



FEMA

1. **Date Published:** October 23, 2005
2. **Recovery Division Policy Number:** 9523.13
3. **Title:** Debris Removal from Private Property
4. **Purpose:** This revised policy is being issued to include the areas devastated by Hurricane Rita under this guidance and provide guidance on debris removal from commercial private property. This policy provides guidance on the appropriate use of funding as provided for in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended, for debris removal and disposal, including demolition of unsafe structures, (hereafter referred to as “debris removal”) from private property in areas where Hurricanes Katrina and Rita caused catastrophic damage. This will ensure consistency in the use of Sections 403 and 407 funding among the Joint Field Offices in the states of Alabama, Louisiana, Mississippi and Texas. It will also decrease the time it takes to deliver funding to the catastrophically impacted areas by streamlining the process through which applicants demonstrate compliance with the requirements in Sections 403 and 407 of the Stafford Act.
5. **Scope and Audience:** This policy applies only to catastrophically damaged areas in the states of Alabama, Louisiana, Mississippi and Texas under FEMA-1605-DR-AL, FEMA-1603-DR-LA, FEMA-1607-DR-LA, FEMA-1604-DR-MS, and FEMA-1606-DR-TX, respectively. It is intended to guide all personnel responsible for the administration of the FEMA Public Assistance grant program.
6. **Background:**
 - A. Sections 403 and 407 of the Stafford Act, 42 U.S.C. 5170b and 5173, provide FEMA authority to fund debris removal from private property provided that the State or local government arranges an unconditional authorization for removal of the debris, and agrees to indemnify the Federal government against any claim arising from the removal.
 - B. The regulations implementing Sections 403 and 407 of the Stafford Act at 44 CFR § 206.224 establish the requirement that debris removal be in the “public interest” in order to be eligible for reimbursement. “Public interest” is defined as being necessary to:

- (1) eliminate immediate threats to life, public health, and safety; or
 - (2) eliminate immediate threats of significant damage to improved property; or
 - (3) ensure economic recovery of the affected community to the benefit of the community at large.
- C.** Hurricanes Katrina and Rita have in some areas created catastrophic, widespread destruction resulting in vast quantities of debris which may require state or local government to enter private property to remove it in order to prevent disease and other immediate public health and safety threats. In these situations, debris removal from private property may be in the public interest and thus may be eligible for reimbursement, when the unconditional authorization for debris removal and indemnification requirements established by Sections 403 and 407 of the Stafford Act are met.
- D.** Debris removal from private property generally does not include strictly commercial sites. It is assumed and expected that these commercial enterprises retain insurance that can and will cover the cost of debris removal. The removal of debris from private commercial property by a state or local government is eligible for FEMA reimbursement when such removal is in the public interest
- 7. Policy:** The following guidance for reimbursement of state, county and municipal governments for costs incurred in debris removal from private property applies to major disaster declarations FEMA-1603-DR-LA, FEMA-1604-DR-MS, FEMA-1605-DR-AL, FEMA-1606-DR-TX and FEMA-1607-DR-LA.
- A.** FEMA will work with each State to designate those areas where the debris is so widespread that removal of the debris from private property is in the “public interest” under 44 CFR § 206.224 and thus is eligible for FEMA reimbursement.
- B.** States, counties and municipalities ordinarily rely on condemnation and nuisance abatement authorities and obtain a right-of-entry from private property owners prior to the commencement of debris removal work. There may be circumstances, however, where the State or local government determines that ordinary condemnation and nuisance abatement procedures and the obtaining of a right of entry from each property owner are too time consuming to address an immediate public health and safety threat.
- C.** Any State or local government that intends to remove debris from private property must, prior to commencement of work, submit a written request to the Federal Coordinating Officer (FCO) seeking approval for reimbursement. The written request and any accompanying attachments must include the following provisions:

- (1) The request concerns conditions determined by the relevant State, county or municipal government's Department of Health or equivalent public health authority to be an immediate public health and safety threat.
- (2) A detailed explanation certifying the requesting entity's legal responsibility, duty and authority to remove debris from private property, and has satisfied all required legal process and received all necessary permissions for such actions.
- (3) Confirmation that a legally-authorized official of the requesting entity has ordered the exercise of public emergency powers or other appropriate authority to enter onto private property in order to remove/reduce a public health and safety threat via debris removal.
- (4) The requesting entity indemnifies the Federal government and its employees, agents, and contractors.

D. When deciding whether to authorize the removal of debris from private commercial property, the FCO should determine if it is necessary to: eliminate an immediate threat to life, public health, safety or significant damage to improved property, 44 CFR § 206.224(a)(1) and (a)(2); **or** ensure economic recovery of the affected community to the benefit of the community-at-large, 44 CFR § 206.224(a)(3).

In making a determination, the FCO will consider the following factors relative to an **immediate threat** to public health and safety:

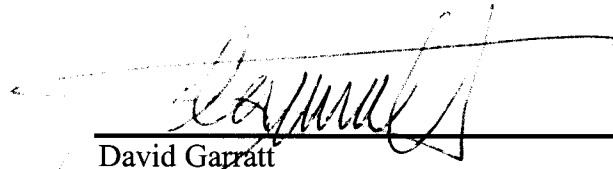
- Is there a substantial risk that human remains may be intermixed with the debris creating an immediate public health and safety threat?
- Is the commercial property in such close proximity to residential property and the level of destruction so catastrophic that it is impossible to delineate between residential and commercial property and debris?
- Can the threat to public health and safety be lessened or eliminated by placing a fence around the property?
- Generally, the removal of debris from commercial private property is not eligible when the sites are separated from residential or business districts. Examples of these areas are industrial parks and woodland areas.

or the following factors relative to the **economic recovery** of the community-at-large:

- What specific financial reasons are preventing the business from removing its own debris?
- Does the business have the financial capability to reopen if and only if the government removes the debris?

- What effect will the restoration of the business have with respect to the economic recovery of the community to the benefit of the community-at-large?
- E. FEMA is prohibited from approving funds that would result in a duplication of benefits, and therefore, State and local governments must take reasonable steps to prevent such an occurrence. These steps include the requesting entity's agreement to research whether insurance coverage exists for the debris removal accomplished on each piece of private property in the project. If it is discovered that duplication of benefits has occurred, the State or local government must agree to make reasonable efforts to recover such proceeds paid to the property owners and remit in a timely fashion to FEMA.
 - F. For those instances where the State or local government determines that ordinary condemnation and nuisance abatement procedures and the obtaining of a right of entry are too time consuming, the FCO will also require a written opinion from the relevant State's Office of the Attorney General confirming the legal basis under state constitutional and statutory authority for the State, county and municipal governments to enter private property to perform debris removal.
 - G. All private property requiring debris removal must be identified and requested to FEMA in accordance with this policy within 90 calendar days of the declaration. After FEMA approval, emergency debris removal must begin within 180 calendar days from declaration. . These deadlines may be extended by the FCO based on circumstances beyond the control of the State or local government.
 - H. The FCO will approve or disapprove in writing each written request for private property debris removal within five business days of receiving the request from the State or local government. After receiving approval from the FCO, the State or local government may begin identified private property debris removal activities and the application process for supplemental assistance through the Public Assistance Program.
8. **Supersession:** This policy replaces Recovery Policy Number 9523.13, dated September 7, 2005
 9. **Authorities:** Sections 403 and 407 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, and the implementing regulations at 44 CFR § 206.224.
 10. **Originating Office:** Public Assistance Branch, Recovery Division, FEMA, U.S. Department of Homeland Security.

11. **Signature:**

A handwritten signature in black ink, appearing to read "D Garratt", is written over a solid horizontal line.

David Garratt
Acting Director of Recovery
Federal Emergency Management Agency

12. **Distribution:** Regional Directors, and Joint Field Offices in Alabama, Florida, Louisiana, Mississippi and Texas.