

9523.4 Demolition of Private Structures

- I. **TITLE:** Demolition of Private Structures
- II. **DATE:** July 18, 2007
- III. **PURPOSE:** This policy provides guidance in determining the eligibility of demolition of private structures under the Federal Emergency Management Agency's (FEMA) Public Assistance Program.
- IV. **SCOPE AND AUDIENCE:** The policy is applicable to all major disasters declared on or after the date of publication of this policy. It is intended for FEMA personnel involved in the administration of the Public Assistance Program.
- V. **AUTHORITY:** Section 403(a)(3)(E) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5170b, 42 U.S.C. 5172, 44 CFR 206.225, and 44 CFR 206.226.
- VI. **BACKGROUND:**
 - A. Section 403 of the Stafford Act, 42 U.S.C. 5170b, provides FEMA authority to provide assistance essential to meeting immediate threats to life and property resulting from a major disaster. Specifically, Section 403(a)(3)(E) provides FEMA authority to fund the demolition of unsafe structures which endanger the public on public and private property (44 CFR 206.225). Eligible Public Assistance applicants may be eligible for Public Assistance grant funding under Section 403 of the Stafford Act under the conditions of this policy.
 - B. The demolition of unsafe structures owned by eligible public and private nonprofit (PNP) applicants may be eligible for Public Assistance grant funding under Section 406 of the Stafford Act, which funds the repair, restoration, reconstruction, or replacement of eligible facilities (44 CFR 206.226).
- VII. **POLICY:**
 - A. **Definitions.**
 1. **Demolition:** The act or process of reducing a structure, as defined by State or local code, to a collapsed state.
 2. **Demolition debris:** Materials including building materials and personal effects that are deposited as a result of the demolition process.
 3. **Legal responsibility:** A statute, formally adopted local code, or ordinance that gives local government officials the responsibility to enter private property to demolish unsafe structures or to perform work to remove an immediate threat (44 CFR 206.223(a)(3), 44 CFR 206.221(c), and 44 CFR 206.225(a)(3)).
 4. **Unsafe structure:** A structure found to be dangerous to the life, health or safety of the public because such structure is so damaged or structurally unsafe as a direct result of the declared disaster that partial or complete collapse is imminent.
 - B. **Duplication of Benefits** (44 CFR 206.191). FEMA is prohibited by Section 312 of the Stafford Act from approving funds for work that is covered by any other source of funding. Therefore, State and local governments must take reasonable steps to prevent such an occurrence, and verify that insurance coverage or any other source of funding does not exist for the demolition of private structures.
 1. When demolition of private structures is covered by an insurance policy, the insurance proceeds must be used as the first source of funding. Public Assistance grant funding may be used to pay for the remainder of the demolition costs.

2. If it is discovered that a duplication of benefits from any other source of funding has occurred, FEMA will de-obligate funds from the Grantee in the amount that such assistance duplicates funding the property owners received from other sources.

C. Eligibility of Demolition of Private Structures.

1. Demolition of privately owned structures and subsequent removal of demolition debris may be eligible for Public Assistance grant funding under Section 403 of the Stafford Act when the following conditions are met:
 - a. The structures were damaged and made unsafe by the declared disaster, and are located in the area of the declared disaster (44 CFR 206.223(a)(1) and (2)).
 - b. The State or local government applicant certifies that the structures are determined to be unsafe and pose an immediate threat to the public (44 CFR 206.225(a)). The Public Assistance applicant provides a detailed explanation documenting its legal responsibility to enter private property to demolish an unsafe structure, and confirms that all legal processes and permission requirements (e.g., rights-of-entry) for such action have been satisfied. The Public Assistance Group Supervisor must concur that the demolition of unsafe structures and removal of demolition debris are in the public interest. FEMA will consider alternative measures to eliminate threats to life, public health, and safety posed by disaster-damaged unsafe structures, including fencing off unsafe structures and restricting public access, when evaluating requests for demolition.
 - i. The eligible applicant must demonstrate the legal basis as established by law, ordinance, or code upon which it exercised or intends to exercise its responsibility following a major disaster to demolish unsafe private structures (44 CFR 206.223(a)(3)). Codes and ordinances must be germane to the structural condition representing an immediate threat to life, public health, and safety, and not merely define the local government's uniform level of services.

States and local governments ordinarily rely on condemnation and/or nuisance abatement authorities to obtain legal responsibility prior to the commencement of demolition of private structures. There may be circumstances, however, where the State or local government determines that ordinary condemnation and/or nuisance abatement procedures are too time-consuming to address an immediate public health and safety threat. In such circumstances, applicants may not have to precisely follow their nuisance abatement procedures or other ordinances that would prevent the State or local government from taking emergency protective measures to protect public health and safety (44 CFR 206.225(a)).
1. The applicant's legal responsibility to take action where there is an immediate threat to life, public health, and safety should be independent of any expectation, or request, that FEMA will reimburse costs incurred for demolition of private structures and the removal of demolition debris from private property. In addition, an applicant's legal responsibility is not established solely by an applicant obtaining signed rights-of-entry and hold harmless agreements from property owners.
 - a. The State or local government confirms that a legally authorized official has ordered the exercise of public emergency powers or other appropriate authority to enter onto private

property in order to remove/reduce threats to life, public health, and safety threat via demolition of unsafe structures and removal of demolition debris (44 CFR 206.223).

- b. The State or local government indemnifies the Federal government and its employees, agents, and contractors from any claims arising from the demolition of unsafe private structures and removal of demolition debris from private property (44 CFR 206.9).
 - c. The work is completed within the completion deadlines outlined in 44 CFR 206.204 for emergency work.
 - d. Eligible costs associated with the demolition of private structures may include, but are not limited to:
 - a. capping wells;
 - b. pumping and capping septic tanks;
 - c. filling in basements and swimming pools;
 - d. testing and removing hazardous materials from unsafe structures, including asbestos and household hazardous wastes;
 - e. securing utilities (electric, phone, water, sewer, etc.);
 - f. securing permits, licenses, and title searches. Fees for permits, licenses, and titles issued directly by the applicant are not eligible unless it can be demonstrated that the fees are above and beyond administrative costs; and
 - g. demolition of disaster-damaged outbuildings such as garages, sheds, and workshops determined to be unsafe.
 - e. Ineligible costs associated with the demolition of private structures may include:
 - a. removal of slabs or foundations, except in very unusual circumstances, such as when disaster-related erosion under slabs on a hillside causes an immediate public health and safety threat;
 - b. removal of pads and driveways;
 - f. Structures condemned as safety hazards before the disaster are not eligible for demolition and subsequent demolition debris removal under Public Assistance grant authority.
 - g. Individuals and private organizations (except for eligible PNPs) will not be reimbursed for demolition activities on their own properties under the Public Assistance Program (44 CFR 206.224(c)).
 - h. The removal of substantially damaged structures and associated appurtenances acquired through a Section 404 FEMA Hazard Mitigation Grant Program buyout and relocation project may be eligible for Public Assistance grant funding under Section 407 of the Stafford Act. Such removal must be completed within two years of the declaration date, unless extended by the Assistant Administrator of the Disaster Assistance Directorate (44 CFR 206.224(a)(4)).
- A. **Demolition of Commercial Structures.** The demolition of commercial structures is generally ineligible for Public Assistance grant funding. It is assumed and expected that these commercial enterprises retain insurance that can and will cover the cost of demolition. However, in some cases as determined by the FCO, the demolition of commercial structures by a State or local government may be eligible for FEMA reimbursement only when such removal is in the public interest (44 CFR 206.224(a) and (b)).
- Apartments, condominiums, and mobile homes in commercial trailer parks are generally considered commercial structures with respect to Public Assistance funding.
- A. **Environmental and Historic Review Requirements.** Eligible demolition activities must satisfy environmental and historic preservation compliance review requirements as

established by 44 CFR Parts 9 and 10, the National Historic Preservation Act, the Endangered Species Act, and all other applicable legal requirements.

- I. **ORIGINATING OFFICE:** Disaster Assistance Directorate (Public Assistance Division).
- II. **SUPERSESSSION:** This policy supersedes Recovery Policy 9523.4 dated November 9, 1999, and all previous guidance on this subject.
- III. **REVIEW DATE:** Three years from date of publication