

general public. However, a careful reading of legislative authorities makes clear that in 1988, in amending the Disaster Relief Act of 1974, Congress did intend that facilities within the category of "other private nonprofit facilities which provide essential services of a governmental nature" (as defined in § 206.221(e)(7)) must be open to the general public. Furthermore, with passage of the Disaster Mitigation Act of 2000 Congress added "irrigation" facilities to the extent they provide water for essential services of a governmental nature to the general public. These changes have been incorporated into the existing policy, which is presented in its entirety below.

7. *Policy:* Guidance for determining the eligibility of PNP organizations and their facilities follows:

A. Applicants—Basic Statutory and Regulatory Requirements.

(1) The applicant must have a ruling letter from the U.S. Internal Revenue Service or satisfactory evidence from the State that it is a nonprofit organization doing business under State law.

(2) The applicant must meet requirements as listed in 44 CFR 206.221—44 CFR 206.226, including the need to own or operate an eligible facility and to be legally responsible for disaster-related repairs.

(3) The applicant must meet the requirements of the Civil Rights Act of 1964.

B. Facilities—Basic Statutory and Regulatory Requirements/Information.

(1) The facility, at a minimum, must meet the criteria outlined in 44 CFR 206.221(e).

(2) The facility must be *primarily used* for one of the services or facilities listed in 44 CFR 206.221(e).

(3) Certain types of facilities are not required to be open to the general public if they meet the definition of an educational, utility, emergency, medical, or custodial care facility (enumerated in § 206.221(e)(1), (2), (4), (5), (6)). Other types of private nonprofit facilities that provide certain essential government type services to the general public, which include PNP irrigation facilities (as defined in § 206.221(e)(3)) and facilities that provide "other essential government services" as defined in § 206.221(e)(7), and as listed in 4(g) below, must be open to the general public.

(4) *Eligible PNP Facilities.* The following generally are eligible for assistance, and may be subject to the requirements of paragraph F of this policy:

(a) Educational facilities (as defined in § 206.221(e)(1)),

(b) Utilities (as defined in § 206.221(e)(2)),

(c) Irrigation facilities (as defined in § 206.221(e)(3)),

(d) Emergency facilities (as defined in § 206.221(e)(4)),

(e) Medical facilities (as defined in § 206.221(e)(5) (which includes, rehabilitational facilities)),

(f) Custodial care facilities (as defined in § 206.221(e)(6)),

(g) Facilities that provide essential governmental services and which must be open to the general public (as defined in § 206.221(e)(7)), such as:

- (i) Museums,
- (ii) Zoos,
- (iii) Community centers,
- (iv) Libraries,
- (v) Homeless shelters,
- (vi) Senior citizen centers,
- (vii) Shelter workshops, and
- (viii) Health and safety services of a governmental nature, including, for example:

- Low-income housing (as defined by Federal, State or local law or regulation),
- Alcohol and drug treatment centers,
- Residences and other facilities offering programs for battered spouses,
- Animal control facilities directly related to public health and safety,
- Facilities offering food programs for the needy, and
- Daycare centers for children, or individuals with special needs (e.g., those with Alzheimer's disease, autism, muscular dystrophy, etc.)

(5) *Ineligible PNP Facilities.* Some PNP facilities that might have been assisted prior to 1993 are no longer eligible under the governing statutes and regulations. Examples include:

- (a) Recreation facilities,
- (b) Job counseling and training centers,
- (c) Facilities for advocacy groups not directly providing health services,
- (d) Public housing (other than low-income),
- (e) Cemeteries,
- (f) Performing arts facilities,
- (g) Parking garages,
- (h) Conference facilities,
- (i) Facilities maintained by property owners' associations such as roads and recreational facilities (except those facilities that could be classified as utilities or emergency facilities), and
- (j) Daycare centers for purposes other than those described in paragraph 4 above.

C. *Facility Eligibility Based on Primary Use.* Even though an organization that owns the facility is an eligible PNP, the facility itself must be primarily used for eligible services. Space is the primary consideration in

determining if a facility is eligible.¹ Where certain spaces are used both for eligible and ineligible purposes, eligibility is determined by looking at the time the facility is used for eligible versus ineligible services.

(1) A facility must have over 50% of its space dedicated to eligible uses in order for any of the facility to be eligible. Common space (lobbies, restrooms, utility closets, janitorial closets, elevators, stairs, parking, etc.) is not included in calculating the proportion of eligible use. A facility is assessed as an entire structure and not its individual parts such as a basement, floor or building wing.

(2) When space is not dedicated to specific activities, or is used for eligible and ineligible purposes, primary use is determined by the amount of time used for eligible services.

(3) Space dedicated to or primarily used for religious purposes is not eligible for Public Assistance Program assistance under the governing statutes and regulations.

(4) FEMA will consider damages to the entire facility, not just to the portion occupied by the eligible services. However, the assistance is in direct proportion to the percentage of space dedicated to eligible services. The balance of costs to repair damages or replace a facility will not be funded by FEMA.

(5) Contents that are the responsibility of an ineligible occupant are not eligible for reimbursement if damaged.

D. *Ownership.* There are instances when an eligible organization will use part of a facility for eligible services and lease the remaining portion for an ineligible service or use. In other situations an eligible organization may be a partial owner in a facility with an ineligible organization. The following guidelines are to be used in determining the eligible costs for such facilities.

(1) *Total Ownership by PNP.* A facility must have over 50% of its space dedicated to an eligible purpose/mission in order to be eligible.

(a) If the facility meets the 50% threshold, then the eligibility of the repairs is in direct proportion to the percentage of space dedicated to its eligible purpose/mission. In any event, the applicant must repair the entire building. Exceptions to repairing the entire building may be granted in unusual situations.

(b) A facility that does not meet the 50% space threshold is not an eligible PNP facility.

¹ PNP irrigation facilities used in delivering water for essential governmental services are exempt from this requirement.