Public Assistance Alternative Procedures Pilot Program Guide for Debris Removal (Version 2)

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FEMA

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PART I. OVERVIEW

On January 29, 2013, President Obama signed into law the Sandy Recovery Improvement Act of 2013 (P.L. 113-2). This law amends Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) (Stafford Act). Specifically, the law adds section 428, which authorizes alternative procedures for the Public Assistance Program under sections 403(a)(3)(A), 406, 407 and 502(a)(5) of the Stafford Act. It also authorizes the Federal Emergency Management Agency (FEMA) to implement the alternative procedures through a pilot program. The pilot program for the alternative procedures that pertain to debris removal is available through June 27, 2015. FEMA will analyze data documented throughout the pilot to assess the procedures' effectiveness at achieving the goals outlined in the Sandy Recovery Improvement Act. Based on the assessment, FEMA may elect to discontinue the program, extend the pilot for an additional performance period, or issue regulations that would institute the program changes authorized by the law.

The law identifies the following goals for these procedures:

- Reducing the costs to the Federal Government of providing Public Assistance.
- Increasing flexibility in the administration of such assistance.
- Expediting the provision of assistance to a state, tribal or local government, or nonprofit owner or operator of a private nonprofit facility.
- Providing financial incentives and disincentives for timely and cost-effective completion of projects with such assistance.

Public Assistance Program Features Included in the Alternative Procedures

The alternative procedures authorized under the law pertain to debris removal (emergency work) and repair, restoration, and replacement of disaster-damaged public and private nonprofit facilities (permanent work). This guide outlines the alternative procedures for debris removal only.

Alternative Procedures for Debris Removal

For debris removal, the law allows for, and FEMA is currently piloting:

- The use of a sliding scale for determining the federal share for removal of debris and wreckage based on the time it takes to complete debris and wreckage removal;
- The use of program income from recycled debris without offset to the grant amount;
- Reimbursing base and overtime wages for the employees of state, tribal or local governments, or owners or operators of private nonprofit facilities performing or administering debris and wreckage removal; and

- Providing incentives to a state or tribal or local government to have a debris management plan accepted[1] by the FEMA Administrator and have pre-qualified one or more debris and wreckage removal contractors before the start of the declaration's incident period.

The law also authorizes the FEMA to make grants for debris removal on the basis of fixed estimates, and to allow subgrantees to use excess funds from those grants for approved purposes. FEMA is not implementing these procedures as part of this pilot. FEMA continues to work to improve debris estimating methodologies and will consider implementing these procedures in the future.

A. Applicability

In accordance with the law, state, tribal, and local governments, and the owners and operators of certain private nonprofit facilities may participate in the alternative procedures during the pilot performance period.[2] Participation in the pilot program and use of the alternative procedures for debris removal is voluntary. If subgrantees use any of the alternative procedures, they will sign an acknowledgement regarding these procedures, which FEMA will attach to the Subgrant Application (Project Worksheet).

The alternative procedures for the debris removal pilot program is available to any applicant, upon request, for any major disaster or emergency declared on or after June 28, 2013, and until the end of the pilot program period. For incidents declared between June 28, 2013, and June 27, 2014, the alternative procedures contained in this document are for large projects only with the exception of reimbursement for straight time force account labor which can be applied to both small and large projects.[3] (See **Debris Removal Straight Time Force Account Labor** section.) For disasters and emergencies declared on or after June 28, 2014, all of the debris removal alternative procedures can be applied to both small and large projects. Small projects, with the exception of those using the Accelerated Debris Removal--Increased Federal Cost Share (Sliding Scale) alternative procedure, are to processed using the Simplified Procedures authorized by section 422 of the Stafford Act.

[1] FEMA will review debris management plans as described in the Debris Management Plan Job Aid.

[2] A grantee is defined as a state or tribal government that has chosen to serve as a grantee. A subgrantee is defined as a state agency, local government, Indian tribe, authorized tribal organization, Alaska Native village or organization, or certain Private Nonprofit organization that submits a request for disaster assistance under the Presidentially declared major disaster or emergency.

[3] A large project is a project with a total estimated cost that exceeds the monetary threshold established in section 422 of the Stafford Act and 44 CFR §206.203(c). For major disasters and emergencies declared after February 26, 2014, the threshold is $120,000. This threshold will be adjusted annually for inflation. A small project is any project below the large project threshold.

B. Compliance With Applicable Laws, Regulations, and Policies

The law authorizes FEMA to carry out the alternative procedures via this guidance as a pilot program. Accordingly, FEMA has developed this document to provide the framework for implementing the alternative procedures as a pilot program and to establish acceptable requirements for those elements of existing regulations that are excepted by the provisions of the law. This guidance document addresses exceptions to regulations in 44 CFR §206.203(c)(1), §206.204(e), §206.206, and §206.253(a).

Subgrantees participating in this pilot program must abide by the elements of this guidance document for applicable components of the Public Assistance Program; and FEMA will approve projects to which the alternative procedures apply in accordance with this document. However, all other statutory, regulatory and policy requirements of the Public Assistance Program apply and are not affected by the alternative procedures. The alternative procedures also do not affect requirements for compliance with other federal requirements, including environmental and historic preservation (EHP) laws, regulations, and executive orders.

C. Purpose of this Guidance Document

This document provides guidance to FEMA, grantees, and subgrantees for implementing the alternative procedures for the debris removal pilot program. This guidance document pertains only to procedures authorized under the law. FEMA, grantees, and subgrantees will implement all other aspects of the Public Assistance Program in accordance with standard procedures. It describes the scope and limitations of the alternative procedures; describes changes to the aspects of the Public Assistance Program to which these procedures apply; identifies responsibilities for certain activities; and identifies timelines for key actions and decisions.

As described above, FEMA is implementing the alternative procedures initially through a pilot program. The pilot will allow FEMA to gather meaningful information on the effectiveness of the alternative procedures, to establish controls for the proper use of federal funds, and to inform a potential future proposed rulemaking.

PART II. ALTERNATIVE PROCEDURES FOR DEBRIS REMOVAL

These procedures contain provisions intended to increase the effectiveness of debris removal operations and reduce federal administrative costs. Although some provisions are most effective when used together, such as employing a debris management plan in an accelerated debris removal operation, subgrantees may elect to use one or more of the procedures for their debris removal projects. Utilizing multiple debris removal alternative procedures is not required for any given debris removal project in order to receive the incentive for any of the other provisions. These alternative procedures are addressed in greater detail below.

A. Requesting Alternative Procedures for Debris Removal

Upon the declaration of a major disaster or emergency by the President authorizing FEMA to provide debris removal assistance, FEMA will provide eligible Public Assistance subgrantees the opportunity to participate in the alternative procedures for the debris removal pilot program. Subgrantees must notify FEMA of their intent to participate in the alternative procedures by signing and submitting the *Public Assistance Alternative Procedures Pilot Program for Debris Acknowledgement* (Appendix A) before obligation of their first subgrant for debris removal or within 60 days of the Kickoff Meeting, whichever occurs earlier.

B. Accelerated Debris Removal--Increased Federal Cost Share (Sliding Scale)

The pilot program authorizes an increased federal cost share for the collection, hauling, processing, and disposal of debris when subgrantees perform removal operations within a specified time frame (Table 1). To participate in this procedure, debris removal projects must include all debris for which a subgrantee will be requesting FEMA assistance.

Table 1. Alternative Procedure Federal Cost Share

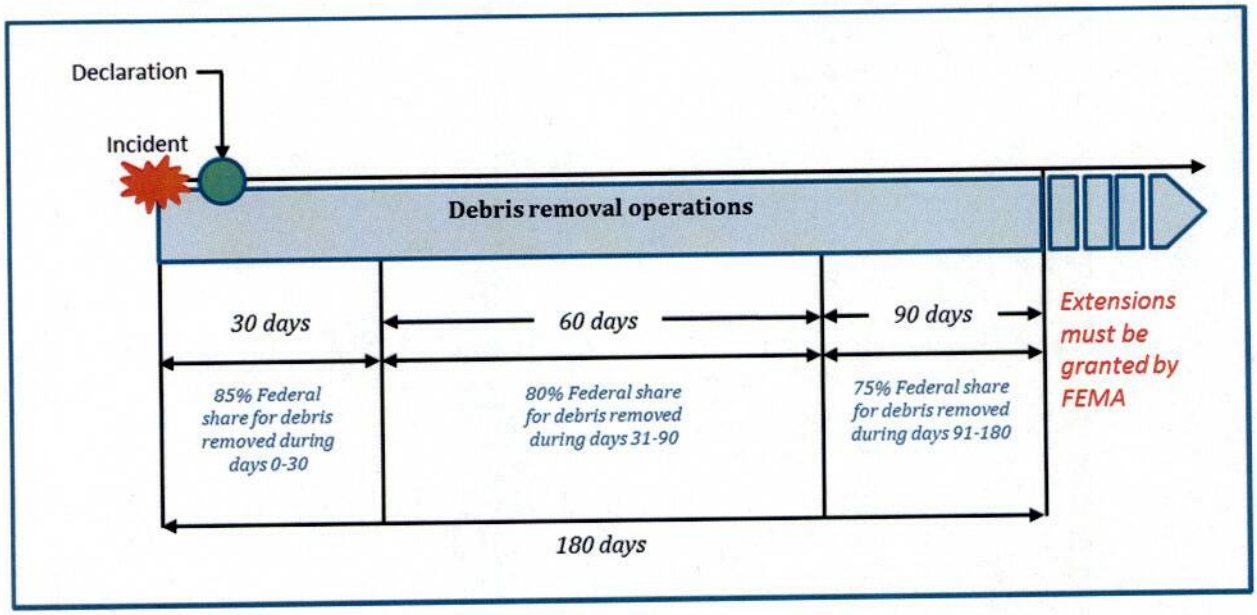
Debris Removal Work (Days from Start of Incident Period)	Federal Cost Share
0-30	85%
31-90	80%
91-180	75%
Federal dollars will NOT be provided for debris removal after 180 days (unless an extension is granted by FEMA)	

Reimbursement provided to subgrantees will be based on the federal cost share percentages shown in Table 1 for debris removal work performed within the specified time frames. The subgrant shall reflect actual costs for debris removal activities conducted from the incident's start date until the ending time frame specified in the table. The increased federal cost share for

accelerated debris removal is available only for grant assistance provided to a subgrantee for the debris removal it performs. It does not apply to debris removal conducted under Direct Federal Assistance (DFA).

A subgrant will be prepared at the appropriate cost share to reflect the amount of debris removal work completed during each operational time frame. If the subgrantee agrees to this alternative procedure, no costs associated with debris removal activities conducted after 180 days from the start of the incident period will be funded, unless FEMA grants an extension. The grantee must make any request for an extension of the 180-day timeframe and extensions may be granted only by FEMA. See 44 CFR 206.204(d) for further information on requesting extensions. Additional debris removal beyond the 180 days cannot be funded through DFA. After agreeing to this alternative procedure, and once the first subgrant is prepared and obligated at the increased federal share, the subgrantee cannot revert back to standard procedures for the remaining debris removal costs. Figure 1 describes the overall timeline for use of the sliding scale.

Figure 1. Timeline for use of the sliding scale for debris removal.



C. Recycling Revenues

Subgrantees may retain revenues received through recycling eligible disaster debris. The subgrantee shall provide the grantee written notification of the revenue received as part of its final accounting of actual costs. This should include the completion date of the debris removal operations, a brief description of the quantity and types of debris recycled, and the cost for processing debris for recycling. The grantee will forward this information to FEMA in the accounting of the final project costs. The cost of establishing and managing the recycling program or process and additional sorting and processing of the debris for recycling purposes

cannot be claimed as a direct project cost on the debris removal subgrant. This alternative procedure can be used in combination with any other alternative procedure or on its own.

Subgrantees can use revenues from debris recycling only for the following approved purposes: to meet the cost sharing requirements of Public Assistance grant funding for debris removal; to develop comprehensive disaster preparedness and assistance plans, programs, and capabilities; to conduct activities that reduce the risk of future damage, hardship or suffering from a major disaster; or to improve future debris removal operations or planning. Activities that improve future debris removal operations and planning may include:

- Developing disaster debris management plans
- Updating or revising existing plans
- Enhancing subgrantee landfill-management sites
- Installing mechanisms such as debris trash racks, K-Rail debris guards and silt fences to control the flow of disaster debris in future events
- Buying equipment such as street sweepers, shredders, backhoes, balers and sorting conveyors that would facilitate sorting, volume reduction, or removing disaster debris
- Purchasing debris recycling equipment
- Purchasing software and hardware products to facilitate quantifying disaster debris
- Buying onboard weight measurement systems for debris-collection trucks
- Purchasing software systems for debris load management to assist in tracking trucks, drivers and routes

If revenues are not used for an authorized purpose, grant funding will be reduced by the amount of that revenue as program income.

D. Straight Time Force Account Labor

When subgrantees use their own labor forces to perform all or part of debris removal operations, FEMA will reimburse, at the appropriate cost share level, the base and overtime wages for existing employees and hiring of additional staff. This alternative procedure can be used with any other alternative procedure or on its own.

E. Debris Management Plans

A subgrantee with a FEMA-accepted debris management plan at the time of an event can increase the effectiveness of its debris management operations. Specifically, a debris management plan should improve a subgrantee's ability to complete debris removal within the timelines associated with the sliding scale.

When the subgrantee has a FEMA-accepted debris management plan before the date of the declared incident period, FEMA will provide a one-time incentive of a 2 percent cost share adjustment applied to debris removal work completed within 90 days. This one-time incentive will not be available to the same subgrantee again during the course of the pilot. This procedure

can be used with any of the other pilot procedures or on its own. FEMA will review plans presented through the grantee. Plans should include all of the following elements:

- Debris management overview
- Events and assumptions
- Debris collection and removal plan
- Debris disposal locations and debris management sites
- Debris removal on private property
- Use and procurement of contracted services
- Use of force account labor
- Monitoring of debris operations
- Health and safety requirements
- Environmental considerations and other regulatory requirements
- Public information

The legislation also requires a subgrantee to have at least one or more pre-qualified contractors.[4] Any debris contract award must comply with federal procurement requirements, as outlined in 44 CFR §13.36. Federal procurement compliance may have more stringent requirements than state or local requirements.

In addition, the content of the plans will vary and depend highly on state and local ordinances and zoning, as well as the location of critical infrastructure, emergency services, disposal locations, and other localized factors. FEMA will review the plans to ensure that subgrantees have considered the elements listed above. FEMA review of the plan does not mean it is approving any operational component of the plan and does not commit the Federal Government to funding any aspect of the plan.

[4] A pre-qualified contractor is one that has been identified and evaluated by a local government and has been determined to be capable to perform debris removal work (e.g., capabilities, bonding, insurance, availability). Identification of these qualifications should be done in conjunction with the drafting of a debris management plan, which should include specific contract requirements and explain how contractor qualifications are established. A pre-qualified contractor does not constitute a "stand-by" contract.

PART III. GRANTS MANAGEMENT REQUIREMENTS

The process for monitoring and closing projects is streamlined under the alternative procedures. The grants management requirements are outlined in the sections that follow.

A. Grants Management Activities

For projects funded under the alternative procedures, major activities conducted during the Grants Management phase are as follows:

- The subgrantee must complete work within established regulatory time frames and request time extensions as appropriate, pursuant to 44 CFR §206.204(d) *Requests for time extensions*.
- The subgrantee must submit quarterly progress reports to the grantee for large projects in which the work is not completed and financially reconciled, pursuant to 44 CFR §206.204(f) *Progress reports*.
- The grantee will provide funds to the subgrantee in accordance with federal and state requirements.
- The grantee will ensure that subgrantees understand and adhere to federal procurement requirements as well as other requirements of 44 CFR Part 13, 2 CFR Part 215, and the appropriate Office of Management and Budget circulars.
- The grantee will ensure that subgrantees comply with EHP requirements, notify FEMA of any work that requires EHP compliance reviews, and provide necessary documentation to conduct EHP reviews.
- The subgrantee must not deposit grant funds in an interest-bearing account. If that occurs, the subgrantee must remit any interest earned to FEMA.
- The subgrantee will submit to the grantee a final report of project costs. This report will be used to track and monitor the success of the pilot (see Standard Operating Procedures 9570.14, *Program Management and Closeout* for information on closeout processes and requirements). The final report should include the following components as documented on the Project Worksheet (FEMA Form 90-91):
    - Total actual costs to complete the subgrant
    - Actual quantities of debris removed
    - Time frames for full removal of debris
    - Compliance with federal procurement requirements
    - Documentation of compliance with all subgrant conditions
    - Compliance with EHP conditions

B. Subgrant Closure

Alternative procedures subgrants are closed when the approved scope of work is completed, and the subgrantee provides the grantee an accounting of the subgrant in accordance with the above requirements. The grantee will provide the accounting of project costs to FEMA and will request the project be closed.

C. Appeals

For subgrants funded using the alternative procedures, the subgrantee can submit an appeal, in accordance with 44 CFR §206.206, only for the following:

- Subgrant approval and obligation
- Corrective actions resulting from compliance reviews such as an audit

D. Audits and Compliance Reviews

The Office of Inspector General may audit any subgrantee and/or subgrant. FEMA also can conduct compliance reviews of grants and subgrants. Any corrective actions the Agency takes as a result of these audits or compliance reviews may be appealed in accordance with 44 CFR §206.206. For alternative procedures subgrants, a compliance audit will review subgrants and costs to ensure that the subgrantee complied with the guidelines contained within this document and other applicable requirements.

PART IV. REPORTING AND PERFORMANCE MEASURES

FEMA will review and evaluate the alternative procedures pilot program to determine if the pilot met the objectives of the Sandy Recovery Improvement Act. FEMA will assess if the pilot achieved the objectives for the alternative procedures outlined in the law, namely:

- Reducing the costs to the Federal Government of providing Public Assistance.
- Increasing flexibility in the administration of such assistance.
- Expediting the provision of assistance to a state, tribal or local government, or nonprofit owner or operator of a private nonprofit facility.
- Providing financial incentives and disincentives for timely and cost-effective completion of projects with such assistance.

FEMA will implement a comprehensive assessment based on performance measures and metrics that are identified to measure the success of the pilot in meeting these objectives. If the pilot is determined to be effective, the data will be used to inform the development of future proposed rulemaking.

APPENDIX - A

Public Assistance Alternative Procedures Pilot Program for Debris Removal Acknowledgement

In accordance with the Sandy Recovery Improvement Act of 2013, the Federal Emergency Management Agency (FEMA) is implementing alternative procedures for the Public Assistance (PA) Program through a pilot program.

As a representative of the subgrantee, we elect to participate in the following:

- ☐ Accelerated Debris Removal - increased federal cost share (sliding scale)
- ☐ Recycling Revenue (Subgrantee retention of income from debris recycling without a grant offset)
- ☐ One-time incentive for a FEMA-accepted debris management plan and identification of at least one pre-qualified contractor
- ☐ Reimbursement of straight time force account labor costs for debris removal

1. The pilot is voluntary and the subgrantee must apply the selected alternative procedures to all of its debris removal subgrants.
2. For the sliding scale, the subgrantee accepts responsibility for any costs related to debris operations after six months from the date of the incident unless, based on extenuating circumstances, FEMA grants a time extension.
3. The subgrantee acknowledges that FEMA may request joint quantity evaluations and details regarding subgrantee operations necessary to assess the pilot program procedures.
4. All contracts must comply with local, state, and federal requirements for procurement, including provisions of 44 CFR Part 13.
5. The subgrantee must comply with all federal, state and local environmental and historic preservation laws, regulations, and ordinances.
6. The Office of Inspector General may audit any subgrantee and/or subgrant.

_____

Signature of Subgrantee's Authorized Representative Date

_____

Printed Name and Title

_____

Subgrantee Name PA ID Number

- ☐ We elect to **not** participate in the Alternative Procedures for Debris Removal.