

PUBLICATION

New FEMA Clarification Regarding Codes & Standards Requirements

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On September 28, 2022, FEMA issued a memorandum to Regional Administrators clarifying the agency's 2019 list of approved codes, specifications, and standards that may be required for Public Assistance-funded projects.

This new memorandum clarifies the agency's [Consensus-Based Codes, Specifications, and Standards for Public Assistance Policy \(FP-104-009-11\)](#), which provides guidance to Public Assistance (PA) applicants regarding the incorporation of resiliency and risk reduction to PA projects under Sections 323 and 406(e) of the Stafford Act and FEMA's regulations at 44 CFR 206.400 – 206.402. The memorandum stated that FEMA would require permanent work projects to comply with the relevant consensus-based codes, specifications, and standards identified in Appendix A of that policy.

FEMA's list in Appendix A to the policy, however, was not comprehensive and omitted consensus-based codes, specifications, and standards that had been adopted by law in communities across the country and are equivalent to, if not more stringent than, those contained in the list. It also overlooked the work of national standards accreditation bodies like the American National Standards Institute (ANSI) that independently certify the process used to develop many consensus-based codes and standards.

In response to this oversight and the unintended consequence of the policy on industry, FEMA's assistant administrator for the Recovery Directorate issued a memorandum to Regional Administrators on September 28, 2022, clarifying the policy.

The memorandum (available [here](#)) reads in part:

The list of approved codes, specifications, and standards outlined in the appendix is not exhaustive. Applicants are not limited to using the codes, specifications, and standards listed in the appendix to be eligible for Public Assistance funding. Applicants who use different state or locally adopted codes, specifications, or standards with resilience criteria that are comparable to, or more stringent than, those listed in the appendix are eligible for funding and will be reimbursed for those costs.

Compliance with applicable codes, specifications, and standards is not optional for a PA permanent work applicant. With rare exception, noncompliance with the applicable code, specifications, and standards will result in denial of project eligibility or funding de-obligation by FEMA. Although more must be done on this topic, this new memorandum emphasizes that there is an expanded horizon of acceptable codes, specifications, and standards a community may adopt while maintaining a floor for acceptable resilience criteria.

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