



# Federal Emergency Management Agency

Washington, D.C. 20472

December 29, 2000

MEMORANDUM FOR: Regional Directors, Regions I, III, IV and VI-X  
Acting Regional Directors, Regions II and V,  
CAO & PAO, FCO Cadre

ATTENTION: Infrastructure Branch Chief

*/Signed/*

FROM: Lacy E. Suiter  
Executive Associate Director  
Response and Recovery Directorate

SUBJECT: Implementation of New Stafford Act Amendments  
Public Assistance Program - Supplement

This memorandum supplements and replaces my memorandum of November 22, 2000, on this subject. The definition of critical service facilities is changed with the addition of fire protection/emergency facilities and a re-definition of emergency medical care facilities to include "essential medical care" facilities. The new language of the Stafford Act gives the President authority to define "critical services" beyond the list that is provided in the statute. The Senate Report 106-295 dated May 16, 2000, which accompanied S. 1691, is being used as guidance as to the intent of Congress and justification for supplemental guidance on the definition of critical services.

The interim interpretation for disasters declared only for Public Assistance and Hazard Mitigation Assistance, when Individual Assistance is not designated and therefore SBA loans are not available, is still in effect. See page 3 for more details.

On October 30, 2000, the President signed the Stafford Act amendments into law. As has been our usual practice for changes to the program, the amendments are effective only for disasters declared after October 30, 2000. Some provisions in the law are effective immediately and others will be delayed until regulations are published or certain other actions are accomplished. The purpose of this memorandum is to provide guidance for the four immediately effective provisions. These are discussed individually below.

1. The provision with the most far-reaching effect is one that requires owners of certain non-critical private nonprofit (PNP) facilities to apply for a loan from the Small Business Administration (SBA). 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. The provision is contained in Section 406 of the Act, permanent restoration, and thus does not apply to grants

for emergency work. Applicants operating non-critical facilities that have both emergency work and permanent work will have to make separate applications to FEMA and SBA. Critical PNP facilities (defined below) do not have to apply to SBA before applying to FEMA for a grant and these may be processed for all assistance in the same manner as we always have.

#### 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 water by a water company supplying municipal water. In addition, water provided by an irrigation company for potable, fire protection or electricity generation purposes.

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 – Facilities which provide direct patient care to include hospitals, clinics, outpatient services, and nursing homes.

Fire Protection/Emergency – Fire and rescue companies including buildings and vehicles essential to providing emergency services, and ambulance companies.

The following explanation provides rationale for two of the above definitions:

*Fire protection* - The Senate report states that critical infrastructure includes, at a minimum, the services listed in the statute and "fire protection." Therefore, fire fighting and protection facilities have been added to the list of critical services.

*Emergency medical care* –The report also limits one type of critical service facility. It states that the intent of Congress is that "essential medical care" includes facilities that provide direct medical services to persons, such as hospitals, clinics, or outpatient services and not facilities that may be part of a medical complex and do not provide direct patient care services. This language is interpreted to extend to the intent of the term "emergency medical care." Nursing homes are included as critical service facilities because they provide direct medical services to persons.

The above is a basic description of what is meant by "critical services," but if you have questions you may call Chuck Stuart. Now to the process.

Those PNPs that apply first to FEMA, through the grantee, will be entered into the NEMIS system. As we have done in the past, PNP facilities that do not meet the definition of an eligible facility, using R&R policies 9521.1, 9521.2 and 9521.3, and Item 2. of this memorandum will be advised that they are not eligible for any FEMA assistance. They should be directed to apply to SBA for a disaster loan. Some of this group of ineligible PNPs may apply first to SBA and should continue the SBA application process for a disaster loan.

The next group of PNP facilities is those providing "critical services" as defined above. Once again, within this group, there will be two sets of PNPs: those that choose to apply first to FEMA and those choosing to go first to SBA. Those applying first for FEMA assistance may be processed in the normal manner. If a PNP applying to SBA appears to operate a critical service facility, SBA will contact the FEMA person designated to be the SBA point of contact and the eligibility of the applicant will be determined. If appropriate, the applicant will be referred to FEMA.

The remaining "non critical," but eligible, facilities will be required to apply to SBA for a disaster loan. These are primarily educational facilities and the "other" category listed in 44 CFR § 206.221(e)(6). Certain non-emergency medical facilities are also in this group. The application to SBA may have one of three outcomes:

- 1) They are declined for a loan. They may apply to FEMA for a grant. (This does not include those PNPs that do not meet the definition of an eligible PNP by FEMA regulation and policy.)
- 2) The SBA loan fully covers eligible damages from the disaster event in which case no assistance from FEMA is available.
- 3) The maximum loan for which the facility is eligible does not fully cover eligible damages. They may apply to FEMA for a grant for the excess damages. (The maximum loan available is normally \$1.5 million but may be a different amount depending on individual circumstances.)

FEMA will coordinate with SBA to ensure prompt processing of PNP loan applications, but it will be the responsibility of the PNP organization to make the application to SBA and to supply all of the required information. If the organization is eligible to apply to FEMA, as in 1. and 3. above, they will be supplied with a determination letter from SBA, a copy of which will also be supplied to FEMA by SBA. Once again, it is the responsibility of the applicant to re-apply to FEMA if necessary, when the SBA determination has been made. Note that an additional function of "SBA Coordinator" will have to be performed in the Public Assistance office.

**The above discussion is applicable for disasters, or counties for which Individual Assistance is designated. When Individual Assistance is not available, the SBA loan program is not activated. When the SBA loan program is not activated, FEMA will treat the situation as if all applicants had been declined for a loan and all eligible applicants**

**may apply for a FEMA grant. This interpretation will be in effect until SBA either revises their regulation or some other solution is implemented.**

2. Another provision adds "irrigation" to the definition of PNP facilities at Section 102(9) (42 U.S.C. 5122) of the Act. The location of this change in the definition section makes it apply to all types of assistance under the Act. However, it does not make all irrigation facilities eligible for assistance. We have received some guidance from Congress in the form of a colloquy on the floor of the House of Representatives about this provision. The discussion clarified the intent of the change to say that it does not include water for agricultural purposes. It does include *"water for essential services of a governmental nature to the general public. . . such as fire suppression, generating and supplying electricity and drinking water supply."* This clarification of the definition is applicable to the eligibility of PNP irrigation facilities with respect to whether they are eligible at all and secondly, whether they are a critical service that is not required to apply to SBA.
3. The Alternate Project contribution is reduced from 90 percent of the Federal share to 75 percent of the Federal share with one exception. If the choice of taking an alternate project is required by the presence of unstable soils at the site of the damaged facility, then the contribution remains at 90 percent of the Federal share. This exception applies only to State and local government applicants and not to private nonprofit facilities. There will be further guidance forthcoming on how to evaluate "unstable soils."
4. When a single project is estimated to cost more than \$20 million, a new provision requires FEMA to notify the Congress before obligating the funds. The \$20 million is a measure of the cost of the total project and not just each PW. NEMIS will show a running total for all PWs associated with a single project. Notification should be provided to Elizabeth Edge for these projects as you have been doing for the million dollar PWs.

Questions on any of these provisions may be directed to Chuck Stuart at 202/646-3691.