizes the delivery of federal disaster assistance following a declaration of major disaster by the President. A major disaster is defined in 44 Code of Federal Regulations (CFR) as:

“Any natural catastrophe... or regardless of cause, any fire, flood, explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance...to supplement the efforts and available resources of State, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.”

A key word within the definition is “supplement”. This means that state and local governments must apply all available resources to the disaster before federal disaster assistance is provided. Local officials shall contact their County Emergency Management Agency (EMA) to assist in obtaining recourses and making requests for state and/or federal disaster assistance.

### ***DAMAGE ASSESSMENT- What does it do?***

During and immediately following the incident, a damage assessment is conducted. Early identification of problems enables local officials to make prompt and efficient decisions concerning available resources. The extent of damage and its affect upon a community is used to determine the amount of federal assistance needed and the program(s) to request.



Speed and accuracy are important in order to obtain the maximum amount of assistance; therefore, a systematic procedure to collect and properly analyze damage information is established before the disaster occurs. The identification and training of local personnel tasked with damage assessment is critical to this process. Your County EMA can assist you in obtaining damage assessment training.

When the assessment information is received by Ohio EMA, the data is reviewed and a determination made concerning the availability of additional supplemental assistance. If the assessment reveals that sufficient damage exists to warrant further action, a request is made to the Federal Emergency Management Agency (FEMA). A Preliminary (or Joint) Damage Assessment (PDA) by federal, state and local personnel is conducted to determine the needs of the community.

The PDA is conducted to determine the types of disaster relief and assistance needed by the stricken area and to provide documentation for the Governor’s letter of request to the President. FEMA also uses this information to determine staffing requirements should a major disaster be declared.

## ***YOUR ROLE IN DAMAGE ASSESSMENT***

Federal and state personnel who tour the damaged area survey public damages. Local governments provide assessment team members to answer questions and ensure that the teams have viewed all damage. When selecting local team members, it is wise to designate engineers or public works personnel. Their expertise may mean the difference in receiving or not receiving a declaration for Public Assistance.

The areas of greatest damage are always viewed by the PDA team(s) first. Maps, with the areas of damage marked, are provided to the assessment team(s).



If potential applicants are experiencing a cash flow/funding problem because of the disaster, they may request of the Federal PDA Representative the need for Immediate Needs Funding. The funds are provided for work that must be performed immediately and paid for within the first sixty (60) days following declaration. Eligible work typically includes debris removal, emergency protective measures, and removal of health and safety hazards. Immediate needs funds can be used for such expenses as temporary labor costs, overtime payroll, equipment, and material fees.

### ***DAMAGE ASSESSMENT – Results of this Process.***

When all information is collected, it is reviewed by state personnel to determine if a major disaster declaration is warranted. If warranted, the Governor's letter of request is prepared and forwarded to FEMA. If the declaration is granted, the County EMA contacts local officials and PNP's with information concerning the time and location of Applicant's Briefings.

**Applications for the Public Assistance Program are made at the time of the Briefing.**

In the event the declaration is denied, a one-time appeal may be submitted by the Governor within thirty (30) days of the denial. The process described above is repeated and additional damage and information is provided.

### ***ATTACHMENTS***

- 44 CFR Part 206, Subparts G – Public Assistance Project Administration and H – Public Assistance Eligibility
- FEMA 9500 Series Policy Publications

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**e-CFR Data is current as of June 20, 2011**

### **Title 44: Emergency Management and Assistance** [PART 206 FEDERAL DISASTER ASSISTANCE](#)

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#### **Subpart G Public Assistance Project Administration**

**Source:** 55 FR 2304, Jan. 23, 1990, unless otherwise noted.

#### **§ 206.200 General.**

(a) *Purpose.* This subpart establishes procedures for the administration of Public Assistance grants approved under the provisions of the Stafford Act.

#### RELATED RESOURCES

[Code of Federal Regulations](#)

[Federal Register](#)

[List of CFR Sections Affected](#)

[Regulations.gov](#)

[Unified Agenda](#)

[All NARA Publications](#)

#### ABOUT GOVERNMENT



[Ben's Guide to U.S. Government](#)



(b) *What policies apply to FEMA public assistance grants?* (1) The Stafford Act requires that we deliver eligible assistance as quickly and efficiently as possible consistent with Federal laws and regulations. We expect the Grantee and the subgrantee to adhere to Stafford Act requirements and to these regulations when administering our public assistance grants.

(2) The regulations entitled Uniform Requirements for Grants and Cooperative Agreements to State and Local Governments, published at 44 CFR part 13, place requirements on the State in its role as Grantee and gives the Grantee discretion to administer federal programs under their own procedures. We expect the Grantee to:

(i) Inform subgrantees about the status of their applications, including notifications of our approvals of Project Worksheets and our estimates of when we will make payments;

(ii) Pay the full amounts due to subgrantees as soon as practicable after we approve payment, including the State contribution required in the FEMA-State Agreement; and

(iii) Pay the State contribution consistent with State laws.

[55 FR 2304, Jan. 23, 1990, as amended at 63 FR 64425, Nov. 20, 1998; 64 FR 55160, Oct. 12, 1999]

#### § 206.201 Definitions used in this subpart.

(a) *Applicant* means a State agency, local government, or eligible private nonprofit organization, as identified in Subpart H of this regulation, submitting an application to the Grantee for assistance under the State's grant.

(b) *Emergency work* means that work which must be done immediately to save lives and to protect improved property and public health and safety, or to avert or lessen the threat of a major disaster.

(c) *Facility* means any publicly or privately owned building, works, system, or equipment, built or manufactured, or an improved and maintained natural feature. Land used for agricultural purposes is not a facility.

(d) *Grant* means an award of financial assistance. The grant award shall be based on the total eligible Federal share of all approved projects.

(e) *Grantee*. Grantee means the government to which a grant is awarded, and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. Generally, except as provided in §206.202(f), the State for which the emergency or major disaster is declared is the grantee. However, an Indian Tribal government may choose to be a grantee, or it may act as a subgrantee under the State. If an Indian Tribal government is the grantee, it will assume the responsibilities of the grantee or State as described in this part with respect to administration of the Public Assistance program.

(f) *Hazard mitigation* means any cost effective measure which will reduce the potential for damage to a facility from a disaster event.

(g) *Host-State*. A State or Indian Tribal government that by agreement with FEMA provides sheltering and/or evacuation support to evacuees from an impact-State. An Indian Tribal government may also be referred to as a Host-Tribe.

(h) *Impact-State*. The State for which the President has declared an emergency or major disaster and that, due to a need to evacuate and/or shelter affected individuals outside the State, requests such assistance from FEMA pursuant to §206.208.

(i) *Indian Tribal government* means any federally recognized governing body of an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe under the Federally Recognized Tribe List Act of 1994, 25 U.S.C. 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

(j) *Permanent work* means that restorative work that must be performed through repairs or replacement, to restore an eligible facility on the basis of its predisaster design and current applicable standards.

(k) *Predisaster design* means the size or capacity of a facility as originally designed and constructed or subsequently modified by changes or additions to the original design. It does not mean the capacity at which the facility was being used at the time the major disaster occurred if different from the most recent designed capacity.

(l) A *project* is a logical grouping of work required as a result of the declared major disaster or emergency. The scope of work and cost estimate for a project are documented on a Project Worksheet (FEMA Form 90 91).

(1) We must approve a scope of eligible work and an itemized cost estimate before funding a project.

(2) A project may include eligible work at several sites.

(m) *Project approval* means the process in which the Regional Administrator, or designee, reviews and signs an approval of work and costs on a Project Worksheet or on a batch of Project Worksheets. Such approval is also an obligation of funds to the Grantee.

(n) *Subgrant* means an award of financial assistance under a grant by a grantee to an eligible subgrantee.

(o) *Subgrantee* means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

[55 FR 2304, Jan. 23, 1990, as amended at 63 FR 64425, Nov. 20, 1998; 64 FR 55160, Oct. 12, 1999; 74 FR 60213, Nov. 20, 2009]

## **§ 206.202 Application procedures.**

(a) *General.* This section describes the policies and procedures that we use to process public assistance grants to States. Under this section the State is the Grantee. As Grantee you are responsible for processing subgrants to applicants under 44 CFR parts 13 and 206, and your own policies and procedures.

(b) *Grantee.* You are the grant administrator for all funds provided under the Public Assistance grant program. Your responsibilities under this section include:

(1) Providing technical advice and assistance to eligible subgrantees;

(2) Providing State support for project identification activities to include small and large project formulation and the validation of small projects;

(3) Ensuring that all potential applicants are aware of available public assistance; and

(4) Submitting documents necessary for the award of grants.

(c) *Request for Public Assistance (Request)*. The Grantee must send a completed *Request* (FEMA Form 90 49) to the Regional Administrator for each applicant who requests public assistance. You must send *Requests* to the Regional Administrator within 30 days after designation of the area where the damage occurred.

(d) *Project Worksheets*. (1) An applicant's authorized local representative is responsible for representing the applicant and for ensuring that the applicant has identified all eligible work and submitted all costs for disaster-related damages for funding.

(i) We or the applicant, assisted by the State as appropriate, will prepare a Project Worksheet (FEMA Form 90 91) for each project. The Project Worksheet must identify the eligible scope of work and must include a quantitative estimate for the eligible work.

(ii) The applicant will have 60 days following its first substantive meeting with us to identify and to report damage to us.

(2) When the estimated cost of work on a project is less than \$1,000, that work is not eligible and we will not approve a Project Worksheet for the project. Periodically we will review this minimum approval amount for a Project Worksheet and, if needed, will adjust the amount by regulation.

(e) *Grant approval*. (1) Before we obligate any funds to the State, the Grantee must complete and send to the Regional Administrator a Standard Form (SF) 424, Application for Federal Assistance, and a SF 424D, Assurances for Construction Programs. After we receive the SF 424 and SF 424D, the Regional Administrator will obligate funds to the Grantee based on the approved Project Worksheets. The Grantee will then approve subgrants based on the Project Worksheets approved for each applicant.

(2) When the applicant submits the Project Worksheets, we will have 45 days to obligate Federal funds. If we have a delay beyond 45 days we will explain the delay to the Grantee.

(f) *Exceptions*. The following are exceptions to the procedures and time limitations outlined in this section.

(1) *Host-State Evacuation and/or Sheltering*. (i) *General*. A grant to a host-State for sheltering and/or evacuation support is available under this section when an impact-State requests direct Federal assistance for sheltering and/or evacuation support pursuant to §206.208. To receive this grant, a host-State must enter into a FEMA Host-State Agreement, amend its State Administrative Plan pursuant to §206.207, and submit a Standard Form SF424 *Application for Federal Assistance* directly to FEMA to apply for reimbursement of eligible costs for evacuating and/or sheltering individuals from an impact-State. Upon award, the host-State assumes the responsibilities of the grantee or State under this part with respect to its grant award.

(ii) *Force Account Labor Costs*. For the performance of eligible evacuation and sheltering support under sections 403 or 502 of the Stafford Act, the straight-time salaries and benefits of a host-State's permanently employed personnel are eligible for reimbursement. This is an exception to §206.228(a)(2).

(2) *Time limitations*. The Regional Administrator may extend the time limitations shown in paragraphs (c) and (d) of this section when the Grantees justifies and makes a request in writing. The justification must be based on extenuating circumstances beyond the grantee's or subgrantee's control.

[64 FR 55160, Oct. 12, 1999, as amended at 74 FR 15350, Apr. 3, 2009; 74 FR 60213, Nov. 20, 2009]

### **§ 206.203 Federal grant assistance.**

(a) *General*. This section describes the types and extent of Federal funding available under State disaster assistance grants, as well as limitations and special procedures applicable to each.

(b) *Cost sharing*. All projects approved under State disaster assistance grants will be subject to the cost sharing provisions established in the FEMA-State Agreement and the Stafford Act.

(c) *Project funding* (1) *Large projects*. When the approved estimate of eligible costs for an individual project is \$35,000 or greater, Federal funding shall equal the Federal share of the actual eligible costs documented by a grantee. Such \$35,000 amount shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(2) *Small projects*. When the approved estimate of costs for an individual project is less than \$35,000, Federal funding shall equal the Federal share of the approved estimate of eligible costs. Such \$35,000 amount shall be adjusted annually as indicated in paragraph (c)(1) of this section.

(d) *Funding options* (1) *Improved projects*. If a subgrantee desires to make improvements, but still restore the predisaster function of a damaged facility, the Grantee's approval must be obtained. Federal funding for such improved projects shall be limited to the Federal share of the approved estimate of eligible costs.

(2) *Alternate projects*. In any case where a subgrantee determines that the public welfare would not be best served by restoring a damaged public facility or the function of that facility, the Grantee may request that the Regional Administrator approve an alternate project.

(i) The alternate project option may be taken only on permanent restorative work.

(ii) Federal funding for alternate projects for damaged public facilities will be 90 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.

(iii) Federal funding for alternate projects for damaged private nonprofit facilities will be 75 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.

(iv) Funds contributed for alternate projects may be used to repair or expand other selected public facilities, to construct new facilities, or to fund hazard mitigation measures. These funds may not be used to pay the nonFederal share of any project, nor for any operating expense.

(v) Prior to the start of construction of any alternate project the Grantee shall submit for approval by the Regional Administrator the following: a description of the proposed alternate project(s); a schedule of work; and the projected cost of the project(s). The Grantee shall also provide the necessary assurances to document compliance with special requirements, including, but not limited to floodplain management, environmental assessment, hazard mitigation, protection of wetlands, and insurance.

[55 FR 2304, Jan. 23, 1990, as amended at 66 FR 22444, May 4, 2001; 73 FR 20551, Apr. 16, 2008]

#### **§ 206.204 Project performance.**

(a) *General*. This section describes the policies and procedures applicable during the performance of eligible work.

(b) *Advances of funds*. Advances of funds will be made in accordance with 44 CFR 13.21, Payment.

(c) *Time limitations for completion of work* (1) *Deadlines*. The project completion deadlines shown below are set from the date that a major disaster or emergency is declared and apply to all projects approved under State disaster assistance grants.

### Completion Deadlines

Type of work	Months
Debris clearance	6
Emergency work	6
Permanent work	18

(2) *Exceptions.* (i) The Grantee may impose lesser deadlines for the completion of work under paragraph (c)(1) of this section if considered appropriate.

(ii) Based on extenuating circumstances or unusual project requirements beyond the control of the subgrantee, the Grantee may extend the deadlines under paragraph (c)(1) of this section for an additional 6 months for debris clearance and emergency work and an additional 30 months, on a project by project basis for permanent work.

(d) *Requests for time extensions.* Requests for time extensions beyond the Grantee's authority shall be submitted by the Grantee to the Regional Administrator and shall include the following:

(1) The dates and provisions of all previous time extensions on the project; and

(2) A detailed justification for the delay and a projected completion date. The Regional Administrator shall review the request and make a determination. The Grantee shall be notified of the Regional Administrator's determination in writing. If the Regional Administrator approves the request, the letter shall reflect the approved completion date and any other requirements the Regional Administrator may determine necessary to ensure that the new completion date is met. If the Regional Administrator denies the time extension request, the grantee may, upon completion of the project, be reimbursed for eligible project costs incurred only up to the latest approved completion date. If the project is not completed, no Federal funding will be provided for that project.

(e) *Cost Overruns.* (1) During the execution of approved work a subgrantee may find that the actual project costs exceed the approved Project Worksheet estimates. Such cost overruns normally fall into the following three categories:

(i) Variations in unit prices;

(ii) Change in the scope of eligible work; or

(iii) Delays in timely starts or completion of eligible work.

(2) The subgrantee must evaluate each cost overrun and, when justified, submit a request for additional funding through the Grantee to the Regional Administrator for a final determination. All requests for the Regional Administrator's approval will contain sufficient documentation to support the eligibility of all claimed work and costs. The Grantee must include a written recommendation when forwarding the request. The Regional Administrator will notify the Grantee in writing of the final determination. FEMA will not normally review an overrun for an individual small project. The normal procedure for small projects will be that when a subgrantee discovers a significant overrun related to the total final cost for all small projects, the subgrantee may submit an appeal for additional funding in accordance with §206.206, within 60 days following the completion of all its small projects.

(f) *Progress reports.* Progress reports will be submitted by the Grantee to the Regional Administrator quarterly. The Regional Administrator and Grantee shall negotiate the date for submission of the first report. Such reports will describe the status of those projects on which a final payment of the Federal

share has not been made to the grantee and outline any problems or circumstances expected to result in noncompliance with the approved grant conditions.

[55 FR 2304, Jan. 23, 1990; 55 FR 5458, Feb. 15, 1990, as amended at 64 FR 55161, Oct. 12, 1999]

### **§ 206.205 Payment of claims.**

(a) *Small Projects.* Final payment of the Federal share of these projects will be made to the Grantee upon approval of the Project Worksheet. The Grantee will make payment of the Federal share to the subgrantee as soon as practicable after Federal approval of funding. Before the closeout of the disaster contract, the Grantee must certify that all such projects were completed in accordance with FEMA approvals and that the State contribution to the non-Federal share, as specified in the FEMA-State Agreement, has been paid to each subgrantee. Such certification is not required to specify the amount spent by a subgrantee on small projects. The Federal payment for small projects shall not be reduced if all of the approved funds are not spent to complete a project. However, failure to complete a project may require that the Federal payment be refunded.

(b) *Large projects.* (1) The Grantee shall make an accounting to the Regional Administrator of eligible costs for each approved large project. In submitting the accounting the Grantee shall certify that reported costs were incurred in the performance of eligible work, that the approved work was completed, that the project is in compliance with the provisions of the FEMA-State Agreement, and that payments for that project have been made in accordance with 44 CFR 13.21, Payments. Each large project shall be submitted as soon as practicable after the subgrantee has completed the approved work and requested payment.

(2) The Regional Administrator shall review the accounting to determine the eligible amount of reimbursement for each large project and approve eligible costs. If a discrepancy between reported costs and approved funding exists, the Regional Administrator may conduct field reviews to gather additional information. If discrepancies in the claim cannot be resolved through a field review, a Federal audit may be conducted. If the Regional Administrator determines that eligible costs exceed the initial approval, he/she will obligate additional funds as necessary.

[55 FR 2304, Jan. 23, 1990, as amended at 64 FR 55161, Oct. 12, 1999]

### **§ 206.206 Appeals.**

An eligible applicant, subgrantee, or grantee may appeal any determination previously made related to an application for or the provision of Federal assistance according to the procedures below.

(a) *Format and Content.* The applicant or subgrantee will make the appeal in writing through the grantee to the Regional Administrator. The grantee shall review and evaluate all subgrantee appeals before submission to the Regional Administrator. The grantee may make grantee-related appeals to the Regional Administrator. The appeal shall contain documented justification supporting the appellant's position, specifying the monetary figure in dispute and the provisions in Federal law, regulation, or policy with which the appellant believes the initial action was inconsistent.

(b) *Levels of Appeal.* (1) The Regional Administrator will consider first appeals for public assistance-related decisions under subparts A through L of this part.

(2) The Assistant Administrator for the Disaster Assistance Directorate will consider appeals of the Regional Administrator's decision on any first appeal under paragraph (b)(1) of this section.

(c) *Time Limits.* (1) Appellants must file appeals within 60 days after receipt of a notice of the action that is being appealed.

(2) The grantee will review and forward appeals from an applicant or subgrantee, with a written

recommendation, to the Regional Administrator within 60 days of receipt.

(3) Within 90 days following receipt of an appeal, the Regional Administrator (for first appeals) or Assistant Administrator for the Disaster Assistance Directorate (for second appeals) will notify the grantee in writing of the disposition of the appeal or of the need for additional information. A request by the Regional Administrator or Assistant Administrator for the Disaster Assistance Directorate for additional information will include a date by which the information must be provided. Within 90 days following the receipt of the requested additional information or following expiration of the period for providing the information, the Regional Administrator or Assistant Administrator for the Disaster Assistance Directorate will notify the grantee in writing of the disposition of the appeal. If the decision is to grant the appeal, the Regional Administrator will take appropriate implementing action.

(d) *Technical Advice.* In appeals involving highly technical issues, the Regional Administrator or Assistant Administrator for the Disaster Assistance Directorate may, at his or her discretion, submit the appeal to an independent scientific or technical person or group having expertise in the subject matter of the appeal for advice or recommendation. The period for this technical review may be in addition to other allotted time periods. Within 90 days of receipt of the report, the Regional Administrator or Assistant Administrator for the Disaster Assistance Directorate will notify the grantee in writing of the disposition of the appeal.

(e) *Transition.* (1) This rule is effective for all appeals pending on and appeals from decisions issued on or after May 8, 1998, except as provided in paragraph (e)(2) of this section.

(2) Appeals pending from a decision of an Assistant Administrator for the Disaster Assistance Directorate before May 8, 1998 may be appealed to the Administrator in accordance with 44 CFR 206.440 as it existed before May 8, 1998 (44 CFR, revised as of October 1, 1997).

(3) The decision of the FEMA official at the next higher appeal level shall be the final administrative decision of FEMA.

[63 FR 17110, Apr. 8, 1998; 63 FR 24970, May 6, 1998]

#### **§ 206.207 Administrative and audit requirements.**

(a) *General.* Uniform administrative requirements which are set forth in 44 CFR part 13 apply to all disaster assistance grants and subgrants.

(b) *State administrative plan.* (1) The State shall develop a plan for the administration of the Public Assistance program that includes at a minimum, the items listed below:

(i) The designation of the State agency or agencies which will have the responsibility for program administration.

(ii) The identification of staffing functions in the Public Assistance program, the sources of staff to fill these functions, and the management and oversight responsibilities of each.

(iii) Procedures for:

(A) Notifying potential applicants of the availability of the program;

(B) Conducting briefings for potential applicants and application procedures, program eligibility guidance and program deadlines;

(C) Assisting FEMA in determining applicant eligibility;

(D) Participating with FEMA in conducting damage surveys to serve as a basis for obligations of funds to subgrantees;

(E) Participating with FEMA in the establishment of hazard mitigation and insurance requirements;

(F) Processing appeal requests, requests for time extensions and requests for approval of overruns, and for processing appeals of grantee decisions;

(G) Compliance with the administrative requirements of 44 CFR parts 13 and 206;

(H) Compliance with the audit requirements of 44 CFR part 13;

(I) Processing requests for advances of funds and reimbursement; and

(J) Determining staffing and budgeting requirements necessary for proper program management.

(K) Determining the reasonable percentage or amount of pass-through funds for management costs provided under 44 CFR part 207 that the grantee will make available to subgrantees, and the basis, criteria, or formula for determining the subgrantee percentage or amount.

(2) The Grantee may request the Regional Administrator to provide technical assistance in the preparation of such administrative plan.

(3) In accordance with the Interim Rule published March 21, 1989, the Grantee was to have submitted an administrative plan to the RD for approval by September 18, 1989. An approved plan must be on file with FEMA before grants will be approved in a future major disaster. Thereafter, the Grantee shall submit a revised plan to the Regional Administrator annually. In each disaster for which Public Assistance is included, the Regional Administrator shall request the Grantee to prepare any amendments required to meet current policy guidance.

(4) The Grantee shall ensure that the approved administrative plan is incorporated into the State emergency plan.

(c) *Audit* (1) *Nonfederal audit.* For grantees or subgrantees, requirements for nonfederal audit are contained in FEMA regulations at 44 CFR part 13 or OMB Circular A 110 as appropriate.

(2) *Federal audit.* In accordance with 44 CFR part 13, FEMA may elect to conduct a Federal audit of the disaster assistance grant or any of the subgrants.

[55 FR 2304, Jan. 23, 1990; 55 FR 5458, Feb. 15, 1990, as amended at 72 FR 57875, Oct. 11, 2007; 74 FR 15350, Apr. 3, 2009]

#### **§ 206.208 Direct Federal assistance.**

(a) *General.* When the State and local government lack the capability to perform or to contract for eligible emergency work and/or debris removal, under sections 402(1) and (4), 403, 407, 502(a)(1), (5) and (7) of the Act, the Grantee may request that the work be accomplished by a Federal agency. Such assistance is subject to the cost sharing provisions outlined in §206.203(b) of this subpart. Direct Federal assistance is also subject to the eligibility criteria contained in Subpart H of these regulations. FEMA will reimburse other Federal agencies in accordance with Subpart A of these regulations.

(b) *Requests for assistance.* All requests for direct Federal assistance shall be submitted by the Grantee to the Regional Administrator and shall include:

(1) A written agreement that the State will:

(i) Provide without cost to the United States all lands, easements and rights-of-ways necessary to accomplish the approved work;

(ii) Hold and save the United States free from damages due to the requested work, and shall indemnify the Federal Government against any claims arising from such work;

(iii) Provide reimbursement to FEMA for the nonFederal share of the cost of such work in accordance with the provisions of the FEMA-State Agreement; and

(iv) Assist the performing Federal agency in all support and local jurisdictional matters.

(2) A statement as to the reasons the State and the local government cannot perform or contract for performance of the requested work.

(3) A written agreement from an eligible applicant that such applicant will be responsible for the items in subparagraph (b)(1) (i) and (ii) of this section, in the event that a State is legally unable to provide the written agreement.

(c) *Implementation.* (1) If the Regional Administrator approves the request, a mission assignment will be issued to the appropriate Federal agency. The mission assignment letter to the agency will define the scope of eligible work, the estimated cost of the eligible work and the billing period frequency. The Federal agency must not exceed the approved funding limit without the authorization of the Regional Administrator.

(2) If all or any part of the requested work falls within the statutory authority of another Federal agency, the Regional Administrator shall not approve that portion of the work. In such case, the unapproved portion of the request will be referred to the appropriate agency for action.

(3) If an impact-State requests assistance in providing evacuation and sheltering support outside an impact-State, FEMA may directly reimburse a host-State for such eligible costs through a grant to a host-State under an impact-State's declaration, consistent with §206.202(f)(1). FEMA may award a grant to a host-State when FEMA determines that a host-State has sufficient capability to meet some or all of the sheltering and/or evacuation needs of an impact-State, and a host-State agrees in writing to provide such support to an impact-State.

(d) *Time limitation.* The time limitation for completion of work by a Federal agency under a mission assignment is 60 days after the President's declaration. Based on extenuating circumstances or unusual project requirements, the Regional Administrator may extend this time limitation.

(e) *Project management.* (1) The performing Federal agency shall ensure that the work is completed in accordance with the Regional Administrator's approved scope of work, costs and time limitations. The performing Federal agency shall also keep the Regional Administrator and Grantee advised of work progress and other project developments. It is the responsibility of the performing Federal agency to ensure compliance with applicable Federal, State and local legal requirements. A final inspection report will be completed upon termination of all direct Federal assistance work. Final inspection reports shall be signed by a representative of the performing Federal agency and the State. Once the final eligible cost is determined (including Federal agency overhead), the State will be billed for the nonFederal share of the mission assignment in accordance with the cost sharing provisions of the FEMA-State Agreement.

(2) Pursuant to the agreements provided in the request for assistance the Grantee shall assist the performing Federal agency in all State and local jurisdictional matters. These matters include securing local building permits and rights of entry, control of traffic and pedestrians, and compliance with local building ordinances.

[55 FR 2304, Jan. 23, 1990, as amended at 64 FR 55161, Oct. 12, 1999; 74 FR 60214, Nov. 20, 2009]

**§ 206.209 Arbitration for Public Assistance determinations related to Hurricanes Katrina and Rita (Major disaster declarations DR 1603, DR 1604, DR 1605, DR 1606, and DR 1607).**

(a) *Scope.* Pursuant to section 601 of the American Recovery and Reinvestment Act of 2009, Public Law 111 5, this section establishes procedures for arbitration to resolve disputed Public Assistance applications under the following major disaster declarations: DR 1603, DR 1604, DR 1605, DR 1606, and DR 1607.

(b) *Applicability.* An applicant or subgrantee (hereinafter applicant for purposes of this section) may request arbitration of a determination made by FEMA on an application for Public Assistance, provided that the total amount of the project is greater than \$500,000, and provided that:

(1) the applicant is eligible to file an appeal under §206.206; or

(2) the applicant had a first or second level appeal pending with FEMA pursuant to §206.206 on or after February 17, 2009.

(c) *Governing rules.* An applicant that elects arbitration agrees to abide by this section and applicable guidance. The arbitration will be conducted pursuant to procedure established by the arbitration panel.

(d) *Limitations* (1) *Election of remedies.* A request for arbitration under this section is in lieu of filing or continuing an appeal under §206.206.

(2) *Final agency action under §206.206.* Arbitration is not available for any matter that obtained final agency action by FEMA pursuant to §206.206 prior to February 17, 2009. Arbitration is not available for determinations for which the applicant failed to file a timely appeal under the provisions of §206.206 prior to August 31, 2009, or for determinations which received a decision on a second appeal from FEMA prior to February 17, 2009.

(e) *Request for arbitration* (1) *Content of request.* The request for arbitration must contain a written statement and all documentation supporting the position of the applicant, the disaster number, and the name and address of the applicant's authorized representative or counsel.

(2) *Submission by the applicant to the Grantee, the FEMA Regional Administrator, and the arbitration administrator.* An applicant under paragraph (b)(1) of this section must submit its request for arbitration in writing simultaneously to the Grantee, the FEMA Regional Administrator, and the arbitration administrator within 30 calendar days after receipt of notice of the determination that is the subject of the arbitration request or by September 30, 2009, whichever is later. An applicant under paragraph (b)(2) of this section must make a request for arbitration in writing and, if FEMA has not issued a decision on the appeal, submit a withdrawal of the pending appeal, simultaneously to the Grantee, the FEMA Regional Administrator, and the arbitration administrator by October 30, 2009.

(3) *Submission by the Grantee to the arbitration administrator and FEMA.* Within 15 calendar days of receipt of the applicant's request for arbitration, the Grantee must forward the name and address of the Grantee's authorized representative or counsel, and may forward a written recommendation in support or opposition to the applicant's request for arbitration, simultaneously to the FEMA Regional Administrator, the arbitration administrator, and the applicant.

(4) *Submission of FEMA's response.* FEMA will submit a memorandum in support of its position, a copy of the Project Worksheet(s), and any other supporting information, as well as the name and address of its authorized representative or counsel, simultaneously to the arbitration administrator, the Grantee, and the applicant, within 30 calendar days of receipt of the applicant's request for arbitration.

(5) *Process for submissions.* When submitting a request for arbitration, the applicant should describe its claim with sufficient detail so that the circumstances of the dispute are clear to the arbitration panel. All papers, notices, or other documents submitted to the arbitration administrator under this section by the applicant, the Grantee, or FEMA will be served on each party's authorized representative or counsel. The submitting party will make such service by courier or overnight delivery service (such as Federal Express, DHL, United Parcel Service, or the United States Postal Service overnight delivery), addressed to the party, representative, or counsel, as applicable, at its last known address.

(f) *Selection of arbitration panel.* The arbitration administrator will select the arbitration panel for arbitration and notify the applicant, FEMA, and the Grantee of the names and identities of the arbitrators selected for the panel.

(g) *Preliminary conference.* The arbitration panel will hold a preliminary conference with the parties and/or representatives of the parties within 10 business days of the panel's receipt of FEMA's response to the request for arbitration. The panel and the parties will discuss the future conduct of the arbitration, including clarification of the disputed issues, request for disqualification of an arbitrator (if applicable), and any other preliminary matters. The date and place of any oral hearing will be set at the preliminary conference. The preliminary conference will be conducted by telephone.

(h) *Hearing* (1) *Request for hearing.* The panel will provide the applicant and FEMA with an opportunity to make an oral presentation on the substance of the applicant's claim in person, by telephone conference, or other means during which all the parties may simultaneously hear all other participants. If the applicant or FEMA would like to request an oral hearing, the request must be made no later than the preliminary conference.

(2) *Location of hearing.* If an in-person hearing is authorized, it will be held at a hearing facility of the arbitration panel's choosing.

(3) *Conduct of hearing.* Each party may present its position through oral presentations by individuals designated in advance of the hearing. These presentations may reference documents submitted pursuant to paragraph (e) of this section; the parties may not provide additional paper submissions at the hearing. If the panel deems it appropriate or necessary, it may request additional written materials from either or both parties or seek the advice or expertise of independent scientific or technical subject matter experts.

(4) *Closing of hearing.* The panel will inquire of each party whether it has any further argument. When satisfied that the record is complete, the panel will declare the hearing closed, unless a post-hearing submission of additional information or a memorandum of law is to be provided in accordance with this paragraph. The hearing will be declared closed as of the date set by the panel for the submission of the additional information or the memorandum of law.

(5) *Time limits.* The panel will endeavor to hold the hearing within 60 calendar days of the preliminary conference.

(6) *Postponement.* The arbitration panel may postpone a hearing upon agreement of the parties, or upon request of a party for good cause shown. Within 10 business days of the postponement, the arbitration panel will notify the parties of the rescheduled date of the hearing.

(7) *Record of the hearing.* There will be no recording of the hearing, unless a party specifically requests and arranges for such recording at its own expense.

(8) *Post-hearing submission of additional information.* A party may file with the arbitration panel additional information or a memorandum of law after the hearing upon the arbitration panel's request or upon the request of one of the parties with the panel's consent. The panel will set the time for submission of the additional information or the memorandum of law.

(9) *Reopening of hearing.* The hearing may be reopened on the panel's initiative under compelling

circumstances at any time before the decision is made.

(i) *Review by the arbitration panel.* (1) *Determination of timeliness.* Upon notification by FEMA, or on its own initiative, the arbitration panel will determine whether the applicant timely filed a request for arbitration.

(2) *Substantive review.* The arbitration panel will consider all relevant written materials provided by the applicant, the Grantee, and FEMA, as well as oral presentations, if any. If the panel deems it appropriate or necessary, it may request additional written materials from either or both parties or seek the advice or expertise of independent scientific or technical subject matter experts.

(j) *Ex parte communications.* No party and no one acting on behalf of any party will engage in ex parte communications with a member of the arbitration panel. If a party or someone acting on behalf of any party engages in ex parte communications with a member of the arbitration panel, the party that engaged in such communication will provide a summary or a transcript of the entire communication to the other parties.

(k) *Decision* (1) *Time limits.* The panel will make every effort to issue a written decision within 60 calendar days after the panel declares the hearing closed pursuant to paragraph (h)(4) of this section, or, if a hearing was not requested, within 60 calendar days following the receipt of FEMA's response to the request for arbitration. A decision of the panel may take longer than 60 calendar days if the arbitration involves a highly technical or complex matter.

(2) *Form and content.* The decision of the panel will be in writing and signed by each member of the panel. The panel will issue a reasoned decision that includes a brief and informal discussion of the factual and legal basis for the decision.

(3) *Finality of decision.* A decision of the majority of the panel shall constitute a final decision, binding on all parties. Final decisions are not subject to further administrative review. Final decisions are not subject to judicial review, except as permitted by 9 U.S.C. 10.

(4) *Delivery of decision.* Notice and delivery of the decision will be by facsimile or other electronic means and by regular mail to each party or its authorized representative or counsel.

(l) *Costs.* FEMA will pay the fees associated with the arbitration panel, the costs of any expert retained by the panel, and the arbitration facility costs, if any. The expenses for each party, including attorney's fees, representative fees, copying costs, costs associated with attending any hearing, or any other fees not listed in this paragraph will be paid by the party incurring such costs.

(m) *Guidance.* FEMA may issue separate guidance as necessary to supplement this section.

[FR 44767, Aug. 31, 2009]

## §§ 206.210-206.219 [Reserved]

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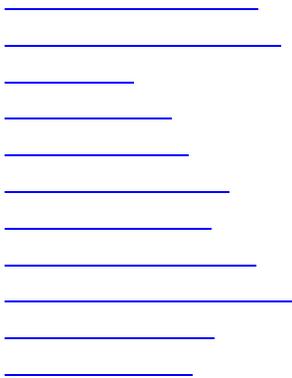
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### **Title 44: Emergency Management and Assistance** [PART 206 FEDERAL DISASTER ASSISTANCE](#)

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#### **Subpart H Public Assistance Eligibility**

**Source:** 55 FR 2307, Jan. 23, 1990, unless otherwise noted.

#### **§ 206.220 General.**

This subpart provides policies and procedures for determinations of eligibility of applicants for public assistance, eligibility of work, and eligibility of costs for assistance under sections 402, 403, 406, 407, 418, 419, 421(d), 502, and 503 of the Stafford Act. Assistance under this subpart must also conform

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to requirements of 44 CFR part 201, Mitigation Planning, and 44 CFR part 206, subparts G Public Assistance Project Administration, I Public Assistance Insurance Requirements, J Coastal Barrier Resources Act, and M Minimum Standards. Regulations under 44 CFR part 9 Floodplain Management and 44 CFR part 10 Environmental Considerations, also apply to this assistance.

[67 FR 8854, Feb. 26, 2002]

#### § 206.221 Definitions.

(a) *Educational institution* means:

(1) Any elementary school as defined by section 801(c) of the Elementary and Secondary Education Act of 1965; or

(2) Any secondary school as defined by section 801(h) of the Elementary and Secondary Education Act of 1965; or

(3) Any institution of higher education as defined by section 1201 of the Higher Education Act of 1965.

(b) *Force account* means an applicant's own labor forces and equipment.

(c) *Immediate threat* means the threat of additional damage or destruction from an event which can reasonably be expected to occur within five years.

(d) *Improved property* means a structure, facility or item of equipment which was built, constructed or manufactured. Land used for agricultural purposes is not improved property.

(e) *Private nonprofit facility* means any private nonprofit educational, utility, emergency, medical, or custodial care facility, including a facility for the aged or disabled, and other facility providing essential governmental type services to the general public, and such facilities on Indian reservations. Further definition is as follows:

(1) *Educational facilities* means classrooms plus related supplies, equipment, machinery, and utilities of an educational institution necessary or appropriate for instructional, administrative, and support purposes, but does not include buildings, structures and related items used primarily for religious purposes or instruction.

(2) *Utility* means buildings, structures, or systems of energy, communication, water supply, sewage collection and treatment, or other similar public service facilities.

(3) *Irrigation facility* means those facilities that provide water for essential services of a governmental nature to the general public. Irrigation facilities include water for fire suppression, generating and supplying electricity, and drinking water supply; they do not include water for agricultural purposes.

(4) *Emergency facility* means those buildings, structures, equipment, or systems used to provide emergency services, such as fire protection, ambulance, or rescue, to the general public, including the administrative and support facilities essential to the operation of such emergency facilities even if not contiguous.

(5) *Medical facility* means any hospital, outpatient facility, rehabilitation facility, or facility for long term care as such terms are defined in section 645 of the Public Health Service Act (42 U.S.C. 2910) and any similar facility offering diagnosis or treatment of mental or physical injury or disease, including the administrative and support facilities essential to the operation of such medical facilities even if not contiguous.

(6) *Custodial care facility* means those buildings, structures, or systems including those for essential administration and support, which are used to provide institutional care for persons who require close supervision and some physical constraints on their daily activities for their self-protection, but do not require day-to-day medical care.

(7) *Other essential governmental service facility* means museums, zoos, community centers, libraries, homeless shelters, senior citizen centers, rehabilitation facilities, shelter workshops and facilities which provide health and safety services of a governmental nature. All such facilities must be open to the general public.

(f) *Private nonprofit organization* means any nongovernmental agency or entity that currently has:

(1) An effective ruling letter from the U.S. Internal Revenue Service, granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954, or

(2) Satisfactory evidence from the State that the nonrevenue producing organization or entity is a nonprofit one organized or doing business under State law.

(g) *Public entity* means an organization formed for a public purpose whose direction and funding are provided by one or more political subdivisions of the State.

(h) *Public facility* means the following facilities owned by a State or local government: any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; any non-Federal aid, street, road, or highway; and any other public building, structure, or system, including those used for educational, recreational, or cultural purposes; or any park.

(i) *Standards* means codes, specifications or standards required for the construction of facilities.

[55 FR 2307, Jan. 23, 1990, as amended at 58 FR 47994, Sept. 14, 1993; 66 FR 22445, May 4, 2001]

#### **§ 206.222 Applicant eligibility.**

The following entities are eligible to apply for assistance under the State public assistance grant:

(a) State and local governments.

(b) Private non-profit organizations or institutions which own or operate a private nonprofit facility as defined in §205.221(e).

(c) Indian tribes or authorized tribal organizations and Alaska Native villages or organizations, but not Alaska Native Corporations, the ownership of which is vested in private individuals.

#### **§ 206.223 General work eligibility.**

(a) *General.* To be eligible for financial assistance, an item of work must:

(1) Be required as the result of the emergency or major disaster event;

(2) Be located within the designated area of a major disaster or emergency declaration, except that sheltering and evacuation activities may be located outside the designated area; and

(3) Be the legal responsibility of an eligible applicant.

(b) *Private nonprofit facilities.* To be eligible, all private nonprofit facilities must be owned and operated by an organization meeting the definition of a private nonprofit organization [see §206.221(f)].

(c) *Public entities.* Facilities belonging to a public entity may be eligible for assistance when the application is submitted through the State or a political subdivision of the State.

(d) *Facilities serving a rural community or unincorporated town or village.* To be eligible for assistance, a facility not owned by an eligible applicant, as defined in §206.222, must be owned by a private nonprofit organization; and provide an essential governmental service to the general public. Applications for these facilities must be submitted through a State or political subdivision of the State.

(e) *Negligence.* No assistance will be provided to an applicant for damages caused by its own negligence. If negligence by another party results in damages, assistance may be provided, but will be conditioned on agreement by the applicant to cooperate with FEMA in all efforts necessary to recover the cost of such assistance from the negligent party.

[55 FR 2307, Jan. 23, 1990, as amended at 71 FR 40027, July 14, 2006; 74 FR 60214, Nov. 20, 2009]

#### **§ 206.224 Debris removal.**

(a) *Public interest.* Upon determination that debris removal is in the public interest, the Regional Administrator may provide assistance for the removal of debris and wreckage from publicly and privately owned lands and waters. Such removal is in the public interest when it is necessary to:

- (1) Eliminate immediate threats to life, public health, and safety; or
- (2) Eliminate immediate threats of significant damage to improved public or private property; or
- (3) Ensure economic recovery of the affected community to the benefit of the community-at-large; or
- (4) Mitigate the risk to life and property by removing substantially damaged structures and associated appurtenances as needed to convert property acquired through a FEMA hazard mitigation program to uses compatible with open space, recreation, or wetlands management practices. Such removal must be completed within two years of the declaration date, unless the Assistant Administrator for the Disaster Assistance Directorate extends this period.

(b) *Debris removal from private property.* When it is in the public interest for an eligible applicant to remove debris from private property in urban, suburban and rural areas, including large lots, clearance of the living, recreational and working area is eligible except those areas used for crops and livestock or unused areas.

(c) *Assistance to individuals and private organizations.* No assistance will be provided directly to an individual or private organization, or to an eligible applicant for reimbursement of an individual or private organization, for the cost of removing debris from their own property. Exceptions to this are those private nonprofit organizations operating eligible facilities.

[55 FR 2307, Jan. 23, 1990, as amended at 66 FR 33901, June 26, 2001]

#### **§ 206.225 Emergency work.**

(a) *General.* (1) Emergency protective measures to save lives, to protect public health and safety, and to protect improved property are eligible.

(2) In determining whether emergency work is required, the Regional Administrator may require certification by local State, and/or Federal officials that a threat exists, including identification and evaluation of the threat and recommendations of the emergency work necessary to cope with the threat.

(3) In order to be eligible, emergency protective measures must:

(i) Eliminate or lessen immediate threats to life, public health or safety; or

(ii) Eliminate or lessen immediate threats of significant additional damage to improved public or private property through measures which are cost effective.

(b) *Emergency access.* An access facility that is not publicly owned or is not the direct responsibility of an eligible applicant for repair or maintenance may be eligible for emergency repairs or replacement provided that emergency repair or replacement of the facility economically eliminates the need for temporary housing. The work will be limited to that necessary for the access to remain passable through events which can be considered an immediate threat. The work must be performed by an eligible applicant and will be subject to cost sharing requirements.

(c) *Emergency communications.* Emergency communications necessary for the purpose of carrying out disaster relief functions may be established and may be made available to State and local government officials as deemed appropriate. Such communications are intended to supplement but not replace normal communications that remain operable after a major disaster. FEMA funding for such communications will be discontinued as soon as the needs have been met.

(d) *Emergency public transportation.* Emergency public transportation to meet emergency needs and to provide transportation to public places and such other places as necessary for the community to resume its normal pattern of life as soon as possible is eligible. Such transportation is intended to supplement but not replace predisaster transportation facilities that remain operable after a major disaster. FEMA funding for such transportation will be discontinued as soon as the needs have been met.

#### **§ 206.226 Restoration of damaged facilities.**

Work to restore eligible facilities on the basis of the design of such facilities as they existed immediately prior to the disaster and in conformity with the following is eligible:

(a) *Assistance under other Federal agency (OFA) programs.* (1) Generally, disaster assistance will not be made available under the Stafford Act when another Federal agency has specific authority to restore facilities damaged or destroyed by an event which is declared a major disaster.

(2) An exception to the policy described in paragraph (a)(1) of this section exists for public elementary and secondary school facilities which are otherwise eligible for assistance from the Department of Education (ED) under 20 U.S.C. 241 1 and 20 U.S.C. 646. Such facilities are also eligible for assistance from FEMA under the Stafford Act, and grantees shall accept applications from local educational agencies for assistance under the Stafford Act.

(3) The exception does not cover payment of increased current operating expenses or replacement of lost revenues as provided in 20 U.S.C. 241 1(a) and implemented by 34 CFR 219.14. Such assistance shall continue to be granted and administered by the Department of Education.

(b) *Mitigation planning.* In order to receive assistance under this section, the State or Indian Tribal government applying to FEMA as a grantee must have in place a FEMA approved State or Tribal Mitigation Plan, as applicable, in accordance with 44 CFR part 201.

(c) *Private nonprofit facilities.* Eligible private nonprofit facilities may receive funding under the

following conditions:

(1) The facility provides critical services, which include power, water (including water provided by an irrigation organization or facility in accordance with §206.221(e)(3)), sewer services, wastewater treatment, communications, emergency medical care, fire department services, emergency rescue, and nursing homes; or

(2) The private nonprofit organization not falling within the criteria of §206.226(c)(1) has applied for a disaster loan under section 7(b) of the Small Business Act (15 U.S.C.636(b)) and

(i) The Small Business Administration has declined the organization's application; or

(ii) Has eligible damages greater than the maximum amount of the loan for which it is eligible, in which case the excess damages are eligible for FEMA assistance.

(d) *Standards.* For the costs of Federal, State, and local repair or replacement standards which change the predisaster construction of facility to be eligible, the standards must:

(1) Apply to the type of repair or restoration required;

(Standards may be different for new construction and repair work)

(2) Be appropriate to the predisaster use of the facility;

(3)(i) Be found reasonable, in writing, and formally adopted and implemented by the State or local government on or before the disaster declaration date or be a legal Federal requirement applicable to the type of restoration.

(ii) This paragraph (d) applies to local governments on January 1, 1999 and to States on January 1, 2000. Until the respective applicability dates, the standards must be in writing and formally adopted by the applicant prior to project approval or be a legal Federal or State requirement applicable to the type of restoration.

(4) Apply uniformly to all similar types of facilities within the jurisdiction of owner of the facility; and

(5) For any standard in effect at the time of a disaster, it must have been enforced during the time it was in effect.

(e) *Hazard mitigation.* In approving grant assistance for restoration of facilities, the Regional Administrator may require cost effective hazard mitigation measures not required by applicable standards. The cost of any requirements for hazard mitigation placed on restoration projects by FEMA will be an eligible cost for FEMA assistance.

(f) *Repair vs. replacement.* (1) A facility is considered repairable when disaster damages do not exceed 50 percent of the cost of replacing a facility to its predisaster condition, and it is feasible to repair the facility so that it can perform the function for which it was being used as well as it did immediately prior to the disaster.

(2) If a damaged facility is not repairable in accordance with paragraph (d)(1) of this section, approved restorative work may include replacement of the facility. The applicant may elect to perform repairs to the facility, in lieu of replacement, if such work is in conformity with applicable standards. However, eligible costs shall be limited to the less expensive of repairs or replacement.

(3) An exception to the limitation in paragraph (d)(2) of this section may be allowed for facilities eligible for or on the National Register of Historic Properties. If an applicable standard requires repair

in a certain manner, costs associated with that standard will be eligible.

(g) *Relocation.* (1) The Regional Administrator may approve funding for and require restoration of a destroyed facility at a new location when:

(i) The facility is and will be subject to repetitive heavy damage;

(ii) The approval is not barred by other provisions of title 44 CFR; and

(iii) The overall project, including all costs, is cost effective.

(2) When relocation is required by the Regional Administrator, eligible work includes land acquisition and ancillary facilities such as roads and utilities, in addition to work normally eligible as part of a facility reconstruction. Demolition and removal of the old facility is also an eligible cost.

(3) When relocation is required by the Regional Administrator, no future funding for repair or replacement of a facility at the original site will be approved, except those facilities which facilitate an open space use in accordance with 44 CFR part 9.

(4) When relocation is required by the Regional Administrator, and, instead of relocation, the applicant requests approval of an alternate project [see §206.203(d)(2)], eligible costs will be limited to 90 percent of the estimate of restoration at the original location excluding hazard mitigation measures.

(5) If relocation of a facility is not feasible or cost effective, the Regional Administrator shall disapprove Federal funding for the original location when he/she determines in accordance with 44 CFR parts 9, 10, 201, or subpart M of this part 206, that restoration in the original location is not allowed. In such cases, an alternative project may be applied for.

(h) *Equipment and furnishings.* If equipment and furnishings are damaged beyond repair, comparable items are eligible as replacement items.

(i) *Library books and publications.* Replacement of library books and publications is based on an inventory of the quantities of various categories of books or publications damaged or destroyed. Cataloging and other work incidental to replacement are eligible.

(j) *Beaches.* (1) Replacement of sand on an unimproved natural beach is not eligible.

(2) Improved beaches. Work on an improved beach may be eligible under the following conditions:

(i) The beach was constructed by the placement of sand (of proper grain size) to a designed elevation, width, and slope; and

(ii) A maintenance program involving periodic renourishment of sand must have been established and adhered to by the applicant.

(k) *Restrictions* (1) *Alternative use facilities.* If a facility was being used for purposes other than those for which it was designed, restoration will only be eligible to the extent necessary to restore the immediate predisaster alternate purpose.

(2) *Inactive facilities.* Facilities that were not in active use at the time of the disaster are not eligible except in those instances where the facilities were only temporarily inoperative for repairs or remodeling, or where active use by the applicant was firmly established in an approved budget or the owner can demonstrate to FEMA's satisfaction an intent to begin use within a reasonable time.

[55 FR 2307, Jan. 23, 1990, as amended at 58 FR 55022, Oct. 25, 1993; 63 FR 5897, Feb. 5, 1998;

66 FR 22445, May 4, 2001; 67 FR 8854, Feb. 26, 2002; 68 FR 61371, Oct. 28, 2003; 69 FR 55097, Sept. 13, 2004; 74 FR 15350, Apr. 3, 2009; 74 FR 47482, Sept. 16, 2009]

#### **§ 206.227 Snow assistance.**

Emergency or major disaster declarations based on snow or blizzard conditions will be made only for cases of record or near record snowstorms, as established by official government records. Federal assistance will be provided for all costs eligible under 44 CFR 206.225 for a specified period of time which will be determined by the circumstances of the event.

[62 FR 45330, Aug. 27, 1997]

#### **§ 206.228 Allowable costs.**

General policies for determining allowable costs are established in 44 CFR 13.22. Exceptions to those policies as allowed in 44 CFR 13.4 and 13.6 are explained below.

(a) *Eligible direct costs* (1) *Applicant-owned equipment.* Reimbursement for ownership and operation costs of applicant-owned equipment used to perform eligible work shall be provided in accordance with the following guidelines:

(i) *Rates established under State guidelines.* In those cases where an applicant uses reasonable rates which have been established or approved under State guidelines, in its normal daily operations, reimbursement for applicant-owned equipment which has an hourly rate of \$75 or less shall be based on such rates. Reimbursement for equipment which has an hourly rate in excess of \$75 shall be determined on a case by case basis by FEMA.

(ii) *Rates established under local guidelines.* Where local guidelines are used to establish equipment rates, reimbursement will be based on those rates or rates in a Schedule of Equipment Rates published by FEMA, whichever is lower. If an applicant certifies that its locally established rates do not reflect actual costs, reimbursement may be based on the FEMA Schedule of Equipment Rates, but the applicant will be expected to provide documentation if requested. If an applicant wishes to claim an equipment rate which exceeds the FEMA Schedule, it must document the basis for that rate and obtain FEMA approval of an alternate rate.

(iii) *No established rates.* The FEMA Schedule of Equipment Rates will be the basis for reimbursement in all cases where an applicant does not have established equipment rates.

(2) *Force Account Labor Costs.* The straight- or regular-time salaries and benefits of a subgrantee's permanently employed personnel are not eligible in calculating the cost of eligible work under sections 403 and 407 of the Stafford Act, 42 U.S.C. 5170b and 5173. For the performance of eligible permanent restoration under section 406 of the Stafford Act, 42 U.S.C. 5172, straight-time salaries and benefits of a subgrantee's permanently employed personnel are eligible.

(3) Administrative and management costs for major disasters and emergencies will be paid in accordance with 44 CFR part 207.

(b) [Reserved]

[55 FR 2307, Jan. 23, 1990, as amended at 58 FR 47996, Sept. 14, 1993; 63 FR 64426, Nov. 20, 1998; 64 FR 55161, Oct. 12, 1999; 72 FR 57875, Oct. 11, 2007]

#### **§§ 206.229-206.249 [Reserved]**

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# APPLICATION AND AUTHORIZED AGENT

## *HOW DO I APPLY FOR PUBLIC ASSISTANCE?*

In order to apply for Public Assistance, a Request for Public Assistance (RPA) must be completed and submitted to the Federal Emergency Management Agency (FEMA), via the State, within **30 days** of the disaster declaration. This application is generally completed at the Applicant's Briefing or can be submitted by fax or electronically.

## *WHO IS ELIGIBLE FOR PUBLIC ASSISTANCE?*

Any local government or eligible Private Non-Profit Organization (PNP) within a federally declared county is eligible to apply to the Public Assistance Program.

Eligible PNP's consist of any non-profit educational, irrigation, utility, emergency, medical, or custodial care facility, including a facility for the aged or disabled, and other facilities providing essential governmental type services. In addition, other essential governmental services facilities (museums, zoos, performing arts facilities, community centers, libraries, homeless shelters, senior citizen centers, shelter workshops and ) which provide health and safety services of a governmental nature, for example: low-income housing (as defined by Federal, State or local law or regulation), alcohol and drug treatment centers, residences and other facilities offering programs for battered spouses, animal control facilities directly related to public health and safety, facilities offering food programs for the needy, daycare centers for children, and daycare centers for individuals with special needs (e.g., those with Alzheimer's disease, autism, muscular dystrophy, etc.).

Ineligible PNP Facilities include: recreation facilities, job counseling and training centers, facilities for advocacy groups not directly providing health services, housing (other than low-income), cemeteries, parking garages, conference facilities, facilities maintained by property owners' associations such as roads and recreational facilities (except those facilities that could be classified as utilities or emergency facilities), and daycare centers for purposes other than those described.

Prior to receiving funding for eligible work under the PA Program, eligible **non-critical** PNP's must first apply to the Small Business Administration (SBA). A **critical** PNP is defined as providers of critical services such as power, water, sewer and wastewater treatment, communications, and emergency medical care (see Definitions in Table of Contents section).

The requirement to apply to SBA is only if the non-critical PNP incurred damages to permanent facilities (Categories C-G). If they are declined for a loan or the loan does not cover all eligible damages, they may apply to FEMA for the remainder of the damages. If damage costs are **only** in Categories A-B, the non-critical PNP is waived from the SBA process. However, if there are costs/damages in the emergency work categories and permanent work categories, then the non-critical PNP must make applications to both FEMA and SBA. See Project Formulation section for definition of Categories.

## ***WHO IS THE AUTHORIZED AGENT AND WHAT ARE THEIR DUTIES?***

The Authorized Agent is responsible for ensuring that all federal and state Program requirements are met and should have the full cooperation of other local officials who are assisting in disaster recovery. Assuring that this individual is aware of all facets of the recovery process will enable receipt of all available assistance.

This person is the point of contact for the State and is responsible for all administrative duties, monitoring of work to be completed, and ensuring appropriate documentation is maintained for tracking costs, appeals and audits. In addition, the Authorized Agent is the recipient of all correspondence and information relating to the subgrant. All applicants to the Program shall designate/appoint a person to act as their Authorized Agent. This person may or may not be the individual who worked with FEMA to write projects.

## ***DESIGNATING AUTHORIZED AGENT***

There are two (2) actions that must be taken in order to designate an Authorized Agent. These are referred to as your administrative requirements. **This information must be received prior to release of any funds and are as follows:**

1. Resolution/Letter of Appointment
2. State/Local Agreement

Each applicant must also submit a W-9 with your federal tax identification number so that the State can make payments. Each applicant also needs a DUNS (Data Universal Numbering System) number in order for FEMA to approve your projects. If you do not have a DUNS number, you can go to <http://fedgov.dnb.com/webform> or call 1-866-705-5711 to apply. The DUNS number does require annual renewal and this can be done at [www.ccr.gov](http://www.ccr.gov). If you have any questions please call 1-866-608-8220. There is no fee for the registration or renewal. **Please include your DUNS number on the space provided on the State/Local Agreement.**

In the event the Authorized Agent changes prior to closure of the subgrant, appointments and agreements must be renegotiated with the State.

Attached is a sample letter of resolution, the State/Local Agreement signature page and a blank W-9 (included in pocket of this binder). The backup to the Agreement which outlines the roles and responsibilities of the grantee (the State) and subgrantee (you) are included in this tab.

## ***AUTHORIZED AGENT CHECKLIST***



This checklist is the key to ensuring that the process of applying for, receiving and administering disaster assistance is as easy as possible. You play a vital role in this process. Use this checklist as your guide, but address any questions to the State Public Assistance Office.

## ***Administration***

- ❑ Ensure designation by local governing body (resolution or letter of appointment);
- ❑ Ensure a copy of the appropriate Project Worksheet (PW) is provided to the person(s) responsible for the scope of work;
- ❑ Follow proper bid and contract procedures;
- ❑ Document repair costs at each work site as they occur;
- ❑ Submit **timely** request for final inspection of large projects;
- ❑ Maintain supporting **documentation** for work completed;
- ❑ Ensure proper handling of disaster funds;
- ❑ Ensure completion of **required** Quarterly Project Reports and P.4., Project Listings, and;
- ❑ Ensure compliance with the State/Local Agreement and Audit Compliance/Standards.

## ***Project worksheets (other local officials may assist or complete these items as well).***

- ❑ PW formulation;
- ❑ Have knowledge of all damaged facilities;
- ❑ Have photographs of all damages;
- ❑ Know if repairs are made by force account (local forces) or contract;
- ❑ Have a copy of local codes and standards, and;
- ❑ Make sure **all** damages are written in PW's.

## ***Work monitoring***

- ❑ Review each PW to become familiar with approved work;
- ❑ Make approved repairs only;
- ❑ Request an improved project before you change approved work;
- ❑ Request approval of costs overruns for large projects;
- ❑ Complete work within time limits, and;
- ❑ **Justify** time extension requests, by PW, if required.

## ***Documentation***

- ❑ Maintain a separate folder for each PW;
- ❑ Prepare Daily Activity Reports from supervisor's daily logs;
- ❑ Keep these documents for each PW by Force Account:
  - ❑ Daily Activity Reports for labor, equipment, and materials.
  - ❑ Invoices.
  - ❑ Payroll journals.
  - ❑ Cancelled checks.
  - ❑ Daily logs from supervisors.
- ❑ Keep these documents for each PW done by Contract:
  - ❑ Bid advertisement and list of bidders.
  - ❑ Contract awarded.
  - ❑ Invoices.
  - ❑ Cancelled checks.
  - ❑ Record of work inspections.
  - ❑ Engineering documentation, if applicable on a project listing form per PW.



*The below letter of appointment can serve as a substitute for a copy of the formal resolution designating an Authorized Agent. The letter of appointment should be typed on official letterhead and the body and signature should be specific to your jurisdiction. Individuals cannot designate themselves.*

## **SAMPLE LETTER OF APPOINTMENT**

Date

Nancy J. Dragani, Executive Director  
Ohio Emergency Management Agency  
2855 West Dublin Granville Road  
Columbus, Ohio 43235

Dear Ms. Dragani:

As **Mayor/County Commissioners/Township Trustees/Director of (City, Village, County, or Organization)**, I authorize **(Name of person and title, i.e. Jane Doe, Township Clerk)**, to sign all documents and in all ways act as the Authorized Agent relative to the Public Assistance Grant Program for FEMA-DR-[Enter Disaster Declaration Number]-OH.

Sincerely,

Signature



OHIO DEPARTMENT OF PUBLIC SAFETY  
EMERGENCY MANAGEMENT AGENCY

**STATE-LOCAL AGREEMENT**

MAJOR DISASTER DESIGNATION: PUBLIC ASSISTANCE PROGRAM FEMA-DR- -OH

FEDERAL AWARDING AGENCY: **DEPARTMENT OF HOMELAND SECURITY**

PASS THRU ENTITY: **OHIO EMERGENCY MANAGEMENT AGENCY**

CATALOG OF FEDERAL DOMESTIC ASSISTANCE: **97.036**

DATE OF PRESIDENTIAL DECLARATION:

PRINT OR TYPE

APPLICANT (SUBGRANTEE) NAME		ADDRESS	
CITY	COUNTY	ZIP	
PHONE ( ) -	FAX ( ) -		
DUNS NUMBER	E MAIL		

As authorized representative for the above named applicant / subgrantee, I have read and understand the State-Local Disaster Assistance Agreement and agree to comply, as an applicant (subgrantee) of these funds, with all requirements described therein during the administration of the grant program.

APPLICANT'S AUTHORIZED AGENT	TITLE
SIGNATURE <b>X</b>	DATE

Signed for the STATE

GOVERNOR'S AUTHORIZED REPRESENTATIVE (GAR) Nancy J. Dragani	TITLE Governor's Authorized Representative
SIGNATURE <b>X</b>	DATE

## STATE-LOCAL DISASTER ASSISTANCE AGREEMENT

This agreement between the State of Ohio, Governor's Authorized Representative (GRANTEE) and

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the applicant (SUBGRANTEE) to the Public Assistance Grant Program (GRANT) shall be effective on the date signed by the GRANTEE and the SUBGRANTEE and shall apply to all assistance funds provided by or through the GRANTEE to the SUBGRANTEE during the administration of the GRANT.

The Authorized Agent of the SUBGRANTEE certifies that:

1. The SUBGRANTEE agrees that this State-Local Disaster Assistance Agreement will not be active nor program funds obligated until the GRANTEE approves, through signature, the State-Local Disaster Assistance Agreement.
2. The applicant's Authorized Agent has the legal authority to apply for assistance on behalf of the SUBGRANTEE.
3. The SUBGRANTEE shall use GRANT funds solely for the purposes for which these funds are provided and as approved by the GRANTEE or the Federal Emergency Management Agency (FEMA).
4. The SUBGRANTEE agrees to comply with the GRANT requirements found in the most recent version of Title 44 Code of Federal Regulations (CFR), Part 13, 2 CFR Part 215, 2 CFR Part 225, 2 CFR Part 220, 2 CFR Part 230, OMB A-133 and the Federal Acquisition Regulations (FAR) Part 31.2 as applicable and as amended.
5. The SUBGRANTEE agrees to provide the necessary local share of funding required under the GRANT and that funding will be available within the specified period of time for completion of the project (s).
6. The SUBGRANTEE shall return to the GRANTEE any funds that are not supported by audit or other federal or state review of documentation maintained by the GRANTEE. .
7. The SUBGRANTEE shall comply with all applicable local ordinances, laws, regulations, building codes and standards as pertains to this GRANT.
8. The SUBGRANTEE is required to follow applicable local and state procurement procedures as long as they meet or exceed the standards identified in 44 CFR part 13 or 2 CFR Part 215, whichever is applicable to the SUBGRANTEE.
9. The SUBGRANTEE shall comply with all time frames for completion of projects as they apply to the GRANT, unless a time extension is granted by the GRANTEE or by FEMA.
10. The SUBGRANTEE shall comply with all State statutes, policies and regulations relating to equal employment opportunities, non-discrimination, prevailing wages, environmental and historic preservation and floodplain management. This includes the Department of Public Safety polices, DPS-501.39 and 501.40. These polices are included in the Applicant's Handbook that is provided at the Applicant's Briefing.

11. The SUBGRANTEE shall not enter into contracts for which payment is contingent upon receipt of state or federal funds.
1. The SUBGRANTEE has read, understands, and shall comply with the State of Ohio Audit Requirements/Compliance Standards (found in Applicant's Handbook, Program Management tab).
2. The SUBGRANTEE will provide to the GRANTEE a written Quarterly Progress Report (QPR) of all outstanding approved projects until said projects are complete. The first report will be due three (3) months from the date of the declaration.
3. The SUBGRANTEE is required to contact the GRANTEE immediately regarding any changes to their GRANT, to include:
  - a. Change in approved scope of work, which must be reported prior to work being completed;
  - b. Project cost overruns/underruns;
  - c. Non-accomplishment of approved project or intentional cancellation of the project;
  - d. Need for time extension to allow for completion of project within specified deadlines;
  - e. Actions required to rectify findings of a Single Audit concerning the GRANT, and;
  - f. Any other change in SUBGRANTEE program management.
4. The SUBGRANTEE understands that failure to submit the required QPR's or to forward a completed P.4 Project Completion and Certification Report within sixty (60) days completion of the final project may result in forfeiture of all or a portion of the State share.

The Governor's Authorized Representative as GRANTEE certifies that:

1. The GRANTEE shall deliver assistance as expeditiously as possible, consistent with 44 CFR Part 13.
2. The GRANTEE shall inform all SUBGRANTEES of the status of their application, approvals, and shall provide copies of Project Worksheets.
3. The GRANTEE shall provide technical advice and assistance to SUBGRANTEES as required, and if requested.
4. The GRANTEE shall, on behalf of the SUBGRANTEE, submit appeals to FEMA.
5. The GRANTEE agrees to provide the necessary State share of funding which will be available within the specified period of time for completion of projects. The state share for small projects (inclusive) will be based on the amount claimed by the subgrantee up to the original (FEMA) approved amount.
6. The GRANTEE will work closely with the SUBGRANTEES to ensure their compliance with all regulations pertaining to the GRANT.

Below are the requirements as set forth by the Federal Emergency Management Agency (FEMA) under FEMA Form 20-16A, Assurances-Nonconstruction Programs, FEMA Form 20-16B, Assurances-Construction Programs and FEMA Form 20-16C, Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements. ***By signing the State-Local Disaster Assistance Agreement, the designated Authorized Agent for the Public Assistance Grant Program certifies that the applicant will comply with the terms of the State-Local Disaster Assistance Agreement and the identified FEMA Assurances and Certifications.***

**NOTE:**

Certain of these assurances may not be applicable to your project or program. If you have any questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified. ***Items 1-28 below are the compilation of FEMA Form 20-16A and 20-16 B.***

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (*including funds sufficient to pay the non-Federal share of project costs*) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. Section 4727-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P. L. 88-352) which prohibits discrimination on the basis of race, color, or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. Sections 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. Sections 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) Sections 523 and 527 of the Public Health Service Act of 1912, (42 U.S.C. 290-dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Acts of 1968 (42 U.S.C. Section 3601 et. seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provision in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Title II and III of the Uniformed Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally assisted programs. These requirements apply to all interest in real property acquired for project purposes regardless of Federal participation in purchase.

8. Will comply with provisions of Hatch Act (5 U.S.C. Sections 1501-1508 and 7324-7328) which limit the political activities of employees whose principle employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. Sections 276a to 276a-7) the Copeland Act (40 U.S.C. Section 276c and 18 U.S.C. Sections 874), and the Contract

Work Hours and Safety Standards Act (40 U.S.C. Sections 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable with flood insurance purchase requirements of Section 102a of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. Sections 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176 (c) of the Clean Air Act of 1955, as amended (42 U.S.C. Section et seq.); (g) protection of underground sources of drinking water under Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. Sections 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers systems.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 9-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. Sections 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

19. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act (29 U.S.C. 201), as they apply to employees of institutions of higher education, hospitals, and other non-profit organizations.

20. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.

21. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.

22. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or state.

23. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. Sections 4801-et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

24. It will require the facility to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A117-1961, as modified (41CFR 101-17.703). The applicant will be responsible for conducting inspections to ensure compliance with these specifications by the contractor.

25. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

26. In making subgrants with nonprofit institutions under this Comprehensive Cooperative Agreement, it agrees that such grants will be subject to OMB Circular A-122, "Cost Principles for Non-profit Organization" including but not limited to, the "Lobbying Revision" published in vol 49, Federal Register, pages 18260 through 18277 (April 27, 1984)

27. It will obtain approval by the appropriate Federal agencies of the final working drawings and specifications before the project is advertised or placed on the market for bidding; that it will construct the project, or cause it to be constructed, to final completion in accordance with the application and approved plans and specifications; that it will submit to the appropriate Federal agency for prior approval changes that alter the cost of the project, use of space, or functional layout; that it will not enter into a construction contract(s) for the project or undertake other activities until the conditions of the construction grant program(s) have been met.

28. It will operate and maintain the facility in accordance with the minimum standards as may be required or prescribed by the applicable Federal, State, and local agencies for the maintenance and operation of such facilities.

***Below is text of FEMA Form 20-16C***

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature on the State-Local Disaster Assistance Agreement provides for compliance with certification requirements under 44 CFR Part 18, "New Restrictions on Lobbying" and 28 CFR Part 17, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Federal Emergency Management Agency (FEMA) determines to award the transaction, grant, or cooperative agreement.

**1. LOBBYING**

As required by section 1352, Title 31 of the U.S. Code, and implemented at 44 CFR Part 18, for persons entering into a grant or cooperating agreement over \$ 100,000, as defined at 44 CFR Part 18, the applicant certifies that:

(a) 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 any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement.

(b) If any other funds than Federal appropriated funds have been paid or will be paid to any other person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or an employee of Congress, or employee of a member of Congress in connection

with this Federal Grant or cooperative agreement, the undersigned shall complete and submit Stand Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

## **2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS (DIRECT RECIPIENT)**

**NOTE:** By signing the State-Local Agreement, the applicant agrees that, should the proposed covered transaction (the primary covered transaction) be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by FEMA entering into this transaction.

The applicant further agrees by application to the Public Assistance Program that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the FEMA Regional Office entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. (Refer to 44 CFR Part 17.)

As required by Executive Order 12549, Debarment and Suspension, and implemented at 44 CFR Part 67, for prospective participants in primary covered transactions, as defined at 44 CFR Part 17, Section 17.510-A.

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of a or had a civilian judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or perform a public a public (Federal ,State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause of default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

## **3. DRUG-FREE WORKPLACE (GRANTEE OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 44 CFR Part 17, Subpart F, for grantees, as defined at 44 CFR Part 17.615 and 17.620-

A. The applicant certifies that it will continue to provide a drug-free workplace by;

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an on-going drug free awareness program to inform employees about-
  - (1) The dangers of drug abuse in the workplace;
  - (2) The grantee's policy of maintaining a drug-free workplace;
  - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant to be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-
  - (1) Abide by the term of the statement; and
  - (2) Notify the employee in writing of his or her conviction for a violation of a criminal drug statute occurring ion the workplace no later than five calendar days after such convictions;
- (e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position, title, to the applicable FEMA awarding office, i.e., regional office or FEMA office.
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is convicted-
  - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation act of 1973, as amended; or
  - (2) Requiring such an employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).



## Ohio Department of Public Safety

Policy Number : DPS-501.39

### ADDRESSING COMPLAINTS OF EMPLOYMENT DISCRIMINATION AGAINST ODPS GRANT RECIPIENTS

Date of Revision : **8/30/2011**

Priority Review : **All Employees ; All Supervisors**

Distribution : **All ODPS Divisions**

#### Summary of Revisions

New policy to ensure compliance with federal laws and regulations prohibiting employment discrimination.

#### Purpose

To provide guidelines and procedures that allow the Ohio Department of Public Safety (ODPS) to process and forward complaints alleging employment discrimination by employees or applicants of ODPS grant recipients.

#### Policy

##### A. STATEMENT OF POLICY

1. It is the policy of ODPS to prohibit discriminatory employment practices against anyone employed by an ODPS grant recipient, and to ensure all employees have equal employment opportunity. It is the policy of the State of Ohio and ODPS to ensure a working environment free from any discrimination and to prohibit sexual harassment of applicants, customers, clients, and employees, including discriminatory sexual advances or harassment adversely affecting an employee's terms and conditions of employment either directly or indirectly. ODPS will ensure that grant recipients comply with all applicable federal laws regarding employment discrimination.

##### 2. RETALIATION

- a. Persons who believe they have been discriminated against on basis of their membership in a protected class (race, color, religion, sex, national origin, disability, age, ancestry, or military status) shall not be retaliated against in terms and conditions of employment or services for exercising their right to file a discrimination complaint or inquiry.
- b. No person who participates in the investigation of a complaint, or is a witness in an investigation, or brings attention to a person in authority, of an alleged discrimination complaint shall be retaliated against.

##### B. DEFINITIONS

1. **Discrimination:** To make a distinction, show bias towards, or be prejudicial against, a person or thing on the basis of the group, class, or category to which the person or thing belongs, rather than according to actual merit.

2. **Civil Rights Complaint Coordinator:** Person designated by ODPS who is responsible for acknowledging discrimination complaints filed by employees or applicants of ODPS grant recipients and forwarding them to one of the following: U.S. Equal Employment Opportunity Commission (EEOC); the U.S. Department of Justice (DOJ), Office for Civil Rights (OCR); the Ohio Civil Rights Commission (OCRC); or other appropriate agency. The ODPS EEO Manager shall be the designated Civil Rights Complaint Coordinator.
3. **Grant Recipient:** An agency or organization that receives funding from a division within ODPS, whether it is federal pass-through funding or a state grant. ODPS divisions that provide grants to agencies and organizations include the Office of Criminal Justice Services (OCJS), Ohio Emergency Management Agency (EMA) and Ohio Homeland Security (OHS).
4. **Retaliation:** Occurs when adverse action is taken against an individual in a protected class because he or she engaged in protected activity.
5. **Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. §3789d(c)(1)):** Prohibits discrimination on the basis of race, color, religion, national origin, and sex, in regard to both employment practices and the delivery of services, in any program or activity receiving federal financial assistance under this statute as set forth in the DOJ implementing regulations (28C.F.R. Part 42, Subpart D).
6. **Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. §12132):** Prohibits discrimination against qualified individuals with disabilities, in regard to both employment and the delivery of services or benefits, in all programs, activities, and employment and the delivery of services or benefits, in all programs, activities, and services of public entities as set forth in DOJ implementing regulations (28 C.F.R. Part 35).
7. **Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794):** Prohibits discrimination on the basis of disability, in regard to both employment and the delivery or services or benefits, in any program or activity receiving federal financial assistance as set forth in the DOJ implementing regulations (28 C.F.R. Part 42, Subpart G).
8. **Title IX of the Education Amendments of 1972 (20 U.S.C. §1681):** Prohibits discrimination on the basis of sex, in regard to both employment and the delivery of services or benefits, in educational programs receiving federal financial assistance as set forth in the DOJ implementing regulations (20 C.F.R. Part 54).

### C. COMPLAINT PROCEDURES

1. ODPS shall accept and acknowledge all discrimination complaints from employees or applicants of ODPS grant recipients. All discrimination allegations and complaints shall be referred to the designated ODPS Civil Rights Complaint Coordinator.
2. An employee or applicant of an ODPS grant recipient may file a complaint of discrimination via e-mail to the appropriate ODPS grant coordinator or via U.S. Mail directly to the attention of the ODPS Civil Rights Complaint Coordinator (1970 West Broad Street, Columbus, OH 43223). The complaint

should include the complainant's name, contact information, and a brief explanation of the alleged discrimination. If the complaint is sent to an ODPS Grant Coordinator, that employee shall forward it immediately to the ODPS Civil Rights Complaint Coordinator.

3. The Complaint Coordinator shall provide an acknowledgement of the complaint to the employee or applicant of the ODPS grant recipient via e-mail or in a letter confirming the complaint has been received. The contents of the acknowledgement response must include information specifying the external agency to which the complaint has been forwarded for investigation. If the complaint is against an ODPS grant recipient implementing funding from the DOJ and the ODPS is not forwarding the complaint to the OCR, the acknowledgement response shall also notify the complainant that he / she may file a complaint directly with the OCR at the following address:

**U.S. Department of Justice (DOJ)  
Office of Justice Programs  
Office for Civil Rights (OCR)  
810 Seventh Street NW  
Washington, D.C. 20531**

4. The Complaint Coordinator shall then forward the complaint to the EEOC, DOJ-OCR, OCRC, or other appropriate agency. The complaint shall be investigated by the appropriate agency.
5. All employees or applicants of ODPS grant recipients shall have access to these procedures at any time via the ODPS website (<http://publicsafety.ohio.gov>).
6. Any employee or applicant of an ODPS grant recipient may choose to file a complaint directly with the grant recipient, EEOC, DOJ-OCR (if the grant recipient receives funding from the DOJ), OCRC, or other appropriate agency as opposed to filing with ODPS. If a complaint is filed directly with the grant recipient or with an outside agency, once the grant recipient becomes aware of the complaint, the grant recipient must notify the ODPS Civil Rights Complaint Coordinator of the complaint and how it is being investigated.

#### **D. TRAINING**

1. ODPS shall provide annual training for agency employees on these complaint procedures. The training shall explain an employee's responsibility to refer discrimination complaints from employees or applicants of ODPS grant recipients to the Complaint Coordinator. This information shall be disseminated to new ODPS employees during new employee orientation training or as appropriate. The ODPS shall also disseminate a copy of these complaint procedures to ODPS grant recipients.
2. The current policy shall be evaluated annually to determine its effectiveness. ODPS shall make any necessary changes to ensure the complaint process is timely and efficient.

#### **Current Form and Supplemental References**

**Department of Justice Informational Links:**

- [Omnibus Crime Control and Safe Streets Act of 1968 \(42 U.S.C. §3789d\(c\)\(1\)\)](#)
- [Title II of the Americans with Disabilities Act of 1990 \(42 U.S.C. §12132\)](#)
- [Section 504 of the Rehabilitation Act of 1973 \(29 U.S.C. §794\)](#)
- [Title IX of the Education Amendments of 1972 \(20 U.S.C. §1681\)](#)

**Standard References**

None

**Policy References**

<a href="#"><u>DPS-100.01</u></a>	ADMINISTRATIVE INVESTIGATIONS
<a href="#"><u>DPS-501.01</u></a>	WORK RULES - NON-SWORN BARGAINING UNIT PERSONNEL
<a href="#"><u>DPS-501.02</u></a>	WORK RULES - SWORN PERSONNEL
<a href="#"><u>DPS-501.03</u></a>	WORK RULES - EXEMPT PERSONNEL
<a href="#"><u>DPS-501.04</u></a>	WORK RULES - TEMPORARY WORKERS, CONTRACT VENDORS, CONSULTANTS, NON-DPS STAFF
<a href="#"><u>DPS-501.15</u></a>	INITIAL EMPLOYMENT ORIENTATION TRAINING
<a href="#"><u>DPS-501.29</u></a>	DISCRIMINATION AND UNLAWFUL HARASSMENT
<a href="#"><u>OSP-103.19</u></a>	ADMINISTRATIVE INVESTIGATIONS - OSP EMPLOYEES
<a href="#"><u>OSP-203.03</u></a>	POWERS / DUTIES, AUTHORITY / CODE OF ETHICS / OATH / RULES AND REGULATIONS



**Ohio Department of Public Safety**  
**Policy Number : DPS-501.40**

**ADDRESSING CIVIL RIGHTS COMPLAINTS FROM CLIENTS OF  
THE DEPARTMENT OF PUBLIC SAFETY OR CLIENTS OF  
SUBRECIPIENTS**

Date of Revision : **8/30/2011**

Priority Review : **All Employees ; All Supervisors**

Distribution : **All ODPS Divisions**

### **Summary of Revisions**

New policy to ensure compliance with Title VI of the Civil Rights Act of 1964 and other federal laws and regulations prohibiting discrimination.

### **Purpose**

To provide guidelines and procedures that allow the Ohio Department of Public Safety (ODPS) to process and forward complaints alleging discrimination from clients, customers, program participants, or consumers of ODPS or ODPS grant recipients.

### **Policy**

#### **A. STATEMENT OF POLICY**

1. All individuals have the right to participate in programs and activities operated by ODPS and ODPS grant recipients regardless of race, color, national origin, sex, religion, disability, and age. ODPS will make every effort to ensure ODPS and its grant recipients comply with Title VI of the Civil Rights Act of 1964, the Omnibus Crime Control and Safe Streets Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the DOJ regulations on the Equal Treatment for Faith-Based Organizations.

#### **2. RETALIATION**

- a. Persons who believe they have been discriminated against on the basis of their membership in a protected class (race, color, religion, sex, national origin, disability, age, ancestry, or military status) shall not be retaliated against in terms and conditions of employment or services for exercising their right to file a discrimination complaint or inquiry.
- b. No person who participates in the investigation of a complaint, or is a witness in an investigation, or brings attention to a person in authority, of an alleged discrimination shall be retaliated against.

#### **B. DEFINITIONS**

1. **Discrimination:** To make a distinction, show bias towards, or be prejudicial against, a person or thing on the basis of the group, class, or category to which the person or thing belongs, rather than according to actual merit.

2. **Civil Rights Complaint Coordinator:** Person designated by ODPS who is responsible for receiving and acknowledging discrimination complaints and forwarding them to the U.S. Department of Justice (DOJ), Office of Justice Programs, Office for Civil Rights (OCR); the Ohio Civil Rights Commission (OCRC), or other appropriate agency for review of the complaint to determine if a violation was committed. The ODPS EEO Manager shall be the designated Civil Rights Complaint Coordinator.
3. **Grant Recipient:** An agency or organization that receives funding from a division within ODPS, whether it is federal pass-through funding or a state grant. ODPS divisions that provide grants to agencies and organizations include, but are not limited to, the Office of Criminal Justice Service (OCJS), Ohio Emergency Management Agency (EMA) and Ohio Homeland Security (OHS).
4. **Retaliation:** Occurs when adverse action is taken against an individual in a protected class because he or she engaged in protected activity.
5. **Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d):** Prohibits an individual from being excluded from participation in, being denied the benefits of, or being subjected to discrimination under any program or activity receiving federal financial assistance on the basis of race, color, or national origin as set forth in the DOJ implementing regulations (28 C.F.R. Part 42, Subpart C).
6. **Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. §3789d(c)(1)):** Prohibits recipients that receive federal funding under this statute from discriminating, either in employment practices or in the delivery of services or benefits, on the basis of race, color, religion, national origin, and sex as set forth in the DOJ implementing regulations (28 C.F.R. Part 42, Subpart D).
7. **Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794):** Prohibits discrimination on the basis of disability, in regard to both employment and the delivery of services or benefits, in any program or activity receiving federal financial assistance as set forth in the DOJ implementing regulations (28 C.F.R. Part 42, Subpart G).
8. **Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. §12132):** Prohibits discrimination against qualified individuals with disabilities, in regard to both employment and the delivery of service or benefits, in all programs, activities, and services of public entities as set forth in the DOJ implementing regulations (28 C.F.R. Part 35). Title II applies to all state and local governments, their departments and agencies, and any other instrumentalities or special purpose districts of state or local governments.
9. **Title IX of the Education Amendments of 1972 (20 U.S.C. §1681):** Prohibits discrimination on the basis of sex in educational programs and activities that receive federal financial assistance as set forth in the DOJ implementing regulations (28 C.F.R. Part 54).
10. **Age Discrimination Act of 1975 (42 U.S.C. §6102):** Prohibits discrimination on the basis of age in the programs and activities receiving

federal financial assistance as set forth in the DOJ implementing regulations (28 C.F.R. Part 42, Subpart I). The Act, which applies to all ages, permits the use of certain age distinctions and factors other than age that meet the Act's requirements.

11. **DOJ regulations on the Equal Treatment for Faith-Based Organizations:** Prohibits discrimination on the basis of religion in the delivery of services and prohibits organizations from using DOJ funding on inherently religious activities (28 C.F.R. Part 38).

### C. COMPLAINT PROCEDURES

1. ODPS shall accept and acknowledge all discrimination complaints from clients, customers, program participants, or consumers of ODPS or ODPS grant recipients. All discrimination allegations and complaints shall be referred to the designated ODPS Civil Rights Complaint Coordinator.
2. A client, customer, program participant, or consumer may file a complaint of discrimination via e-mail to the appropriate ODPS grant coordinator or via U.S. Mail to the attention of the ODPS Civil Rights Complaint Coordinator (1970 West Broad Street, Columbus, Oh, 43223). The complaint should include the complainant's name, contact information, and a brief explanation of the alleged discrimination. If the complaint is sent to an ODPS Grant Coordinator, that employee shall forward it immediately to the ODPS Civil Rights Complaint Coordinator.
3. The Complaint Coordinator shall provide an acknowledgement of the complaint to the client, customer, program participant, or consumer via e-mail or in a letter confirming the complaint has been received. The contents of the acknowledgement response must include information specifying the external agency to which the complaint has been forwarded for investigation, and provide information in which the complainant can contact that agency directly. If the complaint is against the ODPS or an ODPS grant recipient implementing funding from the DOJ and the ODPS is not forwarding the complaint to the OCR, the acknowledgement response shall also notify the complainant that he / she may file a complaint directly with the OCR at the following address:

**U.S. Department of Justice (DOJ)**  
**Office of Justice Programs**  
**Office of Civil Rights (OCR)**  
**810 Seventh Street NW**  
**Washington, D.C. 20531**
4. The Complaint Coordinator shall then forward the complaint to OCR, OCRC, or other appropriate agency. The complaint shall be investigated by the appropriate agency.
5. All clients, customers, program participants, or customers of ODPS or ODPS grant recipients shall have access to these procedures at any time via the ODPS website (<http://publicsafety.ohio.gov>).
6. Any client, customer, program participant, or consumer may choose to file a complaint directly with the DOJ-OCR (if the complaint is against the ODPS or an ODPS grant recipient implementing funding from DOJ), OCRC, the appropriate

agency as opposed to filing with ODPS, or directly with the grant recipient. If a complaint is filed directly with an outside agency, ODPS requests that a courtesy copy be forwarded to the ODPS Civil Rights Complaint Coordinator by the complainant. If the complaint is against an ODPS grant recipient, once the grant recipient becomes aware of the complaint, the grant recipient must notify the ODPS Civil Rights Complaint Coordinator of the complaint and how it is being investigated.

#### D. TRAINING

1. ODPS shall provide annual training for agency employees on these complaint procedures. The training shall explain an employee's responsibility to refer discrimination complaints from clients, customers, program participants, or consumers to the Complaint Coordinator. This information shall be disseminated to new ODPS employees during new employee orientation training or as appropriate. ODPS will also disseminate a copy of these complaint procedures to ODPS grant recipients.
2. The current policy shall be evaluated annually to determine its effectiveness. ODPS shall make any necessary changes to ensure the complaint process is timely and efficient.

### Current Form and Supplemental References

#### Department of Justice Informational Links:

- [Title VI of the Civil Rights Act of 1964 \(42 U.S.C. §2000d\)](#)
- [Omnibus Crime Control and Safe Streets Act of 1968 \(42 U.S.C. §3789d\(c\)\(1\)\)](#)
- [Section 504 of the Rehabilitation Act of 1973 \(29 U.S.C. §794\)](#)
- [Title II of the Americans with Disabilities Act of 1990 \(42 U.S.C. §12132\)](#)
- [Title IX of the Education Amendments of 1972 \(20 U.S.C. §1681\)](#)
- [Age Discrimination Act of 1975 \(42 U.S.C. §6102\)](#)
- [DOJ regulations on the Equal Treatment for Faith-Based Organizations \(28 C.F.R. Part 38\)](#)

#### Standard References

None

#### Policy References

<a href="#">DPS-100.01</a>	ADMINISTRATIVE INVESTIGATIONS
<a href="#">DPS-501.01</a>	WORK RULES - NON-SWORN BARGAINING UNIT PERSONNEL
<a href="#">DPS-501.02</a>	WORK RULES - SWORN PERSONNEL
<a href="#">DPS-501.03</a>	WORK RULES - EXEMPT PERSONNEL
<a href="#">DPS-501.04</a>	WORK RULES - TEMPORARY WORKERS, CONTRACT VENDORS, CONSULTANTS, NON-DPS STAFF
<a href="#">DPS-501.15</a>	INITIAL EMPLOYMENT ORIENTATION TRAINING
<a href="#">DPS-501.29</a>	DISCRIMINATION AND UNLAWFUL HARASSMENT
<a href="#">OSP-103.19</a>	ADMINISTRATIVE INVESTIGATIONS - OSP EMPLOYEES
<a href="#">OSP-203.03</a>	POWERS / DUTIES, AUTHORITY / CODE OF ETHICS / OATH / RULES AND REGULATIONS



# **PROJECT FORMULATION**

## ***WHAT IS PROJECT FORMULATION?***

Project formulation is the process of identifying an eligible scope of work and estimating costs associated with that scope of work which ultimately results in a Project Worksheet (PW). Project formulation also includes the process of determining any special considerations that need met prior to project approval and implementation. Project formulation begins with the Kickoff Meeting, which is conducted by a FEMA Project Specialist (PS). The PS assists you in identifying damage, determining eligible repair work, estimating costs, and identifying issues such as insurance coverage, environmental hazards, and historic buildings, which require special attention.

## ***APPLICANT'S RESPONSIBILITIES FOR THE KICKOFF MEETING***

In preparation for your Kickoff Meeting, you should take the following actions in order to expedite the process and help produce more accurate estimates. The individuals with working knowledge of the repairs needed and costs incurred should attend the Kickoff Meeting.

1. Prepare a list of work performed and facilities damaged as a direct result of the disaster. **All damages must be identified within 60 days of the Kickoff meeting.** Damages should be segregated into applicable types such as specific facility site, system, method of work, category of work, etc.
2. Have cost estimates prepared or at least have a method for preparing a cost estimate available. Local cost estimates, rather than estimates determined using FEMA cost codes, are the preferred source for determining a reasonable approved amount for PWs because they should more accurately reflect final actual costs.
3. Ensure that the person(s) designated to develop PWs or accompany survey teams has knowledge of completed work and locations of those sites where work remains to be completed.
4. Be prepared with or to provide a detailed cost breakdown of personnel, equipment, materials, rented equipment and contractual services for all completed work. The completed work breakdown should include locations and types of work performed.
5. Use the FEMA furnished equipment rates for use of your own equipment unless established local rates are lower.
6. If damaged facilities are to be upgraded to conform to codes, specifications, or standards, be prepared to discuss these issues.
7. Have information available on insurance coverage such as copies of insurance policies, proof of loss documentation and the amount of any insurance settlement received.
8. Have pre-identified any sites that could have environmental or historic considerations such as working in the floodplain or facilities over 50 years old.
9. Maintain records to document costs for disaster recovery work. Documented costs are maintained for each approved PW, for expenses incurred before and after development of the PW.

## ***WHAT IS A PROJECT WORKSHEET?***

Project Worksheets (PWs) describe the pre-disaster facility, function and location, the disaster-related damage, the repairs necessary to bring the facility back to its pre-disaster condition (scope of work) including cost estimates, any special considerations and any change in the pre-disaster condition of the facility that is required. PWs can be formulated by the following methods:

- Specific Site: all work at a site;
- Specific Facility: all work, for example, on a bridge or restoration of a building;
- Type of Damage: all work under a specific category;
- System: all work, for example, pertaining to a water distribution system;
- Jurisdiction: all work, for example, performed by the city police, fire, etc;
- Method of Work: for example, all contract work together;
- Complex: for example, all damage to a high school, and/or;

The minimum amount for a single PW is \$1,000. Items of work in the same category may be combined on one PW to meet this minimum. This determination is at the discretion of the PS, recognizing that the principle of supplementary federal assistance applies.

PWs are divided into two types: Small and Large projects. FEMA determines the maximum amount of small projects each October. For Federal Fiscal Year 2011, the maximum amount is \$66,400.

## ***WHO WRITES THE PROJECT WORKSHEETS?***

Applicants have two options for completion of small project. ***The first option is to write your own.*** With technical assistance from the PS, you can write your own PWs. If you choose to write your own PWs, they must be completed and submitted to your PS within 60 days of your Kickoff Meeting. With this option, the PS will conduct a 20% validation of all submitted small project worksheets. Failure to meet this deadline will result in 100% validation by the PS. ***The second option is to have FEMA write the PW's.*** In this case, the PS will write your PWs following the same process as you will if you write your own.

In the case of large projects, the PS will complete these worksheets. However, you will still play an integral part in writing the scope of work and determining the cost estimate.

## ***HOW DO I PREPARE A COST ESTIMATE?***

Once you have a clear and complete scope of work, the eligible costs need to be determined. If the work has been completed, report the actual costs. If it has not been completed, estimate the costs. The costs must be:

- Reasonable and necessary to accomplish the work
- Reduced by all applicable credits, such as anticipated insurance proceeds and salvage values

- Compliant with Federal, State, and local requirements for competitive procurement, if the work is done by contract

For small projects, estimates are especially important because they become the fixed approved amount. For large projects, estimates will be adjusted once work is complete based on reasonable final costs. However, the initial estimate is important for budgeting and management purposes. The most common methods of cost estimating are:

**Unit costs** – With this method, the project is broken down into elements based on the quantity of material that must be used to complete the work. For example, a culvert repair may be broken down into linear feet of pipe, cubic yards of fill, and square feet of pavement. The estimate for each of these items is a cost per unit that includes all labor, equipment, and material necessary to install that item (referred to as an in-place cost). Unit cost data developed by State or local governments may be used for estimating costs, if appropriate. Alternatively, commercially available cost-estimating guides or data from local vendors and contractors may also be used. Also, FEMA has developed a list of unit costs for typical disaster repairs that may be used for estimating total costs. The order of preference for these cost data sources is: State and local data from previously completed projects, commercial estimating sources, and then FEMA cost codes.

**Time, equipment, and materials for local force account work** – This method may be used on projects that have been completed or will be completed by your employees, using your own (or rented) equipment and material purchased by you (or from your stock on hand). This method breaks costs down into labor, equipment, and materials. Costs must be thoroughly documented by payroll information, equipment logs or usage records, site or location, and other records, such as materials invoices, receipts, payment vouchers, warrants, or work orders. FEMA equipment rates, or your established rates, whichever are lower, should be used to compute applicant-owned equipment rates.

**Contracts** – Contracts are used to summarize costs for work that you obtain from an outside source. In general, contract costs are for work already completed. If work has not yet begun on a project, but a contract has been bid or let for the eligible work, then the contract price can be used for the cost estimate. You must follow your established procurement policies when procuring goods or services with FEMA Public Assistance funds. Your established policies must adhere to all State and local laws and regulations as well as Federal standards.

**Cost Estimating Format (CEF)** - FEMA uses a cost estimating methodology called the Cost Estimating Format (CEF) for large projects to better estimate their total cost. The CEF is a forward-pricing model that allows FEMA to account for all possible costs associated with projects for which the base costs of labor, materials, and equipment meet or exceed the large project threshold. FEMA uses experienced cost estimators as part of the project formulation team for projects on which the CEF is used.

The CEF should only be used on large projects for which the permanent restorative work is 90% or less complete. Projects greater than 90% complete are not required to be estimated using the CEF. In these cases, the PS should use the actual costs of the eligible work and extend those costs to cover the remaining work.

The CEF relies on the development of a clear definition of the scope of work that is eligible for Public Assistance. Once this scope of work has been developed, the CEF is applied. **Part A** represents the base cost of completing the project; it includes the labor, materials, and equipment necessary to complete each item of the scope of work. Parts B through H contain job-specific factors that are added to the base cost determined in Part A. These factors are described below:

**Part B** includes construction costs not typically itemized in Part A, such as the contractor's supervision costs.

**Part C** reflects construction cost contingencies and addresses budgetary risks associated with project complexity during the design process.

**Part D** accounts for the contractor's home-office overhead, insurance, bonds, and profit.

**Part E** accounts for cost escalation over the life of the project.

**Part F** includes fees for special reviews, plan checks, and permits.

**Part G** is the applicant's reserve for change orders, hidden damages, and differing site conditions after construction starts.

**Part H** accounts for the applicant's cost to manage the design and construction of the project.

The construction-related costs represented by Parts B through H are usually encountered during the course of construction and can normally be expected to occur. However, these construction-related costs may already be a component of the Part A costs. In all cases, the cost estimator determines the makeup of the unit costs used in Part A, before applying one or more of the Parts B through H factors. Costs considered in Part A cannot be duplicated in Parts B through H factors.

## ***APPROVAL OF PROJECT WORKSHEETS***

Once written, FEMA and the State will review all PWs for accuracy and eligibility. After the PWs are approved by FEMA, they are forwarded to the State PA Office for distribution to the applicants. Please make sure to carefully review approved PWs for any changes or amendments that may have occurred during the review process. You have 60 days following receipt of PWs to appeal FEMA's decision.

**Once PWs are approved, no changes in the scope of work should be made without first getting approval from the State and/or FEMA. Failure to get prior approval can result in loss of funding. Therefore, ensure that all parties involved in the PWs are aware of the approved scope of work and know to get prior approval for any changes.**

## ***CATEGORIES OF WORK***

There are two types of work: Emergency Work and Permanent Work.

Emergency work is done immediately to save lives and to protect and preserve property, public health, and safety, or to avert or lessen the threat of a major disaster. Debris removal and

emergency protective measures are considered emergency work. Only overtime force account labor is eligible under these categories (A-B).

Permanent work is restorative work performed through repairs or replacement, to restore an eligible facility on the basis of its pre-disaster design and current applicable standards. Categories (C-G) are permanent work.

### **WHAT IS EMERGENCY WORK?**

#### Category “A” - Debris Removal

Assistance is provided to remove debris and wreckage, resulting from a major disaster or emergency, from publicly owned lands and waters. Removal of debris from privately owned land is eligible only if it is in the public interest. A Debris Fact Sheet created by the Ohio EMA and Ohio Environmental Protection Agency (Ohio EPA) is included at the end of this tab and is a resource for issues related to managing all types of wastes, including removal, reduction, temporary sites, contracting and disposal.

#### Category “B” - Emergency Protective Measures

Emergency protective measures are those activities undertaken by a community before, during, and following a disaster that are necessary to do one of the following:

- eliminate or reduce an immediate threat to life, public health, or safety; or
- eliminate or reduce an immediate threat of significant damage to improved public or private property through cost-effective measures.

Generally, those prudent actions taken by a community to warn residents, reduce the disaster damage, ensure the continuation of essential public services, and protect lives and public health or safety are eligible for assistance. Such activities should be evaluated to ensure that they meet the criteria of the law. The following list provides examples of activities that may be eligible:

- Warning of risks and hazards.
- Search and rescue, including transportation of disaster victims.
- Emergency medical facilities. Eligible costs include any additional temporary facilities and equipment required to treat disaster victims when existing facilities are overloaded or damaged. Ineligible costs include any costs for emergency medical treatment (including vaccinations), labor costs (physicians, medical personnel, etc.), follow-on treatment, increased operational and administrative costs, and loss of revenue. (See [FEMA Policy 9525.4, Medical Care and Evacuations](#).)
- Emergency evacuations of medical and custodial care facilities. Eligible costs include transportation and extraordinary labor costs for non-medical staff assisting in the evacuations. Ineligible costs include medical staff and supplies utilized during the evacuations. (See [FEMA Policy 9525.4, Medical Care and Evacuations](#).)
- Facility costs (but not labor costs) for emergency mass care and shelter operations provided by volunteer agencies. Eligible costs generally include supplies, durable medical equipment, security, cleanup, minor repairs, and increased utility costs. Lease costs are not eligible except in the most extraordinary of disaster situations.
- Facility costs (including labor costs allowed under [FEMA Policy 9525.7, Labor Costs - Emergency Work](#)) for emergency mass care and shelter operations provided by

governmental entities when volunteer agencies are unable to provide emergency mass care and shelter. Eligible costs generally include supplies, durable medical equipment, security, cleanup, minor repairs, and increased utility costs. Lease costs are not eligible costs except in the most extraordinary of disaster situations.

- Expenses of PNPs for providing emergency protective measures for their facilities are eligible if their facilities are otherwise eligible for assistance.
- Security in the disaster area.
- Provision of food, water, ice, and other essential needs at central distribution points for use by the local population.
- Temporary generators for facilities that provide health and safety services.
- Rescue, care, shelter, and essential needs for household pets and service animals if claimed by a State or local government. Service animals will be sheltered with their owners in congregate shelters. (See [FEMA Policy 9523.18, Eligible Costs Related to Pet Evacuations and Sheltering](#).)
- The provisions of rescue, evacuation, movement of supplies and persons, care, shelter, and essential needs for human populations affected by the outbreak and spread of influenza pandemic. Three conditions must be met for a pandemic to start: a) a new influenza virus subtype must emerge for which there is little or no human immunity; b) it must infect humans and cause illness; and c) it must spread easily and sustainably (continue without interruption) among humans.
- Provision of temporary facilities for schools (public and PNP) and essential community services. Examples of temporary facilities include construction of a temporary bridge or detour road to replace an essential crossing facility, temporary hookup of utilities, and essential temporary buildings for schools or government offices. Eligibility criteria for temporary relocation are outlined on pages 38-39. (See [FEMA Policy 9523.3, Provision of Temporary Relocation Facilities](#).)
- Activation of a State or local emergency operations center to coordinate and direct the response to a disaster event. Costs must be associated with a time frame related to circumstances justified by the nature of the emergency or disaster. Often an emergency operations center is used to direct response activities for a period of time, and then its primary activity shifts to managing the Federal assistance.
- Because the Stafford Act places limitations on reimbursement for the costs of administering the Federal grant, the applicant must keep track of which duties are being performed by the center's personnel. Applicant pre-disaster pay policies related to overtime, compensatory time, and Fair Labor Standards Act designations are integral to eligibility determinations regarding costs.
- Demolition and removal of damaged public and private buildings and structures that pose an immediate threat to the safety of the general public. The threat must be identified by local officials according to established local ordinances and verified by State and Federal officials. In some instances, securing a damaged building from access is sufficient to alleviate the threat and demolition is not necessary. Buildings that were condemned as a safety hazard before the disaster are not eligible. (See [FEMA Policy 9523.4, Demolition of Private and Public Facilities](#).)
- Removal of health and safety hazards. Such activities may include the following:
  - disposal of dead animals;
  - pumping of trapped floodwaters that threaten improved property;

- pumping of flooded basements, but only if there is a widespread need affecting numerous homes and businesses in the community;
- pumping of septic tanks or decontamination of wells, but only if there is a widespread pollution threat; and.
- vector control of rodents or insects when there is a serious health hazard. A serious health threat exists when a specific threat posed by the increased vector population is identified. Verification of the threat by the Federal Centers for Disease Control or State or local health agencies in accordance with established ordinances is required. [See [FEMA Policy 9523.10, Vector Control \(Mosquito Abatement\)](#).]
- Construction of emergency protective measures to protect lives or improved property to include the following:
  - temporary levees, berms, dikes, and sandbagging by itself or on top of a levee;
  - buttressing, bracing, or shoring of a damaged structure to protect against further damage to the structure, or to protect the general public;
  - emergency repairs to protective facilities (work is limited to that which would provide protection from a 5-year event or would restore the facility to its pre-disaster design, whichever is less); and placement of sand on a beach to serve as protection of improved property from waves and flooding (the same criteria regarding the level of protection apply).
- Emergency measures to prevent further damage to an eligible facility. Boarding windows or doors, covering the roof, and remediation to stop the spread of mold in the immediate aftermath of the disaster are examples of this work.
- Restoration of access. If a privately owned access (such as a driveway, road, or bridge) is damaged, funds for restoration of this access may be eligible either under FEMA's Individuals and Households Program or FEMA's PA Program. In cases where homes are inaccessible as a result of the damage, work to establish emergency access may be eligible under PA if an eligible applicant has legal authority to perform the work and provided that the emergency access economically eliminates the need for temporary housing. The PA Program staff should coordinate with the Individuals and Households Program staff to eliminate duplication of effort and funds.

### **Other Types of Emergency Work**

Specific eligibility criteria may also apply to the provision of emergency communications, public transportation, building inspections, and snow removal. These criteria are defined as follows.

**Emergency Communications.** The communications system in a local community may be damaged by a disaster to the extent that the local officials are unable to carry out their duties of providing essential community services or responding to the disaster. A temporary emergency communications system, such as a mobile radio system or cellular telephones, may be needed. Such a system is meant to supplement the portion of the community's communications that remains operable, not to replace or expand the pre-disaster system. The community is expected to repair the damaged system on an expedited basis so that the assistance can be terminated when there is no longer an emergency need.

The temporary system may be eligible for assistance, but only through Direct Federal Assistance. FEMA, through a Mission Assignment, would use appropriate Federal agencies to perform the eligible work. See pages 76-78 for additional discussion regarding [Direct Federal Assistance and Mission Assignments](#).

**Emergency Public Transportation.** The essential portions of a community's transportation system may be damaged by a disaster to such an extent that the vital functions of community life are disrupted. This situation may involve damage to buses, a subway system, or a bridge between two sections of the city. For some of these damaged facilities, replacement with temporary facilities may provide the solution. In other situations, there may not be a specific damaged facility, but there is still a need to supplement existing transportation. This condition may result from temporary changes in the location of government facilities or residential areas or a need to access different shopping areas. The supplemental system must be required to ensure access to public places, employment centers, post offices, and schools so that a normal pattern of life may be restored as soon as possible. The emergency transportation, such as extra buses or trains, additional school buses to transport relocated students, or new bus routes, may be eligible for assistance, but only through Direct Federal Assistance. FEMA, through a Mission Assignment, would use appropriate Federal agencies to perform the eligible work.

The damaged facilities should be restored, or the need for supplemental transportation should be addressed, as soon as possible so that the assistance can be terminated when there is no longer an emergency need.

**Building Inspection.** Safety inspections are eligible if necessary to establish whether a damaged structure poses an immediate threat to life, public health, or safety. Inspections associated with a determination of substantial damage under the National Flood Insurance Program, the determination if a building should be elevated or relocated, a determination of what repairs are needed to make a building habitable, and code enforcement during reconstruction are not eligible, because these inspections go beyond the scope of a safety inspection. (See [FEMA Policy 9523.2, Eligibility of Building Inspections in a Post-Disaster Environment](#).)

## ***WHAT IS PERMANENT WORK?***

### ***Category "C" - Roads and Bridges***

Assistance is provided for the repair or rebuilding of roads, bridges, culverts, rights-of-way, curbs, sidewalks, street lights, gutters and so on. Roads on the Federal Aid System are not eligible.

### ***Category "D" - Water Control Facilities***

Assistance is provided for the repair or rebuilding of drainage structures, dams, levees, and irrigation facilities which are owned, operated, controlled, or maintained by local governments. Facilities that perform flood control operations are generally not eligible.

### ***Category "E" - Public Buildings, Facilities, Equipment***

Assistance is provided for the repair or rebuilding of any government-owned facility. Schools, municipal buildings, police stations, fire stations, and damaged equipment are included under

this category. Applicants should research possible coverage under existing insurance policies as these proceeds would come before any disaster assistance.

#### Category “F” - Public Utilities

Assistance is provided for the repair or rebuilding of government-owned utilities and utility systems. Rural electric co-ops, water and sewer treatment facilities, and so on, fall into this category.

#### Category “G” - Parks and Recreation

Assistance is provided for the repair or rebuilding of parks and other recreational facilities which are government owned and operated.

### ***IMPROVED PROJECTS***

If an applicant wishes to make improvements, but still restore the pre-disaster function, design and capacity of a damaged facility, they should submit a request for an improved project to the State for approval. YOU MUST REQUEST AN IMPROVED PROJECT PRIOR TO ACTION. FAILURE TO DO SO CAN RESULT IN LOSS OF FUNDS. If approved, the federal funding for the project is limited to the approved amount of the original project.

### ***ALTERNATE PROJECTS***

If an applicant determines that the public welfare is not best served by restoring a damaged public facility or the function of that facility, they should submit a request for an alternate project to the State. YOU MUST REQUEST AN IMPROVED PROJECT PRIOR TO ACTION. FAILURE TO DO SO CAN RESULT IN LOSS OF FUNDS. The State forwards the request to FEMA for approval. Please note the following regarding alternate projects:

- The project option can only be taken on permanent work (categories C-G);
- Federal funding is limited to 90% of the federal share approved under the original PW for public facilities and 75% of the federal share for PNP facilities;
- Funds for this project should be used to repair or expand other selected public facilities, to construct new facilities, or to fund hazard mitigation measures;
- Funds are not to be used to pay the non-federal share of a PW.

Requests for alternate projects must contain the following:

- A description of the proposed alternate project;
- A schedule of work;
- Projected cost of the project;
- Provide assurances to document compliance with special considerations, including but not limited to flood plain management, hazard mitigation, protection of wetlands and insurance.

## **WHAT ARE SPECIAL CONSIDERATIONS?**



Special considerations include insurance, historic, floodplain, wetland and other environmental issues and hazard mitigation. FEMA and the State are required to ensure that all funding actions are in compliance with current State and Federal laws, regulations and policies. It should also be noted that environmental, insurance and other special consideration issues are typically site specific.



Certain sites may require special reviews by FEMA or the permitting agency. The subgrantee is responsible for obtaining all necessary permits. Guidance, fact sheets and Executive Orders regarding special considerations are included at the end of this tab.

## ***INSURANCE REQUIREMENTS***

### General Requirements

If a damaged facility is insured, the subgrantee should review current insurance policies to ensure that coverage under this policy is utilized prior to any eligible FEMA funding. These insurance recoveries will be deducted from otherwise eligible costs. Even if insurance proceeds are available for the facility, a PW should be written and all damaged elements included in the approved scope of work. This allows for an accurate review by FEMA's Insurance Specialists.

When insurance is required as a condition of approval, the subgrantee must obtain the required insurance and submit an insurance commitment form and policy declaration page. Once this is complete, funding for these projects may be released. Insurance purchase is not required when the total loss estimate is less than \$5,000.

### Flood Insurance

Where an insurable facility damaged by flooding is located in a special flood hazard area and the facility is not fully covered by flood insurance, assistance is reduced. The amount of the reduction will be the value of the facility immediately prior to the event or the maximum amount of the insurance proceeds that would have been received had a policy been in place, whichever is less. FEMA requires flood insurance for flood damaged facilities located outside the base floodplain when such insurance is reasonably available, adequate and necessary but does not make the mandatory reduction if insurance was not in place at the time of the event.

## ***SECTION 406 HAZARD MITIGATION***

Hazard mitigation is any cost-effective measure that will reduce the potential for damage from a disaster event. To be eligible, Section 406 hazard mitigation measures:

- Must be reviewed by FEMA staff to ensure eligibility, technical feasibility, environmental and historic preservation compliance, and cost effectiveness.
- Must be appropriate to the disaster damage, must prevent future damage similar to that caused by the declared event and can only apply to permanent work.

- Must be applied only to the damaged element(s) of a facility. This criterion is particularly important when conducting repairs to a portion of a system. For example, if floodwaters inundate a sanitary sewer, block manholes with sediment and damage some of the manholes, cost-effective mitigation to prevent blockage of the damaged manholes in future events may be eligible; however, work to improve any undamaged manholes that are part of the system is not eligible. New berms are not eligible as mitigation measures because they do not meet the requirement of being part of the damaged element.
- Cannot increase risks or cause adverse effects to the facility or to other property.
- Must consist of work that is above and beyond the eligible work required to return the damaged facility to its pre-disaster design. Upgrades required to meet current codes and standards, however, are not considered hazard mitigation measures for purposes of the PA Program and have different eligibility criteria.
- Cannot be applied to replacement buildings. Since new construction will be to current codes and standards, which are intended to ensure structural integrity for local conditions, mitigation funding applies only to building repairs, which generally are not covered by codes and standards.

The considerations listed below are used to determine cost effectiveness. In all cases, the total eligible cost of the project, before deducting insurance proceeds, is used for the cost comparison.

- Hazard mitigation measures may amount to up to 15 percent of the total eligible cost of the eligible repair work for the damaged facility.
- Certain mitigation measures may be determined to be cost-effective as long as the mitigation measure does not exceed the cost of the eligible repair work on the project. Examples are provided below.
- For measures that exceed the costs of eligible repair work, the applicant must demonstrate through an acceptable benefit/cost analysis that the measure is cost effective.

Failure to complete approved mitigation measures will result in loss of funding for those measures and could jeopardize future funding at the site.

The following list includes examples of Section 406 mitigation measures that have been determined to be cost-effective if they do not exceed the cost of the eligible repair work. As stated above, the applicant, the State, or FEMA may propose such measures, and FEMA may require hazard mitigation measures before agreeing to provide funds for certain projects.

- Relocation of facilities from hazardous locations:
  - Roads and bridges
  - Utilities
  - Buildings
- Slope stabilization to protect facilities:
  - Placement of riprap
  - Installation of cribbing or retaining walls
  - Installation of soil retention blankets
- Protection from high winds:
  - Installation of shutters to protect windows
  - Installation of hurricane clips
  - Strengthening anchoring and connections of roof-mounted equipment

- Floodproofing of buildings:
  - Use of flood-resistant materials
  - Elevation of mechanical equipment and utilities
  - Elevation of buildings
  - Dry-floodproofing, if technically feasible
- Flood protection of bridges and culverts:
  - Installation of cut-off walls or headwalls on culverts
  - Installation of gabions, riprap, sheet piling, or geotextile fabric
- Seismic protection:
  - Bracing of overhead pipes and electrical lines
  - Anchoring non-structural elements such as parapets and veneers
  - Bracing interior walls and partitions
- Protection of utilities:
  - Use of disaster-resistant materials for power poles
  - Anchoring fuel tanks to prevent movement
  - Elevation of equipment, control panels, and electrical service to prevent flood damage

### ***HISTORIC/ENVIRONMENTAL CONSIDERATIONS***

There are a number of federal and state laws governing the protection of historic places and the environment. Your PS will assist you in completing requirements of the National Historic Preservation Act (NHPA) and National Environmental Policy Act (NEPA). In addition, your project may require review and approval from the State Historic Preservation Office (SHPO).

### ***YOUR RESPONSIBILITIES FOR SPECIAL CONSIDERATIONS?***

- Answer all of the Special Considerations questions for each project.
- Identify all facilities located in the 100-year floodplain area.
- Identify all facilities 50 years old or older and/or those that have an important social or cultural significance.
- Identify if a project will require ground disturbance, particularly of previously undisturbed ground.
- Look for and request hazard mitigation opportunities.
- Provide insurance policies to the PS at the earliest opportunity. Even if you don't think the facility is covered under the policy, if a policy exists, provide a copy to the PS for review.
- Notify the PS of all Special Consideration issues as soon as possible. This will ensure the fastest review and funding.
- Maintain all documentation that has to do with any identified Special Consideration issues. Even if they are considered to be of no consequence, keep all related documentation in case any questions arise at a later date.

## ***ATTACHMENTS***

- Sample Project Worksheet, Field and Final version
- Debris Fact Sheet for Local Officials, Ohio EMA and Ohio EPA
- Fact Sheet – Insurance Considerations for Applicants, FEMA
- FEMA Policy 9526.1 – Hazard Mitigation Funding Under Section 406
- Section 106 Requirements, State Historic Preservation Office
- Ohio Stream Management Guide No. 02 – “Who Owns Ohio’s Streams”, Ohio DNR
- Ohio Stream Management Guide No. 06 – Permit Checklist for Stream Modification Projects, Ohio DNR
- Emergency Stream Stabilization, Restoration or Clearance, FEMA
- Executive Order 11988 – Floodplain Management
- Executive Order 11990 – Protection of Wetlands

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DEPARTMENT OF HOMELAND SECURITY  
 FEDERAL EMERGENCY MANAGEMENT AGENCY  
**PROJECT WORKSHEET**

O.M.B. No. 1660-0017  
 Expires October 31, 2008

*PW # 00325*

**PAPERWORK BURDEN DISCLOSURE NOTICE**

Public reporting burden for this form is estimated to average 90 minutes per response. Burden means the time, effort and financial resources expended by persons to generate, maintain, disclose, or to provide information to us. You may send comments regarding the burden estimate or any aspect of the collection, including suggestions for reducing the burden to: Information Collections Management, U.S. Department of Homeland Security, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, Paperwork Reduction Project (1660-0017). You are not required to respond to this collection of information unless a valid OMB number appears in the upper right corner of this form. **NOTE: Do not send your completed questionnaire to this address.**

DISASTER <b>DR-1805</b>	PROJECT NO. <b>HFC007</b>	PA ID NO. <i>017-59234-00</i> <b>0</b>	DATE <b>11/26/2008</b>	CATEGORY <b>A</b>
DAMAGED FACILITY <b>Debris Removal</b>			WORK COMPLETE AS OF: <b>11/25/2008 : 100 %</b>	
APPLICANT			COUNTY <b>Butler</b>	
LOCATION <b>101 East High street</b>			LATITUDE <b>39.29641</b>	LONGITUDE <b>-84.44268</b>

**DAMAGE DESCRIPTION AND DIMENSIONS**

This is a PA Pilot program project worksheet.  
 During the declared event on September, 14, 2008, high winds downed trees and vegetative debris onto the Applicant maintained roads and rights-of-ways. The applicant maintains 52 miles of roadway. The Quantity of debris was measured by the following method: Applicant maintained daily records of vegetative debris for entire period.  
 Based on applicant's records the total volume of vegetative debris equals -11,200 cu,yds.

**SCOPE OF WORK**

Work completed:  
 The applicant utilized 1691.45 hours of Force Account Labor, (1500.60 eligible regular hours and 190.85 eligible Overtime hours), 1951.55 hours of eligible force account equipment, contract services, rental equipment to cut, collect, and disposed of approximately 11,200 cubic yards of vegetative debris. Work performed during the period 9/14/08 to 9/26/08. Backup documentation supporting this claim has been reviewed, found accurate, and is on file in the applicant's office. The Applicant has volunteered to participate in the force account labor procedure of the PA Pilot program.  
 See PW continuation sheet for details on listed invoices *equipment*

Does the Scope of Work change the pre-disaster conditions at the site?  Yes  No  
 Special Considerations included?  Yes  No Hazard Mitigation proposal included?  Yes  No  
 Is there insurance coverage on this facility?  Yes  No

**PROJECT COST**

ITEM	CODE	NARRATIVE	QUANTITY	UNIT	UNIT PRICE	COST
<b>COMPLETED WORK</b>						
1	9703	PA Pilot: Force Account-Labor	1	LS	\$41,356.97	41,356.97
2	9007	Force Account Labor-Overtime	1	LS	\$6,131	\$6,130.57
3	9008	Force Account Equipment	1	LS	60,657.03	60,657.03
4	9004	Rented Equipment	1	LS	\$355.00	355.00
5	9009	Material	1	LS	\$413.07	413.07
6	9026	Contractual Service	1	LS	\$9,075.00	9,075.00
					<b>9010</b>	<b>9010</b>

PREPARED BY: Herbert F Cummings TITLE: PO TOTAL COST: \$117,987.64  
 APPLICANT: \_\_\_\_\_ TITLE: Director of Services 117,922.64  
 REVIEWED BY: Reuben McWhirt TITLE: PAC

*State  
12/16/08  
CML*

DEPARTMENT OF HOMELAND SECURITY  
FEDERAL EMERGENCY MANAGEMENT AGENCY

O.M.B. No. 1660-9917  
Expires October 31, 2008

PROJECT WORKSHEET - Damage Description and Scope of Work Continuation Sheet

DISASTER <b>DR-1805</b>	PROJECT NO. <b>HFC007</b>	PA ID NO. <b>0</b>	DATE <b>11/26/2008</b>	CATEGORY <b>A</b>
APPLICANT			COUNTY <b>Butler</b>	

Continuation sheet:

Scope of work:

The applicant has submitted invoices #3497 and #3688 dated 9/19/08 total in the amount of \$1,891.89 for repairs/replacement parts, and lubricant. In the FEMA costs code the applicant is being paid for labor hours, which includes fuel, lubricants, insurance, depreciation on equipment, it is not eligible.. *equipment*

See details in PA guide p-48 in relation to damages and repairs to the applicant's owned equipment.

PREPARED BY:

Herbert F Cummings

TITLE:

PO

PA-05-OH-1805-PW-00325(0)	
Applicant Name	Application Title
	HFC-007 - Pilot
Period of Performance Start	Period of Performance End
10-24-2008	04-24-2009

### Subgrant Application - FEMA Form 90-91

**Note:** The Effective Cost Share for this application is 75%

FEDERAL EMERGENCY MANAGEMENT AGENCY <b>PROJECT WORKSHEET</b>				O.M.B. No. 1660-0017 Expires: 10/31/2008	
<b>PAPERWORK BURDEN DISCLOSURE NOTICE</b>					
Public reporting burden for this form is estimated to average 90 minutes per response. The burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the needed data, and completing, reviewing, and submitting the form. You are not required to respond to this collection of information unless a valid OMB control number appears in the upper right hand corner of this form. Send comments regarding the accuracy of the burden estimate and any suggestions for reducing the burden to: Information Collections Management, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, Paperwork Reduction Project (3067-0151). Submission of the form is required to obtain benefits under the Public Assistance Program. NOTE: Do not send your completed form to the above address.					
DISASTER		PROJECT NO.	PA ID NO.	DATE	CATEGORY
FEMA	1805 - OH	199	017-59234-00	12-09-2008	A
DAMAGED FACILITY				WORK COMPLETE AS OF	
				11-25-2008 : 100 %	
APPLICANT:			COUNTY: Butler		
LOCATION:				LATITUDE:	LONGITUDE: -
				39.29641	84.44268
DAMAGE DESCRIPTION AND DIMENSIONS					
During the declared event on September, 14, 2008, high winds downed trees and vegetative debris onto the Applicant maintained roads and rights-of-ways. The applicant maintains 52 miles of roadway. The Quantity of debris was measured by the following method: Applicant maintained daily records of vegetative debris for entire period. Based on applicant's records the total volume of vegetative debris equals 11,200 cu,yds.					
SCOPE OF WORK					
Work completed: The applicant utilized 1691.45 hours of Force Account Labor, (1500.60 eligible regular hours and 190.85 eligible Overtime hours), 1951.55 hours of eligible force account equipment, contract services, rental equipment to cut, collect, and disposed of approximately 11,200 cubic yards of vegetative debris. Debris taken to Collins Run Composting (945 Collins Run Road, Oxford OH) Work performed during the period 9/14/08 to 9/26/08. Backup documentation supporting this claim has been reviewed, found accurate, and is on file in the applicant's office. The Applicant has volunteered to participate in the force account labor procedure of the PA Pilot program. The applicant has submitted invoices #3497 and #3688 dated 9/19/08 total in the amount of \$1,891.89 for repairs/replacement parts, and lubricant. In the FEMA costs code the applicant is being paid for labor hours, which includes fuel, lubricants, insurance, depreciation on equipment, it is not eligible.. See details in PA guide p-48 in relation to damages and repairs to the applicant's owned equipment.					
Does the Scope of Work change the pre-disaster conditions at the site? <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
					Hazard Mitigation proposal included?

Special Considerations included? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Is there insurance coverage on this facility? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No					
PROJECT COST					
ITEM	CODE	NARRATIVE	QUANTITY/UNIT	UNIT PRICE	COST
1	0000	Work Completed	0/LS	\$ 0.00	\$ 0.00
2	9703	PA Pilot: Force Account Labor	1/LS	\$ 41,356.97	\$ 41,356.97
3	9007	Labor	1/LS	\$ 6,130.57	\$ 6,130.57
4	9008	Equipment	1/LS	\$ 60,657.03	\$ 60,657.03
5	9004	Rented Equipment	1/LS	\$ 355.00	\$ 355.00
6	9009	Material	1/LS	\$ 413.07	\$ 413.07
7	9001	Contract	1/LS	\$ 9,010.00	\$ 9,010.00
				<b>TOTAL COST</b>	<b>\$ 117,922.64</b>
PREPARED BY Herbert F Cummings		TITLE Project Specialist		SIGNATURE	
APPLICANT REP.		TITLE Director of Service		SIGNATURE	

## DEBRIS FACT SHEET FOR LOCAL OFFICIALS



The information contained within this document is intended to assist local officials responsible for all or a portion of the issues relating to managing all types of waste (“debris”) resulting from a disaster or significant emergency. Removal, reduction, recycling, temporary sites, contracting and disposal data as well as points of contact are included in the following pages.

The Ohio Environmental Protection Agency (EPA) and Ohio Emergency Management Agency (EMA) are two state agencies that have primary responsibilities to respond to disasters. Disasters can generate a significant amount of debris and can disrupt local government operations in general. Their roles and day-to-day points of contact are detailed below.

### **Local Governments**

Local health departments may be able to provide technical assistance regarding debris management and public health issues. Local health departments may also have primary responsibility during a disaster in the regulatory oversight for proper management of debris. Of particular concern for public health and safety is the management and proper disposal of debris created by a disaster or by demolition, yard waste, household hazardous waste, food stuffs, and spoiled food.

### **Ohio Environmental Protection Agency** ([www.epa.state.oh.us/dmwm](http://www.epa.state.oh.us/dmwm))

Division of Materials and Waste Management, Central Office  
50 West Town Street, Suite 700, Columbus, OH 43215  
Phone (614) 644-2621 Fax (614) 728-5315

Primary responsibility during a disaster is regulatory oversight for proper management of debris. This is accomplished by providing rule interpretations (regulatory requirements), technical assistance/coordination regarding temporary staging, collection, removal and disposal of debris, and resource lists.

### **Ohio Emergency Management Agency** ([www.ema.ohio.gov](http://www.ema.ohio.gov))

Disaster Recovery Branch  
2855 West Dublin Granville Road, Columbus, OH 43235  
Phone (614) 799-3665 Fax (614) 791-0018

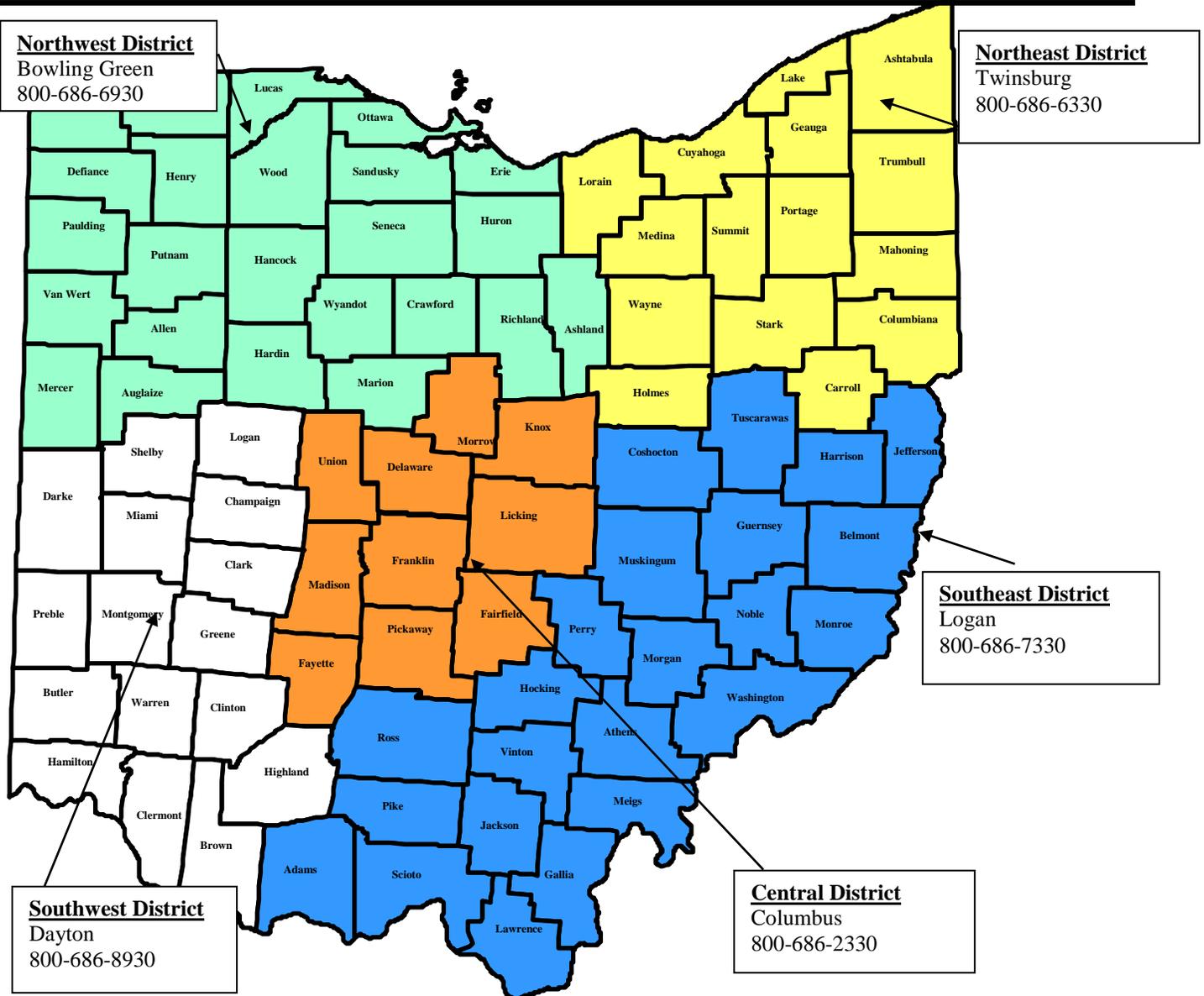
Primary responsibility is coordination of state assistance, through County Emergency Management Agency offices, to support the efforts of local officials following disasters. The Disaster Recovery Branch administers reimbursement programs for costs associated with local response/recovery actions, including debris operations.

Page 2	Contact List	Page 5	Ohio EPA Resources
Page 3	Management Options Chart	Page 6	Contracting and FEMA Eligibility
Page 4	Temporary Debris Sites		

## DEBRIS MANAGEMENT CONTACTS

### OHIO ENVIRONMENTAL PROTECTION AGENCY

Div. Materials & Waste Management (includes solid, infectious, & hazardous) (614) 644-2621  
 Public Drinking Water (614) 644-2752 Burn Permits (614) 644-2270  
 Waste Water Treatment (614) 644-2001 Chemical Spills (800) 282-9378



### ADDITIONAL CONTACTS

Local Solid Waste Mgmt District (Recycling)	See Local Listing	Ohio EMA (Response and Recovery)	(877) 644-6362
Local Department of Health	See Local Listing	Ohio Historic Preservation Off (Environmental/Historic)	(614) 298-2000
Ohio Department of Health (Private Drinking Water)	(614) 466-1390	Attorney General (Consumer Protection)	(800) 282-0515
Ohio Department of Agriculture (Dead Animals)	(614) 728-6200	Ohio Dept. Natural Resources (Recycling, Floodplain Mgmt.)	(614) 265-6565
U.S. Corp of Engineer (Regulatory-Great Lakes Division)	(513) 684-3002		

## Ohio Environmental Protection Agency – Management Options for Disaster Related Wastes

**Variances / Exemptions:** All regulated disposal facilities in Ohio have operational requirements / restrictions regarding the types and volume of waste that can be

Type of Waste	Description of Waste	Management Options
General Solid Waste (aka Municipal Solid Waste)	Food, packaging, clothing, appliances, furniture, machinery, electronic equipment, garbage, plastic, paper, bottles, cans, loose carpeting, paper products, scrap tires, street dirt, dead animals, vehicles  Sand Bag Note: Sand from sand bags used to control flooding may be emptied from the bags and reused. The empty bags, if not reused, are considered solid waste. Sand contaminated with other materials (hazardous, etc.) should be handled appropriately.	<ul style="list-style-type: none"> <li>• <b>Recycling: segregate / recycle as much as possible (preferred)</b></li> <li>• MSW Landfill Disposal</li> <li>• MSW Transfer Facility Disposal</li> <li>• Scrap Tires: licensed tire recovery / recycling facility</li> <li>• Appliances: remove refrigerants prior to disposal</li> <li>• Vehicles: auto salvage yards</li> <li>• Dead Animals: landfill, compost, burn / bury / render (per Ohio Dept. of Ag. Guidelines)</li> </ul>
Agricultural Waste & Vegetative Waste (aka Solid Waste)	Vegetative or woody waste, tree limbs, brush, shrubs (does not include buildings, other structures, dead animals, or vehicles)	<ul style="list-style-type: none"> <li>• <b>Recycling: drying, chipping, grinding for use in landscaping, mulching, and as a fuel supplement (preferred)</b></li> <li>• MSW Landfills Disposal</li> <li>• MSW Transfer Facility Disposal</li> <li>• Appropriate Composting Facilities</li> <li>• Controlled Burning – for use in declared disaster areas only; air curtain destructor use and <b>Ohio EPA approval required</b></li> </ul>
Construction & Demolition Debris (CDD)	Brick, stone, mortar, asphalt, lumber, wallboard, glass, roofing, metal, piping, fixtures, electrical wiring, heating equipment, insulation, carpeting attached to structures, railroad ties, utility poles, mobile homes	<ul style="list-style-type: none"> <li>• <b>Recycling: segregate and reuse as much materials as possible</b></li> <li>• CDD Landfill Disposal</li> <li>• MSW Landfill Disposal</li> <li>• MSW Transfer Facility Disposal</li> <li>• Mobile Homes: take to salvage company or CDD landfill</li> </ul>
Clean Hard Fill (a subset of CDD)	CDD which consists only of reinforced or non-reinforced concrete, asphalt concrete, brick, block, tile, and stone which can be reused as construction or fill material	<ul style="list-style-type: none"> <li>• Segregate and reuse materials as appropriate. Notify local health district of intent to use clean hard fill in filling operations</li> </ul>
Infectious Waste	Needles and medical related glass (“sharps”), syringes, blood containing or saturated items including tubing, clothing, bandages, etc.	<ul style="list-style-type: none"> <li>• Contact local health district or Ohio EPA District Office for guidance</li> </ul>
Hazardous Wastes & Household Hazardous Wastes	Flammable materials (fuels, gasoline, kerosene, propane tanks, oxygen bottles, etc.), explosives, batteries, common household chemicals, industrial and agricultural chemicals, cleaners, solvents, fertilizers, etc.	<ul style="list-style-type: none"> <li>• Segregate materials as practical and dispose of at an approved hazardous waste facility. Contact appropriate Ohio EPA District Office for guidance.</li> <li>• <b>Household hazardous waste</b> disposal is permitted at MSW facilities. However, <b>strongly</b> consider segregation from waste stream, where practical, and dispose of with other hazardous materials.</li> </ul>
Radiological Wastes	Nuclear medicine materials and associated patient wastes, certain monitoring equipment	<ul style="list-style-type: none"> <li>• Contact Ohio Department of Health for regulatory requirements and management options. Not regulated by Ohio EPA.</li> </ul>

accepted for disposal. During emergency events, a facility may seek authorization from the Director of Ohio EPA to temporarily accept different waste streams or an increased volume of waste. Before taking disaster-related debris to a disposal facility, please make sure that the facility is willing and properly authorized to accept the material.

**Stream Cleanup Activities:** Prior to removing debris from streams and waterways, please make sure you have the appropriate authorizations, if necessary (permits from COE and/or Ohio EPA, property owner permission, etc.). Once debris is removed from the streams / waterways segregate the debris as much as possible and manage according to the above outlined options.

# Temporary Debris Sites

## Things to Consider

- Site Ownership – Use public lands whenever possible to avoid potentially costly and complicated leasing arrangements, and to lessen potential trespassing allegations. Use privately owned land only if no public sites are available. If using private lands, be sure to obtain proper, detailed usage agreements with all parties having an ownership interest.
  
- Site Location
  - Consider impact of noise, dust, traffic
  - Consider pre-existing site conditions
  - Look for good ingress/egress at site
  - Consider paved versus unpaved areas
  - Consider potential impact on ground water
  - Determine whether any existing drains need to be sealed
  - Consider site size based on:
    - Expected volume of debris to be collected
    - Planned volume reduction and debris processing activities
  - Avoid environmentally sensitive areas, such as:
    - Wetlands
    - Rare and critical animals or plant species
    - Well fields and surface water supplies
    - Historical / archaeological sites
    - Sites near residential areas, schools, churches, hospitals, and other sensitive areas
    - Record detailed conditions of chosen site (pictures, video, etc.)
  
- Site Operations
  - Use portable containers
  - Ensure portable containers are emptied/replaced when necessary
  - Separate types of waste as operations continue
  - Monitor site at all times
  - Perform on-going volume reduction (on site or removal for disposal / reduction)
  - Provide nuisance management (dust, noise, etc.)
  - Provide vector controls (rats, insects, etc.)
  - Provide special handling for regulated hazardous materials
  - If household hazardous waste is segregated, ensure disposal options exist
  - Provide security (limit access to site)
  - Ensure appropriate equipment is available for site operations
  
- Site Closeout
  - Remove all remaining debris to authorized locations
  - Restore site to pre-use conditions
  - Record detailed conditions of site after closeout is complete (pictures, video, etc.)

## Ohio Environmental Protection Agency Resources

The following documents are available for download from the Ohio EPA Website or by contacting the appropriate Ohio EPA division.

- Ohio EPA Registered and/or Licensed Debris Disposal Facility and Company Listings - DMWM
  - Composting Facilities
  - Construction and Demolition Debris Landfills
  - Infectious Waste Transporters
  - Municipal Solid Waste Landfills
  - Municipal Solid Waste Transfer Facilities
  - Scrap Tire Storage and Disposal Facilities
  - Scrap Tire Transporters
  - Solid Waste Management District Contacts
  
- Emergency Response Contractors - DERR
- Orphan Drum Program – DERR
- Open Burning Regulations – DAPC
- Ohio EPA District Office Map and Contact Numbers (included with this fact sheet)

### **Ohio EPA Division of Materials & Waste Management (DMWM)**

[www.epa.state.oh.us/dmwm](http://www.epa.state.oh.us/dmwm)

(614) 644-2621

### **Ohio EPA Division of Emergency & Remedial Response (DERR)**

[www.epa.state.oh.us/derr](http://www.epa.state.oh.us/derr)

(614) 644-2924

### **Ohio EPA Division of Air Pollution Control**

[www.epa.state.oh.us/dapc](http://www.epa.state.oh.us/dapc)

(614) 644-2270

# CONTRACTING AND FEMA ELIGIBILITY

## GENERAL WORK ELIGIBILITY

Under a presidential disaster declaration for the state of Ohio, the Federal Emergency Management Agency (FEMA) may provide assistance to state and local governments for costs associated with debris removal operations. Debris removal operations include collection; pick up, hauling, and storage at a temporary site, segregation, reduction, and final disposal. This document provides information on the eligibility of debris removal operations for Public Assistance (PA) funding.

Determination of eligibility is a FEMA responsibility. Removal and disposal of debris that is a result of the disaster, is within a declared county and is on public property, is eligible for federal assistance. Public property includes roads and publicly-owned facilities. Removal of debris from parks and recreation areas is eligible when it affects improved facilities (i.e. trails), affects public health and safety or limits the use of those facilities.

**Debris Removal from Private Property:** Costs incurred by local governments to remove debris from private property may be reimbursed by FEMA if it is pre-approved by the Federal Disaster Recovery Manager, is a public health and safety hazard, and if the work is performed by an eligible PA applicant, such as a municipal or county government. The cost of debris removal by private individuals is not eligible under the Public Assistance Program; however, during a specific time period, a private property owner may move disaster-related debris to the curbside for pick up by an eligible PA applicant. Applicants should set the specific period of time to ensure curbside debris does not include non-event related or reconstruction debris (ineligible).

**Eligible Costs:** If an applicant uses force account (their own) personnel and equipment, the cost of the equipment and overtime costs for personnel are eligible for federal funding. If an applicant chooses to award a contract(s) for debris operations, the costs of the contracts are also eligible for federal funding, as long as the contract is reasonable.

**Documentation:** To ensure that processing of federal funding is done as quickly as possible, applicants should maintain the following information: debris estimates, procurement information (bid requests, bid tabulations, etc.), contracts, invoices, and monitoring information (load tickets, scale records, etc). If an applicant performs debris removal, the payroll and equipment hours must be kept. All records should be maintained in the manner prescribed by the local government with consideration of state and federal record retention guidelines.

## CONTRACTING FOR DEBRIS REMOVAL

### **Procurement**

- Determine the type of contracting needed to satisfy specific debris clearance, removal and disposal requirements of an unusual and compelling urgency;
- Ensure adherence to state and local procurement guidance;
- Determine if any purchasing and contracting requirements are waived as a result of the disaster and subsequent declarations of emergency (see Ohio Revised Code 125.023 and/or 44 CFR 13.36(d)(4));

- To ensure federal reimbursement, applicants should follow FEMA requirements for procurement, 44 CFR Part 13.36. FEMA requires that the procurement process allow for competition and reasonable cost. To show competition, applicants should at a minimum solicit three quotes (projects under \$100,000) or formally bid (advertise) the work. Reasonable costs are those that are fair and equitable for the type of work performed in the affected area. To show reasonable cost, the applicants should be able to document a base amount to which they compared the awarded bid;
- Solicit bids, evaluate offers, award contracts, and issue notices to proceed with all contract assignments. (See pg 8 of this document for debarred/suspended contractor information);
- Supervise the full acquisition process for service and supply contracts and the oversight of contract actions to ensure conformance to regulatory requirements;
- Coordinate with the local Department of Public Works and Department of Solid Waste Management staffs and consult with legal counsel. The contracting office must take care to avoid the solicitation of assistance from the general public and giving the impression that compensation will be provided for such assistance. In general, this would be considered as volunteer actions. In addition, there are a number of other issues involved with such a solicitation, including licensing, bonding, insurance, the potential for the communities to incur liability in the event of injury or fatality, supervision and certification of work done;
- Please see the Ohio Revised Code, Sections 125.023, 307.86.92, 153.54, 153.57, 2921.01, and 2921.42 and supplementary rules and local ordinances for additional information pertaining to competitive bidding.
- FEMA recommends use of pre-drafted contracts or pre-event contracts so long as they follow procurements requirements as outlined in 44 CFR Part 13.36 and also recommends pre-qualifying contractors to expedite the bid process.

### **Unit Price Contracts**

- Based on weights (tons) or volume (cubic yards) of debris hauled, and should be used when the scope of work is not well defined;
- They require close monitoring of pick up, hauling and dumping to ensure that quantities are accurate;
- Unit price contracts may be complicated by the need to segregate debris for disposal.

### **Lump Sum Contracts**

- Establishes the total contract price using a one-item bid from the contractor;
- Should only be used when the scope of work is clearly defined, with areas of work and quantities of material clearly identified;
- These contracts can be defined in one of two ways: Area Method where the scope of work is based on a one-time clearance of a specified area and Pass Method where the scope of work is based on a certain number of passes through a specified area, such as a given distance along a right-of-way.

### **Time and Materials Contracts (T/M)**

- This is an administratively labor intensive type of contract and should only be used if the applicant has the administrative resources to successfully accomplish and document the monitoring aspect;
- May be used for short periods of time immediately after the disaster to mobilize contractors for emergency removal efforts (generally FEMA accepts these contracts for the first 70 hours).

Applicants should move towards either Unit Price or Lump Sum contract as soon as possible after the beginning of debris removal operations;

- If T/M contracts are determined by the applicant to be the most cost-effective and well-suited to the type of work, they may be continued beyond the initial 70 hour period if the following applies:
  - A determination was made and documented that no other contract was suitable and a ceiling price was included;
  - The applicant can document monitoring of contractor activities. This includes but is not limited to monitoring load tickets or completion of daily reporting forms and requesting backup to contractor invoices (i.e. time cards, etc.).
- T/M contracts must have a dollar ceiling or a not-to-exceed limit for hours (or both), and should be terminated immediately when this limit is reached;
- The contract should (a) detail labor costs to include job classification, skill level and hourly rate, (b) the price for labor and equipment applies only when in operation, (c) cost for equipment includes fuel and maintenance, (d) the community reserves the right to terminate the contract at its convenience, and (e) the community does not guarantee a minimum number of hours.

### **Contract Monitoring**

An employee or contractor should monitor the contractor's activities to ensure satisfactory performance. Monitoring includes: verification that all debris picked up is a direct result of the disaster; measurement and inspection of trucks to ensure they are fully loaded; on-site inspection of pick up areas, debris traffic routes, temporary storage sites, and disposal areas; verification that the contractor is working in its assigned contract areas; verification that all debris reduction and disposal sites have access control and security.

**Contracting Do-Nots:** FEMA does not recommend, pre-approve, or certify any debris contractor. FEMA does not certify or credential personnel other than official employees and Technical Assistance Contract personnel assigned to the disaster by FEMA. Additionally, only FEMA has the authority to make eligibility determinations, not contractors. Finally, do not accept contractor-provided contracts without close review. FEMA /Ohio EMA can provide technical assistance on contracts and contract procedures, if requested to do so by local officials.

**Ineligible Contracts:** FEMA will not provide funding for cost-plus-percentage of cost contracts (including markups), contracts contingent upon receipt of state or federal disaster assistance funding, or contracts awarded to debarred or suspended contractors.

See [www.epls.gov](http://www.epls.gov) (federal-list) and <http://www.sos.state.oh.us/SOS/recordsindexes.aspx> (state-list) for debarred contractor information. A second site for suspended contractors is <http://www.auditor.state.oh.us/resources/findings/default.htm>.

### **ENVIRONMENTAL CONSIDERATIONS**

Federal, State and local regulations, laws and ordinances need to be addressed and followed for all environmental and historic preservation issues. Examples of how these considerations could affect reimbursement for debris removal operations:

- Executive Order 11988, Floodplain Management: Temporary storage sites should not be in the floodplain;

- Executive Order 12898, Environmental Justice: Do not purposefully choose routes to disposal sites that avoid more affluent neighborhoods over minority or low-income neighborhoods;
- Clean Water Act: Temporary storage sites not located within ¼ mile from ground or surface water supply.
- Ohio EPA: There was no burning of debris unless expressly authorized by the Director of Ohio EPA.

### **OTHER FEDERAL AGENCIES**

Debris removal on federal highways is not eligible under the FEMA Public Assistance Program except in very limited circumstances.

### **DEBRIS REMOVAL FROM WATERWAYS**

If an applicant has debris (obstructions to include sunken vessels) generated by an event within waterways, FEMA has very specific eligibility criteria. Please see FEMA policy [http://www.fema.gov/government/grant/pa/9523\\_5.shtm](http://www.fema.gov/government/grant/pa/9523_5.shtm) for additional information or contact Ohio EMA directly.

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## INSURANCE CONSIDERATIONS FOR APPLICANTS

### Overview

Insurance is an important element of the Public Assistance (PA) Program. The purpose of this Fact Sheet is to highlight for you, the Applicant, insurance considerations that will influence your PA grant.

Three key provisions in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121-5206, as amended, and 44 Code of Federal Regulations (CFR) §§206.250, 206.252, and 206.253 guide our insurance policies and procedures:

1. Disaster assistance provided by FEMA is intended to supplement financial assistance from other sources. Disaster assistance will not be provided for damage or losses covered by insurance. Insurance coverage must be subtracted from all applicable PA grants in order to avoid duplication of financial assistance. If PA funds are obligated for work that is subsequently determined to be covered by insurance, FEMA must de-obligate the funds. (Stafford Act, Sections 101(b)(4) and 312(c)).
2. The Applicant must obtain insurance on damaged insurable facilities (buildings, equipment, contents, and vehicles) as a condition of receiving PA grant funding. In addition, the Applicant must maintain insurance on those facilities in order to be eligible for PA funding in future disasters. (Stafford Act, Section 311).
3. FEMA will reduce the amount of eligible PA funding for flood losses in the Special Flood Hazard Area (SFHA) (Stafford Act, Section 406(d)). If an eligible insurable facility damaged by flooding is located in a SFHA that has been identified for more than one year by the Administrator, and the facility is not covered by flood insurance (or is underinsured) on the date of such flooding, FEMA will reduce PA funding by the maximum amount of insurance proceeds that would have been received had the buildings and contents been fully covered under a National Flood Insurance Program (NFIP) standard flood insurance policy.

## INSURANCE CONSIDERATIONS FOR APPLICANTS

### Applicant Responsibilities

You, the Applicant, should:

1. Identify all damaged facilities that were covered by insurance at the time of the disaster and the type and amount of coverage (including deductibles and policy limits) for each.
2. Identify all damaged facilities for which PA funding was received previously and for which you were required to purchase insurance. Failure to maintain the required insurance for the hazard that caused the disaster will render the facility ineligible for PA funding.
3. Provide all pertinent insurance information (policies, declarations, insuring agreements, conditions, exclusions, and "Statements of Loss") for each insured damaged facility to the State Public Assistance Officer (PAO) as soon as possible.
4. Pursue payment under your insurance policies to maximize potential benefits, thereby avoiding risk of delays or loss of Federal assistance.
5. Identify all facilities (buildings, equipment, contents, and vehicles) located in the SFHA. If an eligible insurable facility and contents damaged by flooding are located in a SFHA that has been identified for more than one year by the Administrator and the facility is not covered by flood insurance (or is underinsured) on the date of such flooding, FEMA will reduce PA funding by the maximum amount of insurance proceeds that would have been received had the facility and its contents been fully covered under a National Flood Insurance Program (NFIP) standard flood insurance policy.

### Insurance Requirements

Further, you, the Applicant:

1. Must purchase and maintain insurance coverage on facilities – buildings, equipment, contents, and vehicles - for the type of hazard that caused the damage in order to receive future PA funding. Such coverage must, at a minimum, be in the amount of the eligible project costs. FEMA will not provide assistance for that facility in future disasters if the requirement to purchase and maintain insurance is not met (44 CFR §§206.252(d), 206.253(b)(1)).
2. Must document insurance coverage by an insurance policy or binder and submit it to FEMA before project approval (44 CFR §§206.252(c), 206.253(a)).
3. Are exempt from this requirement for projects where the total eligible damage is less than \$5,000 (44 CFR §§206.252(d); 206.253(d)).

## INSURANCE CONSIDERATIONS FOR APPLICANTS

### Frequently Asked Questions (FAQs)

**1. Are there pre-disaster insurance requirements for facilities that have not had any prior disaster assistance?**

No. State and local governments, Indian Tribal governments, and private nonprofit (PNP) organizations are not required to purchase insurance prior to a disaster. Note that Stafford Act, Section 406(d) reductions will apply to the facilities located in the SFHA.

**2. If the Applicant had insurance but certain items are not covered, will the PA Program provide funding for these items?**

Any eligible work not covered by an insurance policy may qualify for a PA grant, including non-recoverable depreciation and items exceeding the policy limit, but excluding items for which there was an insurance purchase requirement.

**3. Where eligible and ineligible damage is insured in one policy, how will the insurance settlement proceeds be apportioned?**

- If the Applicant's insurance policy specifies the amount of coverage for each type of loss, the proceeds will be apportioned according to the policy limits.
- If the insurer provides a Statement of Loss that specifies the amount of proceeds per type of loss, that will be used to determine the proceeds for eligible damage.
- If the Applicant's insurance covers eligible and ineligible damage (for example, property damage and business interruption losses respectively) without specifying limits for each type of loss, the proceeds will be apportioned based on the ratio of the Applicant's eligible to ineligible damage. For example, if the Applicant's total losses are 60 percent property damage and 40 percent business interruption, then 60 percent of the insurance proceeds would be applied to offset the eligible damage, since business interruption losses are not eligible for reimbursement under the PA Program.

**4. Does the PA Program fund deductibles?**

In the first disaster, FEMA deducts the total insurance proceeds received or anticipated from the total eligible cost of the project. The remaining amount is reimbursed, which usually includes deductibles, non-recoverable costs, or uninsurable losses. However, a deductible, up to and including the amount of eligible damages incurred in a previous disaster, is **not** eligible for the same facility in a subsequent disaster of the same type. The portion of a deductible in excess of the previous disaster damages is eligible.

## INSURANCE CONSIDERATIONS FOR APPLICANTS

5. **Where the deductible covers both eligible and ineligible damage, how will the deductible be apportioned?**

Deductibles are apportioned in the same manner as insurance proceeds described in #3 above.

6. **What facilities or items require the purchase of insurance as a condition of receiving PA funding from FEMA?**

Insurance is required for damage to buildings, equipment, contents, and vehicles exceeding \$5,000.

7. **Does the post-disaster insurance purchase requirement apply to a building that is outside of the Special Flood Hazard Area and damaged by flooding?**

Yes. Prior to the approval of a PA grant, the Applicant must commit to obtain and maintain insurance to protect against future loss of a property whether the property is inside or outside the SFHA. Federal assistance will not be provided for any facility for which the Applicant has previously received Federal assistance, unless all insurance required as a condition for that assistance has been obtained and maintained.

8. **Can self-insurance be used to satisfy the insurance purchase requirement?**

Yes, however, self-insurance is an option only for States. The State must submit an established plan of self-insurance to be approved by FEMA's Assistant Administrator of the Disaster Assistance Directorate. Local and Indian Tribal governments and eligible private non-profit organizations may not satisfy the insurance purchase requirement with self-insurance. For flood disasters, State self-insurance plans must follow the standards established in 44 CFR §75.11. These standards will serve as the model for non-flood disaster self-insurance plans as well.

9. **What if the Applicant cannot obtain insurance because the facility was destroyed by the disaster?**

When a facility is damaged beyond the point of repair, and funding is needed for replacement of the damaged facility, an insurance commitment letter must be submitted by an Applicant to document the outstanding insurance requirement for the replacement facility. The Applicant must provide proof of insurance, for the rebuilt facility, to the State as soon as possible after the insurance is purchased. A project cannot be closed out without proof of purchase (either through policy or binder) of required insurance coverage (44 CFR §§206.202(b)(4), 206.253(3)(f)).

## INSURANCE CONSIDERATIONS FOR APPLICANTS

**10. Can the insurance requirements be waived?**

Yes. If the State Insurance Commissioner certifies that the type and extent of insurance required is not reasonably available, the Regional Administrator may waive the requirement in conformity with the certification. The certification will be effective until the next major disaster. An insurance waiver should:

- a. Be based on a type or class of facility or on a facility-by- facility basis prior to project approval;
- b. Include the Applicant's request for exemption, stating the reasons insurance is not reasonable;
- c. Provide information concerning the commercial availability of insurance based on types of risks, classification of facilities, extent of coverage limits, and related premium costs;
- d. Provide justification for certifying that the type and/or extent of insurance is not reasonable for the facility or facilities and hazard in question.

**11. What are the consequences of not maintaining insurance on a facility as required by the Stafford Act?**

The facility will be ineligible for Federal disaster assistance under the PA Program in future disasters.

**12. If an Applicant's insurer is insolvent and is unable to make a full settlement of claims, will the Applicant's eligible damage still be funded by FEMA?**

Yes. FEMA will fund all eligible costs minus actual or anticipated insurance recoveries. You are expected to take appropriate measures to recover payments owed by the insurer. If the insurer is determined to be legally insolvent, FEMA will consider this when determining PA funding.

**13. Is there a requirement to purchase insurance beyond the NFIP maximum?**

Yes. Regardless of the NFIP maximum policy amount (currently \$500,000), insurance is required at least up to the amount of eligible damage. Commercial flood insurance policies are readily available for this excess coverage.



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Carlos J. Castillo  
Assistant Administrator  
Disaster Assistance Directorate

5/29/08

\_\_\_\_\_  
Date





# FEMA

## RECOVERY POLICY

RP9526.1

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

II. DATE: MAR 30 2010

### III. PURPOSE:

Provide guidance on the appropriate use of hazard mitigation discretionary funding available under Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5172. This will ensure national consistency in the use of Section 406 mitigation funds and promote measures that reduce future loss to life and property, protect the federal investment in public infrastructure and ultimately, help build disaster resistant communities.

### IV. SCOPE AND AUDIENCE:

This policy applies to all disasters declared after publication of this document. It is intended to guide all personnel responsible for the administration of the FEMA Public Assistance Grant Program.

### V. AUTHORITY:

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

### VI. BACKGROUND:

A. The Robert T. Stafford Disaster Relief and Emergency Assistance Act provides FEMA the authority to fund the restoration of eligible facilities that have sustained damage due to a presidentially declared disaster. Title 44 CFR §206.226 **Restoration of damaged facilities** contains a provision for the consideration of funding additional measures that will enhance a facility's ability to resist similar damage in future events.

1. In providing discretionary authority for the addition of hazard mitigation measures to permanent work restoration, Congress recognized that during the repair of damaged components of facilities there would be a unique opportunity to prevent recurrence of similar damage from future, similar disaster events. Such measures are in addition to any



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measures undertaken to comply with applicable codes and standards, although such compliance, itself, could be considered a form of mitigation.

2. Section 406 hazard mitigation funding and Section 404 hazard mitigation funding are distinct. Section 406 is applied on the parts of the facility that were actually damaged by the disaster and the mitigation measure provides protection from subsequent events. The mitigation work must be cost effective and be reasonably performed as part of the work or measure which will reduce the potential for damage to a facility from a disaster event. Sometimes, a combination of Section 406 and 404 funding may be appropriate, where Section 406 hazard mitigation funding is used to provide protection to the parts of the facility that were damaged and Section 404 hazard mitigation funding is used to provide protection to the undamaged parts of the facility. In these instances, the application for Section 404 hazard mitigation funding must be submitted in a timely manner, consistent with State and local hazard mitigation plans, and approved by the State Hazard Mitigation Officer.

3. FEMA may provide discretionary hazard mitigation funding under Section 406 of the Stafford Act. FEMA, Grantee and subgrantee's interests in disaster resistance must be balanced with the supplemental nature of disaster assistance and FEMA's obligation for the prudent stewardship of Federal disaster funds.

4. Only FEMA is authorized to interpret and implement the Stafford Act and regulations issued pursuant to the Stafford Act. Accordingly, only FEMA has the authority to determine which hazard mitigation measures it will fund. The Stafford Act and applicable regulations do not authorize State or local building officials or agencies to determine the amount of hazard mitigation funding FEMA will contribute to a project.

### VII. POLICY:

A. Section 406 provides discretionary authority to fund mitigation measures in conjunction with the repair of the disaster-damaged facilities. These opportunities usually present themselves during the repair efforts. The mitigation measures must be related to eligible disaster-related damages and must directly reduce the potential of future, similar disaster damages to the eligible facility. Normally, this work is performed on the parts of the facility that were actually damaged by the disaster. In some instances, an eligible mitigation measure may not be an integral part of the damaged facility. FEMA will consider these exceptions on a case-by-case basis.



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B. Mitigation measures must be determined to be cost effective. Any one of the following means may be used to determine cost-effectiveness:

1. Mitigation measures may amount to up to 15% of the total eligible cost of the eligible repair work on a particular project.
2. Certain mitigation measures (see Appendix A) determined cost effective, as long as the mitigation measure does not exceed 100% of the eligible cost of the eligible repair work on the project.
3. For measures that exceed the above costs, the Grantee or subgrantee must demonstrate through an acceptable benefit/cost analysis methodology that the measure is cost effective. FEMA's Benefit Cost Analysis (BCA) software provides appropriate benefit/cost analysis methodologies. Public Assistance personnel can obtain the software from FEMA by downloading the software from <http://www.bchelpline.com>. If you need technical assistance with the FEMA BCA tools please contact the BCA helpline via e-mail ([bchelpline@dhs.gov](mailto:bchelpline@dhs.gov)) or by calling 1-866-222-3580. The benefit/cost analysis will be based on a comparison of the total project cost to the total cost of the following projected benefits: 1) damage to the facility and its damaged contents, 2) emergency protective measures required as a result of that damage, 3) temporary facilities required due to the damage, 4) loss of function, 5) casualty (loss of life and injury), and 6) cost avoidance (damages avoided in the future due to mitigation measures).

C. If a facility has Section 406 hazard mitigation funding included in the approved scope of work (SOW) and the subgrantee wishes to restore the facility to its pre-disaster condition and function without the Section 406 hazard mitigation SOW, then the subgrantee must request a change of SOW prior to completion of the project. Section 406 hazard mitigation funds must be de-obligated when the subgrantee does not use the funds as approved in the SOW.

D. FEMA must approve proposed hazard mitigation projects prior to funding. FEMA will evaluate the proposed hazard mitigation projects for cost effectiveness, technical feasibility, and compliance with statutory, regulatory and executive order requirements. In addition, FEMA will ensure that the proposed hazard mitigation projects do not cause a negative impact to the facility's operation, surrounding areas, or susceptibility to damage from another hazard.

E. The cost of meeting applicable codes/standards in accordance with 44 CFR §206.226(d) **Restoration of damaged facilities**, *Standards* and minimum National Flood Insurance Program requirements are regulatory requirements that are distinct from hazard mitigation. Funding for these costs is considered separately.



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F. When the cost of proposed replacement material for a damaged component is more than the original material, the proposed material must be shown to be cost effective.

G. There may be no duplication in hazard mitigation funding between Sections 404 and 406. Therefore, the Grantee and subgrantee must be able to identify specific hazard mitigation work that will be accomplished with funding through Section 406. Section 404 funding may not duplicate that work, although Section 404 may be additive and accomplished on Section 406 facilities. The appropriate split on a project between funds under Sections 404 and 406 is a FEMA decision. Sections 404 and 406 funding cannot be used to meet the non-federal cost share of the other grant.

H. Funds recommended for mitigation measures may be approved for an improved project if the original facility and its function will be restored and the mitigation work is still needed, is technically feasible, and will be performed as part of the overall project. Facilities eligible for replacement under 44 CFR 206.226(f) **Restoration of damaged facilities**. *Repair vs. replacement* are not eligible for mitigation measures.

1. If mitigation measures are approved for the repair of a disaster-damaged facility and the subgrantee requests an improved project which will instead involve the replacement of the facility, on the same site or an alternate site, the cost of the mitigation measures is not eligible.

2. The cost of mitigation measures approved under Section 406 for the repair of a facility may not be applied towards an Alternate Project.

**VIII. RESPONSIBLE OFFICE:** Recovery Directorate (Public Assistance Division).

**IX. SUPERSESSION:** This policy supersedes DAP9526.1, *Hazard Mitigation Funding Under Section 406 (Stafford Act)*, dated July 30, 2007, and all previous guidance on this subject.

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

  
Elizabeth A. Zimmerman  
Assistant Administrator  
Recovery Directorate



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### Appendix A

#### POTENTIAL MITIGATION MEASURES THAT ARE PRE-DETERMINED TO BE COST EFFECTIVE

The following potential mitigation measures (reference: paragraph VII.B.2) are determined to be cost-effective if they:

- do not exceed 100% of project cost,
- are appropriate to the disaster damage,
- will prevent future similar damage,
- are directly related to the eligible damaged elements,
- do not increase risks or cause adverse effects to the property or elsewhere,
- are technically feasible for the hazard and location, and
- otherwise meet requirements stipulated in this policy, including environmental, historic, and mitigation planning considerations.

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

#### A. Drainage/crossings and bridges

1. Drainage structures - When drainage structures are destroyed, replacing the structure with multiple structures or a larger structure. Sizing of replacement culverts can be made using in-place state/local drainage criteria (nomographs). However, structures need to be considered with regard to a total drainage system and should not be upgraded without a watershed hydrology study with an emphasis on downstream effects and NFIP regulations.

2. Culverts – Where the alignment of culverts is inconsistent with streams flowing through them (because it has been blown-out), realign or relocate the culverts to improve hydraulics and minimize erosion. However, realignment of structures must be considered in regard to a total drainage system and shall not be replaced without a hydrology study with an emphasis on downstream erosion effects.

3. Headwalls and wing walls - Installation to control erosion.

4. Low-water crossings – When bridges are destroyed and where traffic counts are low, replacing bridges with carefully placed low-water crossings.



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5. Gabion baskets, riprap, sheet-piling, and geotextile fabric installation - Installation to control erosion.

6. Roadways – Where roadways shoulders are damaged by overflow from adjacent water courses, stabilize shoulders and embankments with geotextile fabric.

7. Restraining cables on bridges - Installation of cables to restrain a bridge from being knocked off piers or abutments during floods or earthquakes. Also, where bridges have been damaged or destroyed when girders, beams and decking system are displaced by storm surges or earthquakes, install girder and deck uplift tie-downs to prevent their displacement from the substructure.

### **B. Sanitary and storm sewer systems**

1. Access covers - When feasible, access covers can be elevated to the hydraulic grade line. There are a number of devices that prevent infiltration into access holes.

2. Sewer lines – Repair, lining or encasement of damaged sections to prevent infiltration or structural collapse.

3. Pump stations –

a. Equipment or controls in a pump station that are subject to damage from the 100-year flood can be elevated. Pump station buildings can be dry flood-proofed.

b. Installation of camlocks, transfer switches, and electrical panels to facilitate the connection of portable emergency generators.

c. Pump stations – If pumps and their attached motors are damaged by storm water inundation, replace them with submersible or inline pumps as appropriate.

d. Pump stations – If pump station equipment is damaged as a result of inundation resulting from power failure, install switches, circuit isolation and/quick connect capability to facilitate rapid connection of backup power.



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### C. Wastewater treatment plants

1. Elevation of equipment and controls that can be elevated easily.
2. Dry or wet flood-proofing of buildings.

### D. Potable water

1. Well systems –
  - a. Reduction of infiltration and subsequent contamination of the aquifer. Methods include casing the well or raising the elevation of the well head.
  - b. Elevation of controls, mechanical equipment, or electrical service associated with use of the well to protect them from flood damage.
2. Raw water intakes - Buttressing to prevent damage from erosion, scour and flood debris.
3. Water treatment plants –
  - a. Elevation of equipment and controls that can be elevated easily.
  - b. Dry flood-proofing.

### E. Electric power distribution

1. Pad-mounted transformers - elevating above the base flood elevation.
2. Using multiple poles to support transformers.
3. Anchoring or otherwise protecting fuel tanks from movement in a disaster.
4. Replacing damaged poles with higher-rated poles, of the same or different material such as replacing wood poles with precast concrete or steel.
5. Adding guy wire or additional support to power lines.



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6. Removing large diameter lines from poles.

7. Providing looped distribution service or other redundancies in the electrical service to critical facilities.

### F. Above ground storage tanks

1. Strengthening or stiffening base connections.

2. Installation of self-initiating disconnects and shut-off valves between tanks and distribution lines to minimize damage and leaks.

**G. Underground pipelines** - Installation of shut-off valves so that damaged sections of pipeline can be isolated.

### Buildings – General:

#### A. General effects of flood damage –

1. Buildings substantially damaged under NFIP regulations - Repair, dry flood-proofing, or elevation so they are protected to meet minimum NFIP regulations. If the building is replaced, rather than repaired, minimum NFIP requirements are generally in place as codes and standards in participating communities and are applicable in both repair and replacement situations. Section 406 mitigation should be considered in those cases where the standards either fall short or provide no protection against other hazards.

2. Buildings not substantially damaged under NFIP regulations - If technically feasible, dry flood-proofing. Electrical panels, machinery rooms, emergency generators can be elevated above the BFE or dry flood-proofed. If dry flood-proofing is not feasible, these buildings should be wet flood-proofed.

**B. Roofs** - Because the failure of a roof covering can lead to extensive damage to contents and operation, damaged roofing should be evaluated to determine cause of failure.

1. Low slope roofs - Replacement of the entire roof with a roof covering with a secondary membrane and a fully adhered roof covering, such as modified bitumen. Mechanically fastened insulation or membranes are not acceptable.



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2. Roof-mounted equipment should be attached to a foundation that will resist expected wind forces.

3. Hurricane clips - Hurricane clips for use in high-wind areas.

4. Roofs – When roof damages are due to wind pressure beneath soffits and overhangs, strengthen the soffit and overhang material and means of attachment to prevent wind pressure adversely affecting the roofing system.

5. Roofs – When there is roof system damage or water intrusion due to damage to roof opening such as hatches and skylights strengthen the openings or the windows to avoid future damage.

6. Roofs – For gable roofs damaged by wind, replace the gable end-framing with hipped roof framing to reduce wind forces (lower edge pressure; reduced projected wind area) and strengthen the roof framing.

**C. Shutters** - In areas subject to hurricane winds, shutters are appropriate in the following areas:

1. All damaged windows on critical facilities such as hospitals.

2. The lower floors of buildings with damaged windows most likely to be struck by debris.

3. Damaged windows of buildings with very high value contents that can be damaged by water (such as libraries and document centers).

4. Damaged windows of buildings subject to debris from nearby ballasted roofs, metal buildings, manufactured homes or other structures likely to fail and result in debris.

**D. Anchoring** –

1. Anchoring of mechanical and electrical equipment in critical facilities.

2. For small ancillary buildings that have sustained damage and/or have caused damage to other facilities, anchor the buildings to foundations to prevent toppling or becoming missile hazards.



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**E. Flexible piping** - Installation of flexible piping at pipe/conduit connections to equipment to accommodate expected movement in an earthquake.

**F. Bracing –**

1. Bracing of large diameter pipes and electrical lines to meet seismic loads.
2. Bracing non-structural interior walls and partitions.
3. Bracing parapets, anchoring veneer or cladding, and bracing other non-structural elements that could collapse and cause injury or block safe exit of a building during an earthquake.

**G. Replacement of glass** - Replacement of glass with impact-resistant material.

**H. General Buildings –**

1. Buildings – Where spread footings have been undercut by scour, underpin footings.
2. Siding – if siding has been damaged by wind, replace with a stronger siding with stronger attachments to the wall sheathing and structure.
3. Venting – Where there has been water damage caused by water intrusion through venting systems, replace the vents with rain and water resistant vents.

**I. Doors and Windows –**

1. Where damage has resulted from wind and water intrusion around weather stripping on doors and/or windows, upgrade the weather stripping to prevent water infiltration.
2. Where damage has been caused by wind-induced failure of doors, replace the doors with stronger units. This applies to the door frame, door, hinges and lock hardware. Both entry and garage doors should be considered.



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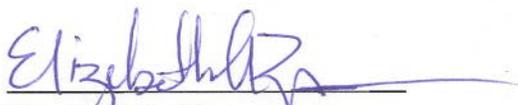
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### J. Miscellaneous Structures –

1. Marine Piers – If marine pier ramps that attach to decking have been damaged by storm-surge uplift and buoyancy, install open decking or floating decking with uplift-resistant tie-downs and fasteners.

2. Signage – If sign panels and their supports have failed, replace with a stronger type of system of supports and panels. Consider using multiple support posts and stronger panels and fasteners.

3. Gutters and Downspouts – If damaged by either wind and/or water, upgrade the gutter and downspout system to direct water away from the structure to prevent interior or basement water damage.

  
Elizabeth A. Zimmerman  
Assistant Administrator  
Recovery Directorate





THE OHIO HISTORICAL SOCIETY  
Ohio Historic Preservation Office  
*Section 106 Reviews*



## Section 106 Requirements

Properties listed in the National Register, as well as those eligible for listing, are given special consideration in the planning of federally assisted or licensed projects. [Section 106](#) of the [National Historic Preservation Act of 1966](#), the same act that established the National Register program, requires that all federally funded, permitted, or licensed projects be reviewed before work commences to determine whether they will affect historic properties. Section 106 review is a routine part of the planning process for all federally-assisted projects. It occurs regardless of whether a property is in the National Register of Historic Places or not. Reviewers use the National Register of Historic Places criteria to evaluate properties that may be affected by the federal project. The review does not guarantee that the property will not be affected or even demolished, but it does ensure that there will be an opportunity to consider the effects of the project before it occurs.

Section 106 of the National Historic Preservation Act requires federal agencies (or in the case of Community Development Block Grant funds, the local government grantee) to consider the effect of their projects on historic properties. These projects can involve full or partial federal funding, transfer of ownership, licensing, or permits. As part of the review, the agency must consult with the State Historic Preservation Office (SHPO) to get its comments on the project's effect on historic properties.

It is the responsibility of the federal agency to provide information to the State Historic Preservation Office that (1) identifies historic properties, (2) assesses their eligibility for listing in the National Register of Historic Places, and (3) determines any possible effect that a project might have on listed or eligible properties. The State Historic Preservation Office reviews the information and responds by concurring, commenting, recommending further action, or requesting additional information.

According to the regulations, the State Historic Preservation Office

has 30 calendar days from the day the information is received to respond. Each time new information is supplied, the 30 day period starts again. In order to avoid delays, submissions should be complete from the start.

The agency must provide the following information to the State Historic Preservation Office for ALL properties in the project area. The information should clearly explain what and where the project is, whether historic properties will be affected, and how that decision was made.

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**\* Identification of properties already listed in the National Register of Historic Places.** The agency should identify the National Register status of properties in the project area. Properties can be buildings, structures, objects, archaeological sites, or groups of buildings or sites. The Ohio Historic Preservation Office has a [searchable list](#) of National Register properties in Ohio.

**\* Identification of properties that are eligible for listing in the National Register of Historic Places.** The law applies to properties that are listed in or eligible for listing in the National Register of Historic Places. The agency should check local landmarks lists, existing surveys, the [Ohio Historic Inventory](#), the [Ohio Archaeological Inventory](#), and the National Register of Historic Places to see if historic properties have been identified in the project area. The agency should use the National Register criteria (explained in [National Register Bulletin 15](#), available from the [National Park Service](#) or the Ohio Historic Preservation Office) to decide whether any properties in the project area are eligible for listing in the National Register of Historic Places.

**\* Photographs keyed to a map.** Please do not submit photocopies or instant photos. The preferred format is 3"x5" color prints professionally developed or printed at high resolution. Photos should show the front, rear, and sides of the properties, the area surrounding the properties, and interiors, when part of the project. Also provide photos of the subject property taken from a sufficient distance to provide context.

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**\* Maps showing the exact location of properties and the project area.** Preferred formats are U.S. Geological Survey topographical maps or city plat maps. Maps should include a scale and be cross-referenced to the photographs. Street names should be legible. The area covered by the map should extend beyond the project in order to provide reference points and context.

**\* Information about the project.** Please include a detailed description of the project. If the project is a rehabilitation, new construction, or addition and it may affect a historic property, also submit (1) rehabilitation specifications and (2) drawings, if they are available. Product information, such as manufacturers brochures, as well as cost estimates should be provided if they are relevant.

All of this information should be submitted to:

**Mark Epstein, Department Head**  
Resource Protection and Review  
Ohio Historic Preservation Office  
567 East Hudson Street  
Columbus, OH 43211-1030

If you have questions, contact the following Resource Protection and Review staff at (614) 298-2000.

**Archaeology**  
Julie Quinlan  
David Snyder  
Nathan Young

**Architecture**  
Lisa Adkins  
Justin Cook

**Transportation Projects**  
Thomas Grooms  
Nancy Campbell

**CDBG Projects**  
William Palmer

Please visit the [Advisory Council on Historic Preservation](#) and the National Historic Preservation Act of 1966, as amended, and codified in [36 CFR Part 800](#) or for more information about Section 106

requirements, contact the [Ohio Historic Preservation Office](#) .

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# OHIO STREAM MANAGEMENT GUIDE

## “Who Owns Ohio's Streams?”

Guide No. 02

Over the years, Ohio citizens have frequently contacted the Department of Natural Resources seeking assistance in the resolution of problems they have encountered related to water resources. Many of the questions posed have concerned the authorities and duties of government, as well as the rights and responsibilities of individuals, with regard to surface water. This fact sheet poses some of the more frequently-asked questions, and provides the responses which have been passed along. It is intended to assist the lay person in understanding the basic legal concepts involved with some of Ohio's more common water rights issues. A more comprehensive analysis can be obtained through review of the references cited, which is strongly recommended. For those persons involved in water rights conflicts, this fact sheet is intended as a prelude to consultation with an attorney, not as a substitute for it.

**Who owns Ohio's streams?** Ohio's Constitution does not address this question, nor has there been a statute enacted in Ohio to address it. So the answer must be derived from the common law.

**What is “the common law”?** The common law, in this context, is the system of law initially developed in England by the higher courts and stated in the written opinions of these courts based on general customs or on reason and fixed principles of justice.<sup>1&2</sup> English common law had been adopted in the American colonies prior to the Revolutionary War, and those parts of it that were consistent with the Constitution of the United States were retained. Since then, opinions of federal and state courts in this country have modified, refined, and added to the common law of the United States and the State of Ohio.

**What if the federal or state government passes a law that contradicts the common law?** This type of law, called a statute, overrides the common law. Common law is used by the courts to interpret statutes and to determine the outcome of cases in which statutes are not controlling.

**Are there situations not addressed by the common law?** Yes, but because the common law is founded on the “laws of nature and the dictates of reason”, even in the absence of a precedent it is adapt-

able to new situations and circumstances.<sup>1&2</sup> A precedent is a past decision of a higher court (an appeals court or supreme court) which serves as an example for other courts to follow in similar cases. In situations where there is no clear precedent to follow, it is difficult to predict how the common law may be adapted or modified. Even in situations where there is a clear precedent, it still may be modified or reversed by a new court decision and a new precedent established. Significant changes to the common law, which normally are the result of Ohio or U.S. Supreme Court decisions, occur due to changing circumstances, an expanding knowledge base, and changing attitudes in society and in the courts.

**So what does the common law say about who owns Ohio's streams?** There are two components to a stream, the water flowing in it and the land beneath the water. The nature of flowing water makes it impossible for a landowner to exercise the kind of control over it that is essential for it to be considered private property. Despite a landowner's efforts to retain it, the water will inevitably seep into the ground or evaporate into the air or flow downhill onto the next property. Water is a “public good” and not ownable as private property. Landowners do have rights to make use of the water flowing through their property including the right to withdraw it and otherwise control it to the extent that nature permits, so long as the rights of others are not infringed upon.<sup>3</sup> Such rights are known as “riparian rights”, meaning they are derived through the ownership of streamside property.

As to who owns the land beneath a stream, under Ohio common law the owner of the land beside the stream also owns the land beneath it. If the land on each side is owned by two different owners, then each owns to the center of the stream unless otherwise specified by the landowners' deeds. On navigable streams there is a public right of navigation, spelled out originally in the Northwest Ordinance, which states that navigable waters shall be common highways, forever free to the people of the United States. On such streams, boaters have the right to navigate on the stream, regardless of who owns the land beside it. Because of this, some have claimed that the owners of land beside a navigable stream do not own the land beneath it. But Ohio courts have

long held that the owners of the land on the banks of a navigable stream are also owners of the beds to the middle of the stream, as in the common law.<sup>4</sup> One exception is the submerged land beneath the Ohio portion of Lake Erie, which is owned and held in trust for the public by the State of Ohio.

**Does a landowner who owns the land on both sides of a stream (and, therefore, beneath the stream as well) have the right to construct a dam across it?** There are no constitutional provisions and, in most instances, no statutes that address this type of action. Under the common law, dam construction is allowed so long as it doesn't infringe on the rights of others. If a dam is constructed so that the water retained behind it backs up onto an upstream landowner's property and causes harm, the dam owner may be held liable in court for an unreasonable interference with the flow of surface water.<sup>5</sup> If the dam curtails the flow of water downstream and prevents reasonable uses by downstream property owners, the dam owner may also be held liable in court. If the dam collapses during a normal flood and causes harm to downstream landowners, the dam owner may likewise be held liable.<sup>6</sup> On navigable streams, the construction of a dam may interfere with the public's right to navigate the stream. This could result in a court decision disallowing a dam because it is an impediment to the public's right of navigation.<sup>7</sup>

There are also both state and federal statutes which are, in some instances, relevant to construction of a dam. Depending on the size of the dam and the amount of water it would retain, it may fall under the jurisdiction of Ohio's dam safety statute which requires a construction permit from the Ohio Department of Natural Resources, Division of Water.<sup>8</sup> The purpose of the dam safety program is to require that dams are designed and constructed according to appropriate specifications to assure their structural integrity and the public safety. On a few large rivers in Ohio, construction of dams and other impediments to navigation is regulated by the U.S. Army Corps of Engineers. Impediments to navigation on these streams are generally not permitted.<sup>9</sup> Construction of a dam may also constitute placement of fill into waters of the United States, which may require a federal permit, also from the U.S. Army Corps of Engineers.<sup>10</sup> The federal and state statutes which are relevant to dam construction are outlined in Guide 06 *Permit Checklist for Stream Modification Projects*.

**Whether or not a stream is navigable seems to affect landowner rights in Ohio. What is a navigable stream and how can I find out if a particular stream is navigable?** Under Ohio common law, navigability cannot be determined by a precise formula which fits every stream under all circumstances and at all times. This means that the courts must decide the navigability of streams one at a time,

on a case-by-case basis. Factors provided as guidelines for the courts include the stream's capacity for boating in its natural condition, its capacity for boating after the making of reasonable improvements and its accessibility to public destinations.<sup>11</sup> A natural temporary obstruction to navigation, such as a logjam or sandbar, does not destroy the otherwise navigable nature of a stream.

Traditionally, a test of navigability has been whether a stream is used or could be used as a highway for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water. Recently, the definition of navigability has been broadened to include a stream's capacity for recreational navigation as well. The modern view is that navigation for pleasure and recreation is as important in the eyes of the law as navigation for commercial purposes.<sup>12</sup> At any rate, under Ohio common law it is not possible to know with certainty whether or not a specific stream is subject to the public's right of navigation until a court has made such a determination.

Navigability is also defined in different ways by several federal and state statutes based upon the regulatory jurisdictions of the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency. These definitions are relevant only within the context of the statutes in which they appear. More information about these statutes and their applicability can be found in Guide 06 *Permit Checklist for Stream Modification Projects*. Fact sheets explaining Section 404 permits and Section 401 water quality certifications are available from the Ohio Environmental Protection Agency by calling (614) 644-2001.<sup>13</sup>

**Do landowners along a stream have the right to improve drainage on their land and route the drainage outlets into the stream?** Again, there are no constitutional provisions or statutes which address this concern. Under the common law in Ohio, landowners have the right to make a reasonable use of their land, even though altering the flow of surface water may cause harm to others. Landowners incur liability only when their harmful interference with the flow of surface water is unreasonable.<sup>14</sup>

**But if the outlet is a "natural watercourse," aren't property owners allowed to discharge drainage water into it even if it does cause damage downstream?** Yes, but only if their actions are reasonable. Historically, the courts in Ohio maintained that upstream landowners could place surface water above and beyond the natural flow into natural watercourses without being liable to downstream owners.<sup>15</sup> However, more recent court decisions have applied a "reasonable use" rule instead. Under this rule, landowners are neither permitted to dispose of surface water any way they wish nor are they prohibited from interfering with the natural flow of

surface water to the detriment of others. Landowners are liable for damages caused by their interference with the natural flow of surface water only when their actions are “unreasonable”.<sup>14</sup>

**Who determines when the harmful interference with the flow of surface water is unreasonable?** The reasonability of an alteration of the flow of surface water is decided by the courts on a case-by-case basis. A landowner along a stream who believes he or she has been harmed by another streamside landowner’s actions must seek relief through court action. The court determines whether or not the harm is significant and material, whether it is unreasonable, and what the appropriate remedy should be. If the court determines that the harm is significant and material and that it is unreasonable, it may require that the action causing the harm be discontinued by granting an injunction against it. The court may also allow the action causing the harm to continue, but specify that compensation for damages be paid.

**If a drainage improvement diverts water into a stream from land that does not naturally drain into that stream, isn’t that illegal?** Not necessarily. Historically, when the courts in Ohio allowed upstream landowners to place surface water above and beyond the natural flow into natural watercourses without being liable to downstream owners, one of the conditions was that none of the additional water could come from outside the watershed.<sup>15</sup> However, since the courts have been applying the reasonable use rule, the prohibition on diversion may no longer apply.<sup>16</sup> Under the reasonable use rule, such a diversion may be allowed unless a court determines that it constitutes a harmful interference with the flow of surface water that is unreasonable.

It is important to note that a state statute overrides the common law for diversions of water out of either the Lake Erie or Ohio River Basins in quantities greater than 100,000 gallons per day. A permit from the Ohio Department of Natural Resources is required for such diversions.<sup>17</sup> And under federal statute, diversions out of the Lake Erie Basin, regardless of quantity, must have the approval of all the Great Lakes States’ Governors.<sup>18</sup>

**Who is responsible for clearing natural obstructions, such as logjams and sandbars, from streams to keep them free flowing?** It is not clear than anyone has such a responsibility. Governmental entities at the municipal, county, state, and federal levels have the statutory **authority** to undertake stream clearing and drainage improvement projects, but no governmental entity at any level has been assigned by statute the **responsibility** for such activities. The common law also does not specify that property owners must keep the streams flowing through their property clear of natural obstructions.

Natural obstructions in a stream on one property may cause harm to upstream property owners by reducing the stream’s capacity for conveying runoff, resulting in flooding or reducing the effectiveness of artificial drainage systems. If these problems were caused by a landowner’s actions, such as the construction of a dam across the stream, this harm would be actionable in court. It is unclear whether or not a landowner’s inaction in failing to remove natural obstructions from the stream is similarly actionable.

On watercourses where drainage improvements have been made under authority of County Ditch<sup>19</sup> statutes, there are requirements for maintenance that may include removal of logjams, sandbars, and other natural obstructions. A county ditch project doesn’t change a streamside landowner’s basic rights to the use of the watercourse and, in fact, improves its capacity for carrying away excess water. The county (or a joint county board for multi-county drainage projects) retains a maintenance easement along the stream, and is required by the statute to maintain the original drainage project.<sup>20</sup> Landowners pay an annual maintenance assessment for these services. There are similar maintenance provisions on streams where water management improvement projects have been undertaken by one of Ohio’s Conservancy Districts.<sup>21</sup>

Municipal governments also have the authority to undertake stream clearing and drainage improvement projects, and some cities and villages have enacted ordinances requiring that streams be maintained in their free-flowing states within the municipal boundaries.

The statutory authorities available for removing obstructions are discussed in Guide 04, *A Catalog of Contacts for Stream Topics*. The Ohio Department of Natural Resources recommends that, before an obstruction removal project is begun, consultation be made with the applicable local, state, and federal agencies listed in Guide 06, *Permit Checklist for Stream Modification Projects*. The extent of permit requirements will depend on the location and design of the particular project.

## REFERENCES:

- 1 H.C. Black, 1968, Black’s Law Dictionary, Definitions of Terms and Phrases of American and English Jurisprudence, Ancient and Modern, Revised Fourth Edition, edited by the publisher’s editorial staff, West Publishing Company, St. Paul, Minnesota.
- 2 P.B. Gove, editor in chief, 1966, Webster’s Third New International Dictionary of the English Language Unabridged, G.&C. Merriam Company, Springfield, Massachusetts.
- 3 3 Kent Comm. 439 (3d, 1836); VI-A Amer. L. of Prop. § 28.55 (1954); Cooper v. Williams, (1831), 4 Ohio St.

- 253, 287; Salem Iron Co. v. Hyland, (1906), 74 Ohio St. 160, 165. An excellent discussion on this topic and on water rights generally can be found in: Callahan, C.C. & J.R. Hanson, 1979, Principles of Water Rights Law in Ohio, 2nd edition, Ohio Department of Natural Resources, Division of Water, Columbus, Ohio. Additional information specific to water withdrawal rights can be found in: Hanson, J.R., A.F. Woldorf, & L.P. Black, 1991, Water Rights—An Overview of Ohio Water Withdrawal Law, 2nd edition, Ohio Department of Natural Resources, Division of Water, Columbus, Ohio.
- 4 Gavit v. Chambers, (1828), 3 Ohio St. 496.
- 5 Fox v. Fostoria, (1897), 14 OCC 471, rev. on other grounds, 60 Ohio St. 340; Neff v. Sullivan, 9 OD Repr. 765.
- 6 East Liverpool City Ice Company v. Mattern, (1920), 101 Ohio St. 62.
- 7 State ex rel. Brown v. Newport Concrete Company, (1975), 44 Ohio App. 2d 121.
- 8 Ohio Revised Code, § 1521.06.
- 9 Federal River and Harbor Act of 1899, Section 10.
- 10 Federal Water Pollution Control Act Amendments of 1972, Section 404.
- 11 Coleman v. Schaeffer, (1955), 163 Ohio St. 202.
- 12 Mentor Harbor Yachting Club v. Mentor Lagoons, (1959), 170 Ohio St. 193.
- 13 Section 404 Permits and Section 401 Water Quality Certifications, Ohio Environmental Protection Agency fact sheets.
- 14 McGlashan v. Spade Rockledge Corp., (1980), 62 Ohio St. 2d 55. See also: Myotte v. Mayfield, (1977), 54 Ohio App. 2d 97; Chudzinski v. Sylvania, (1976), 53 Ohio App. 2d 151; Masley v. Lorain, (1976), 48 Ohio St. 2d 334. An excellent discussion on this and related topics can be found in: Brown, L.C. and J.L. Stearns, Ohio's Drainage Laws—An Overview, Bulletin 822, OSU Extension, Columbus, Ohio.
- 15 Munn v. Horvitz, (1964), 175 Ohio St. 521.
- 16 Joseph, v. Wyss, (1991), 72 Ohio App. 3d 199.
- 17 Ohio Revised Code, §1501.32.
- 18 Federal Water Resources Development Act of 1986, Section 1109.
- 19 Ohio Revised Code, Chapters 6131, 6133, 6135, and 6137.
- 20 The maintenance requirement applies only to county ditch projects done after 1957.
- 21 Ohio Revised Code, Chapter 6101.

This Guide is one of a series of Ohio Stream Management Guides covering a variety of watershed and stream management issues and methods of addressing stream related problems. All Guides, including an **Index of Titles**, are available from the Ohio Department of Natural Resources Division of Water at:

The Ohio Department of Natural Resources  
Division of Water  
2045 Morse Road, Bldg B  
Columbus, Ohio 43229-6693

The guides are also available on-line as web pages and PDF files so you may print high quality originals at your location. You will find the guides on-line at: <http://www.dnr.state.oh.us/water/>.

For more information call the ODNR, Division of Water at 614/265-6740. Each Guide is designed to be easily and clearly reproduced and can be bound in a notebook. **Single copies are available free of charge. When distributing guides at meetings or in mailings, please use the printed editions or the PDF file as a master for reproducing the number of copies you need.**

Prepared by the Ohio Department of Natural Resources, Leonard P. Black, Division of Water, principal author. Input from staff of several ODNR divisions and other local, state and federal agencies is used in the development of the Ohio Stream Management Guides. Funding for the production of the Ohio Stream Management Guides is provided in part through a federal grant under section 319 of the Clean Water Act. This Ohio Stream Management Guide is not intended to function as advice on legal issues. Please contact an attorney if legal advice is required..

Guides are available on-line at:  
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# OHIO STREAM MANAGEMENT GUIDE

## Permit Checklist for Stream Modification Projects

Guide No. 06

This Ohio Stream Management Guide serves as a planning tool to assist you in obtaining information and the applicable permits for projects within a stream environment. Many of the requirements apply to projects proposed in wetlands, too. The size of the stream and your project design will affect your permit requirements. This checklist may not contain all of the permits necessary for your project, but will guide you in the procurement of most of the necessary permits.

The purpose of the project, a map showing the entire project and an identified contact person in your organization need to be included in your letter to the regulatory/resource agency in most cases.

### LOCAL PERMITS

**1. Special flood hazard area development permit** (contact the local governmental official designated as local floodplain administrator). Nearly 700 Ohio communities (counties, cities and villages) participate in the National Flood Insurance Program. The communities agree to review all development, structural and nonstructural, proposed in a federally identified special flood hazard area (SFHA). The SFHA is that area subject to inundation in the event of a 100-year flood. The 100-year flood has a one percent chance of occurring in any given year.

In most cases, the regulations enforced by each participating community address development in floodway and fringe locations. The floodway portion of the floodplain is the area of strongest current during a flood. **Any** proposed **action** in the **floodway** must be supported by hydrologic and hydraulic analysis to demonstrate that there will be no impact on the water surface elevations during the discharge of a 100-year flood. In fringe areas (that portion of the 100-year floodplain not identified as floodway), regulations will require development to meet certain standards to ensure its protection.

### OHIO DEPT. OF NATURAL RESOURCES (ODNR) PERMITS/REQUIREMENTS

**1. If instream blasting** is necessary, **written permission** from the Chief of the Division of Wildlife if required prior to blasting (O.R.C. 1533.58). Individuals should contact the Division of Wildlife's Environmental Section (614/265-6300).

**2. If dewatering in the project area** is anticipated during the course of project construction, and a **loss of aquatic life** is anticipated, **monetary compensation** is required for loss of those animals according to O.R.C. 1531.02. Contact the Division of Wildlife's Environmental Section (614/265-6300) for information.

**3. If dewatering** a site with a pump(s) that has the **capacity to withdraw 100,000 gallons per day** or more (70 gal./minute), a **temporary water withdrawal facility registration form** will need to be filed with the Division of Water under O.R.C. 1521.16. For more information contact the Water Resources Section of the Division of Water (614/265-6740).

**4. If spoil** from the project is placed in such a way as to **create a dike or levee** (as defined by the Division of Water), a **permit** from the Division of Water may be required (O.R.C. 1521.06). Contact the Division of Water's Water Engineering Group (614/265-6731).

**5. If the project** involves an area located near a **State Scenic River**, authorization under the **Director's Approval Authority** may be needed before project commencement according to O.R.C. 1501.17. Those areas include portions of the Maumee, Sandusky, Chagrin, Grand, Upper Cuyahoga, Stillwater, Kokosing, Olentangy, and Little Miami rivers and the Little Beaver, Greenville and Big & Little Darby creeks. Contact the Division of Natural Areas and Preserves' Scenic Rivers staff at 614/265-6453 for more information.

**6. To aid the project planning process**, submit a request to the Division of

Natural Areas and Preserves' **Natural Heritage Database** staff to locate any **endangered, threatened, or special interest species** found on or near your project site. Contact the Division of Natural Areas and Preserves' staff at 614/265-6453 for a request form.

### OTHER STATE AGENCY PERMITS/REQUIREMENTS

**1. Since the project** involves work in a stream, a **401 Water Quality Certification** from the **Ohio Environmental Protection Agency** (Ohio EPA) may be required. The U.S. Army Corps of Engineers is the lead agency for coordinating the Clean Water Act permit application process (see Federal Agency Permits, below.) However, you should contact the Ohio EPA early, during project planning. They can identify water quality factors that should be considered in project design. This early coordination generally results in a faster process once you submit a Section 404 permit application. The Ohio EPA has fact sheets available which explain the certification and permit process. Ask for the fact sheets Section 401 Water Quality Certification and Section 404 Permits. The Ohio EPA also has a series of flow charts on Section 404 Nationwide Permits which will help you know whether your project falls within certain pre-authorized permit categories or whether you must apply for an individual permit. The Division of Surface Water should be contacted for more information at 614/644-2001.

**2. If the proposed project** may **impact a public water supply through dewatering**, the Ohio EPA's Division of Drinking and Ground Waters should be contacted at 614/644-2752.

**3. The Ohio Historic Preservation Office** (OHPO), pursuant to the National Historic Preservation Act of 1966, Public Law 89-665 as amended, should be consulted on specific archaeological, prehistorical, or historical sites or structures which might be affected by the proposed project. The applicant **must consult** with the OHPO under the federal

Clean Water Act permitting process explained below. Submission of a letter to them requesting a OHPO consultation will suffice. Send correspondence to: Ohio Historic Preservation Office, Attn: Department Head, Technical & Review Services, 1982 Velma Avenue, Columbus, OH, 43211-2497, phone 614/297-2300.

## FEDERAL AGENCY PERMITS/CONSULTATIONS

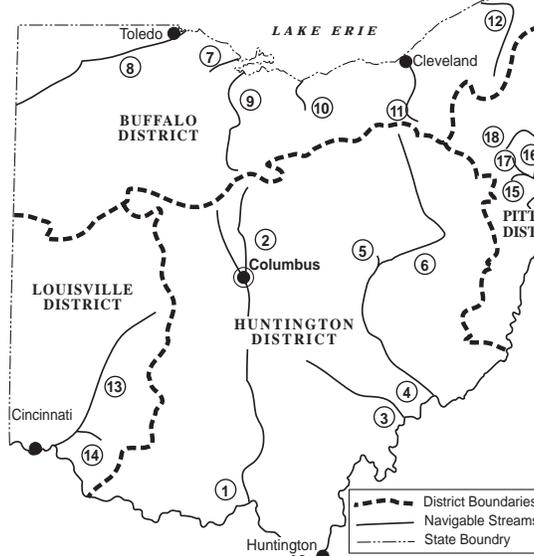
1. According to federal law, anyone who wishes to **redge or place fill in waters of the United States** must obtain a **Section 10 Permit (Rivers & Harbors Act) and/or a Section 404 Permit (Clean Water Act) from the U.S. Army Corps of Engineers (COE)**. Waters of the United States include lakes, streams and wetlands. Note: The COE cannot permit an activity until the **Section 401 Water Quality Certification** is approved by the **Ohio EPA** (see above information regarding Ohio EPA).

Items that will need to be submitted to the COE for Clean Water Act permits include a COE application, project description and project drawings (both plan and cross sectional views). If the project is likely to impact a wetland area, include a delineation (identification of wetland and other water resources in the project vicinity) and an alternatives analysis (a summary of why the project must be constructed in the proposed location and as proposed).

Four COE Districts possess jurisdiction in Ohio (depicted on the map): Buffalo (Lake Erie Basin), Pittsburgh (Mahoning River Basin), Huntington (Muskingum, Hocking & Scioto river basins) and Louisville (Little & Great Miami river basins) districts. For more information contact the district in which your project is located:

- Buffalo District COE, Attn: Regulatory Branch, 1776 Niagara St., Buffalo, NY, 14207-3199, phone 716/879-4330
- Huntington District COE, Attn: Regulatory Branch, 502 Eighth St., Huntington, WV, 25701-2070, phone 304/529-5210
- Louisville District COE, Attn: Regulatory Branch, 600 Federal Place, P.O. Box 59, Louisville, KY, 40201-0059, phone 502/582-5607
- Pittsburgh District COE, Attn: Regulatory Branch, William S. Morrhead Federal Building, 1000 Liberty Ave., Pittsburgh, PA, 15222-4186, phone 412/395-7154

## Navigable Streams Under Section 10



### HUNTINGTON DISTRICT

- 1 Scioto River
- 2 Olentangy River
- 3 Hocking River
- 4 Muskingum River
- 5 Walhinding River
- 6 Tuscarawas River

### BUFFALO DISTRICT

- 7 Portage river
- 8 Maumee River
- 9 Sandusky River
- 10 Cuyahoga River
- 11 Grand River

### LOUISVILLE DISTRICT

- 13 Little Miami River
- 14 East Fork Little Miami River

### PITTSBURG DISTRICT

- 15 Little Beaver Creek
- 16 Middle Fork Little Beaver Creek
- 17 North Fork Little Beaver Creek
- 18 Mahoning River

2. Additionally, the COE will require that an applicant **consult** with the **U.S. Fish and Wildlife Service (U.S. FWS)** regarding the **presence of federally listed threatened and endangered plants and wildlife** located in the project area (Endangered Species Act). Submission of a letter to the U.S. FWS requesting an endangered species consultation will suffice. Send correspondence to: U.S. Fish and Wildlife Service, Ecological Services, 6950-H Americana Parkway, Reynoldsburg, OH, 43068-4115, phone 614/469-6923.

Not all projects will require the same permits or same level of project documentation. By contacting agencies in the project planning stages, your time, resources and frustration can be reduced. Getting input prior to permit application can avoid costly changes required by the various agencies protecting our natural resources. Plan ahead...to avoid confusion later!

This Guide is one of a series of Ohio Stream Management Guides covering a variety of watershed and stream management issues and methods of addressing stream related problems. The overview Guides listed below, are intended to give the reader an understanding of the functions and values of streams. For more information about stream management programs, issues and methodologies, see *Guide 05 Index of Titles* or call the ODNR Division of Water at 614/265-6739. All Guides are available from the Ohio Department of Natural Resources. Single copies are available free of charge and may be reproduced.

For copies please contact:

ODNR Public Information Center  
1952 Belcher Drive Bldg. C-1  
Columbus, Ohio 43224-1386  
614/265-6605

The guides are also available on-line as web pages and PDF files so you may print high quality originals at your location. You will find the guides on-line at:

<http://www.dnr.state.oh.us/odnr/water/pubs/onlnpubs.html>

Prepared by the Ohio Department of Natural Resources, Kim Baker, Division of Real Estate and Land Management, principal author. Input from staff of several ODNR divisions, state and federal agencies are used in the development of the Ohio Stream Management Guides.

Guides are available on-line at: <http://www.dnr.state.oh.us/odnr/water/pubs/onlnpubs.html>



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## **Emergency Work and Permits**

State agencies recognize that in an emergency it may be necessary for individual landowners to clear streams of blockages and debris. Many items, such as up-rooted small trees, limbs, leaves, and debris that have formed a dam, diverted stream flow, or blocked an opening under a bridge can be removed without entering the stream.

**State Agencies and USACE should be consulted prior to the use of any mechanical equipment in a stream for a determination of permit requirements.**

- Public safety is of primary importance. When possible, landowners should seek assistance prior to removing debris.
- Machinery should not enter the stream unless access is otherwise impossible. If entering the stream is absolutely necessary, a permit must be obtained.
- Best Management Practices (BMP) to control erosion and sediment should always be employed when working near streams.
- Landowners are reminded that live vegetation on the stream bank minimizes stream bank failures and reduces erosion. Live and undisturbed vegetation should not be removed.

## **Dredging Does Not Prevent Future Flooding**

Dredging is seldom the answer to preventing future floods. Dredging can have unexpected and unfavorable effects on upstream and downstream property owners. It is important to determine

whether the actual benefits can be achieved by other means. Channel improvement projects can achieve the same goals without these negative impacts.

Dredging frequently results in the following:

- increased flooding downstream
- upstream bank erosion
- increased gravel bar formations
- stream bank erosion
- destruction of stream habitat

Dredging is also impractical in most cases, considering the amount of dredging required to achieve adequate flood prevention. For example, to lower potential flood levels by 6 inches on a 900-foot-wide flood plain, you would need to dredge an existing 30-foot-wide channel an additional 15 feet deep, and maintain it at that depth.

**If you have questions or need more information, please contact the**

Federal Emergency Management Agency:  
[www.fema.gov](http://www.fema.gov)

United States Army Corps of Engineers:  
[www.usace.army.mil](http://www.usace.army.mil)

U.S.D.A. Natural Resources Conservation Service (NRCS):  
[www.nrcs.usda.gov](http://www.nrcs.usda.gov)

*Information for Local Governments, Non-Profit Organizations, and Individuals Affected by Flooding*



## **Emergency Stream Stabilization, Restoration, or Clearance**

*Assistance is available from both State and Federal government agencies in developing and implementing plans to restore stream channels.*

*If you are considering a stream restoration or improvement project, please contact one of the listed agencies for assistance and information.*

## **Stream Restoration After Flooding**

**Stream blockages, eroded stream banks, and accumulated debris can present significant problems in the aftermath of a flood. The removal of debris and blockages from streams and any work to stabilize stream banks must be carefully planned.**

Any disturbance to the streambed or bank may require a permit from one or more state agencies, whether the work is temporary or permanent. Applications for permits to work in waterways or wetlands should be addressed to the agency with jurisdiction. In some states this is the Department of Natural Resources, in others it may have a different name. Depending on the scope of the project, a permit may also be required from the U.S. Army Corps of Engineers (USACE). State agencies work closely with the USACE and will forward the application to the USACE if additional permits are required.

All landowners are encouraged to contact the USACE or the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) for information and guidance relating to emergency stream stabilization. The following government agencies may be able to provide technical and/or financial assistance:

### **U.S. Army Corps of Engineers (USACE)**

The USACE is responsible for issuing permits for discharges of dredged or fill material into streams, including the bulldozing or leveling of streambeds or stream banks. The USACE may also provide limited cost shared assistance to local governments with minor projects to improve

and clear stream channels and provide stream bank protection to endangered roadways, bridges and public facilities, and with small flood control projects.

### **USDA Natural Resources Conservation Service (NRCS)**

Following a natural disaster, the NRCS may provide funding assistance for emergency measures to relieve imminent hazards to life and improved property. The Emergency Watershed Protection Program (EWP) may fund work for removing debris from stream channels, restoring vegetation and stabilizing banks. The measures undertaken must be environmentally and economically sound and must benefit more than one property owner.

Public and private landowners are eligible for assistance but must be sponsored by a public agency of state, county, city or township government. NRCS may bear up to 75 percent of the cost of emergency measures. The remaining 25 percent must come from the local sponsor and can be in the form of cash or in-kind services. EWP funds cannot be used to pay for incurred expenses.

### **Federal Emergency Management Agency (FEMA)**

In limited circumstances following a major disaster declaration, FEMA may be able to reimburse local governments and non-profit organizations for costs related to removing stream blockages. To be eligible for such reimbursement, the applicant must have assumed responsibility for clearing the stream. Additionally, the

blockage created by the disaster must meet the following criteria:

- pose an immediate threat to lives, public health, and safety
- pose an immediate threat of significant damage to improved property
- affect the economic recovery of the community at large.

Projects to alter a natural stream bank are generally ineligible for FEMA assistance. However, limited reimbursement may be available if the stream bank was manufactured or constructed, and has been maintained.

FEMA may reimburse applicants 75 percent of the total eligible costs of the work performed. FEMA does not reimburse applicants for the costs of dredging operations.

If a blocked stream on private property is threatening individual homeowners' property, homeowners are encouraged to contact their local government.

### **County Conservation Districts**

County Conservation Districts can provide technical assistance for erosion and sediment control planning. In addition, some Districts have the ability to issue permits on behalf of the state for certain small projects, including projects to clean channels, protect banks, and repair or replace bridges and culverts.

County Conservation Offices are generally co-located with NRCS offices.

# Executive Order 11988 -- Floodplain Management

Executive Order 11990 - Protection of Wetland (Writer's Note: this EO would be included by the Environmental office staff. Recommend linking to it from floodplain page.)

SOURCE: The provisions of Executive Order 11988 of May 24, 1977, appear at 42 FR 26971, 3 CFR, 1977 Comp., p. 117, unless otherwise noted.

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the National Flood Insurance Act of 1968, as amended (42 U.S.C. 40011 et seq.), and the Flood Disaster Protection Act of 1973 (Public Law 93-234, 87 Stat. 975), in order to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplain development wherever there is a practicable alternative, it is hereby ordered as follows:

Section 1. Each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands, and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

SEC. 2. In carrying out the activities described in Section 1 of this Order, each agency has a responsibility to evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget request reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of this Order, as follows:

1. Before taking an action, each agency shall determine whether the proposed action will occur in a floodplain--for major Federal actions significantly affecting the quality of the human environment, the evaluation required below will be included in any statement prepared under Section 102(2)(C) of the National Environmental Policy Act. This Determination shall be made according to a Department of Housing and Urban Development (HUD) floodplain map or a more detailed map of an area, if available. If such maps are not available, the agency shall make a determination of the location of the floodplain based on the best available information. The Water Resources Council shall issue guidance on this information not later than October 1, 1977.

2. If an agency has determined to, or proposes to, conduct, support, or allow an action to be located in a floodplain, the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplains. If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in this Order requires

sitting in a floodplain, the agency shall, prior to taking action, (i) design or modify its action in order to minimize potential harm to or within the floodplain, consistent with regulations issued in accord with Section 2(d) of this Order, and (ii) prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

3. For programs subject to the Office of Management and Budget Circular A-95, the agency shall send the notice, not to exceed three pages in length including a location map, to the state and areawide A-95 clearinghouses for the geographic areas affected. The notice shall include (i) the reasons why the action is proposed to be located in a floodplain; (ii) a statement indicating whether the action conforms to applicable state or local floodplain protection standards and (iii) a list of the alternatives considered. Agencies shall endeavor to allow a brief comment period prior to taking any action.

4. Each agency shall also provide opportunity for early public review of any plans or proposals for actions in floodplains, in accordance with Section 2(b) of Executive Order No. 11514, as amended, including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969, as amended.

b. Any requests for new authorization or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in a floodplain, whether the proposed action is in accord with this Order.

c. Each agency shall take floodplain management into account when formulating or evaluating any water and land use plans and shall require land and water resources use appropriate to the degree of hazard involved. Agencies shall include adequate provision for the evaluation and consideration of flood hazards in the regulations and operating procedures for the licenses, permits, loan or grants-in-aid programs that they administer. Agencies shall also encourage and provide appropriate guidance to applicants to evaluate the effects of their proposals in floodplains prior to submitting applications for Federal licenses, permits, loans or grants.

d. As allowed by law, each agency shall issue or amend existing regulation and procedures within one year to comply with this Order. These procedures shall incorporate the Unified National Program for Floodplain Management of the Water Resources Council, and shall explain the means that the agency will employ to pursue the nonhazardous use of riverine, coastal and other floodplains in connection with the activities under its authority. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order. Agencies shall prepare their procedures in consultation with the Water Resources Council, the Director of the Federal Emergency Management Agency, and the Council on Environmental Quality, and shall update such procedures as necessary.

[Sec. 2 amended by EO 12148 of July 20, 1979, 44 FR 43239, 3 CFR, 1979 Comp., p. 412]

SEC. 3. In addition to the requirements of Section 2, agencies with responsibilities for Federal real property and facilities shall take the following measures:

a. The regulations and procedures established under Section 2(d) of this Order shall, at a minimum, require the construction of Federal structures and facilities to be in accordance with the standards and criteria and to be consistent with the intent of those promulgated under the National Flood Insurance Program. They shall deviate only to the extent that the standards of the Flood Insurance Program are demonstrably inappropriate for a given type of structure or facility.

b. If, after compliance with the requirements of this Order, new construction of structures or facilities are to be located in a floodplain, accepted floodproofing and other flood protection measures shall be applied to new construction or rehabilitation. To achieve flood protection, agencies shall, wherever practicable, elevate structures above the base flood level rather than filling in land.

c. If property used by the general public has suffered flood damage or is located in an identified flood hazard area, the responsible agency shall provide on structures, and other places where appropriate, conspicuous delineation of past and probable flood height in order to enhance public awareness of a knowledge about flood hazards.

d. When property in floodplains is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, the Federal agency shall (1) reference in the conveyance those uses that are restricted under identified Federal, State or local floodplain regulations; and (2) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successors, except where prohibited by law; or (3) withhold such properties from conveyance.

SEC. 4. In addition to any responsibilities under this Order and Sections 202 and 205 of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4106 and 4128), agencies which guarantee, approve, regulate, or insure any financial transaction which is related to an area located in a floodplain shall, prior to completing action on such transaction, inform any private parties participating in the transaction of the hazards of locating structures in the floodplain.

SEC. 5. The head of each agency shall submit a report to the Council on Environmental Quality and to the Water Resources Council on June 30, 1978, regarding the status of their procedures and the impact of this Order on the agency's operations. Thereafter, the Water Resources Council shall periodically evaluate agency procedures and their effectiveness.

SEC. 6. As used in this Order:

a. The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting floodplains.

b. The term "base flood" shall mean that flood which has a one percent or greater chance of occurrence in any given year.

c. The term "floodplain" shall mean the lowland and relative-ly flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year.

SEC. 7. Executive Order No. 11296 of August 10, 1966, is hereby revoked. All actions, procedures, and issuances taken under that Order and still in effect shall remain in effect until modified by appropriate authority under the terms of this Order.

SEC. 8. Nothing in this Order shall apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to section 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

SEC. 9. To the extent the provisions of section 2(a) of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640), 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, as amended.

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Federal Emergency Management Agency  
U.S. Department of Homeland Security  
500 C Street SW, Washington, D.C. 20472  
(202) 646-2500

# Executive Order 11990, Protection of Wetlands, 1977

## Useful Links

- [US Fish and Wildlife Service National Wetlands Inventory](#)
- [44 CFR Part 9](#)

## Description And Intent

The purpose of Executive Order 11990 is to "minimize the destruction, loss or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands". To meet these objectives, the Order requires federal agencies, in planning their actions, to consider alternatives to wetland sites and limit potential damage if an activity affecting a wetland cannot be avoided. The Order applies to:

- Acquisition, management, and disposition of Federal lands and facilities construction and improvement projects which are undertaken, financed or assisted by federal agencies;
- Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulation, and licensing activities.

## Administering Agency

Each federal agency is responsible for preparing implementing procedures for carrying out the provisions of the Order.

## Implementing Procedures

FEMA's Regulations at 44 CFR Part 9: Floodplain Management and Protection of Wetlands.

## Summary Of Requirements

The procedures require the determination of whether or not the proposed project will be in or will affect wetlands. If so, a wetlands assessment must be prepared that describes the alternatives considered. The procedures include a requirement for public review of assessments. The evaluation process follows the same 8 steps as for EO 11988, Floodplain Management.

## Suggested Information to Aid in Project Review

- Detailed maps (e.g., USACE, USFWS National Wetlands Inventory Maps, etc.) defining wetland boundaries within the project area.
- Studies and reports (e.g., wetland survey maps and reports, flood elevations and velocities, etc.) documenting the project scope as related to the occupancy and modification of wetlands including direct and indirect effects.

- Documentation of compliance and consistency with federal, state, tribal, county and local floodplain management programs and plans.
- Documentation of any Public Notices or public meetings.
- Documentation of coordination with other agencies (e.g., USACE, NRCS, NFIP, State and Local Floodplain Managers, etc.) including studies and reports and recommendations.

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500 C Street SW, Washington, D.C. 20472  
(202) 646-2500



(800) 621-FEMA / TTY (800) 462-7585

[3 Step Guide for Assistance](#)





# **FUNDING**

## ***SHOW ME THE MONEY***

Remember that no funding can be released by the State until you have designated your Authorized Agent and submitted a W-9 and DUNS number (see Applying for Assistance tab). To designate your Authorized Agent, you need to submit a letter of appointment or resolution and that designated individual completes and signs the State/Local Agreement. These two documents as well as the W-9 and DUNS number will facilitate payment.



Funding for Project Worksheets is provided based on type, either small or large project. The breakdown of the cost share regardless of the type of PW is federal share (75%) and the non-federal share.

## ***HOW ARE SMALL PROJECT FUNDED?***

The federal share of small projects is paid once the PWs are approved and funding obligated by FEMA. The non-federal share (should the state participate in the non-federal share) of small project PWs is paid once all of these projects are complete. Any contribution to the non-federal share is based on your claimed costs up to the approved amount. For example, if you receive a grant for \$50,000 and spend \$40,000, the non-federal share will be based on the expenditures of \$40,000. If you exceed the grant award, the non-federal share will be based on the grant award of \$50,000.

## ***HOW ARE LARGE PROJECTS FUNDED?***

Funding for large projects is based on requests for advance of funds. These requests should be based on bills you have in hand or bills you expect to receive within 30 days of your request. The federal share of advances is based on 75% of the eligible federal share. For example, if you have a large project estimated for \$60,000, the federal share is \$45,000. The maximum allowable for advancement is 75% of the federal share or \$33,750.

Once all work for the large project is complete, you need to contact the Public Assistance office to schedule a final inspection. Once a final inspection is completed and all costs are documented, the State forwards a Large Project Final Inspection Report to FEMA for approval. Once FEMA makes a final determination of eligible costs, the balance of the federal share and the entire non-federal share will be paid.

If a large project was 100% complete at inspection, the federal share and applicable non-federal share will be paid automatically upon FEMA's approval of the PW.

## ***HOW DO I HANDLE MY PUBLIC ASSISTANCE FUNDS?***

Each applicant must create a FEMA fund within your books (see State Auditor's Bulletin 1998-013 included at the end of this tab). Even if your funding is strictly reimbursement (all work

100% complete when PWs are written), you must “deposit” your federal monies into a FEMA fund. This requirement is such for several reasons:

- You should be paying bills or reimbursing funds where expenses were already paid, only 75% from the federal funds. For example, if you have a bill for a PW that is for \$1,000, you should pay this bill 75% (\$750) from the FEMA fund and 25% (\$250) from your own funds. Should the state participate in the non-federal share, this will be reimbursed to eligible subgrantees when all small projects are completed or upon receipt of the final approved amount for large projects.
- Creating a FEMA fund makes it easier to account for expenditure of your federal funds for Single Audit Act Requirements. Audit requirements will be further discussed in the Project Completion tab.

Additional questions or guidance regarding handling of the federal share of your PA Grant should be directed to the State Auditor’s Office at (800) 345-2519 or to your District Auditor.

Grant related management costs (see Program Management tab) are also federal funds and should be placed in the FEMA fund. If applicable, the state’s portion of the non-federal share does not need to be “deposited” into the FEMA fund. This is reimbursement and can go back to the funds from which you paid your bills.

### ***WHAT IF I HAVE A BALANCE REMAINING IN MY FEMA FUNDS AFTER COMPLETION OF ALL ELIGIBLE WORK?***

FEMA does not require applicants to return unused federal funds for small projects, as long as the required scope of work was completed for each PW. You may utilize these unspent funds towards the community good, i.e., road maintenance, purchasing of road equipment, stock piling materials, etc., or deposit in a general fund. You should track expenditure of these funds for audit purposes. You may not use these funds to offset any part of your non-federal share.

If you have two approved PWs and the first one is completed lower than estimated, you should not spend those unspent federal funds until all PWs are complete. If you would expend these funds on another non-disaster related project and then have an overrun on your other eligible PW, you would have a federally funded shortfall for that last PW.

### ***INTEREST EARNED ON ADVANCES***

For State and local governments, any interest earned on advances that exceed \$100 per year must be returned to FEMA (see 44 CFR Part 13.21 (i)). If you need to return interest earned, please contact the State PA office for procedures.

If you are an institution of higher education, hospital or private non-profit organization, you shall maintain advances of Federal funds in interest bearing accounts, unless paragraphs the following applies (see 2 CFR 215.22 (k) and (l)):

- (1) You receive less than \$120,000 in Federal awards per year;
- (2) The best reasonably available interest bearing account would not be expected to earn interest in excess of \$250 per year on Federal cash balances;
- (3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

Any interest earned in excess of \$250 annually will have to be returned to the Department of Health and Human Services. If you need to return interest earned, please contact the State PA office for procedures.

### ***ATTACHMENTS***

- Auditor of State Bulletin 98-013, Accounting for FEMA Grants

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AUDITOR OF STATE BULLETIN 98-013  
DECEMBER 16, 1998

TO: All City Auditors, Finance Directors and Treasurers  
All Village Clerks and Treasurers  
All Township Clerks  
All County Auditors  
All IPAs

SUBJECT: Accounting for FEMA grants

This office has been receiving numerous questions about the proper accounting treatment for grants received from the Federal Emergency Management Agency. The following are some general guidelines for handling FEMA money:

A. When no work has been completed at the time a check is received, your entity must:

- 1) Place all funds into a special FEMA fund,
- 2) Pay bills directly from the FEMA fund keeping in mind that the FEMA fund pays the federal share of each Damage Survey Report (DSR), that is 75% (federal) of the 100% total. The remaining 25% state/local match of any bills may be paid out of the general fund or other non-federal fund that permits expenditures for this purpose. When the state share is received, the state money may be receipted directly into the fund(s) from which the original payment(s) were made. As an alternative, if you wish to keep all expenditures related to the project in one fund, money may be advanced to the FEMA fund and repaid when the state share is received. The Auditor of State recommends that all project expenditures be maintained in one fund.

B. When a portion or all of the work has been completed and paid for at the time the FEMA money is received, your entity must:

- 1) Place all funds into a special FEMA fund,
- 2) For work completed and paid for, reimburse the fund(s) used to pay for the goods and/or services (before the FEMA money was received). One way to repay the fund is to reduce the expenditure in the fund making the original payment and to record the expenditure in the FEMA fund. A second method is to have advanced money to the FEMA fund in anticipation of the receipt of the grant. Repay the advance once the FEMA money is received. A third approach is to transfer the FEMA money from the FEMA fund to the fund that made the original payments.

A final alternative to repay from the FEMA fund is to create a bill from the fund that

made the original payment to the FEMA fund. The bill should identify the invoice(s) that were previously paid and show the portion(s) that are being charged to the FEMA fund. This method is most useful when the original expenditures were made in one year and receipt of the FEMA money didn't occur until the following year.

- 3) For Townships and Villages on the UAN system, the system will permit any of these procedures. Please call 1-800-833-8261 for any information on how to properly handle these types of transactions on the UAN system.

Other governments that have questions about accounting or interfund transactions may call 1-800-345-2519.

- 4) For any work not completed at the time FEMA money is received, please follow the instruction(s) shown under A.
- 5) Again, please keep in mind that the Federal FEMA money is to pay 75% federal match with the remaining 25% being paid from the state/local matching funds.

Please note that it is not necessary to create a FEMA fund for each Damage Survey Report. You need only create this fund for the entire grant. Appropriate fund numbers are as follows:

Villages	Alpha-Numeric	Numeric
Special Revenue Fund	B5 or B16	2901-2999
Capital Projects Fund	D2	4901-4999
Townships	Alpha-Numeric	Numeric
Special Revenue Fund	14	2901-2999
Capital Projects Fund	14	4901-4999

Cities and counties receiving FEMA grants should establish separate funds within their chart of accounts.

No additional Auditor of State approval is necessary to establish the FEMA funds; only a resolution of the legislative authority is needed.

The classification of the fund as special revenue or capital projects will depend on the nature of the expenditures that will be made. If the expenditures are mostly for salaries or repairs, special revenue would be appropriate. If the expenditures are for replacing fixed assets, then classify the fund as capital projects. If expenditures will be a mixture of the two, select the fund type that reflects the majority of the expenditures.

For all FEMA money, the correct receipt code to use is one which identifies the money as coming from the federal government.

UAN villages will use receipt code 411 - Federal Restricted. Non-UAN villages will use receipt code

D-141 - Federal Receipts. UAN Townships will use receipt code 511 - Federal Receipts. Non-UAN townships will use receipt code 14-C - Other Receipts.

Questions concerning this Bulletin should be addressed to the Local Government Services Division of the State Auditor's Office at (800) 345-2519.



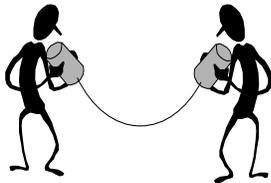
# **PROJECT DOCUMENTATION**

This is one of the most important sections of your Public Assistance Applicant's Handbook. Without proper documentation of disaster related costs, all of your good efforts to assist your community in recovering from a disaster can be derailed.



**Record keeping should begin as soon as possible.** If pre-disaster emergency measures are taken, start keeping records at that time. If not, begin with the onset of a disaster. Only by keeping accurate records from the beginning of an event, will your community be able to obtain all federal/state funding for which it is eligible. Establishing a good record keeping system provides an audit trail of expenditures and provides the bookkeeper with the needed tools to properly and quickly document costs.

## ***HOW SHOULD I DOCUMENT WORK AS IT IS COMPLETED?***



First, the person responsible for tracking costs by PW and the individuals performing work in the field should become very familiar with the scope of work approved in the PW. This includes the type and amount of work to be completed. Variations from this approved scope may not be eligible or may constitute improved or alternate projects (see Project Formulation tab) and will require approval from the State or FEMA before work can be completed.

Tracking of disaster related costs must be done by PW and by site if there are multiple sites within one PW. In order to efficiently and properly track these costs, work done in the field should be marked with the PW number and given to the bookkeeper on a daily basis.

The record keeping discussed here is offered as a suggestion and is presented to give an idea of the kinds of records that are required during disaster recovery. If you have a better record keeping system or prefer to use your own system, then please proceed with this system, ensuring that costs are tracked by PW. In order to be eligible, records must apply to and be identifiable as within the scope of work of a particular PW.

## ***WHAT FORMS SHOULD I USE TO DOCUMENT COSTS?***

FEMA has created Summary Forms for you to use to document use of your own labor, equipment and materials (Force Account) and also for use of rented equipment and contractual services. Blank forms are included in at the end of this tab and directions for these forms are below. FEMA will provide you with an electronic version of the forms or they can be found at Ohio EMA's website. Again, if you already have a system of reporting costs that encompasses all items on these forms, you do not need to transfer information to the FEMA forms.

Also included at end of this tab is the FEMA Schedule of Equipment Rates which is utilized to assign hourly rates to your own equipment. The hourly rate includes maintenance of your vehicles and fuel usage, etc. Therefore, you do not need to claim these types of costs. The only eligible repair to vehicles is if they were damaged by the flood or damaged during rescue operations.

## ***WHAT DO I DOCUMENT?***

Short answer, everything you do. Documentation depends on how the work is performed not necessarily by the work being performed. For example, if you have a PW to remove debris from a temporary storage site to a landfill and a PW for a bridge replacement and both will be completed using contractual services, then your documentation is basically the same for each project. You will want to create a file for each PW and should include at a minimum, the following:

- Copy of the Project Worksheet;
- All support documentation for work completed using force account, rented equipment and/or contractual services;
- All documentation pertaining to Special Considerations and permitting.

Below is an explanation of what should be maintained for support documentation depending on **how** the work is completed. Included in this tab is a Documentation Checklist that guides you on documentation requirements depending on how the work is completed.

### Force Account Labor

- Document hours and dates worked, employee names and titles and fringe benefits. Support documentation includes:
  - Time sheets or payroll generated reports
  - Description and location of work performed
  - Overtime/Comp time/Holiday pay policies

### Force Account Equipment

- Document hours and dates worked and operator names. Support documentation includes:
  - Vehicle usage logs
- Use local or FEMA rates, whichever is lower. FEMA rates include fuel, maintenance, etc.
- In most instances, equipment hours should not exceed labor hours

### Force Account Materials

- Document materials used/purchased. Support documentation includes:
  - From stock, invoice or historical record to support the claimed cost
  - If purchased, invoice and proof of payment
- Materials include road materials, barricades, salt, meals, hotels, lost contents/furnishings, gloves, etc.
- Salvage value must be deducted

### Rented Equipment

- Document hours and dates used; if rented weekly or monthly, FEMA will pro-rate hourly rate based on actual usage and total cost. Supporting documentation includes:
  - Invoices and proof payment
  - Rental agreement
  - Fuel costs
- If equipment was rented without an operator, include your operator hours with force account labor costs

### Contractual Services

- Document procurement process and payments. Supporting documentation includes:
  - Cost or price analysis completed prior to procurement process
  - History of procurement: Document the method used and the process used to select the contractor (see Contracting tab for additional information)
  - Copy of contractor proposal(s): Bid tabulation or estimates
  - Awarding the contract: Resolution or meeting minutes
  - Copy of signed contract
  - Copy of invoices
    - Proof of payment: Canceled check or purchase order
- If Time and Materials or Time and Equipment contract, proof of monitoring and source documentation for contractor's invoices. Source documentation includes time cards, lodging and meal receipts, printing receipts, etc.

Below is an explanation of what should be maintained for support documentation depending on the *type* of work being completed:

### Direct administrative and Management Costs

- These are costs related to your administration of the grant. Grant administration can be accomplished through force account or by contract.
- See Program Management tab for information on eligibility and how to claim these costs

### Donated Resources

- Track donated resources /registered volunteers performing emergency work
- Documentation must include names, record of hours and dates worked, the work site and a description of work for each volunteer and the equivalent information for donated equipment and materials
- FEMA will write a PW based on a calculation of your total Category A and B PWs to offset local share

### Mutual Aid

- In a timely manner, Providing Entities should invoice or bill the Requesting Entity as outlined in the Mutual Aid Agreement. The Requesting Entity will submit requests for reimbursement to FEMA. The Providing Entity may utilize the FEMA Summary Forms to submit their costs to the Requesting Entity
- FEMA will need to see the pre-event written mutual aid agreement
- Written, post event mutual aid agreements may be considered by FEMA

#### 406 Mitigation

- Document approved mitigation the same as the rest of the Project Worksheet but keep the costs separate from the remaining scope of work

#### Engineering and Design (Permanent Categories)

- This includes preliminary engineering analysis, preliminary design, final design, construction inspection and basic construction management
- Documentation depends on whether services are provided by force account or contract
- If not done by force account, typically done with a time and materials contract (T/M) or cost plus contract. T/M contracts have a heavy administrative burden (see Contracting tab) and cost plus are not eligible.

#### Other

- Facility maintenance records and/or inspection/safety reports are required for roads, bridges and other facilities requiring maintenance to ensure proper function or that capacity has been maintained
- Documentation for facilities rented or leased should include a copy of the rental/lease agreement
- If a code upgrade is triggered by the repair/replacement, codes and standards should be documented
- Engineering and technical reports that were considered in eligibility determinations

### ***WHAT DOCUMENTATION DO I SUBMIT?***

If work is complete at inspection, FEMA may not require you to submit all support documentation (time cards, material invoices, etc.) but should view a sample. However, you should maintain this documentation with your files.

If work is not complete at inspection, you should maintain all support documentation until our office requests it.

## Cost Summary Record Instructions

This form summarizes all other forms utilized to claim the costs related to the PW:

Complete the Record as follows:

- Heading:
  - **Applicant Name:** Enter your organization's name
  - **PW Ref No:** Number assigned by FEMA for the PW once it is written
  - **Category:** Category of work for the PW
  - **FIPS #:** Number assigned by FEMA when you apply for the grant
  - **Disaster Number:** Number assigned by FEMA to identify the disaster
- **Force Account Labor (Regular time):** Claimed costs and any comments
- **Force Account Labor (Overtime):** Claimed costs and any comments
- **Force Account Equipment:** Claimed costs and any comments
- **Materials:** Claimed costs and any comments
- **Rental Equipment:** Claimed costs and any comments
- **Contracts:** Claimed costs and any comments
- **Total:** Total of all claimed costs
- **Signature, Title and Date**

## Force Account Labor Summary Record Instructions

Force account is the term to refer to your own personnel and equipment. Keep the following points in mind when compiling force account labor information:

- Record regular and overtime hours separately.
- Record the benefits separately for regular and overtime hours. Most overtime hours include fewer benefits than regular hours.
- Attach a Fringe Benefits Rate Sheet giving a breakdown of what is included in your benefits, by percentages, i.e., social security-15.2%, worker's compensation-4.3%, insurance-18.5%, etc. You can use an average rate if you have different benefit rates for different employees.

Complete the Record as follows:

- **Heading:**
  - **Applicant Name:** Enter your organization's name
  - **PW Ref No:** Number assigned by FEMA for the PW once it is written
  - **Category:** Category of work for the PW
  - **FIPS #:** Number assigned by FEMA when you apply for the grant
  - **Disaster Number:** Number assigned by FEMA to identify the disaster
- **Employee Name:** Enter the names of each employee who worked on the project (please remember to include trustees, if applicable, even though reimbursement of their hourly rate is not eligible).
- **Title/Occupation:** Enter the title or occupation of each employee who worked on the project.
- **REG:** Enter the regular hours that each employee worked on the project.
- **OT:** Enter the overtime hours that each employee worked on the project. **REMINDER: Only overtime is eligible for reimbursement for emergency work. Record both regular and overtime hours, so that personnel hours can be compared with equipment use hours, if necessary.**
- **Total HR:** Total the hours for each employee and enter the result in this block.
- **Rate/Hr:** Enter each employee's hourly rate.
- **Benefits/Hr:** Enter each employees hourly benefit rate. There should be different percentages for benefits pertaining to regular and overtime wages.
- **Total Rate/Hr:** Add the employee's hourly rate in the Rate/Hr block and the hourly benefits rate in the Benefits/Hr block and enter the result here.
- **Total Cost:** Multiply the entries in the Total Hr and Total Rate/Hr blocks and enter the result here.
- **Total Cost for Force Account Labor Regular Time:** Add the entries in the Total Cost, REG block for each employee and enter the results here.
- **Total Cost for Force Account Labor Overtime:** Add the entries in the Total Cost, OT block for each employee and enter the results here.
- **Signature, Title and Date**

## Fringe Benefit Rate Sheet Instructions

Fringe benefits for force account labor is eligible. Except in extremely unusual cases, fringe benefits for overtime will be significantly less than regular time.

The following steps will assist you in calculating the percentage of fringe benefits paid on an employee's salary. Note items and percentages will vary from one entity to another.

1. The normal year consists of 2080 hours (52 weeks x 5 workdays/week x 8 hours/day). This does not include holidays and vacations.
2. Determine the employee's basic hourly pay rate (annual salary/2080 hours).
3. Fringe benefit percentage for vacation time: Divide the number of hours of annual vacation time provided to the employee by 2080 (80 hours (2 weeks)/2080 = 3.85%).
4. Fringe benefit percentage for paid holidays: Divide the number of paid holiday hours by 2080 (64 hours (8 holidays)/2080 = 3.07%).
5. Retirement pay: Because this measure varies widely, use only the percentage of salary matched by the employer.
6. Social Security and Unemployment Insurance: Both are standard percentages of salary.
7. Insurance: this benefit varies by employee. Divide the amount paid by the local government by the basic pay rate determined in Step 2.
8. Worker's Compensation: this benefit also varies by employee. Divide the amount paid by the local government by the basic pay rate determined in Step 2. Use the rate per \$100 to determine the correct percentage.

**Note:** Typically, you should not be charging the same rate for regular time and overtime. Generally, only FICA (Social Security) is eligible for overtime; however, some entities may charge retirement tax on all income.

### Sample Rates

Although some rates may differ greatly between organizations due to their particular experiences, the table below provides some general guidelines that can be used as a reasonableness test to review submitted claims. These rates are based on experience in developing fringe rates for several state departments, the default rate is that used for the state of Florida, following Hurricane Andrew (August 1992) and the review of several FEMA claims. The rates presented are determined using the gross wage method applicable to the personnel hourly rate (PHR) method. The net available hours method would result in higher rates.

#### **Paid Fringe Benefits**

HCA Matching	7.65%	(or slightly less)
Retirement – Regular	17.00%	(or less)
Retirement – Special Risk	25.00%	(or slightly more)
Health Insurance	12.00%	(or less)
Life and Disability Insurance	1.00%	(or less)
Worker's Compensation	3.00%	(or less)
Unemployment Insurance	0.25%	(or less)

#### **Leave Fringe Benefits**

Accrued Annual Leave	7.00%	(or less)
Sick Leave	4.00%	(or less)
Administrative Leave	0.50%	(or less)
Holiday Leave	4.00%	(or less)
Compensatory Leave	2.00%	(or less)

Rates outside of these ranges are possible, but should be justified during the validation process.

## Force Account Equipment Summary Record Instructions

Complete the record as follows:

- **Heading:**
  - **Applicant Name:** Enter your organization's name
  - **PW Ref No:** Number assigned by FEMA for the PW once it is written
  - **Category:** Category of work for the PW
  - **FIPS #:** Number assigned by FEMA when you apply for the grant
  - **Disaster Number:** Number assigned by FEMA to identify the disaster
- **Equipment Description:** Enter a brief description of the equipment, including the rated horsepower or capacity of the equipment. Be sure to include this information if you also use a trade name or common name to describe the equipment, i.e. Ditch Witch.
- **FEMA Code:** Enter the FEMA cost code for the equipment from the Schedule of Equipment Rates.
- **Operator:** Enter the equipment operator's name.
- **Dates/Hours Used:** Enter the dates and hours the equipment was used on the project.
- **Total:** Enter total hours used
- **Cost/Hour:** Enter the hourly cost to use the equipment.
- **Total Cost:** Multiply the number of Hours Used block by the number in the Cost/Hour block and enter the result here.
- **Total Cost for Force Account Equipment:** Add the numbers in the Total Cost blocks and enter the result here.

## Material Record Summary Instructions

Complete the record as follows:

- **Heading:**
  - **Applicant Name:** Enter your organization's name
  - **PW Ref No:** Number assigned by FEMA for the PW once it is written
  - **Category:** Category of work for the PW
  - **FIPS #:** Number assigned by FEMA when you apply for the grant
  - **Disaster Number:** Number assigned by FEMA to identify the disaster
- **Vendor:** Enter the name of the supplier if the material was bought specifically as a result of the disaster.
- **Description:** Enter a brief description of the supplies or materials used or purchased.
- **Total Invoice Amount:** Enter the total cost listed on the invoice.
- **Total Claim Amount:** If different from the invoice amount.
- **Date Purchased:** Enter date item was purchased
- **Date Used:** Enter date item was used
- **Source of Data:** Was item purchased or taken from stock. Mark one.
- **Comments:** Any comments regarding the materials purchased
- **Total Cost for Material:** Add the numbers in the Invoice Total block and enter the result here.
- **Signature, Title and Date**

## Rented Equipment Summary Record Instructions

Complete the record as follows:

- **Heading:**
  - **Applicant Name:** Enter your organization's name
  - **PW Ref No:** Number assigned by FEMA for the PW once it is written
  - **Category:** Category of work for the PW
  - **FIPS #:** Number assigned by FEMA when you apply for the grant
  - **Disaster Number:** Number assigned by FEMA to identify the disaster
- **Equipment Description:** Enter a brief description of the equipment that you leased or rented.
- **Date/Hours Used:** Enter the date and number of hours that the equipment was used on the project.
- **Rate Per Hour:** Enter the hourly rental or lease cost of the equipment. Indicate if the equipment was rented on a daily, weekly, or monthly rate, instead of an hourly rate. Indicate if the hourly rate was with or without an operator.
- **Total Cost:** Enter the cost
- **Vendor:** Enter the name of the company that rented or leased the equipment to you.
- **Invoice Number:** Enter the invoice number
- **Check Number:** Enter the check number used to pay the vendor
- **Comments:** Enter any applicable comments
- **Total Cost for Rented Equipment:** Add the numbers in the Total Cost blocks and enter the result here.
- **Signature, Title and Date**

## Contract Work Summary Record Instructions

Complete the record as follows:

- **Heading:**
  - **Applicant Name:** Enter your organization's name
  - **PW Ref No:** Number assigned by FEMA for the PW once it is written
  - **Category:** Category of work for the PW
  - **FIPS #:** Number assigned by FEMA when you apply for the grant
  - **Disaster Number:** Number assigned by FEMA to identify the disaster
- **Vendor:** Enter the vendor name
- **Description of Work Performed:** Enter a brief description of the work performed
- **Invoice Number:** Enter the invoice number.
- **Dates Worked:** Enter the dates worked
- **Total Invoice Amount:** Enter the total dollar figure listed on the invoice.
- **Total Claim Amount:** Enter the total claimed from the invoice.
- **Comments:** Enter any applicable comments
- **Total Cost for Contract Service:** Add the numbers in the Total Claim Amount column and enter the result here.

## ***ATTACHMENTS***

- FEMA Summary Forms
- FEMA Schedule of Equipment Rates
- Public Assistance Documentation Checklist, Ohio EMA

**COST SUMMARY RECORD**

APPLICANT	PW REF NO.	CATEGORY	FIPS NO.	DISASTER
	CLAIM COST	COMMENTS (FEMA USE ONLY)	ELIGIBLE COSTS	
FORCE ACCOUNT LABOR REGULAR TIME	\$ -		\$	-
FORCE ACCOUNT LABOR OVERTIME	\$ -		\$	-
FORCE ACCOUNT EQUIPMENT	\$ -		\$	-
MATERIALS	\$ -		\$	-
RENTAL EQUIPMENT	\$ -		\$	-
CONTRACTS	\$ -		\$	-
TOTAL	\$ -		\$	-

I certify that the above information was transcribed from timesheets, payroll records, equipment log, invoices, stock records or other documents which are available for audit.

Certified by:	Title:	Date:
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Applicant's records have been reviewed and found correct with the exceptions as noted.

**FORCE ACCOUNT LABOR RECORD**

APPLICANT		PW REF NO.		CATEGORY		FIPS NO.		DISASTER #		FEMA					
DATES & HOURS WORKED EACH WEEK															
Name	Title	REG / OT	STATUS	DATES							TOTAL HRS	HOURLY RATE	BENEFIT RATE	TOTAL HOURLY	TOTAL COST
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## FEMA's SCHEDULE OF EQUIPMENT RATES

**DEPARTMENT OF HOMELAND SECURITY  
FEDERAL EMERGENCY MANAGEMENT AGENCY  
RECOVERY DIRECTORATE  
PUBLIC ASSISTANCE DIVISION  
WASHINGTON, D.C. 20472**

The rates on this Schedule of Equipment Rates are for applicant-owned equipment in good mechanical condition, complete with all required attachments. Each rate covers all costs eligible under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq., for ownership and operation of equipment, including depreciation, overhead, all maintenance, field repairs, fuel, lubricants, tires, OSHA equipment and other costs incidental to operation. Standby equipment costs are not eligible.

Equipment must be in actual operation performing eligible work in order for reimbursement to be eligible. LABOR COSTS OF OPERATOR ARE NOT INCLUDED in the rates and should be approved separately from equipment costs.

Information regarding the use of the Schedule is contained in 44 CFR § 206.228 *Allowable Costs*. Rates for equipment not listed will be furnished by FEMA upon request. Any appeals shall be in accordance with 44 CFR § 206.206 *Appeals*.

THESE RATES ARE APPLICABLE TO MAJOR DISASTERS AND EMERGENCIES DECLARED BY THE PRESIDENT ON OR AFTER SEPTEMBER 15, 2010.

Cost Code	Equipment	Specification	Capacity/Size	HP	Notes	Unit	Rate
8490	Aerial Lift, Self-Propelled	Max. Platform Height	37 ft	to 15	Articulated, Telescoping, Scissor.	hour	\$8.25
8491	Aerial Lift, Self-Propelled	Max. Platform Height	60 ft	to 30	Articulated, Telescoping, Scissor.	hour	\$12.25
8492	Aerial Lift, Self-Propelled	Max. Platform Height	70 ft	to 50	Articulated, Telescoping, Scissor.	hour	\$21.00
8493	Aerial Lift, Self-Propelled	Max. Platform Height	125 ft	to 85	Articulated and Telescoping.	hour	\$55.00
8494	Aerial Lift, Self-Propelled	Max. Platform Height	150 ft	to 130	Articulated and Telescoping.	hour	\$67.00
8486	Aerial Lift, Truck Mntd	Max. Platform Height	40 ft		Articulated and Telescoping. Add to Truck rate for total rate.	hour	\$6.75
8487	Aerial Lift, Truck Mntd	Max. Platform Height	61 ft		Articulated and Telescoping. Add to Truck rate for total rate.	hour	\$12.25
8488	Aerial Lift, Truck Mntd	Max. Platform Height	80 ft		Articulated and Telescoping. Add to Truck rate for total rate.	hour	\$23.50
8489	Aerial Lift, Truck Mntd	Max. Platform Height	100 ft		Articulated and Telescoping. Add to Truck rate for total rate.	hour	\$34.00
8010	Air Compressor	Air Delivery	41 cfm	to 10	Hoses included.	hour	\$1.50
8011	Air Compressor	Air Delivery	103 cfm	to 30	Hoses included.	hour	\$7.00
8012	Air Compressor	Air Delivery	130 cfm	to 50	Hoses included.	hour	\$9.25
8013	Air Compressor	Air Delivery	175 cfm	to 90	Hoses included.	hour	\$20.00
8014	Air Compressor	Air Delivery	400 cfm	to 145	Hoses included.	hour	\$27.50
8015	Air Compressor	Air Delivery	575 cfm	to 230	Hoses included.	hour	\$45.50
8016	Air Compressor	Air Delivery	1100 cfm	to 355	Hoses included.	hour	\$51.00
8017	Air Compressor	Air Delivery	1600 cfm	to 500	Hoses included.	hour	\$80.00
8040	Ambulance			to 150		hour	\$25.50
8041	Ambulance			to 210		hour	\$32.50
8060	Auger, Portable	Hole Diameter	16 in	to 6		hour	\$1.30
8061	Auger, Portable	Hole Diameter	18 in	to 13		hour	\$3.50
8062	Auger, Tractor Mntd	Max. Auger Diameter	36 in	to 13	Includes digger, boom and mounting hardware. Add to Tractor rate for total rate.	hour	\$1.30
8063	Auger, Truck Mntd	Max. Auger Size	24 in	to 100	Includes digger, boom and mounting hardware. Add to Truck rate for total rate.	hour	\$29.00
8070	Automobile			to 130	Transporting people.	mile	\$0.50
8071	Automobile			to 130	Transporting cargo.	hour	\$13.00
8072	Automobile, Police			to 250	Patrolling.	mile	\$0.60
8073	Automobile, Police			to 250	Stationary with engine running.	hour	\$16.25
8110	Barge, Deck	Size	50'x35'x7.25'			hour	\$34.00
8111	Barge, Deck	Size	50'x35'x9'			hour	\$49.00
8112	Barge, Deck	Size	120'x45'x10'			hour	\$60.00
8113	Barge, Deck	Size	160'x45'x11'			hour	\$75.00
8050	Board, Arrow			to 8	Trailer Mounted.	hour	\$3.15
8051	Board, Message			to 5	Trailer Mounted.	hour	\$8.50
8133	Boat, Push	Size	45'x21'x6'	to 435	Flat hull.	hour	\$150.00
8134	Boat, Push	Size	54'x21'x6'	to 525	Flat hull.	hour	\$200.00
8135	Boat, Push	Size	58'x24'x7.5'	to 705	Flat hull.	hour	\$250.00
8136	Boat, Push	Size	64'x25'x8'	to 870	Flat hull.	hour	\$300.00

**FEMA's SCHEDULE OF EQUIPMENT RATES**

Cost Code	Equipment	Specification	Capacity/Size	HP	Notes	Unit	Rate
8130	Boat, Row				Heavy duty.	hour	\$0.85
8131	Boat, Runabout	Size	13'x5'	to 50	Outboard.	hour	\$14.00
8132	Boat, Tender	Size	14'x7'	to 100	Inboard with 360 degree drive.	hour	\$26.00
8120	Boat, Tow	Size	55'x20'x5'	to 870	Steel.	hour	\$250.00
8121	Boat, Tow	Size	60'x21'x5'	to 1050	Steel.	hour	\$300.00
8122	Boat, Tow	Size	70'x30'x7.5'	to 1350	Steel.	hour	\$450.00
8123	Boat, Tow	Size	120'x34'x8'	to 2000	Steel.	hour	\$830.00
8140	Boat, Tug	Length	16 ft	to 100		hour	\$33.50
8141	Boat, Tug	Length	18 ft	to 175		hour	\$53.00
8142	Boat, Tug	Length	26 ft	to 250		hour	\$65.00
8143	Boat, Tug	Length	40 ft	to 380		hour	\$150.00
8144	Boat, Tug	Length	51 ft	to 700		hour	\$225.00
8419	Breaker, Pavement, Hand-Held	Weight	25-90 lb			hour	\$0.65
8420	Breaker, Pavement			to 70		hour	\$31.25
8150	Broom, Pavement	Broom Length	72 in	to 35		hour	\$12.30
8151	Broom, Pavement	Broom Length	96 in	to 100		hour	\$19.75
8153	Broom, Pavement, Mntd	Broom Length	72 in	to 18	Add to Prime Mover rate for total rate.	hour	\$6.00
8154	Broom, Pavement, Pull	Broom Length	84 in	to 20	Add to Prime Mover rate for total rate.	hour	\$10.25
8270	Bucket, Clamshell	Capacity	1.0 cy		Includes teeth. Does not include Clamshell & Dragline.	hour	\$3.60
8271	Bucket, Clamshell	Capacity	2.5 cy		Includes teeth. Does not include Clamshell & Dragline.	hour	\$6.75
8272	Bucket, Clamshell	Capacity	5.0 cy		Includes teeth. Does not include Clamshell & Dragline.	hour	\$11.25
8273	Bucket, Clamshell	Capacity	7.5 cy		Includes teeth. Does not include Clamshell & Dragline.	hour	\$14.50
8275	Bucket, Dragline	Capacity	2.0 cy		Does not include Clamshell & Dragline.	hour	\$2.90
8276	Bucket, Dragline	Capacity	5.0 cy		Does not include Clamshell & Dragline.	hour	\$6.50
8277	Bucket, Dragline	Capacity	10 cy		Does not include Clamshell & Dragline.	hour	\$10.50
8278	Bucket, Dragline	Capacity	14 cy		Does not include Clamshell & Dragline.	hour	\$13.50
8180	Bus			to 150		hour	\$20.00
8181	Bus			to 210		hour	\$23.00
8182	Bus			to 300		hour	\$27.00
8190	Chain Saw	Bar Length	16 in			hour	\$1.75
8191	Chain Saw	Bar Length	25 in			hour	\$3.20
8192	Chain Saw, Pole	Bar Size	18 in			hour	\$1.60
8200	Chipper, Brush	Chipping Capacity	6 in	to 35	Trailer Mounted.	hour	\$7.50
8201	Chipper, Brush	Chipping Capacity	9 in	to 65	Trailer Mounted.	hour	\$16.00
8202	Chipper, Brush	Chipping Capacity	12 in	to 100	Trailer Mounted.	hour	\$21.75
8203	Chipper, Brush	Chipping Capacity	15 in	to 125	Trailer Mounted.	hour	\$30.75
8204	Chipper, Brush	Chipping Capacity	18 in	to 200	Trailer Mounted.	hour	\$45.50
8210	Clamshell & Dragline, Crawler		149,999 lb	to 235	Bucket not included in rate.	hour	\$86.00
8211	Clamshell & Dragline, Crawler		250,000 lb	to 520	Bucket not included in rate.	hour	\$121.00
8212	Clamshell & Dragline, Truck			to 240	Bucket not included in rate.	hour	\$130.00
8712	Cleaner, Sewer/Catch Basin	Hopper Capacity	5 cy		Truck Mounted. Add to Truck rate for total rate.	hour	\$16.00
8713	Cleaner, Sewer/Catch Basin	Hopper Capacity	14 cy		Truck Mounted. Add to Truck rate for total rate.	hour	\$21.50
8220	Compactor			to 10		hour	\$11.00
8221	Compactor, Towed, Vibratory Drum			to 45		hour	\$17.50
8222	Compactor, Vibratory, Drum			to 75		hour	\$25.00
8223	Compactor, Pneumatic, Wheel			to 100		hour	\$29.00
8225	Compactor, Sanitation			to 300		hour	\$96.00
8226	Compactor, Sanitation			to 400		hour	\$163.00
8227	Compactor, Sanitation			to 535		hour	\$225.00
8228	Compactor, Towed, Pneumatic, Wheel		10000 lb		Add to Prime Mover rate for total rate.	hour	\$7.50

**FEMA's SCHEDULE OF EQUIPMENT RATES**

Cost Code	Equipment	Specification	Capacity/Size	HP	Notes	Unit	Rate
8229	Compactor, Towed, Drum Static		20000 lb		Add to Prime Mover rate for total rate.	hour	\$12.25
8500	Crane	Max. Lift Capacity	8 MT	to 80		hour	\$27.00
8501	Crane	Max. Lift Capacity	15 MT	to 150		hour	\$55.00
8502	Crane	Max. Lift Capacity	50 MT	to 200		hour	\$95.00
8503	Crane	Max. Lift Capacity	70 MT	to 300		hour	\$155.00
8504	Crane	Max. Lift Capacity	110 MT	to 350		hour	\$220.00
8496	Crane, Truck Mntd	Max. Lift Capacity	24000 lb		Add to Truck rate for total rate.	hour	\$10.00
8497	Crane, Truck Mntd	Max. Lift Capacity	36000 lb		Add to Truck rate for total rate.	hour	\$16.00
8498	Crane, Truck Mntd	Max. Lift Capacity	60000 lb		Add to Truck rate for total rate.	hour	\$30.00
8195	Cutter, Brush	Cutter Size	8 ft	to 150		hour	\$90.00
8196	Cutter, Brush	Cutter Size	8 ft	to 190		hour	\$100.00
8197	Cutter, Brush	Cutter Size	10 ft	to 245		hour	\$120.00
8670	Derrick, Hydraulic Digger	Max. Boom Length	60 ft		Includes hydraulic pole alignment attachment. Add to Truck rate.	hour	\$21.00
8671	Derrick, Hydraulic Digger	Max. Boom Length	90 ft		Includes hydraulic pole alignment attachment. Add to Truck rate.	hour	\$39.00
8580	Distributor, Asphalt	Tank Capacity	500 gal		insulated tank, and circulating spray bar.	hour	\$12.00
8581	Distributor, Asphalt	Tank Capacity	1000 gal		Truck Mounted. Includes burners, insulated tank, and circulating spray bar. Add to Truck rate.	hour	\$13.00
8582	Distributor, Asphalt	Tank Capacity	4000 gal		Truck Mounted. Includes burners, insulated tank, and circulating spray bar. Add to Truck rate.	hour	\$25.00
8250	Dozer, Crawler			to 75		hour	\$31.00
8251	Dozer, Crawler			to 105		hour	\$40.00
8252	Dozer, Crawler			to 160		hour	\$65.00
8253	Dozer, Crawler			to 250		hour	\$80.00
8254	Dozer, Crawler			to 360		hour	\$135.00
8255	Dozer, Crawler			to 565		hour	\$250.00
8256	Dozer, Crawler			to 850		hour	\$340.00
8260	Dozer, Wheel			to 300		hour	\$55.00
8261	Dozer, Wheel			to 400		hour	\$110.00
8262	Dozer, Wheel			to 500		hour	\$150.00
8263	Dozer, Wheel			to 625		hour	\$200.00
8280	Excavator, Hydraulic	Bucket Capacity	0.5 cy	to 45	Crawler, Truck & Wheel. Includes bucket.	hour	\$18.00
8281	Excavator, Hydraulic	Bucket Capacity	1.0 cy	to 90	Crawler, Truck & Wheel. Includes bucket.	hour	\$39.00
8282	Excavator, Hydraulic	Bucket Capacity	1.5 cy	to 160	Crawler, Truck & Wheel. Includes bucket.	hour	\$65.00
8283	Excavator, Hydraulic	Bucket Capacity	2.5 cy	to 265	Crawler, Truck & Wheel. Includes bucket.	hour	\$120.00
8284	Excavator, Hydraulic	Bucket Capacity	4.5 cy	to 420	Crawler, Truck & Wheel. Includes bucket.	hour	\$200.00
8285	Excavator, Hydraulic	Bucket Capacity	7.5 cy	to 650	Crawler, Truck & Wheel. Includes bucket.	hour	\$240.00
8286	Excavator, Hydraulic	Bucket Capacity	12 cy	to 1000	Crawler, Truck & Wheel. Includes bucket.	hour	\$400.00
8240	Feeder, Grizzly			to 35		hour	\$17.00
8241	Feeder, Grizzly			to 55		hour	\$30.00
8242	Feeder, Grizzly			to 75		hour	\$44.00
8300	Fork Lift	Capacity	6000 lb	to 60		hour	11.75
8301	Fork Lift	Capacity	12000 lb	to 90		hour	\$17.00
8302	Fork Lift	Capacity	18000 lb	to 140		hour	\$23.00
8303	Fork Lift	Capacity	50000 lb	to 215		hour	\$50.00
8310	Generator	Prime Output	5.5 kW	to 10		hour	\$3.25
8311	Generator	Prime Output	16 kW	to 25		hour	\$8.00
8312	Generator	Prime Output	43 kW	to 65		hour	\$17.00
8313	Generator	Prime Output	100 kW	to 125		hour	\$34.00
8314	Generator	Prime Output	150 kW	to 240		hour	\$50.00
8315	Generator	Prime Output	210 kW	to 300		hour	\$60.00
8316	Generator	Prime Output	280 kW	to 400		hour	\$85.00

**FEMA's SCHEDULE OF EQUIPMENT RATES**

Cost Code	Equipment	Specification	Capacity/Size	HP	Notes	Unit	Rate
8317	Generator	Prime Output	350 kW	to 500		hour	\$95.00
8318	Generator	Prime Output	530 kW	to 750		hour	\$150.00
8319	Generator	Prime Output	710 kW	to 1000		hour	\$200.00
8320	Generator	Prime Output	1100 kW	to 1500		hour	\$375.00
8321	Generator	Prime Output	2500 kW	to 3000		hour	\$500.00
8755	Golf Cart	Capacity	2 person			hour	\$3.20
8330	Graders	Moldboard Size	10 ft	to 110	Includes Rigid and Articulate	hour	\$34.50
8331	Graders	Moldboard Size	12 ft	to 150	Includes Rigid and Articulate	hour	\$58.00
8332	Graders	Moldboard Size	14 ft	to 225	Includes Rigid and Articulate	hour	\$70.00
8350	Hose, Discharge	Diameter	3 in		Per 25 foot length. Includes couplings.	hour	\$0.13
8351	Hose, Discharge	Diameter	4 in		Per 25 foot length. Includes couplings.	hour	\$0.19
8352	Hose, Discharge	Diameter	6 in		Per 25 foot length. Includes couplings.	hour	\$0.50
8353	Hose, Discharge	Diameter	8 in		Per 25 foot length. Includes couplings.	hour	\$0.75
8354	Hose, Discharge	Diameter	12 in		Per 25 foot length. Includes couplings.	hour	\$1.35
8355	Hose, Discharge	Diameter	16 in		Per 25 foot length. Includes couplings.	hour	\$2.20
8356	Hose, Suction	Diameter	3 in		Per 25 foot length. Includes couplings.	hour	\$0.23
8357	Hose, Suction	Diameter	4 in		Per 25 foot length. Includes couplings.	hour	\$0.43
8358	Hose, Suction	Diameter	6 in		Per 25 foot length. Includes couplings.	hour	\$0.90
8359	Hose, Suction	Diameter	8 in		Per 25 foot length. Includes couplings.	hour	\$1.35
8360	Hose, Suction	Diameter	12 in		Per 25 foot length. Includes couplings.	hour	\$2.45
8361	Hose, Suction	Diameter	16 in		Per 25 foot length. Includes couplings.	hour	\$3.90
8517	Jackhammer (Dry)	Weight Class	25-45 lb			hour	\$1.00
8518	Jackhammer (Wet)	Weight Class	30-55 lb			hour	\$1.15
8380	Loader, Crawler	Bucket Capacity	0.5 cy	to 32	Includes bucket.	hour	\$11.50
8381	Loader, Crawler	Bucket Capacity	1 cy	to 60	Includes bucket.	hour	\$19.00
8382	Loader, Crawler	Bucket Capacity	2 cy	to 118	Includes bucket.	hour	\$42.00
8383	Loader, Crawler	Bucket Capacity	3 cy	to 178	Includes bucket.	hour	\$76.00
8384	Loader, Crawler	Bucket Capacity	4 cy	to 238	Includes bucket.	hour	\$115.00
8540	Loader, Skid-Steer	Operating Capacity	1000 lb	to 35		hour	\$11.00
8541	Loader, Skid-Steer	Operating Capacity	2000 lb	to 65		hour	\$18.00
8542	Loader, Skid-Steer	Operating Capacity	3000 lb	to 85		hour	\$22.00
8401	Loader, Tractor, Wheel			to 81		hour	\$25.00
8390	Loader, Wheel	Bucket Capacity	0.5 cy	to 38		hour	\$15.50
8391	Loader, Wheel	Bucket Capacity	1 cy	to 60		hour	\$21.50
8392	Loader, Wheel	Bucket Capacity	2 cy	to 105		hour	\$28.75
8393	Loader, Wheel	Bucket Capacity	3 cy	to 152		hour	\$40.00
8394	Loader, Wheel	Bucket Capacity	4 cy	to 200		hour	\$52.00
8395	Loader, Wheel	Bucket Capacity	5 cy	to 250		hour	\$66.00
8396	Loader, Wheel	Bucket Capacity	6 cy	to 305		hour	\$82.00
8397	Loader, Wheel	Bucket Capacity	7 cy	to 360		hour	\$95.00
8398	Loader, Wheel	Bucket Capacity	8 cy	to 530		hour	\$140.00
8570	Loader-Backhoe, Wheel	Loader Bucket Capacity	0.5 cy	to 40	Loader and Backhoe Buckets included.	hour	\$14.75
8571	Loader-Backhoe, Wheel	Loader Bucket Capacity	1 cy	to 70	Loader and Backhoe Buckets included.	hour	\$23.50
8572	Loader-Backhoe, Wheel	Loader Bucket Capacity	1.5 cy	to 95	Loader and Backhoe Buckets included.	hour	\$33.00
8573	Loader-Backhoe, Wheel	Loader Bucket Capacity	1.75 cy	to 115	Loader and Backhoe Buckets included.	hour	\$38.00
8410	Mixer, Concrete Portable	Batching Capacity	10 cft			hour	\$3.25
8411	Mixer, Concrete Portable	Batching Capacity	12 cft			hour	\$4.25
8412	Mixer, Concrete, Trailer Mntd	Batching Capacity	11 cft	to 10		hour	\$8.75
8413	Mixer, Concrete, Trailer Mntd	Batching Capacity	16 cft	to 25		hour	\$15.25
8075	Motorcycle, Police					mile	\$0.35
8633	Mulcher, Trailer Mntd	Working Capacity	7 tph	to 35		hour	\$10.25
8634	Mulcher, Trailer Mntd	Working Capacity	10 tph	to 55		hour	\$15.75
8635	Mulcher, Trailer Mntd	Working Capacity	20 tph	to 120		hour	\$24.75
8430	Paver, Asphalt, Towed				Does not include Prime Mover.	hour	\$7.00
8431	Paver, Asphalt			to 50	Includes wheel and crawler equipment.	hour	\$65.00
8432	Paver, Asphalt			to 125	Includes wheel and crawler equipment.	hour	\$115.00
8433	Paver, Asphalt			to 175	Includes wheel and crawler equipment.	hour	\$125.00
8434	Paver, Asphalt			to 250	Includes wheel and crawler equipment.	hour	\$140.00
8436	Pick-up, Asphalt			to 110		hour	\$55.00
8437	Pick-up, Asphalt			to 150		hour	\$83.00
8438	Pick-up, Asphalt			to 200		hour	\$110.00
8439	Pick-up, Asphalt			to 275		hour	\$140.00
8660	Plow, Cable	Plow Depth	24 in	to 30		hour	\$10.25

**FEMA's SCHEDULE OF EQUIPMENT RATES**

Cost Code	Equipment	Specification	Capacity/Size	HP	Notes	Unit	Rate
8661	Plow, Cable	Plow Depth	36 in	to 65		hour	\$27.75
8662	Plow, Cable	Plow Depth	48 in	to 110		hour	\$31.75
8450	Plow, Snow, Grader Mntd	Width	to 10 ft		Add to Grader for total rate.	hour	\$16.00
8451	Plow, Snow, Grader Mntd	Width	to 14 ft		Add to Grader for total rate.	hour	\$24.00
8452	Plow, Snow, Truck Mntd	Width	to 15 ft		Add to Truck rate for total rate.	hour	\$10.75
8453	Plow, Snow, Truck Mntd	Width	to 15 ft		With leveling wing. Add to Truck rate for total rate.	hour	\$18.50
8470	Pump			to 4	Does not include Hoses.	hour	\$2.15
8471	Pump			to 6	Does not include Hoses.	hour	\$3.20
8472	Pump			to 10	Does not include Hoses.	hour	\$4.10
8473	Pump			to 15	Does not include Hoses.	hour	\$7.75
8474	Pump			to 25	Does not include Hoses.	hour	\$9.25
8475	Pump			to 40	Does not include Hoses.	hour	\$16.00
8476	Pump			to 60	Does not include Hoses.	hour	\$18.75
8477	Pump			to 95	Does not include Hoses.	hour	\$26.50
8478	Pump			to 140	Does not include Hoses.	hour	\$31.00
8479	Pump			to 200	Does not include Hoses.	hour	\$36.00
8480	Pump			to 275	Does not include Hoses.	hour	\$80.00
8481	Pump			to 350	Does not include Hoses.	hour	\$95.00
8482	Pump			to 425	Does not include Hoses.	hour	\$120.00
8483	Pump			to 500	Does not include Hoses.	hour	\$135.00
8484	Pump			to 575	Does not include Hoses.	hour	\$155.00
8485	Pump			to 650	Does not include Hoses.	hour	\$180.00
8510	Saw, Concrete	Blade Diameter	14 in	to 14		hour	\$6.00
8511	Saw, Concrete	Blade Diameter	26 in	to 35		hour	\$13.50
8512	Saw, Concrete	Blade Diameter	48 in	to 65		hour	\$23.00
8513	Saw, Rock			to 100		hour	\$30.00
8514	Saw, Rock			to 200		hour	\$60.00
8521	Scraper	Scraper Capacity	16 cy	to 250		hour	\$90.00
8522	Scraper	Scraper Capacity	23 cy	to 365		hour	\$130.00
8523	Scraper	Scraper Capacity	34 cy	to 475		hour	\$200.00
8524	Scraper	Scraper Capacity	44 cy	to 600		hour	\$240.00
8560	Snow Blower	Capacity	2,000 tph	to 400		hour	\$140.00
8561	Snow Blower	Capacity	2,500 tph	to 500		hour	\$160.00
8562	Snow Blower	Capacity	3,500 tph	to 600		hour	\$180.00
8550	Snow Blower, Truck Mntd	Capacity	600 tph	to 75	Does not include Truck.	hour	\$37.50
8551	Snow Blower, Truck Mntd	Capacity	1400 tph	to 200	Does not include Truck.	hour	\$70.00
8552	Snow Blower, Truck Mntd	Capacity	2000 tph	to 340	Does not include Truck.	hour	\$110.00
8553	Snow Blower, Truck Mntd	Capacity	2500 tph	to 400	Does not include Truck.	hour	\$120.00
8558	Snow Thrower, Walk Behind	Cutting Width	25 in	to 5		hour	\$3.25
8559	Snow Thrower, Walk Behind	Cutting Width	60 in	to 15		hour	\$7.00
8630	Sprayer, Seed	Working Capacity	750 gal	to 30	Trailer & Truck mounted. Does not include Prime Mover.	hour	\$9.75
8631	Sprayer, Seed	Working Capacity	1250 gal	to 50	Trailer & Truck mounted. Does not include Prime Mover.	hour	\$15.00
8632	Sprayer, Seed	Working Capacity	3500 gal	to 115	Trailer & Truck mounted. Does not include Prime Mover.	hour	\$25.75
8458	Spreader, Chemical	Capacity	5 cy	to 4	Trailer & Truck mounted. Does not	hour	\$4.00
8423	Spreader, Chip	Spread Hopper Width	12.5 ft	to 152		hour	\$50.00
8424	Spreader, Chip	Spread Hopper Width	16.5 ft	to 215		hour	\$80.00
8425	Spreader, Chip, Mntd	Hopper Size	8 ft	to 8	Trailer & Truck mounted.	hour	\$3.30
8455	Spreader, Sand	Mounting	Tailgate, Chassis			hour	\$3.30
8456	Spreader, Sand	Mounting	Dump Body			hour	\$5.50
8457	Spreader, Sand	Mounting	Truck (10 yd)			hour	\$7.50
8440	Striper	Paint Capacity	40 gal	to 22		hour	\$8.75
8441	Striper	Paint Capacity	90 gal	to 60		hour	\$19.00
8442	Striper	Paint Capacity	120 gal	to 122		hour	\$37.00
8445	Striper, Truck Mntd	Paint Capacity	120 gal	to 460		hour	\$70.00
8446	Striper, Walk-behind	Paint Capacity	12 gal			hour	\$3.35
8157	Sweeper, Pavement			to 110		hour	\$59.00
8158	Sweeper, Pavement			to 230		hour	\$74.00
8590	Trailer, Dump	Capacity	20 cy		Does not include Prime Mover.	hour	\$8.00

**FEMA's SCHEDULE OF EQUIPMENT RATES**

Cost Code	Equipment	Specification	Capacity/Size	HP	Notes	Unit	Rate
8591	Trailer, Dump	Capacity	30 cy		Does not include Prime Mover.	hour	\$14.00
8600	Trailer, Equipment	Capacity	30 ton			hour	\$10.25
8601	Trailer, Equipment	Capacity	40 ton			hour	\$12.50
8602	Trailer, Equipment	Capacity	60 ton			hour	\$15.00
8603	Trailer, Equipment	Capacity	120 ton			hour	\$25.00
8640	Trailer, Office	Trailer Size	8' x 24'			hour	\$1.70
8641	Trailer, Office	Trailer Size	8' x 32'			hour	\$1.75
8642	Trailer, Office	Trailer Size	10' x 32'			hour	\$2.60
8610	Trailer, Water	Tank Capacity	4000 gal		Includes a centrifugal pump with sump and a rear spraybar.	hour	\$11.00
8611	Trailer, Water	Tank Capacity	6000 gal		Includes a centrifugal pump with sump and a rear spraybar.	hour	\$14.00
8612	Trailer, Water	Tank Capacity	10000 gal		Includes a centrifugal pump with sump and a rear spraybar.	hour	\$16.50
8613	Trailer, Water	Tank Capacity	14000 gal		Includes a centrifugal pump with sump and a rear spraybar.	hour	\$20.50
8650	Trencher			to 40	Walk-behind, Crawler & Wheel Mounted. Chain and Wheel.	hour	\$11.75
8651	Trencher			to 85	Walk-behind, Crawler & Wheel Mounted. Chain and Wheel.	hour	\$25.00
8290	Trowel, Concrete	Diameter	48 in	to 12		hour	\$4.50
8680	Truck, Concrete Mixer	Mixer Capacity	13 cy	to 300		hour	\$75.00
8720	Truck, Dump	Struck Capacity	8 cy	to 220		hour	\$35.00
8721	Truck, Dump	Struck Capacity	10 cy	to 320		hour	\$45.00
8722	Truck, Dump	Struck Capacity	12 cy	to 400		hour	\$60.00
8723	Truck, Dump	Struck Capacity	18 cy	to 400		hour	\$65.00
8724	Truck, Dump, Off	Struck Capacity	28 cy	to 450		hour	\$105.00
8690	Truck, Fire	Pump Capacity	1000 gpm			hour	\$70.00
8691	Truck, Fire	Pump Capacity	1250 gpm			hour	\$80.00
8692	Truck, Fire	Pump Capacity	1500 gpm			hour	\$85.00
8693	Truck, Fire	Pump Capacity	2000 gpm			hour	\$90.00
8694	Truck, Fire Ladder	Ladder length	75 ft			hour	\$125.00
8695	Truck, Fire Ladder	Ladder length	150 ft			hour	\$150.00
8700	Truck, Flatbed	Maximum Gvw	15000 lb	to 200		hour	\$20.00
8701	Truck, Flatbed	Maximum Gvw	25000 lb	to 275		hour	\$22.00
8702	Truck, Flatbed	Maximum Gvw	30000 lb	to 300		hour	\$25.00
8703	Truck, Flatbed	Maximum Gvw	45000 lb	to 380		hour	\$43.00
8730	Truck, Garbage	Capacity	25 cy	to 255		hour	\$47.00
8731	Truck, Garbage	Capacity	32 cy	to 325		hour	\$55.00
8800	Truck, Pickup				Transporting people.	mile	\$0.50
8801	Truck, Pickup		½ ton			hour	\$14.00
8802	Truck, Pickup		1 ton			hour	\$20.00
8803	Truck, Pickup		1¼ ton			hour	\$22.00
8804	Truck, Pickup		1½ ton			hour	\$25.00
8805	Truck, Pickup		1¾ ton			hour	\$30.00
8790	Truck, Tractor	4 x 2	30000 lb	to 220		hour	\$32.00
8791	Truck, Tractor	4 x 2	45000 lb	to 310		hour	\$45.00
8792	Truck, Tractor	6 x 4	50000 lb	to 400		hour	\$55.00
8780	Truck, Water	Tank Capacity	2500 gal	to 175	Include pump and rear spray system.	hour	\$31.00
8781	Truck, Water	Tank Capacity	4000 gal	to 250	Include pump and rear spray system.	hour	\$42.00
8620	Tub Grinder			to 440		hour	\$85.00
8621	Tub Grinder			to 630		hour	\$120.00
8622	Tub Grinder			to 760		hour	\$150.00
8623	Tub Grinder			to 1000		hour	\$270.00
8753	Vehicle, Recreational			to 10		hour	\$3.00
8750	Vehicle, Small			to 30		hour	\$7.00
8761	Vibrator, Concrete			to 4		hour	\$1.15
8770	Welder, Portable			to 16	Includes ground cable and lead cable.	hour	\$5.00
8771	Welder, Portable			to 34	Includes ground cable and lead cable.	hour	\$11.50
8772	Welder, Portable			to 50	Includes ground cable and lead cable.	hour	\$16.00
8773	Welder, Portable			to 80	Includes ground cable and lead cable.	hour	\$22.00

## Public Assistance Documentation Checklist

The following is a general outline of documentation required for all Project Worksheets (PWs). Documentation you submit per PW will depend on how work was completed, contract, force account or a combination. All Summary Sheets should be signed and if backup is required, it has been noted. If you contracted for more than one aspect of your PW (i.e. construction and engineering and design services) you will need to attach applicable documentation for each and/or explain why you did not follow each procurement step.

If you are submitting documentation for a **Large Project**, you must also include a project narrative with the amount of your total claim, a description of actual work completed and any changes/modifications from the approved scope of work, including change orders and an explanation if local, state or federal procurement requirements were bypassed.

### Contractual Services

and/or

### Force Account/Rented Equipment

In house forces and/or rented equipment

#### **Method of Procurement (which was used)**

\_\_\_\_\_ Small purchase or;  
\_\_\_\_\_ Sealed bid or;  
\_\_\_\_\_ Competitive proposal or;  
\_\_\_\_\_ Non-competitive proposal (will require additional explanation)

\_\_\_\_\_ **Copy of Cost Analysis**

#### **Proof of Competition**

\_\_\_\_\_ Copies of advertisements or;  
\_\_\_\_\_ Copies of solicitation letters or;  
\_\_\_\_\_ List of vendors contacted (small purchase)

#### **Copy of Contractor Proposals**

\_\_\_\_\_ Bid tabulations or;  
\_\_\_\_\_ Copy of quotes

#### **Awarding of Contract \***

\_\_\_\_\_ Signed Contract

\* If low bid not taken, provide explanation

#### **Copies of Invoices and Proof of Payment, summarized on a Contract Summary Record**

\_\_\_\_\_ If a time and material contract was used, send sampling of source documentation for contractor invoices, i.e. time cards, per diem receipts, invoices for materials purchased, etc. and documentation supporting monitoring

#### **Send all documentation to:**

Ohio Emergency Management Agency  
Public Assistance Grant Program  
2855 W. Dublin Granville Road  
Columbus, Ohio 43235  
Phone: 614-799-3665; Fax: 614-791-0018

#### **Force Account Summary Record**

##### \_\_\_\_\_ **Labor Summary Record(s)**

You may be required to submit time cards

##### \_\_\_\_\_ **Equipment Summary Record(s)**

You may be required to submit vehicle usage logs

##### \_\_\_\_\_ **Materials Summary Record(s)**

If materials were taken from stock, no additional backup necessary. However, if materials were purchased, invoices and proof of payment required. \*\*

##### \_\_\_\_\_ **Rented Equipment Record(s)**

Backup should include copy of lease agreement, invoices and proof of payment. If equipment was rented without an operator, you need to include a Labor Summary Record to record the operator's hours worked.

\*\* If you purchased certain materials several times but for the same unit price, you only need to send a sampling of the invoices/ proof of payment. You just need to document the unit price being claimed on the Material Summary Record.

#### **Other**

\_\_\_\_\_ **Permits – Copy of applicable/ required permits**



# PROGRAM MANAGEMENT

This section discusses program deadlines, reporting tools, management costs, large project closeout, appeals, the grant closeout process, record retention and audits.

## ***PROGRAM DEADLINES***

Deadlines for completion of eligible work are as follows:

Categories A-B: Six (6) months from declaration date

Categories C-G: Eighteen (18) months from declaration date.

Time extensions may be requested for an additional six (6) months for Categories A-B and an additional thirty (30) months for Categories C-G. These extensions should be requested by PW and should be submitted to the State within 15 days of the original completion date. If further time is required beyond what is listed above, this must be requested to FEMA, through the State. Requests for extensions must describe that the completion deadline could not be met due to extenuating circumstances beyond your control

## ***REPORTING***

We have discussed the importance of properly and thoroughly documenting your disaster related costs. This portion of the handbook is just as important and details the required reports of this program and the significance of submitting and completing them in a timely, efficient manner. When you receive your approved PWs from the State, included reports, if applicable, are as follows:



### ***Quarterly Progress Reports (QPR)***

If you have work that is not complete when PWs are written, you will receive a Quarterly Progress Report. The quarters begin three months after the declaration and run thru the initial 18 month timeframe. To complete the QPR, simply enter the cumulative percent complete and what has been spent to date. Failure to submit your QPR could result in loss of funding. If you have large projects, you may be required to submit more detailed information.

### ***P.4., Project Completion and Certification Report (P.4.)***

This document is submitted once all work is complete. It lists each PW, projected completion date (based on the time frames for eligible categories of work), a percent complete when the PW was written, actual completion date and amount spent by the subgrantee, a brief description of the approved scope of work and could include several pages. **The P.4. must be submitted within 60 days of completion of the last project.**

QUARTERLY PROGRESS REPORT

DR# 1720

Applicant Name:

County: Hancock

PA ID Number: 063-38948-00

PW # Version#	C a L	Approved Amount	% Complete At Inspection	Reports Due By:											
				December 2007	% Complete	March 2008	% Complete	June 2008	% Complete	September 2008	% Complete	December 2008	% Complete	March 2009	% Complete
116	G	\$2,392.70	31%	N/A	N/A										
0															

Date: 04/12/2005

FEDERAL EMERGENCY MANAGEMENT AGENCY  
 Project Completion and Certification Report (P.4)  
 Disaster #: 1580

P.A. ID: 029-86912-00 Applicant: YELLOW CREEK, TOWNSHIP OF

PW#	VSN	PKG#	INF	Cat	Work Done By	Projected Compl. Date	Approved PW Amt.	% Compl. at Insp.	Actual Date Completed	Amt. Claimed by Applicant	Comments
35	0	0		N C		08/15/2006	\$7,016.65	39%		\$	

SITE NUMBER : 1 FACILITY NAME : SLIDE MATERIAL REMOVAL GUARDRAIL REPAIR  
 LOCATION WELLS HOLLOW ROAD.

SCOPE OF WORK WORK COMPLETED: THE MATERIAL BLOCKING THE ROAD HAS BEEN REMOVED BY THE USE OF 2 BACKHOES. THE MATERIAL WAS DISPOSED OF ON SITE BY PLACING IT ON THE DOWNSLOPE SIDE OF THE ROAD. THE WORK WAS ACCOMPLISHED BY FORCE ACCOUNT LABOR, WITH A BACKHOE OWNED BY THE TOWNSHIP, AND A RENTED BACKHOE.

WORK TO BE COMPLETED: PLACE 139 CY (100' BY 15' BY 2.5') OF UNCLASSIFIED FILL MATERIAL ON THE DOWNSLOPE SIDE OF THE ROAD. REPAIR 100 LF OF GUARDRAIL BY REPLACING THE DAMAGED RAILS AND RESETTNG THE UNDERMINED POSTS.

Total for 1 PW	\$7,016.65	\$
Subgrantee Admin:	\$210.50	
Grand Total:	\$7,227.15	

## ***DIRECT ADMINISTRATIVE AND MANAGEMENT COSTS***

Direct administrative costs include costs that can be tracked, charged and accounted for directly to a specific project, such as staff time to complete field inspection and preparation of a PW. Direct costs are limited to actual reasonable costs incurred for a specific project. They are cost-shared at the rate for the declaration because they are part of a specific project. If a project is not completed when the PW is written, FEMA will assist you in estimating these costs.

Management Costs are any indirect costs, administrative expenses, and any other expenses that a grantee or subgrantee reasonably incurs in administering and managing the PA grant that are not directly chargeable to a specific project. The State will make available for your grant 1 ½ percent of your total grant award, not to exceed \$10,000. You will have to document your management costs prior to receiving any of these funds. You should submit these costs along with your P.4. Project Completion and Certification Report.

Below is a list of eligible direct administrative and management costs which can include labor, equipment, materials and contract. You will document either of these utilizing the FEMA force account forms. These forms will be addressed in Project Documentation tab.

- 1) \* Identifying damage – Phone calls made and received to gain information; Any on site trips; Discussions with response personnel.
- 2) Attending Applicant’s Briefings – Attending the meeting itself; preparing for the meeting; phone calls relating to the meeting; obtaining materials for the meeting; office supplies.
- 3) Completing forms necessary to request assistance – All time involved in preparing forms; any time needed to copy forms; cost to copy forms, if any; time spent to review forms; preparing files and filing system required.
- 4) \* Assessing damage – Collecting cost data; developing cost estimates; office supplies.
- 5) Working with the State during project monitoring and final inspection – Site inspections, PW reviews, office equipment (use or purchase of computer, printers, etc).
- 6) Preparing for audits – Time preparing for audit; materials required for audit; time required for the audit itself; returning documentation to filing system; cost of audit.

\* Note: Items 1 and 4 **cannot** be claimed as direct administrative costs.

References: Section 324 of the Stafford Act, 44 CFR Part 13.22, 206.205(b) and (a), 206.207 (b)(3), 206.228 and Part 207.

## ***LARGE PROJECT CLOSEOUT***

If you have a large project that is less than 100% complete when written, submission of documentation to support your final claimed costs is required. When your large project is complete, contact our office. Utilize the Documentation Checklist included in the Project Documentation tab to ensure that you submit all required documentation. Once documentation is submitted and reviewed by our office, we will schedule a site inspection. Following the site

inspection, our office will prepare a report for FEMA that includes a final recommended approved amount for the PW. FEMA will adjust the estimated amount of the PW to reflect your actual final eligible costs and will provide us with a revised PW. Final payment will be made at this time and you will receive a copy of that final PW.

## ***APPEALS***

### ***How do we appeal a FEMA decision?***

If FEMA denies a work item, you have 60 days from receipt of that decision to file an appeal. In most instances, the denial of a work item will be done within a PW so you have 60 days from receipt of that PW to file the appeal. Your appeal should include a cover letter stating the item being appealed and all documentation supporting your reasons behind the appeal. Our office will assist you in gathering and providing the appropriate documentation. Once your appeal is filed, our office has an additional 60 days to review the appeal and forward it to FEMA with a recommendation. The FEMA Regional Administrator has 90 days to respond. If the appeal is denied, you have an opportunity for a second appeal, which follows the same process as outlined about but the FEMA determination will come from FEMA Headquarters. The decision from FEMA Headquarters is final.

If upon completion of all small projects you have an aggregate overrun, you may appeal this overrun. In order to be eligible, the overrun must be due to increased costs and cannot include items completed outside the approved scope of work. This appeal must be filed with our office within 60 days completion of your last small project and must include support documentation for **all** the small projects. Our office will review the documentation and will forward the appeal to FEMA for their review. If approved, FEMA will write a new PW to capture the overrun amount. This PW will be forwarded to you and payment will be made. If the appeal is denied, you may appeal this decision following the process outlined in the first paragraph.

### ***How do we appeal a State decision?***

If you wish to appeal a decision made by our office, for example, loss of state share due to failure to submit Quarterly Progress Reports, you must do so within 60 days notification of the loss of funding. Your appeal should include documentation to support that required documentation was submitted within the required time frames. Any decision made by our office following this appeal is final.

## ***GRANT CLOSEOUT AND RECORD RETENTION***

### ***How do we know that our Grant is closed?***

Once we receive your final P.4. and once all eligible funding is disbursed, you will receive a closeout packet. This packet will contain your P.4., signed by the Governor's Authorized Representative, a fact sheet showing all funding disbursed and other applicable grant information. You must maintain all documents pertaining to this grant for a minimum of three

(3) years following receipt of your close out packet. This essentially closes your Public Assistance Grant. The only outstanding requirements may be audits.

## **AUDITS**

### ***What are our programmatic audit requirements?***

The State PA Office will select one applicant from each county and will perform a Program Review. The Program Review will require that the applicant submit support documentation for all small projects that were less than 100% complete when written. Following review of paperwork, site inspections will be scheduled. Program Reviews will be conducted shortly after the initial 18 month deadline for completion of permanent work.

### ***What are our financial audit requirements?***

Expenditures of over \$500,000 in a fiscal year require that a Single Audit be performed during your regular audit cycle. In order to determine your expenditures, you need to consider all federal funds expended in that particular fiscal year, not just federal funds expended related to the Public Assistance Grant Program. You must inform your auditor of all expenditures, regardless of their amount. Expenditures of less than \$500,000 do not require a Single Audit.

**If a Single Audit is performed, the auditors will request several things from you. The CFDA (Catalog of Federal Domestic Assistance) number is 97-036. The Program is the Public Assistance Program. The Pass Thru Entity is the Ohio Emergency Management Agency, Department of Public Safety.**

Please keep in mind that expenditures do not have to equal receipts for that fiscal year. For example, if you have a large project PW approved under your Public Assistance Grant for which you expend your own funds in FY 011 but for which federal funds are not forwarded until FY 12, you must report your expenditures in FY 11.

### ***State of Ohio Audit Requirements/Compliance Standards.***

In accordance with the Single Audit Act of 1984, including Amendments, and guidance described in OMB Circulars A-102, A-110 (if applicable), A-128, and A-133 the following procedures will assure compliance with those standards in the administration of the Public Assistance Program.

1. At the end of each calendar year, the Department of Public Safety will provide the Auditor of State a listing of all State agencies, local governments and private-non-profit organizations which have received Federal funds under the Public Assistance Program for the specific disaster declared by the President. This will serve as notice to State field examiners to inquire about the funds at the time of the respective subgrantees' audit, ensuring at a minimum, the inclusion of those funds in the Audit Report's "Schedule of Federal Financial Assistance", if applicable.

2. The subgrantee will be contacted by the State of Ohio should the State wish to review a particular audit, with management letter, for a specific fiscal year. This requirement begins the local fiscal year of the presidential declaration of major disaster and ends the local fiscal year in which final expenditures are made.
  - a. The Single Audit Act of 1984, Amendments of 1996 and 2003 requires local governments, State Agencies/ Departments, and private non-profit organizations expending a total of \$500,000 or more in federal financial assistance in any fiscal year to have a single audit performed.
  - b. If during any single audit the subgrantee has been informed of non-compliance findings regarding this program, the subgrantee shall verbally notify the State immediately, prior to publication of the Audit Report.
3. The subgrantees will correct the finding(s) within thirty (30) days of written notification of non-compliance, if not sooner, and notify the State in writing of the actions taken.
4. Findings against the subgrantee remaining uncorrected by the subgrantee will be deducted from the applicant's final reimbursement by the State in the amount of funds questioned in the Audit Report. If the State has already dispersed final settlement, and a subsequent audit report identifies non-compliance by the subgrantee, collection proceedings will be initiated by the State against the subgrantee in the amount of the questioned costs.
5. Throughout the lifetime of the designated Public Assistance Grant Program, it is the responsibility of each subgrantee to inform the State (or private) examiner of their participation in this program at the time of their respective Single Audits.
6. The State will review each audit report received to assure that:
  - a. If applicable, the grant(s) received that fiscal year are included in the "Schedule of Federal Financial Assistance" portion of the Audit Report, and that the report properly addresses the Public Assistance Grant Program, as required under the Single Audit Act and appropriate OMB guidance;
  - b. Any of the program activities which may have been tested by the State examiner are in compliance with all regulations pertaining to the Public Assistance Program and Single Audit requirements, and;
  - c. Audit findings against the subgrantee pertaining to this grant will be rectified within thirty (30) days of receipt of the Audit Report by the subgrantee, either with guidance from, or, established by the State.

If you have further questions regarding audit requirements, you may refer to 44 CFR, Part 13, Subpart G; OMB Circulars A-102, A-110 (if applicable), A-128 and A-133, or you may contact the State Auditor's Office.

### ***What if I am selected for a federal audit?***

The federal Office of Inspector General (OIG) can select any PA applicant for an audit. This audit can be performed anytime from the date of declaration through the record retention period. You will be required to submit all support documentation for PWs selected by the OIG. This is why maintenance and organization of support documentation is so critical. Included in this tab are auditing tips provided by the OIG.

### ***ATTACHMENTS***

- Audit Tips for Managing Disaster-related Project Costs, U.S. Department of Homeland Security, Office of Inspector General



# Homeland Security

## **AUDIT TIPS FOR MANAGING DISASTER-RELATED PROJECT COSTS**

Department of Homeland Security  
Office of Inspector General  
October 2008

## **I. Introduction**

The Department of Homeland Security (DHS), Office of Inspector General (OIG), prepared this guide. It is for recipients of FEMA public assistance and hazard mitigation funds. Using it will help you to:

- Document and account for disaster-related costs,
- Minimize the loss of FEMA disaster assistance program funds,
- Maximize financial recovery, and
- Prevent fraud, waste, and abuse of disaster funds.

This pamphlet has five parts:

- (1) This introduction.
- (2) A brief overview of the OIG (Part II).
- (3) Applicable federal regulations and FEMA guidelines that govern the management of FEMA disaster assistance grants (Part III).
- (4) Information about the audit process and frequent audit findings (Part IV). This part responds to frequently asked questions about common problems found during our audits of disaster projects.
- (5) Key points to remember when administering FEMA grants (Part V).

## **II. Overview of the Office of Inspector General**

The Homeland Security Act of 2002 established the OIG in DHS by amendment to the Inspector General Act of 1978 (P.L.-95-452). The OIG serves as an independent unit to promote economy, efficiency, and effectiveness; to prevent waste, fraud, and abuse; and to keep Congress and the Secretary of DHS fully informed of problems in DHS programs and operations. The principal functions of the OIG are to:

- Perform or oversee all audit functions relating to programs and operations of DHS,
- Inspect department activities to identify actual or potential fraud, waste, abuse, or mismanagement, and to develop recommendations for corrective action, and
- Investigate allegations of illegal, unethical, or other activities that may lead to civil or criminal liability on the part of DHS or its employees, contractors, or program participants.

## **III. Applicable Federal Regulations and FEMA Guidelines**

Many directives are available to you as a public assistance applicant. Some help in responding to and recovering from a disaster and others help in getting and managing federal funds. The most important is Title 44 of the Code of Federal Regulations (44 CFR), which contains policies and procedures for implementing the Robert T. Stafford Disaster Relief and Emergency Assistance Act,

as amended (Stafford Act). These basic policies and procedures govern disaster relief operations. Title 44 CFR is available at the following website:

<http://ecfr.gpoaccess.gov>

Pay particular attention to Part 13 (44 CFR 13) that sets forth administrative requirements for grants, and to Part 206 (44 CFR 206) that sets forth the disaster assistance rules applicable to major disasters and emergencies declared by the President.

In addition to 44 CFR, FEMA has several policy documents that will assist you in understanding all aspects of the Public Assistance Program. The website below will give you access to a number of FEMA resources including the following:

- FEMA 321, *Public Assistance Digest* (October 2001)
- FEMA 322, *Public Assistance: Public Assistance Guide* (June 2007)
- FEMA 323, *Public Assistance: Applicant Handbook* (September 1999)
- FEMA 325, *Public Assistance: Debris Management Guide* (June 2007)
- FEMA Disaster Assistance Policy (9500 series policy statements)

<http://www.fema.gov/government/grant/pa/policy.shtm>.

Other important directives, issued by the Office of Management and Budget (OMB), establish administrative requirements and cost principles applicable to public assistance and hazard mitigation applicants.

OMB Circulars are available online at the following website:

[www.whitehouse.gov/omb/circulars/index.html](http://www.whitehouse.gov/omb/circulars/index.html).

The table below references federal rules that may apply to your organization. To be certain that you are aware of all applicable requirements, we strongly urge you to contact your state's disaster management officer or the Joint Field Office (JFO).

	State and Local Governments	Public and Private Institutions of Higher Education	Hospitals Affiliated with Institutions of Higher Education	Quasi-Public and Private Nonprofits	Public and Private Hospitals
<b>Grant Administration</b>	44 CFR 13 & OMB Circular A-102	OMB Circular A-110	OMB Circular A-110	OMB Circular A-110	OMB Circular A-110
<b>Cost Principles</b>	OMB Circular A-87	OMB Circular A-21	OMB Circular A-21	OMB Circular A-87	OMB Circular A-87
<b>Audits</b>	OMB Circular A-133	OMB Circular A-133	OMB Circular A-133	OMB Circular A-133	OMB Circular A-133

#### IV. The Audit Process and Frequent Audit Findings

The OIG reviews several factors to determine which activities to audit. These factors include:

- Statutory and regulatory requirements;

- Current or potential dollar magnitude;
- Requests from congressional, FEMA, or state officials; and
- Reports/allegations of impropriety or problems in implementing the FEMA programs.

The OIG tries to cover the full range of FEMA-funded disaster activities (temporary housing, public assistance, mitigation, etc.), and organizations that receive funds for conducting those activities.

Generally, the OIG schedules audits no later than 3 years after the grantee or subgrantee reports that all work has been completed and the final expenditure report has been submitted. However, audits may be done after a majority of the work has been completed and before a grant or subgrant recipient submits its final expenditure report. The audits are conducted mainly to determine whether the grantee and subgrantees expended and accounted for FEMA funds according to federal regulations and FEMA guidelines.

### **Frequent Audit Findings (examples)**

#### **A. Poor Project Accounting**

**Criteria:** Federal regulations (44 CFR 13.20 and 206.205) require each subgrantee to maintain a system that accounts for FEMA funds on a project-by-project basis. The system must disclose the financial results for all FEMA-funded activities accurately, currently, and completely. It must identify funds received and disbursed, and reference source documentation (i.e., cancelled checks, invoices, payroll, time and attendance records, contracts, etc.).

**Finding 1:** The subgrantee did not account separately for the costs of each project. The subgrantee had five distinct FEMA-funded projects but accounted for project expenditures under one cost center. As a result, the subgrantee's claim could not be verified by project.

**Finding 2:** The subgrantee's journal of project expenditures did not contain references to payroll or daily activity reports that supported the payroll expenditures charged to the FEMA project. Therefore, expenditures for labor could not be systematically traced to supporting documents and the costs claimed could not be readily verified.

#### **B. Unsupported Costs**

**Criteria:** Federal regulations (OMB Circular A-87 and 44 CFR 13.20) require that costs claimed under federal programs be adequately supported by source documentation such as cancelled checks, payrolls, contracts, etc.

**Finding 1:** The subgrantee claimed \$150,000 for contract labor but had invoices and cancelled checks to support only \$100,000. The OIG questioned the unsupported difference of \$50,000.

**Finding 2:** The subgrantee's claim included \$300,000 for force account labor. However, the subgrantee had time sheets and payroll registers to support only \$275,000. The OIG questioned the unsupported difference of \$25,000.

**Finding 3:** The subgrantee claimed \$1 million for materials withdrawn from its existing inventory to repair its electrical distribution system. The subgrantee had a listing of material items reportedly used for repairs and a listing of the value of such items. However, records reflecting the withdrawal of items from the inventory did not support the listing. Therefore, the OIG questioned the \$1 million claim.

### **C. Duplication of Benefits**

**Criteria:** Government laws and regulations (Stafford Act and 44 CFR 206.191) prohibit duplication of benefits. In other words, a subgrantee cannot receive disaster funding for activities covered by insurance benefits, other federal programs, or any other source.

**Finding 1:** The subgrantee claimed and received \$200,000 to repair a fence, replace dirt, and construct a retaining wall at a baseball park facility. However, the subgrantee had insurance coverage that was never acknowledged to FEMA, and received \$220,000 from its insurance carrier for the same damages. Therefore, the OIG questioned the \$200,000 of FEMA funding received for damages covered by insurance.

**Finding 2:** The subgrantee received \$100,000 of FEMA funds to repair its fire station. This amount and \$300,000 of anticipated insurance proceeds accounted for the \$400,000 needed for disaster-related repairs. However, the subgrantee had actual insurance recoveries of \$350,000. Therefore, the OIG questioned the \$50,000 of excess FEMA funding.

**Finding 3:** Under a FEMA project, the subgrantee had losses of \$1 million that were fully covered by insurance. However, the subgrantee only pursued and received insurance recoveries of \$500,000. Therefore, the OIG questioned the \$500,000 of FEMA funding received for damages covered by insurance.

**Finding 4:** The subgrantee claimed and received \$100,000 of FEMA funds for road repairs and to replace a chain link fence at a Head Start facility. However, the subgrantee also received funds from the U.S. Department of Housing and Urban Development and the U.S. Department of Health and Human Services to carry out the same activities. Therefore, the OIG questioned the \$100,000 of FEMA funds received for activities covered by other federal programs.

### **D. Excessive Equipment Charges**

**Criteria:** Federal regulations (44 CFR 206.228) require that subgrantees use the FEMA schedule of equipment rates or their local rates, whichever are lower. Applicants that do not have local established rates must use the FEMA equipment rates when claiming costs under a FEMA project.

**Finding:** The subgrantee claimed \$78,348 for the use of bucket trucks based on the FEMA rate of \$24 per hour (3,264.5 hours x \$24 per hour). However, the subgrantee's local equipment rate for bucket trucks was \$16 per hour, or \$8 less than the FEMA rate. Therefore, the OIG questioned \$26,116 (3,264.5 hours x \$8) of excess charges.

### **E. Excessive Labor and Fringe Benefit Charges**

**Criteria:** According to OMB Circular A-87, allowable costs must be consistent with policies, regulations, and procedures that apply uniformly to both federal awards and other activities of the governmental unit. According to 44 CFR 206.228, straight or regular-time salaries and benefits of permanent employees engaged in emergency service work are not eligible for FEMA assistance.

**Finding 1:** The subgrantee claimed \$50,000 for overtime fringe benefits based on a fringe benefit rate of 23.55 percent. However, the rate included the cost of worker's compensation, which is not applicable to overtime. The claim should have been based on a rate of 10 percent, which would have resulted in charges of \$20,000. Therefore, the OIG questioned \$30,000 received by the subgrantee for which it was not entitled.

**Finding 2:** The subgrantee claimed \$10,000 for fringe benefits for personnel supplied by a temporary personnel agency. However, the subgrantee did not provide fringe benefits to the workers or pay the personnel agency for the costs claimed. Therefore, the OIG questioned the inappropriate charges of \$10,000.

**Finding 3:** The subgrantee charged a debris-removal project \$250,000 for regular time (\$150,000) and overtime (\$100,000) labor costs of permanent employees. However, as a general rule, the regular-time salaries and benefits of a subgrantee's permanent employees engaged in debris removal work are not eligible for FEMA assistance. Therefore, the OIG questioned the \$150,000 claimed for regular-time labor.

#### **F. Unrelated Project Charges**

**Criteria:** According to OMB Circular A-87, charges to federal grants must be necessary and reasonable to fulfill the objective of the grant program.

**Finding 1:** The subgrantee's claim for repairs to its local electrical distribution system included charges of \$10,000 for meals provided to the subgrantee's vice presidents, car washes, and a VCR. The OIG questioned these costs because they were for activities that did not benefit the project.

**Finding 2:** The subgrantee claimed and received \$500,000 under a FEMA project to repair Road XYZ. However, the subgrantee's claim included \$250,000 for heavy equipment and material charges for Road ABC. The OIG questioned the \$250,000 for Road ABC because the road was not included under the project's approved scope of work.

#### **G. Unapplied Credits**

**Criteria:** According to OMB Circular A-87, grants must be reduced by credits that offset or reduce expenses allocable to federal awards.

**Finding 1:** FEMA awarded funds for repairs to the subgrantee's electrical distribution system. The subgrantee received \$15,000 of proceeds from the sale of scrap material related to the FEMA project. However, the subgrantee did not credit the FEMA project with the sale proceeds. Therefore, the OIG questioned \$15,000 of the subgrantee's final claim.

***Finding 2:*** The City received two credit discounts totaling \$7,000 under a FEMA project for early payments to a contractor. However, the City did not credit the FEMA project for the discounts. Therefore, the OIG questioned \$7,000 of costs under the project.

#### **H. Poor Contracting Practices**

***Criteria.*** According to federal regulations (44 CFR 13.36), a subgrantee must comply with the following procurement standards:

- The subgrantee must maintain records in sufficient detail to reflect the significant history of the procurement, including the rationale for the method of procurement, the basis for the contractor selection, and the basis for the contract price;
- The subgrantee is prohibited from using time-and-material-type contracts unless a determination is made that no other contract is suitable, and provided that the contract includes a ceiling price that the contractor exceeds at its own risk; and
- The subgrantee is prohibited from using a “cost plus a percentage of cost” contract arrangement.

***Finding:*** The subgrantee entered into 3 contracts for renovating 19 vacant buildings to be used as temporary emergency shelters. However, the subgrantee did not document the basis for the contractor selection or the basis for the contract price. Further, although payments under the contracts were based on “time and materials,” the subgrantee did not determine the availability of other contractual arrangements with more suitable pricing terms and, contrary to regulation, did not establish a ceiling price under the contracts.

The OIG also noted that payments under the three contracts were on a “cost plus a percentage of cost” basis. The contractors were reimbursed for time and materials and were also given an overhead and profit allowance of 25 percent of actual costs. Under this type of contract, the greater the labor costs, the greater the overhead and profit. This payment arrangement is prohibited because there is a disincentive to reduce costs.

At the time of our review, the subgrantee had paid \$789,255 in profit and overhead to the contractor. Due to the improper contracting practices and related weak cost control measures, the OIG questioned the reasonableness of the \$789,255 claimed for profit and overhead.

### **V. Key Points to Remember When Administering FEMA Grants**

1. Designate a person to coordinate the accumulation of records.
2. Establish a separate and distinct account for recording revenue and expenditures, and a separate account for each distinct FEMA project.
3. Ensure that the final claim made for each project is supported by amounts recorded in the accounting system.

4. Ensure that each expenditure is recorded in the accounting books and is referenced to supporting source documentation (checks, invoices, etc.) that can be readily retrieved.
5. Research insurance coverage and seek reimbursement for the maximum amount. Credit the appropriate FEMA project with that amount.
6. Check with your Federal Grant Program Coordinator about the availability of funding under other federal programs (i.e., Federal Highway, Housing and Urban Development, etc.) and ensure that the final project claim does not include costs that were funded or should be funded by another federal agency.
7. Ensure that materials taken from existing inventories for use under FEMA projects are documented by inventory withdrawal and usage records.
8. Do not charge the regular time salary of permanent employees or seasonal employees (whose salaries are contained in annual appropriations) to FEMA debris removal and emergency protective services projects.
9. Do not claim costs for items or activities for which you did not have a cash outlay.
10. Ensure that claims for overtime fringe benefits are based on cost items (i.e., F.I.C.A., worker's compensation, etc.) that accrue as a result of overtime. Items such as health benefits and leave are not eligible as overtime fringe benefits.
11. Ensure that expenditures claimed under the FEMA project are reasonable and necessary, are authorized under the scope of work, and directly benefit the project.
12. Ensure that you document pertinent actions for contracts awarded under FEMA projects, including the rationale for the method of procurement, the basis for contractor selection, and the basis for the contract price. Remember that federal regulations prohibit "cost plus a percentage of cost" contracts.

***Reader Response Sheet***

The OIG is interested in the comments and suggestions of those using *Audit Tips for Managing Disaster-Related Project Costs*.

Please take a few minutes to complete this sheet and send it to:

**DHS OIG  
Murray Drive, S.E., Building 410  
Washington, DC 20528  
Attn: ADIG EMO**

- 
1. The things I liked most about the document were:
  2. The things I liked least about the document were:
  3. In the next update, the things I would like to see added or changed are:
  4. Other comments, suggestions and corrections:

Respondent's Name, Title, Phone Number (optional):

Date of Response \_\_\_\_\_

# Disaster Fraud Hotline

**1-866-720-5721**

The DHS OIG not only conducts audits, but also aggressively investigates allegations of fraud, waste, and abuse. Below are a few of the more common allegations reported through our Hotline.

- ❑ Disaster assistance applicants use false names and/or fictitious addresses.
- ❑ Disaster assistance applicants claim losses that they did not incur or were not entitled to claim.
- ❑ Private individuals claim to be FEMA employees.
- ❑ Disaster fund recipients are victimized by contractors who inflate repair fees and/or fail to properly complete repairs.
- ❑ Disaster fund recipients damage their own properties to receive disaster assistance.
- ❑ Subgrantees do not use FEMA funds for the purpose intended.

If you have knowledge of fraud, waste, or abuse, or allegations of mismanagement involving disaster relief operations, you can:

- Call the Disaster Fraud Hotline at 1-866-720-5721
- Fax the Disaster Fraud Hotline at 1-225-334-4707
- Email: [disaster@leo.gov](mailto:disaster@leo.gov)
- Or write: National Center for Disaster Fraud  
Baton Rouge, LA 70821-4909

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***Calls can be made anonymously and  
confidentially***



# CONTRACTING

It is the intent of the Public Assistance Program that restoration of infrastructure assets be accomplished in a cost-effective manner. To ensure this is accomplished, when contract services are used for completion of PWs, **the maximum competitive service method must be utilized.** As a condition of acceptance of federal funds, you must comply with the relevant state and federal laws and regulations on this subject. Various sections of *the Ohio Revised Code* and *Code of Federal Regulations* are primary references.

## ***TYPES OF CONTRACTS***

Federal regulations allow for some types of contracts but do not allow for others. Allowable contracts are:

- Lump Sum Contracts – Work is within a prescribed boundary with a clearly defined scope of work
- Unit Price Contracts – Work is done on an item-by-item basis with cost determined per unit
- Cost-plus-fixed-fee – Either lump sum or unit price contracts with a fixed contractor fee added into the price
- Time and Material Contracts – Work is billed based on labor, equipment and materials used. You should only use this type of contract after determining no other contract is suitable and the contract must include a cost ceiling or “do not exceed” clause. If you use this type of contract, there is a heavy administrative burden due to need for a solid monitoring system for field work and source documentation for invoices. The contractors should either provide source documentation for their invoices (time cards, hotel receipts, vehicle usage logs, etc.) or have them available for you for audit purposes.

Unallowable contracts are:

- Cost-plus-percentage-of-cost and percentage of construction costs contracts (includes markups)

## ***DEBARRED CONTRACTORS***

As a part of your procurement process, please ensure you are not utilizing debarred contractors. You should check the following websites and document for your file that the websites were viewed.

Federal website for debarred contractors: [www.epls.gov](http://www.epls.gov)

State website for debarred contractors: <http://www.sos.state.oh.us/SOS/recordsindexes.aspx>

## ***FEDERAL REQUIREMENTS***

Federal rules for grant administration, including procurement are found at 44 Code of Federal Regulation (CFR) Part 13, Uniform Administrative Requirements for Grants and Cooperative

Agreements to State and Local Governments (included in this tab) or 2 CFR Part 215 Uniform Administrative Requirements for Institutions of Higher Education, Hospitals and Non-Profit Organizations, depending on your entity type. Although there are some differences, four overall requirements are included in both:

- *A cost or price analysis* must be performed and documented unless there is an established market price of a commercial product
- Maintain records sufficient to detail the significant *history of the procurement*. For example how it was determined to use a particular method for procurement over another and how a contractor was selected over another
- Procurement transactions must allow for *full and open competition* with some exceptions allowed in emergency circumstances
- Particularly when using time and material contracts, *source documentation* is required for invoices. This includes time and attendance records and other costs charged by the contractor
- Other general contracting provisions include where practicable, use of small businesses, minority-owned firms and women's businesses and contract provisions for Equal Opportunity, Copeland Act and Davis-Bacon Act\*, debarred contractors, etc.

\*Please note that the PA Program is exempt from the Davis Bacon Act.

**If you are required to use 44 CFR Part 13** - 44 CFR Part 13.36 specifies methods of procurement that should be used depending on the circumstances of the procurement. You must document why you selected the method used and the steps taken to follow said method. Each method is summarized below:

- Small purchase threshold – Simplified acquisition threshold under \$100,000. Price or rate quotations shall be obtained from an adequate number of qualified sources (three recommended). Make sure to document this process, even if they are verbal quotes. Write down when you called, who you spoke to and what was quoted. Also document the decision making process (took low bidder, etc.). Note that the \$100,000 threshold is more than likely higher than the state or local requirement for competitive bidding so even if the work you are looking to contract is less than \$100,000, that does not necessarily exempt the work from competitive bidding.
- Sealed bids – Preferred method for procuring construction contracts. Bids are publicly solicited (advertised) and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible low bidder. The selection of the successful bidder can be made principally on the basis of price.
- Competitive Proposals – Generally used when conditions are not appropriate for sealed bids. Awarded on the basis of contractor qualifications and not solely based on price; most often used for procuring architectural or engineering professional services.
- Noncompetitive Proposals – Used if other methods aren't feasible and if one of the following circumstances apply: 1) Item is available from only one source; 2) Emergency exists that won't permit competition; 3) The awarding agency authorizes its use; or 4) Solicitation attempted but determined inadequate.

**If you are required to use 2 CFR Part 215** - The above methods are also noted in 2 CFR Part 215 but the circumstances by which you would select a certain method are not as clearly defined

or are more at the discretion of the applicant. However, you should still document why you selected the method used and the steps taken to follow said method.

## ***STATE AND LOCAL REQUIREMENTS***

There are several specific laws concerning contracts and the expenditure of public money. Some of these laws are in the Ohio Revised Code, while others are in local governments' charters, ordinances, and resolutions. Therefore, ensure that you are following all applicable laws, regardless of source, as well as the federal regulations. Below is a list of some of laws found within the Ohio Revised Code. **Please note this list is not all inclusive. Please check with the legal authority within your jurisdiction before you enter into any contract to ensure all laws are being met.**

### **Statutory Municipalities**

- ORC 9.48, 715.18, 731.02, 731.12, 731.14, 731.141, 735.05, 735.051, 735.052, 735.053, 737.03 and 2921.42: Municipal contracts
- ORC 731.16, 735.07: Altering or modifying municipal contracts
- ORC 117.16(A), 723.52 – Force Accounts Municipal Corporations [Cities/Villages]

### **Counties**

- ORC 305.30: Responsibilities of the county administrator
- ORC 305.27, 319.16, 307.86, 307.862, 9.37, 307.87, 307.88, and 307.91: County payments to be by auditor's warrant; competitive bidding
- ORC 117.16(A), 5543.19 Force Accounts – Counties

### **Townships**

- ORC 9.48, 505.08, 505.101, 505.267, 505.37, 505.42, 505.46, 507.11(B), 511.12, 511.13, 515.01, 5549.21, and 5575.01: Township expenditures and competitive bidding
- ORC 117.16(A), 5575.01 – Force Accounts – Townships

### **Board of Education (Schools)**

- ORC 3313.33: Conveyances and contracts
- ORC 9.48, 3313.46, 125.04(C), and 3313.533: Board of Education procedures for bidding and letting of contracts
- ORC 3313.33(B), 3313.37, 3313.375, 3313.40, 3313.41, and Section 733.20 of Amended Substitute House Bill 1: Acquisition of school real estate, building, And office equipment
- ORC Chapter 3318: Permissible expenditures for school districts participating in the Classroom Facilities Assistance Program (and related classroom facility programs)
- ORC 3318: School Building Assistance Limited Fund for the Big 8 school districts

### **Community Schools**

- Although the competitive bidding procedures applicable to boards of education in ORC §3313.46 (and related sections in Chapter 153) do not apply to community schools, the sponsor (through its contract) may mandate a community school comply with these or other competitive bidding procedures.

- Ohio Rev. Code Section 3313.33(B) - Interest in contracts by elected officials. These sections prohibit elected officials from having any pecuniary interest in a contract or to be otherwise employed by the entity. They also provide that contracts are void unless authorized at a regular or special meeting. This statute does not apply to community schools unless the sponsor mandates it through the sponsor contract.
- Ohio Rev. Code Section 2921.42 - This section prohibits having an unlawful interest in a public contract. This statute applies to community schools.
- Also note that RC 9.24, regarding unresolved findings for recovery and contracts, does not apply to community schools.
- ORC 3314.24(A) E-school leases for instructional space

### **Hospitals**

- ORC 9.48, 153.65-.71, 339.05: County hospital bidding procedures and purchasing policies for supplies/equipment
- ORC 749.26, 749.27, 749.28, 749.29, 749.30, and 749.31: Municipal hospital contract procedures

### **Colleges and Universities**

- ORC 9.312, 153.65-.71, 3354.16, 3355.12, 3357.16, and 3358.10: Bidding on improvement contracts

### **Libraries**

- ORC 153.65-.71 and 3375.41: Bidding and letting of contracts over \$25,000

### **General**

- ORC 9.48: Joint contracting and purchasing programs for counties and townships
- ORC 153.50, 153.51, 153.52: Bids and contracts for buildings/structures
- ORC 4115.04, 4115.05: Prevailing wage rates
- ORC 9.314: Reverse Internet auction in lieu of sealed bids (all political subdivisions)
- ORC 9.24 Unresolved Findings for Recovery

Source: 2010 Ohio Compliance Supplement Contracts and Expenditures, Chapter 2, Contracts and Expenditures

### ***ATTACHMENTS***

- 44 CFR Part 13
- 2 CFR Part 215

## **PART 13— UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

### Subpart A— General Section

- 13.1 Purpose and scope of this part.
- 13.2 Scope of subpart.
- 13.3 Definitions.
- 13.4 Applicability.
- 13.5 Effect on other issuances.
- 13.6 Additions and exceptions.

### Subpart B— Pre- Award Requirements

- 13.10 Forms for applying for grants.
- 13.11 State plans.
- 13.12 Special grant or subgrant conditions for “ high- risk’ grantees.

### Subpart C— Post- Award Requirements

#### FINANCIAL ADMINISTRATION

- 13.20 Standards for financial management systems.
- 13.21 Payment.
- 13.22 Allowable costs.
- 13.23 Period of availability of funds.
- 13.24 Matching or cost sharing.
- 13.25 Program income.
- 13.26 Non-Federal audit.

#### CHANGES, PROPERTY, AND SUBAWARDS

- 13.30 Changes.
- 13.31 Real property.
- 13.32 Equipment.
- 13.33 Supplies.
- 13.34 Copyrights.
- 13.35 Subawards to debarred and suspended parties.
- 13.36 Procurement.
- 13.37 Subgrants.

#### REPORTS, RECORDS RETENTION, AND ENFORCEMENT

- 13.40 Monitoring and reporting program performance.
- 13.41 Financial reporting.
- 13.42 Retention and access requirements for records.
- 13.43 Enforcement.
- 13.44 Termination for convenience.

### Subpart D— After- the- Grant Requirements

- 13.50 Closeout.
- 13.51 Later disallowances and adjustments.
- 13.52 Collection of amounts due.

### Subpart E— Entitlement [Reserved]

AUTHORITY: Reorganization Plan No. 3 of 1978; 43 FR 41943,3 CFR, 1978 Comp, p. 329; E. O. 12148, 44 FR 43239,3 CFR, 1979 Comp, p. 412.

SOURCE: 53 FR 8078, 8087, Mar. 11, 1988, unless otherwise noted.

EDITORIAL NOTE: For additional information, see related documents published at 49 FR 24958, June 18, 1984; 52 FR 20178, May 29, 1987; and 53 FR 8028, Mar. 11, 1988.

## Subpart A— General

### § 13.1 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

### § 13.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

### § 13.3 Definitions.

As used in this part:

Accrued expenditures mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) Services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) Other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

Accrued income means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

Acquisition cost of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which 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 grantee's regular accounting practices.

Administrative requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from " programmatic" requirements, which concern matters that can be treated only on a program- by- program or grant- by- grant basis, such as kinds of activities that can be supported by grants under a particular program.

Awarding agency means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

Cash contributions means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

Contract means (except as used in the definitions for grant and subgrant in this section and except where qualified by Federal) a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

Cost sharing or matching means the value of the third party in- kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

Cost- type contract means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

Equipment means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

Expenditure report means: (1) For nonconstruction grants, the SF- 269 " Financial Status Report" (or other equivalent report); (2) for construction grants, the SF- 271 " Outlay Report and Request for Reimbursement" (or other equivalent report).

Federally recognized Indian tribal government means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

Government means a State or local government or a federally recognized Indian tribal government.

Grant means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

Grantee means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

Local government means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Obligations means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

OMB means the United States Office of Management and Budget.

Outlays (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

Percentage of completion method refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

Prior approval means documentation evidencing consent prior to incurring specific cost.

Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Share, when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted— not the value of third-party in-kind contributions.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

Subgrant means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded

from the definition of grant in this part.

Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Supplies means all tangible personal property other than equipment as defined in this part.

Suspension means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E. O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

Termination means permanent withdrawal of the authority to obligate previously awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. "Termination" does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) Withdrawal of the unobligated balance as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Terms of a grant or subgrant mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

Third party in-kind contributions mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

Unliquidated obligations for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

#### **§ 13.4 Applicability.**

(a) General. Subparts A through D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of section 13.6, or:

- (1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.
- (2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under title V, subtitle D, Chapter 2, Section 583—the Secretary's discretionary grant program) and titles I–III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of title V, Mental Health Service for the Homeless Block Grant.
- (3) Entitlement grants to carry out the following programs of the Social Security Act:
  - (i) Aid to Needy Families with Dependent Children (Title IV–A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a) 19(G); HHS grants for WIN are subject to this part);
  - (ii) Child Support Enforcement and Establishment of Paternity (Title IV–D of the Act);
  - (iii) Foster Care and Adoption Assistance (Title IV–E of the Act);
  - (iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI–AABD of the Act; and
  - (v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).
- (4) Entitlement grants under the following programs of The National School Lunch Act:

- (i) School Lunch (section 4 of the Act),
  - (ii) Commodity Assistance (section 6 of the Act),
  - (iii) Special Meal Assistance (section 11 of the Act),
  - (iv) Summer Food Service for Children (section 13 of the Act), and
  - (v) Child Care Food Program (section 17 of the Act).
- (5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:
- (i) Special Milk (section 3 of the Act), and
  - (ii) School Breakfast (section 4 of the Act).
- (6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).
- (7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;
- (8) Grant funds awarded under subsection 412 (e) of the Immigration and Nationality Act (8 U. S. C. 1522(e) and subsection 501( a) of the Refugee Education Assistance Act of 1980) (Pub. L. 96– 422, 94 Stat. 1809, for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;
- (9) Grants to local education agencies under 20 U. S. C. 236 through 241–1(a), and 242 through 244 (portions of the Impact Aid program, except for 20 U. S. C. 238( d( 2( c) and 240(f) (Entitlement Increase for Handicapped Children; and
- (10) Payments under the Veterans Administration's State Home Per Diem Program (38 U. S. C. 641(a)).
- (b) Entitlement programs. Entitlement programs enumerated above in § 13.4(a)(3) through (8) are subject to subpart E.

### **§ 13.5 Effect on other issuances.**

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § 13.6.

### **§ 13.6 Additions and exceptions.**

- (a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the FEDERAL REGISTER.
- (b) Exceptions for classes of grants or grantees may be authorized only by OMB.
- (c) Exceptions on a case- by- case basis and for subgrantees may be authorized by the affected Federal agencies.

## **Subpart B— Pre- Award Requirements**

### **§ 13.10 Forms for applying for grants.**

- (a) Scope.
  - (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.
  - (2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.
- (b) Authorized forms and instructions for governmental organizations.
  - (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.
  - (2) Applicants are not required to submit more than the original and two copies of pre-applications or applications.
  - (3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF– 424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.
  - (4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

### **§ 13.11 State plans.**

- (a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations

implementing Executive Order 12372, " Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive Order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

- (1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,
- (2) Repeat the assurance language in the statutes or regulations, or
- (3) Develop its own language to the extent permitted by law.

(c) *Amendments.* A State will amend a plan whenever necessary to reflect:

- (1) New or revised Federal statutes or regulations or
- (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

### **§ 13.12 Special grant or subgrant conditions for " high- risk' grantees.**

(a) A grantee or subgrantee may be considered " high risk' if an awarding agency determines that a grantee or subgrantee:

- (1) Has a history of unsatisfactory performance, or
- (2) Is not financially stable, or
- (3) Has a management system which does not meet the management standards set forth in this part, or
- (4) Has not conformed to terms and conditions of previous awards, or
- (5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high-risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

- (1) Payment on a reimbursement basis;
- (2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;
- (3) Requiring additional, more detailed financial reports;
- (4) Additional project monitoring;
- (5) Requiring the grantee or subgrantee to obtain technical or management assistance; or
- (6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

- (1) The nature of the special conditions/restrictions;
- (2) The reason(s) for imposing them;
- (3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and
- (4) The method of requesting reconsideration of the conditions/restrictions imposed.

## **Subpart C— Post- Award Requirements**

### **FINANCIAL ADMINISTRATION**

#### **§ 13.20 Standards for financial management systems.**

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

- (1) Permit preparation of reports required by this part and the statutes authorizing the grant, and
- (2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

- (1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.
- (2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and

application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U. S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transaction reports to the awarding agency. When advances are made by letter of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(d) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

### **§ 13.21 Payment.**

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(e) *Effect of program income, refunds, and audit recoveries on payment.*

(1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(f) *Withholding payments.*

(1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 13.43(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(g) Cash depositories.

(1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(h) Interest earned on advances. Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U. S. C. 6501 et seq.) and the Indian Self-Determination Act (23 U. S. C. 450, grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to \$100 per year for administrative expenses.

### § 13.22 Allowable costs.

(a) Limitation on use of funds. Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost- type contractors, including allowable costs in the form of payments to fixed- price contractors; and

(2) Reasonable fees or profit to cost type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) Applicable cost principles. For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a— State, local or Indian tribal government. Use the principles in—OMB Circular A– 87.

For the costs of a— Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A–122 as not subject to that circular. Use the principles in—OBM Circular A– 122.

For the costs of a—Educational institutions. Use the principles in— OMB Circular A– 21.

For the costs of a—For- profit organization other than a hospital and an organization named in OBM Circular A– 122 as not subject to that circular. Use the principles in—48 CFR part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

### § 13.23 Period of availability of funds.

(a) General. Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) Liquidation of obligations. A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period(or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report(SF– 269). The Federal agency may extend this deadline at the request of the grantee.

### § 13.24 Matching or cost sharing.

(a) Basic rule: Costs and contributions acceptable. With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost- type contractor under the assistance agreement. This includes allowable costs borne by non- Federal grants or by others cash donations from non- Federal third parties.

(2) The value of third party in- kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) Qualifications and exceptions

(1)Costs borne by other Federal grant agreements. Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) General revenue sharing. For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) Cost or contributions counted towards other Federal costs- sharing requirements. Neither costs nor the values of third party in- kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) Costs financed by program income. Costs financed by program income, as defined in § 13.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 13.25 (g).

(5) Services or property financed by income earned by contractors. Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) Records. Costs and third party in kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost- type contractors. These records must show how the value placed on third party in- kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) Special standards for third party in kind contributions.

(i) Third party in kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in- kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in- kind contribution to a fixed- price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in- kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) Valuation of donated services

(1) Volunteer services. Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) Employees of other organizations. When an employer other than a grantee, subgrantee, or cost- type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph(c)(1) of this section applies.

(d) Valuation of third party donated supplies and loaned equipment or space.

(1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) Valuation of third party donated equipment, buildings, and land. If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) Awards for capital expenditures. If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching,

(2) Other awards. If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs

(e)(2) (i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-Federal share of the property may be counted as cost sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 13.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) Valuation of grantee or subgrantee donated real property for construction/ acquisition. If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-Federal share of the property may be counted as cost sharing or matching.

(g) Appraisal of real property. In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

### **§ 13.25 Program income.**

(a) General. Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) Definition of program income. Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. During the grant period is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) Cost of generating program income. If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) Governmental revenues. Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) Royalties. Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 13.34)

(f) Property. Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ 13.31 and 13.32.

(g) Use of program income. Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives.) In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) Deduction. Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) Addition. When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) Cost sharing or matching. When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

- (i) Income after the award period. There are no Federal requirements governing the disposition of program income earned after the end of the award period (i. e, until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

### **§ 13.26 Non- Federal audit.**

(a) Basic rule. Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act Amendments of 1996 (31 U. S. C. 7501– 7507) and revised OMB Circular A– 133, “ Audits of States, Local Governments, and Non- Profit Organizations.” The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits.

(b) Subgrantees. State or local governments, as those terms are defined for purposes of the Single Audit Act Amendments of 1996, that provide Federal awards to a subgrantee, which expends \$300,000 or more (or other amount as specified by OMB) in Federal awards in a fiscal year, shall:

- (1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A–110, “ Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non- Profit Organizations,” have met the audit requirements of the Act. Commercial contractors (private for- profit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;
- (2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A– 110, or through other means (e. g, program reviews) if the subgrantee has not had such an audit;
- (3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;
- (4) Consider whether subgrantee audits necessitate adjustment of the grantee’s own records; and
- (5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) Auditor selection. In arranging for audit services, § 13.36 shall be followed.

[53 FR 8079, 887, Mar. 11, 1988, as amended at 62 FR 45939, 45945, Aug. 29, 1997]

## **CHANGES, PROPERTY, AND SUBAWARDS**

### **§ 13.30 Changes.**

(a) General. Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post- award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) Relation to cost principles. The applicable cost principles (see § 13.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) Budget changes

(1) Nonconstruction projects. Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency’s share exceeds \$100,000.

(iii) Transfer of funds allotted for training allowances (i. e, from direct payments to trainees to other expense categories.)

(2) Construction projects. Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) Combined construction and nonconstruction projects. When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the

- awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.
- (d) Programmatic changes. Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:
- (1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval.)
  - (2) Need to extend the period of availability of funds.
  - (3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.
  - (4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 13.36 but does not apply to the procurement of equipment, supplies, and general support services.
- (e) Additional prior approval requirements. The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.
- (f) Requesting prior approval.
- (1) A request for prior approval of any budget revision will be in the same budget form the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.
  - (2) A request for a prior approval under the applicable Federal cost principles (see § 13.22) may be made by letter.
  - (3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

### **§ 13.31 Real property.**

- (a) Title. Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.
- (b) Use. Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purpose, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.
- (c) Disposition. When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:
- (1) Retention of title. Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.
  - (2) Sale of property. Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.
  - (3) Transfer of title. Transfer title to the awarding agency or to a third party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

### **§ 13.32 Equipment.**

- (a) Title. Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.
- (b) States. A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.
- (c) Use.

(1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 13.25 (a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) Management requirements. Procedures for managing equipment (including replacement equipment, whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) Disposition. When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of \$5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) Federal equipment. In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) Right to transfer title. The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow § 13.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

### § 13.33 Supplies.

(a) Title. Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) Disposition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

#### **§ 13.34 Copyrights.**

The Federal awarding agency reserves a royalty- free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

#### **§ 13.35 Subawards to debarred and suspended parties.**

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, " Debarment and Suspension."

#### **§ 13.36 Procurement.**

(a) States. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) Procurement standards.

(1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees 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.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters

as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee or subgrantee's protest procedures for failure to review a complaint or protest.

Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) Competition.

(1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of section 13.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all pre-qualified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation

period.

(d) Methods of procurement to be followed

(1) Procurement by small purchase procedures. 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 simplified acquisition threshold fixed at 41 U. S. C. 403(11) (currently set at \$100,000.) If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by sealed bids (formal advertising.) Bids are publicly solicited and a firm- fixed- price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 13.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed- price contract award will be made in writing to the lowest responsive and responsible bidder.

Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by competitive proposals. 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 awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications- based procurement of architectural/ engineering (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 are a potential source to perform the proposed effort.

(4) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i. e, verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre- award review in accordance with paragraph (g) of this section.

(e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms.

- (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.
- (2) Affirmative steps shall include:
  - (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
  - (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
  - (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
  - (vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) Contract cost and price.

(1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e. g, under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will 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.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § 13.22.) Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) Awarding agency review.

(1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre- award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

- (i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or
- (ii) 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; or
- (iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a " brand name" product; or
- (iv) The proposed award 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
- (v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre- award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

- (i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these

reviews shall occur where there is a continuous high-dollar funding, and third party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall 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 his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) Contract provisions. A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000.)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60.) (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees.)

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U. S. C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3.) (All contracts and subgrants for construction or repair.)

(5) Compliance with the Davis-Bacon Act (40 U. S. C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5.) (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation.)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U. S. C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5.) (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers.)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U. S. C. 1857(h)), section 508 of the Clean Water Act (33 U. S. C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15.) (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871.)

[53 FR 8078, 8087, Mar. 11, 1988, as amended at 60 FR 19639, 19645, Apr. 19, 1995]

### **§ 13.37 Subgrants.**

(a) States. States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

- (1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;
- (2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;
- (3) Ensure that a provision for compliance with § 13.42 is placed in every cost reimbursement subgrant; and
- (4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) All other grantees. All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

- (1) Ensure that every subgrant includes a provision for compliance with this part;
- (2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and
- (3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) Exceptions. By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

- (1) Section 13.10;
- (2) Section 13.11;
- (3) The letter- of- credit procedures specified in Treasury Regulations at 31 CFR part 205, cited in § 13.21; and
- (4) Section 13.50.

## **REPORTS, RECORDS RETENTION, AND ENFORCEMENT**

### **§ 13.40 Monitoring and reporting program performance.**

(a) Monitoring by grantees. Grantees are responsible for managing the day to day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) Nonconstruction performance reports. The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi- annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

- (i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.
- (ii) The reasons for slippage if established objectives were not met.
- (iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs

(3) Grantees will not be required to submit more than the original and two copies of performance reports

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) Construction performance reports. For the most part, on-site technical inspections and certified percentage of completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

- (d) Significant developments. Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:
- (1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
  - (2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.
- (e) Federal agencies may make site visits as warranted by program needs.
- (f) Waivers, extensions.
- (1) Federal agencies may waive any performance report required by this part if not needed.
  - (2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

### **§ 13.41 Financial reporting.**

- (a) General.
- (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:
    - (i) Submitting financial reports to Federal agencies, or
    - (ii) Requesting advances or reimbursements when letters of credit are not used.
  - (2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.
  - (3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extent required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decision-making purposes.
  - (4) Grantees will not be required to submit more than the original and two copies of forms required under this part.
  - (5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.
  - (6) Federal agencies may waive any report required by this section if not needed.
  - (7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.
- (b) Financial Status Report
- (1) Form. Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with paragraph (e)(2)(iii) of this section.
  - (2) Accounting basis. Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.
  - (3) Frequency. The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.
  - (4) Due date. When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.
- (c) Federal Cash Transactions Report—
- (1) Form.
    - (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.
    - (ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain

disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) Forecasts of Federal cash requirements. Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) Cash in hands of subgrantees. When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) Frequency and due date. Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) Request for advance or reimbursement

(1) Advance payments. Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) Reimbursements. Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in paragraph (b)(3) of this section.

(e) Outlay report and request for reimbursement for construction programs.

(1) Grants that support construction activities paid by reimbursement method.

(i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in paragraph (d) of this section, instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in paragraph (b)(3) of this section.

(2) Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.

(i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by paragraphs (b) (3) and (4) of this section.

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in paragraph (d) of this section.

(iii) The Federal agency may substitute the Financial Status Report specified in paragraph (b) of this section for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) Accounting basis. The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by paragraph (b)(2) of this section.

### **§ 13.42 Retention and access requirements for records.**

(a) Applicability.

(1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 13.36( i)(10).

(b) Length of retention period.

(1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph(c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3- year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3- year period, whichever is later.

(3) To avoid duplicate record-keeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the

records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) Starting date of retention period

(1) General. When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) Real property and equipment records. The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) Records for income transactions after grant or subgrant support. In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) Indirect cost rate proposals, cost allocations plans, etc. This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) Substitution of microfilm. Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) Access to records

(1) Records of grantees and subgrantees. The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(3) Expiration of right of access. The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) Restrictions on public access. The Federal Freedom of Information Act (5 U. S. C. 552) does not apply to records Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

**§ 13.43 Enforcement.**

(a) Remedies for noncompliance. If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) Hearings, appeals. In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) Effects of suspension and termination. Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are non-cancelable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) Relationship to Debarment and Suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E. O. 12549 (see § 13.35.)

#### **§ 13.44 Termination for convenience.**

Except as provided in § 13.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § 13.43 or paragraph (a) of this section.

#### **Subpart D— After- The- Grant Requirements**

#### **§ 13.50 Closeout.**

(a) General. The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) Reports. Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) Final performance or progress report.

(2) Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF- 271) (as applicable)

(3) Final request for payment (SF- 270) (if applicable.)

(4) Invention disclosure (if applicable.)

(4) Federally- owned property report: In accordance with § 13.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) Cost adjustment. The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) Cash adjustments.

(1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

#### **§ 13.51 Later disallowances and adjustments.**

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § 13.42;

(d) Property management requirements in §§ 13.31 and 13.32; and

(e) Audit requirements in § 13.26

#### **§ 13.52 Collection of amounts due.**

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Chapter II.) The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

**Subpart E— Entitlement [Reserved]**

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**PARTS 200–214 [RESERVED]**

**PART 215—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS (OMB CIRCULAR A–110)**

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**APPENDIX A TO PART 215—CONTRACT PROVISIONS**

AUTHORITY: 31 U.S.C. 503; 31 U.S.C. 1111; 41 U.S.C. 405; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966–1970, p. 939.

SOURCE: 69 FR 26281, May 11, 2004, unless otherwise noted.

**§215.0 About this part.**

(a) *Purpose.* This part contains OMB guidance to Federal agencies on the administration of grants to and agreements with institutions of higher education, hospitals, and other non-profit organizations. The guidance sets forth standards for obtaining consistency and uniformity in the agencies' administration of those grants and agreements.

(b) *Applicability.* (1) Except as provided herein, the standards set forth in this part are applicable to all Federal agencies. If any statute specifically

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prescribes policies or specific requirements that differ from the standards provided in this part, the provisions of the statute shall govern.

(2) The provisions of subparts A through D of this part shall be applied by Federal agencies to recipients. Recipients shall apply the provisions of those subparts to subrecipients performing substantive work under grants and agreements that are passed through or awarded by the primary recipient, if such subrecipients are organizations described in paragraph (a) of this section.

(3) This part does not apply to grants, contracts, or other agreements between the Federal Government and units of State or local governments covered by OMB Circular A-102, “Grants and Cooperative Agreements with State and Local Governments”<sup>1</sup> and the Federal agencies’ grants management common rule (see §215.5) which standardize the administrative requirements Federal agencies impose on State and local grantees. In addition, subawards and contracts to State or local governments are not covered by this part. However, this part applies to subawards made by State and local governments to organizations covered by this part.

(4) Federal agencies may apply the provisions of subparts A through D of this part to commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations.

(c) *OMB responsibilities.* OMB is responsible for:

(1) Issuing and maintaining the guidance in this part.

(2) Interpreting the policy requirements in this part and providing assistance to ensure effective and efficient implementation.

(3) Reviewing Federal agency regulations implementing the guidance in this part, as required by Executive Order 12866.

(4) Granting any deviations to Federal agencies from the guidance in this part, as provided in §215.4. Exceptions will only be made in particular cases

<sup>1</sup>See 5 CFR 1310.9 for availability of OMB circulars.

where adequate justification is presented.

(5) Conducting broad oversight of government-wide compliance with the guidance in this part.

(d) *Federal agency responsibilities.* The head of each Federal agency that awards and administers grants and agreements subject to the guidance in this part is responsible for:

(1) Implementing the guidance in subparts A through D of this part by adopting the language in those subparts unless different provisions are required by Federal statute or are approved by OMB.

(2) Ensuring that the agency’s components and subcomponents comply with the agency’s implementation of the guidance in subparts A through D of this part.

(3) Requesting approval from OMB for deviations from the guidance in subparts A through D of this part in situations where the guidance requires that approval.

(4) Performing other functions specified in this part.

(e) *Relationship to previous issuance.* The guidance in this part previously was issued as OMB Circular A-110. Subparts A through D of this part contain the guidance that was in the attachment to the OMB circular. Appendix A to this part contains the guidance that was in the appendix to the attachment.

(f) *Information Contact.* Further information concerning this part may be obtained by contacting the Office of Federal Financial Management, Office of Management and Budget, Washington, DC 20503, telephone (202) 395-3993.

(g) *Termination Review Date.* This part will have a policy review three years from the date of issuance.

### Subpart A—General

#### §215.1 Purpose.

This part establishes uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. Federal awarding agencies shall not impose additional or inconsistent requirements, except as provided in §215.4, and §215.14 or unless specifically

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required by Federal statute or executive order. Non-profit organizations that implement Federal programs for the States are also subject to State requirements.

### § 215.2 Definitions.

(a) *Accrued expenditures* means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and,

(3) Other amounts becoming owed under programs for which no current services or performance is required.

(b) *Accrued income* means the sum of:

(1) Earnings during a given period from:

(i) Services performed by the recipient, and

(ii) Goods and other tangible property delivered to purchasers, and

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) *Acquisition cost of equipment* means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which 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.

(d) *Advance* means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

(e) *Award* means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services instead of

money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

(f) *Cash contributions* means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

(g) *Closeout* means the process by which a Federal awarding agency determines that all applicable administrative actions and all required work of the award have been completed by the recipient and Federal awarding agency.

(h) *Contract* means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

(i) *Cost sharing or matching* means that portion of project or program costs not borne by the Federal Government.

(j) *Date of completion* means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which Federal sponsorship ends.

(k) *Disallowed costs* means those charges to an award that the Federal awarding agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

(l) *Equipment* means tangible non-expendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.

(m) *Excess property* means property under the control of any Federal awarding agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(n) *Exempt property* means tangible personal property acquired in whole or in part with Federal funds, where the Federal awarding agency has statutory authority to vest title in the recipient

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without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

(o) *Federal awarding agency* means the Federal agency that provides an award to the recipient.

(p) *Federal funds authorized* means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

(q) *Federal share* of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

(r) *Funding period* means the period of time when Federal funding is available for obligation by the recipient.

(s) *Intangible property and debt instruments* means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

(t) *Obligations* means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

(u) *Outlays or expenditures* means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash dis-

bursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(v) *Personal property* means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

(w) *Prior approval* means written approval by an authorized official evidencing prior consent.

(x) *Program income* means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in §215.24(e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal awarding agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(y) *Project costs* means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

(z) *Project period* means the period established in the award document during which Federal sponsorship begins and ends.

(aa) *Property* means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

(bb) *Real property* means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

(cc) *Recipient* means an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Federal awarding agency. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

(dd) *Research and development* means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(ee) *Small awards* means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11) (currently \$25,000).

(ff) *Subaward* means an award of financial assistance in the form of

money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award" in § 215.2(e).

(gg) *Subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the Federal awarding agency.

(hh) *Supplies* means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

(ii) *Suspension* means an action by a Federal awarding agency that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Federal awarding agency. Suspension of an award is a separate action from suspension under Federal agency regulations implementing E.O. 12549 (51 FR 6370, 3 CFR, 1986 Comp., p. 189) and E.O. 12689 (54 FR 34131, 3 CFR, 1989 Comp., p. 235), "Debarment and Suspension."

(jj) *Termination* means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(kk) *Third party in-kind contributions* means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting

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and specifically identifiable to the project or program.

(ll) *Unliquidated obligations*, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(mm) *Unobligated balance* means the portion of the funds authorized by the Federal awarding agency that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(nn) *Unrecovered indirect cost* means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

(oo) *Working capital advance* means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

#### §215.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other non-regulatory materials which are inconsistent with the requirements of this part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in §215.4.

#### §215.4 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part shall be permitted only in unusual circumstances. Federal awarding agencies may apply more restrictive requirements to a class of recipients when approved by OMB. Federal awarding agencies may apply less restrictive requirements when awarding small awards, except for those requirements which are stat-

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utory. Exceptions on a case-by-case basis may also be made by Federal awarding agencies.

### §215.5 Subawards.

Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," published at 7 CFR parts 3015 and 3016, 10 CFR part 600, 13 CFR part 143, 15 CFR part 24, 20 CFR part 437, 22 CFR part 135, 24 CFR parts 44, 85, 111, 511, 570, 571, 575, 590, 850, 882, 905, 941, 968, 970, and 990, 28 CFR part 66, 29 CFR parts 97 and 1470, 32 CFR part 278, 34 CFR parts 74 and 80, 36 CFR part 1207, 38 CFR part 43, 40 CFR parts 30, 31, and 33, 43 CFR part 12, 44 CFR part 13, 45 CFR parts 74, 92, 602, 1157, 1174, 1183, 1234, and 2015, and 49 CFR part 18.

[69 FR 26281, May 11, 2004, as amended at 70 FR 51880, Aug. 31, 2005]

### Subpart B—Pre-Award Requirements

#### §215.10 Purpose.

Sections 215.11 through 215.17 prescribe forms and instructions and other pre-award matters to be used in applying for Federal awards.

#### §215.11 Pre-award policies.

(a) Use of Grants and Cooperative Agreements, and Contracts. In each instance, the Federal awarding agency shall decide on the appropriate award instrument (*i.e.*, grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal

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statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement." Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) Public Notice and Priority Setting. Federal awarding agencies shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

### § 215.12 Forms for applying for Federal assistance.

(a) Federal awarding agencies shall comply with the applicable report clearance requirements of 5 CFR part 1320, "Controlling Paperwork Burdens on the Public," with regard to all forms used by the Federal awarding agency in place of or as a supplement to the Standard Form 424 (SF-424) series.

(b) Applicants shall use the SF-424 series or those forms and instructions prescribed by the Federal awarding agency.

(c) For Federal programs covered by E.O. 12372, "Intergovernmental Review of Federal Programs," (47 FR 30959, 3 CFR, 1982 Comp., p. 197) the applicant shall complete the appropriate sections of the SF-424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the Federal awarding agency or the *Catalog of Federal Domestic Assistance*. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) Federal awarding agencies that do not use the SF-424 form should indicate whether the application is subject to review by the State under E.O. 12372.

### § 215.13 Debarment and suspension.

Federal awarding agencies and recipients shall comply with Federal

agency regulations implementing E.O.s 12549 and 12689, "Debarment and Suspension." Under those regulations, certain parties who are debarred, suspended or otherwise excluded may not be participants or principals in Federal assistance awards and subawards, and in certain contracts under those awards and subawards.

[70 FR 51879, Aug. 31, 2005]

### § 215.14 Special award conditions.

If an applicant or recipient: has a history of poor performance, is not financially stable, has a management system that does not meet the standards prescribed in this part, has not conformed to the terms and conditions of a previous award, or is not otherwise responsible, Federal awarding agencies may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

### § 215.15 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. Federal awarding agencies shall follow the provisions of E.O. 12770, "Metric Usage in Federal Government Programs" (56 FR 35801, 3 CFR, 1991 Comp., p. 343).

**§215.16 Resource Conservation and Recovery Act.**

Under the Act, any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247-254). Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

**§215.17 Certifications and representations.**

Unless prohibited by statute or codified regulation, each Federal awarding agency is authorized and encouraged to allow recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

**Subpart C—Post Award Requirements**

FINANCIAL AND PROGRAM MANAGEMENT

**§215.20 Purpose of financial and program management.**

Sections 215.21 through 215.28 prescribe standards for financial management systems, methods for making payments and rules for: satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

**§215.21 Standards for financial management systems.**

(a) Federal awarding agencies shall require recipients to relate financial

data to performance data and develop unit cost information whenever practical.

(b) Recipients' financial management systems shall provide for the following.

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in §215.52. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101-453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable

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Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Federal awarding agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) The Federal awarding agency may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

### § 215.22 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain:

(1) Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and

(2) Financial management systems that meet the standards for fund control and accountability as established in § 215.21. Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to

the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the Federal awarding agency to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients shall be authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payment shall be submitted on SF-270, "Request for Advance or Reimbursement," or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special Federal awarding agency instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in § 215.12(b) cannot be met. Federal awarding agencies may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, the Federal awarding agency shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients shall be authorized to submit request for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and the Federal awarding agency has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the Federal awarding agency may provide cash on a working capital advance basis. Under this procedure, the Federal awarding

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agency shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, the Federal awarding agency shall reimburse the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, Federal awarding agencies shall not withhold payments for proper charges made by recipients at any time during the project period unless paragraphs (h)(1) or (2) of this section apply.

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements.

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A-129, "Managing Federal Credit Programs." Under such conditions, the Federal awarding agency may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows.

(1) Except for situations described in paragraph (i)(2) of this section, Federal awarding agencies shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless paragraphs (k)(1), (2) or (3) of this section apply.

(1) The recipient receives less than \$120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of \$250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(1) For those entities where CMIA and its implementing regulations at 31 CFR part 205 do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to \$250 per year may be retained by the recipient for administrative expense. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the Federal awarding agency, it waives its right to recover the interest under CMIA.

(m) Except as noted elsewhere in this part, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. Federal agencies shall not require more than an original and two copies of these forms.

(1) SF-270, Request for Advance or Reimbursement. Each Federal awarding agency shall adopt the SF-270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods

are not used. Federal awarding agencies, however, have the option of using this form for construction programs in lieu of the SF-271, "Outlay Report and Request for Reimbursement for Construction Programs."

(2) SF-271, Outlay Report and Request for Reimbursement for Construction Programs. Each Federal awarding agency shall adopt the SF-271 as the standard form to be used for requesting reimbursement for construction programs. However, a Federal awarding agency may substitute the SF-270 when the Federal awarding agency determines that it provides adequate information to meet Federal needs.

**§ 215.23 Cost sharing or matching.**

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria.

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by the Federal awarding agency.

(7) Conform to other provisions of this part, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If a Federal awarding agency authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of paragraphs (c)(1) or (2) of this section.

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the Federal awarding agency may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if paragraphs (g)(1) or (2) of this section apply.

(1) If the purpose of the award is to assist the recipient in the acquisition

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of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Federal awarding agency has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications.

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (*e.g.*, certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.

(i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.

### §215.24 Program income.

(a) Federal awarding agencies shall apply the standards set forth in this section in requiring recipient organizations to account for program income

related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period shall be retained by the recipient and, in accordance with Federal awarding agency regulations or the terms and conditions of the award, shall be used in one or more of the ways listed in the following.

(1) Added to funds committed to the project by the Federal awarding agency and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When an agency authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.

(d) In the event that the Federal awarding agency does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3) of this section shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) of this section shall apply automatically unless the awarding agency indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in §215.14.

(e) Unless Federal awarding agency regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by Federal awarding agency regulations or the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

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(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (see §215.30 through §215.37).

(h) Unless Federal awarding agency regulations or the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

### §215.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon Federal awarding agency requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients shall request prior approvals from Federal awarding agencies for one or more of the following program or budget related reasons.

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the Federal awarding agency.

(6) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with any of the following, as applicable:

(i) 2 CFR part 220, "Cost Principles for Educational Institutions (OMB Circular A-21);"

(ii) 2 CFR part 230, "Cost Principles for Non-Profit Organizations (OMB Circular A-122);"

(iii) 45 CFR part 74, Appendix E, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals;" and

(iv) 48 CFR part 31, "Contract Cost Principles and Procedures."

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, Federal awarding agencies are authorized, at their option, to waive cost-related and administrative prior written approvals required by 2 CFR parts 220 and 230 (OMB Circulars A-21 and A-122). Such waivers may include authorizing recipients to do any one or more of the following.

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of the Federal awarding agency. All pre-award costs are incurred at the recipient's risk (*i.e.*, the Federal awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-

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time extensions, the recipient must notify the Federal awarding agency in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless the Federal awarding agency provides otherwise in the award or in the agency's regulations, the prior approval requirements described in this paragraph (e) are automatically waived (*i.e.*, recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) applies.

(f) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds \$100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency. No Federal awarding agency shall permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j) of this section, do not require prior approval.

(h) For construction awards, recipients shall request prior written approval promptly from Federal awarding agencies for budget revisions whenever paragraphs (h)(1), (2) or (3) of this section apply.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in §215.27.

(i) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(j) When a Federal awarding agency makes an award that provides support for both construction and nonconstruction work, the Federal awarding agency may require the recipient to request prior approval from the Federal awarding agency before making any fund or budget transfers between the two types of work supported.

(k) For both construction and nonconstruction awards, Federal awarding agencies shall require recipients to notify the Federal awarding agency in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than \$5000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the Federal awarding agency indicates a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, Federal awarding agencies shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal awarding agency shall inform the recipient in writing of the date when the recipient may expect the decision.

[69 FR 26281, May 11, 2004, as amended at 70 FR 51880, Aug. 31, 2005]

### §215.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB

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Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations.”

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations.”

(c) For-profit hospitals not covered by the audit provisions of revised OMB Circular A-133 shall be subject to the audit requirements of the Federal awarding agencies.

(d) Commercial organizations shall be subject to the audit requirements of the Federal awarding agency or the prime recipient as incorporated into the award document.

### § 215.27 Allowable costs.

For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of 2 CFR part 225, “Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87).” The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of 2 CFR part 230, “Cost Principles for Non-Profit Organizations (OMB Circular A-122).” The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of 2 CFR part 220, “Cost Principles for Educational Institutions (OMB Circular A-21).” The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, “Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.” The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A-122 is determined in accordance with the pro-

visions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

[70 FR 51880, Aug. 31, 2005]

### § 215.28 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Federal awarding agency.

### § 215.29 Conditional exemptions.

(a) OMB authorizes conditional exemption from OMB administrative requirements and cost principles circulars for certain Federal programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment. A Federal agency shall consult with OMB during its consideration of whether to grant such an exemption.

(b) To promote efficiency in State and local program administration, when Federal non-entitlement programs with common purposes have specific statutorily-authorized consolidated planning and consolidated administrative funding and where most of the State agency’s resources come from non-Federal sources, Federal agencies may exempt these covered State-administered, non-entitlement grant programs from certain OMB grants management requirements. The exemptions would be from:

(1) The requirements in 2 CFR part 225, “Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)” other than the allocability of costs provisions that are contained in subsection C.3 of Appendix A to that part;

(2) The requirements in 2 CFR part 220, “Cost Principles for Educational Institutions (OMB Circular A-21)” other than the allocability of costs provisions that are contained in paragraph C.4 in section C of the Appendix to that part;

(3) The requirements in 2 CFR part 230, “Cost Principles for Non-Profit Organizations (OMB Circular A-122)”

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other than the allocability of costs provisions that are in paragraph A.4 in section A of Appendix A to that part;

(4) The administrative requirements provisions of part 215 (OMB Circular A-110, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,”); and

(5) The agencies’ grants management common rule (see § 215.5).

(c) When a Federal agency provides this flexibility, as a prerequisite to a State’s exercising this option, a State must adopt its own written fiscal and administrative requirements for expending and accounting for all funds, which are consistent with the provisions of 2 CFR part 225, “Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)” and extend such policies to all sub-recipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not be used for general expenses required to carry out other responsibilities of a State or its sub-recipients.

[69 FR 26281, May 11, 2004, as amended at 70 FR 51881, Aug. 31, 2005]

### PROPERTY STANDARDS

#### § 215.30 Purpose of property standards.

Sections 215.31 through 215.37 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. Federal awarding agencies shall require recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of § 215.31 through § 215.37.

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#### § 215.31 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

#### § 215.32 Real property.

Each Federal awarding agency shall prescribe requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, such requirements, at a minimum, shall contain the following.

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of the Federal awarding agency.

(b) The recipient shall obtain written approval by the Federal awarding agency for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (*i.e.*, awards) or programs that have purposes consistent with those authorized for support by the Federal awarding agency.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient shall request disposition instructions from the Federal awarding agency or its successor Federal awarding agency. The Federal awarding agency shall observe one or more of the following disposition instructions.

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by the Federal awarding agency and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

**§ 215.33 Federally-owned and exempt property.**

(a) *Federally-owned property.* (1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the Federal awarding agency. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the Federal awarding agency for further Federal agency utilization.

(2) If the Federal awarding agency has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the Federal awarding agency has statutory authority to dispose of the property by alternative methods (*e.g.*, the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (I)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821, “Improving Mathematics and Science Education in Support of the National Education Goals” (57 FR 54285, 3 CFR, 1992 Comp., p. 323)). Appropriate instructions shall be issued to the recipient by the Federal awarding agency.

(b) *Exempt property.* When statutory authority exists, the Federal awarding agency has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the Federal awarding agency considers appropriate. Such property is “exempt property.” Should a Federal awarding agency not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

**§ 215.34 Equipment.**

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by the Federal awarding agency which funded the original project, then

(2) Activities sponsored by other Federal awarding agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the Federal awarding agency that financed the equipment;

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second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal awarding agency. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the Federal awarding agency.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following:

(1) Equipment records shall be maintained accurately and shall include the following information.

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal awarding agency for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any dif-

ferences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Federal awarding agency.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of \$5000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the original Federal awarding agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from the Federal awarding agency. The Federal awarding agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported to the General Services Administration by the Federal awarding agency to determine whether a requirement for the equipment exists in other Federal agencies. The Federal awarding agency shall issue instructions to the recipient no later than 120 calendar

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days after the recipient's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse the Federal awarding agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by the Federal awarding agency for such costs incurred in its disposition.

(4) The Federal awarding agency may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(i) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(ii) The Federal awarding agency shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally-owned equipment. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

(iii) When the Federal awarding agency exercises its right to take title,

the equipment shall be subject to the provisions for federally-owned equipment.

### § 215.35 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding \$5000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

### § 215.36 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The Federal awarding agency(ies) reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Non-profit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

(c) The Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award.

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(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) (1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that was used by the Federal Government in developing an agency action that has the force and effect of law, the Federal awarding agency shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and the applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions apply for purposes of paragraph (d) of this section:

(i) Research data is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: Preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This “recorded” material excludes physical objects (*e.g.*, laboratory samples). Research data also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) Published is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

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(B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) Used by the Federal Government in developing an agency action that has the force and effect of law is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(e) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of §215.34(g).

[69 FR 26281, May 11, 2004, as amended at 70 FR 51881, Aug. 31, 2005]

### §215.37 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. Agencies may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

#### PROCUREMENT STANDARDS

### §215.40 Purpose of procurement standards.

Sections 215.41 through 215.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions

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of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the Federal awarding agencies upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

### § 215.41 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Federal awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

### § 215.42 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. 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 the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

### § 215.43 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

### § 215.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that paragraphs (a)(1), (2) and (3) of this section apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following.

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or

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performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of “brand name or equal” descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women’s business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women’s business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women’s business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women’s business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women’s business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce’s Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women’s business enterprises.

(c) The type of procuring instruments used (*e.g.*, fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be ap-

propriate for the particular procurement and for promoting the best interest of the program or project involved. The “cost-plus-a-percentage-of-cost” or “percentage of construction cost” methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies’ implementation of E.O.s 12549 and 12689, “Debarment and Suspension.”

(e) Recipients shall, on request, make available for the Federal awarding agency, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(1) A recipient’s procurement procedures or operation fails to comply with the procurement standards in the Federal awarding agency’s implementation of this part.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently \$25,000) 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 small purchase threshold, specifies a “brand name” product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

### §215.45 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with

every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

**§ 215.46 Procurement records.**

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

- (a) Basis for contractor selection;
- (b) Justification for lack of competition when competitive bids or offers are not obtained; and
- (c) Basis for award cost or price.

**§ 215.47 Contract administration.**

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

**§ 215.48 Contract provisions.**

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as

conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or subcontracts exceeding \$100,000, the Federal awarding agency may accept the bonding policy and requirements of the recipient, provided the Federal awarding agency has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows.

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) 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 statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that

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the recipient, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of appendix A to this part, as applicable.

### REPORTS AND RECORDS

#### § 215.50 Purpose of reports and records.

Sections 215.51 through 215.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

#### § 215.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in § 215.26.

(b) The Federal awarding agency shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in § 215.51(f), performance reports shall not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The Federal awarding agency may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report shall not be required after completion of the project.

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(d) When required, performance reports shall generally contain, for each award, brief information on each of the following:

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify the Federal awarding agency of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) Federal awarding agencies may make site visits, as needed.

(h) Federal awarding agencies shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

#### § 215.52 Financial reporting.

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients.

(1) SF-269 or SF-269A, Financial Status Report.

(i) Each Federal awarding agency shall require recipients to use the SF-269 or SF-269A to report the status of funds for all nonconstruction projects or programs. A Federal awarding agency may, however, have the option of not requiring the SF-269 or SF-269A when the SF-270, Request for Advance or Reimbursement, or SF-272, Report of Federal Cash Transactions, is determined to provide adequate information

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to meet its needs, except that a final SF-269 or SF-269A shall be required at the completion of the project when the SF-270 is used only for advances.

(ii) The Federal awarding agency shall prescribe whether the report shall be on a cash or accrual basis. If the Federal awarding agency requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) The Federal awarding agency shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(iv) The Federal awarding agency shall require recipients to submit the SF-269 or SF-269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the Federal awarding agency upon request of the recipient.

(2) SF-272, Report of Federal Cash Transactions.

(i) When funds are advanced to recipients the Federal awarding agency shall require each recipient to submit the SF-272 and, when necessary, its continuation sheet, SF-272a. The Federal awarding agency shall use this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) Federal awarding agencies may require forecasts of Federal cash requirements in the "Remarks" section of the report.

(iii) When practical and deemed necessary, Federal awarding agencies may require recipients to report in the "Remarks" section the amount of cash advances received in excess of three

days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF-272 15 calendar days following the end of each quarter. The Federal awarding agencies may require a monthly report from those recipients receiving advances totaling \$1 million or more per year.

(v) Federal awarding agencies may waive the requirement for submission of the SF-272 for any one of the following reasons:

(A) When monthly advances do not exceed \$25,000 per recipient, provided that such advances are monitored through other forms contained in this section;

(B) If, in the Federal awarding agency's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or,

(C) When the electronic payment mechanisms provide adequate data.

(b) When the Federal awarding agency needs additional information or more frequent reports, the following shall be observed.

(1) When additional information is needed to comply with legislative requirements, Federal awarding agencies shall issue instructions to require recipients to submit such information under the "Remarks" section of the reports.

(2) When a Federal awarding agency determines that a recipient's accounting system does not meet the standards in §215.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. The Federal awarding agency, in obtaining this information, shall comply with report clearance requirements of 5 CFR part 1320.

(3) Federal awarding agencies are encouraged to shade out any line item on any report if not necessary.

(4) Federal awarding agencies may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

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(5) Federal awarding agencies may provide computer or electronic outputs to recipients when such expedites or contributes to the accuracy of reporting.

**§215.53 Retention and access requirements for records.**

(a) This section sets forth requirements for record retention and access to records for awards to recipients. Federal awarding agencies shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the Federal awarding agency. The only exceptions are the following.

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the Federal awarding agency, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in §215.53(g).

(c) Copies of original records may be substituted for the original records if authorized by the Federal awarding agency.

(d) The Federal awarding agency shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, a Federal awarding agency may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) The Federal awarding agency, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, no Federal awarding agency shall place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the Federal awarding agency can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Federal awarding agency.

(g) *Indirect cost rate proposals, cost allocations plans, etc.* Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the recipient submits to the Federal awarding agency or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) *If not submitted for negotiation.* If the recipient is not required to submit to the Federal awarding agency or the subrecipient is not required to submit to the recipient the proposal, plan, or

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other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

### TERMINATION AND ENFORCEMENT

#### § 215.60 Purpose of termination and enforcement.

Sections 215.61 and 215.62 set forth uniform suspension, termination and enforcement procedures.

#### § 215.61 Termination.

(a) Awards may be terminated in whole or in part only if paragraphs (a)(1), (2) or (3) of this section apply.

(1) By the Federal awarding agency, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the Federal awarding agency with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to the Federal awarding agency written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraphs (a)(1) or (2) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 215.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

#### § 215.62 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with

the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Federal awarding agency may, in addition to imposing any of the special conditions outlined in § 215.14, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the Federal awarding agency.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, the awarding agency shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if paragraphs (c)(1) and (2) of this section apply.

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including

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suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.s 12549 and 12689 and the Federal awarding agency implementing regulations (see § 215.13).

### Subpart D—After-the-Award Requirements

#### § 215.70 Purpose.

Sections 215.71 through 215.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

#### § 215.71 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Federal awarding agency may approve extensions when requested by the recipient.

(b) Unless the Federal awarding agency authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) The Federal awarding agency shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that the Federal awarding agency has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A-129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the Federal awarding agency shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with § 215.31 through § 215.37.

(g) In the event a final audit has not been performed prior to the closeout of

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an award, the Federal awarding agency shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

#### § 215.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following:

(1) The right of the Federal awarding agency to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 215.26.

(4) Property management requirements in § 215.31 through § 215.37.

(5) Records retention as required in § 215.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the Federal awarding agency and the recipient, provided the responsibilities of the recipient referred to in paragraph (a) of this section, including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

[69 FR 26281, May 11, 2004, as amended at 70 FR 51881, Aug. 31, 2005]

#### § 215.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Federal awarding agency may reduce the debt by paragraphs (a)(1), (2) or (3) of this section.

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient.

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, the Federal awarding agency shall

charge interest on an overdue debt in accordance with 4 CFR Chapter II, "Federal Claims Collection Standards."

#### APPENDIX A TO PART 215—CONTRACT PROVISIONS

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR, 1964-1965 Comp., p. 339), as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. *Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subgrants in excess of \$2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall 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 is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall re-

port all suspected or reported violations to the Federal awarding agency.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)*—Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each contractor shall 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 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall 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.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—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.

8. Debarment and Suspension (E.O.s 12549 and 12689)—A contract award with an amount expected to equal or exceed \$25,000 and certain other contract awards (see 2 CFR 180.220) shall not be made to parties listed on the government-wide Excluded Parties List System, in accordance with the OMB guidelines at 2 CFR part 180 that implement E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System 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 E.O. 12549.

[69 FR 26281, May 11, 2004, as amended at 70 FR 51879, Aug. 31, 2005]

## PARTS 216–219 [RESERVED]

### PART 220—COST PRINCIPLES FOR EDUCATIONAL INSTITUTIONS (OMB CIRCULAR A–21)

Sec.

220.5 Purpose.

220.10 Scope.

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220.30 Federal agency responsibilities.

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220.40 Relationship to previous issuance.

220.45 Information contact.

APPENDIX A TO PART 220—PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO GRANTS, CONTRACTS, AND OTHER AGREEMENTS WITH EDUCATIONAL INSTITUTIONS

AUTHORITY: 31 U.S.C. 503; 31 U.S.C. 1111; 41 U.S.C. 405; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966–1970, p. 939.

SOURCE: 70 FR 51881, Aug. 31, 2005, unless otherwise noted.

#### § 220.5 Purpose.

This part establishes principles for determining costs applicable to grants, contracts, and other agreements with educational institutions.

#### § 220.10 Scope.

The principles in this part deal with the subject of cost determination, and make no attempt to identify the circumstances or dictate the extent of agency and institutional participation in the financing of a particular project. Provision for profit or other increment above cost is outside the scope of this part.

#### § 220.15 Policy.

The principles in this part are designed to provide that the Federal Government bear its fair share of total costs, determined in accordance with generally accepted accounting principles, except where restricted or prohibited by law. Agencies are not expected to place additional restrictions on individual items of cost. The successful application of cost accounting principles requires development of mutual understanding between representatives of educational institutions and of the Federal Government as to their scope, implementation, and interpretation.

#### § 220.20 Applicability.

(a) All Federal agencies that sponsor research and development, training, and other work at educational institutions shall apply the provisions of Appendix A to this part in determining the costs incurred for such work. The principles shall also be used as a guide in the pricing of fixed price or lump sum agreements.

(b) Each federal agency that awards defense-related contracts to a Federally Funded Research and Development Center (FFRDC) associated with an educational institution shall require the FFRDC to comply with the Cost Accounting Standards and with the rules and regulations issued by the Cost Accounting Standards Board and set forth in 47 CFR part 99.

#### § 220.25 OMB responsibilities.

OMB is responsible for:

(a) Issuing and maintaining the guidance in this part.

(b) Interpreting the policy requirements in this part and providing assistance to ensure effective and efficient implementation.