

SUBCHAPTER D—DISASTER ASSISTANCE

PART 200 [RESERVED]

PART 201—MITIGATION PLANNING

Sec.

- 201.1 Purpose.
- 201.2 Definitions.
- 201.3 Responsibilities.
- 201.4 Standard State Mitigation Plans.
- 201.5 Enhanced State Mitigation Plans.
- 201.6 Local Mitigation Plans.
- 201.7 Tribal Mitigation Plans.

AUTHORITY: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

SOURCE: 67 FR 8848, Feb. 26, 2002, unless otherwise noted.

§ 201.1 Purpose.

(a) The purpose of this part is to provide information on the policies and procedures for mitigation planning as required by the provisions of section 322 of the Stafford Act, 42 U.S.C. 5165.

(b) The purpose of mitigation planning is for State, local, and Indian tribal governments to identify the natural hazards that impact them, to identify actions and activities to reduce any losses from those hazards, and to establish a coordinated process to implement the plan, taking advantage of a wide range of resources.

§ 201.2 Definitions.

Administrator means the head of the Federal Emergency Management Agency, or his/her designated representative.

Flood Mitigation Assistance (FMA) means the program authorized by section 1366 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4104c, and implemented at parts 78 and 79.

Grantee means the government to which a grant is awarded, which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular compo-

nent of the entity is designated in the grant award document. Generally, the State is the grantee. However, after a declaration, an Indian tribal government may choose to be a grantee, or may act as a subgrantee under the State. An Indian tribal government acting as grantee will assume the responsibilities of a “state”, as described in this part, for the purposes of administering the grant.

Hazard mitigation means any sustained action taken to reduce or eliminate the long-term risk to human life and property from hazards.

Hazard Mitigation Grant Program (HMGP) means the program authorized under section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170c, and implemented at part 206, subpart N of this chapter.

Indian Tribal government means any Federally recognized governing body of an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian Tribe under the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

Local government is any county, municipality, city, town, township, public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government; any Indian tribe or authorized tribal organization, or Alaska Native village or organization; and any rural community, unincorporated town or village, or other public entity.

Managing State means a State to which FEMA has delegated the authority to administer and manage the HMGP under the criteria established by FEMA pursuant to 42 U.S.C. 5170c(c). FEMA may also delegate authority to tribal governments to administer and manage the HMGP as a Managing State.

Federal Emergency Management Agency, DHS**§ 201.3**

Pre-Disaster Mitigation Program (PDM) means the program authorized under section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5133.

Regional Administrator means the head of a Federal Emergency Management Agency regional office, or his/her designated representative.

Repetitive Flood Claims (RFC) program means the program authorized under section 1323 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4011, which provides funding to reduce flood damages to individual properties for which 1 or more claim payments for losses have been made under flood insurance coverage and that will result in the greatest savings to the National Flood Insurance Program (NFIP) in the shortest period of time.

Severe Repetitive Loss (SRL) program means the program authorized under section 1361(a) of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4102a, and implemented at part 79 of this chapter.

Severe Repetitive Loss properties are defined as single or multifamily residential properties that are covered under an NFIP flood insurance policy and:

(1) That have incurred flood-related damage for which 4 or more separate claims payments have been made, with the amount of each claim (including building and contents payments) exceeding \$5,000, and with the cumulative amount of such claims payments exceeding \$20,000; or

(2) For which at least 2 separate claims payments (building payments only) have been made under such coverage, with cumulative amount of such claims exceeding the market value of the property.

(3) In both instances, at least 2 of the claims must be within 10 years of each other, and claims made within 10 days of each other will be counted as 1 claim.

Small and impoverished communities means a community of 3,000 or fewer individuals that is identified by the State as a rural community, and is not a remote area within the corporate boundaries of a larger city; is economically disadvantaged, by having an average per capita annual income of resi-

dents not exceeding 80 percent of national, per capita income, based on best available data; the local unemployment rate exceeds by one percentage point or more, the most recently reported, average yearly national unemployment rate; and any other factors identified in the State Plan in which the community is located.

The Stafford Act refers to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended (42 U.S.C. 5121-5206).

State is any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

State Hazard Mitigation Officer is the official representative of State government who is the primary point of contact with FEMA, other Federal agencies, and local governments in mitigation planning and implementation of mitigation programs and activities required under the Stafford Act.

Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided. Subgrantees can be a State agency, local government, private nonprofit organizations, or Indian tribal government. Indian tribal governments acting as a subgrantee are accountable to the State grantee.

[67 FR 8848, Feb. 26, 2002, as amended at 72 FR 61747, Oct. 31, 2007; 74 FR 15344, Apr. 3, 2009; 74 FR 47481, Sept. 16, 2009]

§ 201.3 Responsibilities.

(a) *General.* This section identifies the key responsibilities of FEMA, States, and local/tribal governments in carrying out section 322 of the Stafford Act, 42 U.S.C. 5165.

(b) *FEMA.* The key responsibilities of the Regional Administrator are to:

(1) Oversee all FEMA related pre- and post-disaster hazard mitigation programs and activities;

(2) Provide technical assistance and training to State, local, and Indian tribal governments regarding the mitigation planning process;

(3) Review and approve all Standard and Enhanced State Mitigation Plans;

§ 201.3

(4) Review and approve all local mitigation plans, unless that authority has been delegated to the State in accordance with § 201.6(d);

(5) Conduct reviews, at least once every three years, of State mitigation activities, plans, and programs to ensure that mitigation commitments are fulfilled, and when necessary, take action, including recovery of funds or denial of future funds, if mitigation commitments are not fulfilled.

(c) *State.* The key responsibilities of the State are to coordinate all State and local activities relating to hazard evaluation and mitigation and to:

(1) Prepare and submit to FEMA a Standard State Mitigation Plan following the criteria established in § 201.4 as a condition of receiving non-emergency Stafford Act assistance and FEMA mitigation grants. In addition, a State may choose to address severe repetitive loss properties in their plan as identified in § 201.4(c)(3)(v) to receive the reduced cost share for the Flood Mitigation Assistance (FMA) and Severe Repetitive Loss (SRL) programs, pursuant to § 79.4(c)(2) of this chapter.

(2) In order to be considered for the 20 percent HMGP funding, prepare and submit an Enhanced State Mitigation Plan in accordance with § 201.5, which must be reviewed and updated, if necessary, every three years from the date of the approval of the previous plan.

(3) At a minimum, review and update the Standard State Mitigation Plan every 3 years from the date of the approval of the previous plan in order to continue program eligibility.

(4) Make available the use of up to the 7 percent of HMGP funding for planning in accordance with § 206.434.

(5) Provide technical assistance and training to local governments to assist them in applying for HMGP planning grants, and in developing local mitigation plans.

(6) For Managing States that have been approved under the criteria established by FEMA pursuant to 42 U.S.C. 5170c(c), review and approve local mitigation plans in accordance with § 201.6(d).

(d) *Local governments.* The key responsibilities of local governments are to:

44 CFR Ch. I (10-1-11 Edition)

(1) Prepare and adopt a jurisdiction-wide natural hazard mitigation plan as a condition of receiving project grant funds under the HMGP, in accordance with § 201.6.

(2) At a minimum, review and update the local mitigation plan every 5 years from date of plan approval of the previous plan in order to continue program eligibility.

(e) *Indian tribal governments.* The key responsibilities of the Indian tribal government are to coordinate all tribal activities relating to hazard evaluation and mitigation and to:

(1) Prepare and submit to FEMA a Tribal Mitigation Plan following the criteria established in § 201.7 as a condition of receiving non-emergency Stafford Act assistance as a grantee. This plan will also allow Indian tribal governments to apply through the State, as a subgrantee, for any FEMA mitigation project grant. Indian tribal governments with a plan approved by FEMA on or before October 1, 2008 under § 201.4 or § 201.6 will also meet this planning requirement. All Tribal Mitigation Plans approved after that date must follow the criteria identified in § 201.7. In addition, an Indian Tribal government applying to FEMA as a grantee may choose to address severe repetitive loss properties as identified in § 201.4(c)(3)(v) as a condition of receiving the reduced cost share for the FMA and SRL programs, pursuant to § 79.4(c)(2) of this chapter.

(2) Review and update the Tribal Mitigation Plan at least every 5 years from the date of approval of the previous plan in order to continue program eligibility.

(3) In order to be considered for the increased HMGP funding, the Tribal Mitigation Plan must meet the Enhanced State Mitigation Plan criteria identified in § 201.5. The plan must be reviewed and updated at least every 3 years from the date of approval of the previous plan.

[67 FR 8848, Feb. 26, 2002, as amended at 67 FR 61515, Oct. 1, 2002; 69 FR 55096, Sept. 13, 2004; 72 FR 61748, Oct. 31, 2007; 74 FR 47482, Sept. 16, 2009]

§ 201.4 Standard State Mitigation Plans.

(a) *Plan requirement.* States must have an approved Standard State Mitigation Plans meeting the requirements of this section as a condition of receiving non-emergency Stafford Act assistance and FEMA mitigation grants. Emergency assistance provided under 42 U.S.C. 5170a, 5170b, 5173, 5174, 5177, 5179, 5180, 5182, 5183, 5184, 5192 will not be affected. Mitigation planning grants provided through the Pre-disaster Mitigation (PDM) program, authorized under section 203 of the Stafford Act, 42 U.S.C. 5133, will also continue to be available. The mitigation plan is the demonstration of the State's commitment to reduce risks from natural hazards and serves as a guide for State decision makers as they commit resources to reducing the effects of natural hazards.

(b) *Planning process.* An effective planning process is essential in developing and maintaining a good plan. The mitigation planning process should include coordination with other State agencies, appropriate Federal agencies, interested groups, and be integrated to the extent possible with other ongoing State planning efforts as well as other FEMA mitigation programs and initiatives.

(c) *Plan content.* To be effective the plan must include the following elements:

(1) Description of the *planning process* used to develop the plan, including how it was prepared, who was involved in the process, and how other agencies participated.

(2) *Risk assessments* that provide the factual basis for activities proposed in the strategy portion of the mitigation plan. Statewide risk assessments must characterize and analyze natural hazards and risks to provide a statewide overview. This overview will allow the State to compare potential losses throughout the State and to determine their priorities for implementing mitigation measures under the strategy, and to prioritize jurisdictions for receiving technical and financial support in developing more detailed local risk and vulnerability assessments. The risk assessment shall include the following:

(i) An overview of the type and location of all natural hazards that can affect the State, including information on previous occurrences of hazard events, as well as the probability of future hazard events, using maps where appropriate;

(ii) An overview and analysis of the State's vulnerability to the hazards described in this paragraph (c)(2), based on estimates provided in local risk assessments as well as the State risk assessment. The State shall describe vulnerability in terms of the jurisdictions most threatened by the identified hazards, and most vulnerable to damage and loss associated with hazard events. State owned or operated critical facilities located in the identified hazard areas shall also be addressed;

(iii) An overview and analysis of potential losses to the identified vulnerable structures, based on estimates provided in local risk assessments as well as the State risk assessment. The State shall estimate the potential dollar losses to State owned or operated buildings, infrastructure, and critical facilities located in the identified hazard areas.

(3) A *Mitigation Strategy* that provides the State's blueprint for reducing the losses identified in the risk assessment. This section shall include:

(i) A description of State goals to guide the selection of activities to mitigate and reduce potential losses.

(ii) A discussion of the State's pre- and post-disaster hazard management policies, programs, and capabilities to mitigate the hazards in the area, including: an evaluation of State laws, regulations, policies, and programs related to hazard mitigation as well as to development in hazard-prone areas; a discussion of State funding capabilities for hazard mitigation projects; and a general description and analysis of the effectiveness of local mitigation policies, programs, and capabilities.

(iii) An identification, evaluation, and prioritization of cost-effective, environmentally sound, and technically feasible mitigation actions and activities the State is considering and an explanation of how each activity contributes to the overall mitigation strategy. This section should be linked to local

§ 201.5

44 CFR Ch. I (10-1-11 Edition)

plans, where specific local actions and projects are identified.

(iv) Identification of current and potential sources of Federal, State, local, or private funding to implement mitigation activities.

(v) A State may request the reduced cost share authorized under § 79.4(c)(2) of this chapter for the FMA and SRL programs, if it has an approved State Mitigation Plan meeting the requirements of this section that also identifies specific actions the State has taken to reduce the number of repetitive loss properties (which must include severe repetitive loss properties), and specifies how the State intends to reduce the number of such repetitive loss properties. In addition, the plan must describe the strategy the State has to ensure that local jurisdictions with severe repetitive loss properties take actions to reduce the number of these properties, including the development of local mitigation plans.

(4) A section on the *Coordination of Local Mitigation Planning* that includes the following:

(i) A description of the State process to support, through funding and technical assistance, the development of local mitigation plans.

(ii) A description of the State process and timeframe by which the local plans will be reviewed, coordinated, and linked to the State Mitigation Plan.

(iii) Criteria for prioritizing communities and local jurisdictions that would receive planning and project grants under available funding programs, which should include consideration for communities with the highest risks, repetitive loss properties, and most intense development pressures. Further, that for non-planning grants, a principal criterion for prioritizing grants shall be the extent to which benefits are maximized according to a cost benefit review of proposed projects and their associated costs.

(5) A *Plan Maintenance Process* that includes:

(i) An established method and schedule for monitoring, evaluating, and updating the plan.

(ii) A system for monitoring implementation of mitigation measures and project closeouts.

(iii) A system for reviewing progress on achieving goals as well as activities and projects identified in the Mitigation Strategy.

(6) A *Plan Adoption Process*. The plan must be formally adopted by the State prior to submittal to us for final review and approval.

(7) *Assurances*. The plan must include assurances that the State will comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding, in compliance with 44 CFR 13.11(c) of this chapter. The State will amend its plan whenever necessary to reflect changes in State or Federal statutes and regulations as required in 44 CFR 13.11(d) of this chapter.

(d) *Review and updates*. Plan must be reviewed and revised to reflect changes in development, progress in statewide mitigation efforts, and changes in priorities and resubmitted for approval to the appropriate Regional Administrator every three years. The Regional review will be completed within 45 days after receipt from the State, whenever possible. We also encourage a State to review its plan in the post-disaster timeframe to reflect changing priorities, but it is not required.

[67 FR 8848, Feb. 26, 2002, as amended at 67 FR 61515, Oct. 1, 2002; 69 FR 55096, Sept. 13, 2004; 72 FR 61565, 61738, Oct. 31, 2007]

§ 201.5 Enhanced State Mitigation Plans.

(a) A State with a FEMA approved Enhanced State Mitigation Plan at the time of a disaster declaration is eligible to receive increased funds under the HMGp, based on twenty percent of the total estimated eligible Stafford Act disaster assistance. The Enhanced State Mitigation Plan must demonstrate that a State has developed a comprehensive mitigation program, that the State effectively uses available mitigation funding, and that it is capable of managing the increased funding. In order for the State to be eligible for the 20 percent HMGp funding, FEMA must have approved the plan within three years prior to the disaster declaration.

(b) Enhanced State Mitigation Plans must include all elements of the Standard State Mitigation Plan identified in

Federal Emergency Management Agency, DHS**§ 201.6**

§ 201.4, as well as document the following:

(1) Demonstration that the plan is integrated to the extent practicable with other State and/or regional planning initiatives (comprehensive, growth management, economic development, capital improvement, land development, and/or emergency management plans) and FEMA mitigation programs and initiatives that provide guidance to State and regional agencies.

(2) Documentation of the State's project implementation capability, identifying and demonstrating the ability to implement the plan, including:

(i) Established eligibility criteria for multi-hazard mitigation measures.

(ii) A system to determine the cost effectiveness of mitigation measures, consistent with OMB Circular A-94, Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs, and to rank the measures according to the State's eligibility criteria.

(iii) Demonstration that the State has the capability to effectively manage the HMGP as well as other mitigation grant programs, including a record of the following:

(A) Meeting HMGP and other mitigation grant application timeframes and submitting complete, technically feasible, and eligible project applications with appropriate supporting documentation;

(B) Preparing and submitting accurate environmental reviews and benefit-cost analyses;

(C) Submitting complete and accurate quarterly progress and financial reports on time; and

(D) Completing HMGP and other mitigation grant projects within established performance periods, including financial reconciliation.

(iv) A system and strategy by which the State will conduct an assessment of the completed mitigation actions and include a record of the effectiveness (actual cost avoidance) of each mitigation action.

(3) Demonstration that the State effectively uses existing mitigation programs to achieve its mitigation goals.

(4) Demonstration that the State is committed to a comprehensive state

mitigation program, which might include any of the following:

(i) A commitment to support local mitigation planning by providing workshops and training, State planning grants, or coordinated capability development of local officials, including Emergency Management and Floodplain Management certifications.

(ii) A statewide program of hazard mitigation through the development of legislative initiatives, mitigation councils, formation of public/private partnerships, and/or other executive actions that promote hazard mitigation.

(iii) The State provides a portion of the non-Federal match for HMGP and/or other mitigation projects.

(iv) To the extent allowed by State law, the State requires or encourages local governments to use a current version of a nationally applicable model building code or standard that addresses natural hazards as a basis for design and construction of State sponsored mitigation projects.

(v) A comprehensive, multi-year plan to mitigate the risks posed to existing buildings that have been identified as necessary for post-disaster response and recovery operations.

(vi) A comprehensive description of how the State integrates mitigation into its post-disaster recovery operations.

(c) *Review and updates.* (1) A State must review and revise its plan to reflect changes in development, progress in statewide mitigation efforts, and changes in priorities, and resubmit it for approval to the appropriate Regional Administrator every three years. The Regional review will be completed within 45 days after receipt from the State, whenever possible.

(2) In order for a State to be eligible for the 20 percent HMGP funding, the Enhanced State Mitigation plan must be approved by FEMA within the three years prior to the current major disaster declaration.

§ 201.6 Local Mitigation Plans.

The local mitigation plan is the representation of the jurisdiction's commitment to reduce risks from natural hazards, serving as a guide for decision makers as they commit resources to

§ 201.6

reducing the effects of natural hazards. Local plans will also serve as the basis for the State to provide technical assistance and to prioritize project funding.

(a) *Plan requirements.* (1) A local government must have a mitigation plan approved pursuant to this section in order to receive HMGP project grants. The Administrator may, at his discretion, require a local mitigation plan for the Repetitive Flood Claims Program. A local government must have a mitigation plan approved pursuant to this section in order to apply for and receive mitigation project grants under all other mitigation grant programs.

(2) Plans prepared for the FMA program, described at part 79 of this chapter, need only address these requirements as they relate to flood hazards in order to be eligible for FMA project grants. However, these plans must be clearly identified as being flood mitigation plans, and they will not meet the eligibility criteria for other mitigation grant programs, unless flooding is the only natural hazard the jurisdiction faces.

(3) Regional Administrator's may grant an exception to the plan requirement in extraordinary circumstances, such as in a small and impoverished community, when justification is provided. In these cases, a plan will be completed within 12 months of the award of the project grant. If a plan is not provided within this timeframe, the project grant will be terminated, and any costs incurred after notice of grant's termination will not be reimbursed by FEMA.

(4) Multi-jurisdictional plans (*e.g.* watershed plans) may be accepted, as appropriate, as long as each jurisdiction has participated in the process and has officially adopted the plan. State-wide plans will not be accepted as multi-jurisdictional plans.

(b) *Planning process.* An open public involvement process is essential to the development of an effective plan. In order to develop a more comprehensive approach to reducing the effects of natural disasters, the planning process shall include:

(1) An opportunity for the public to comment on the plan during the drafting stage and prior to plan approval;

44 CFR Ch. I (10-1-11 Edition)

(2) An opportunity for neighboring communities, local and regional agencies involved in hazard mitigation activities, and agencies that have the authority to regulate development, as well as businesses, academia and other private and non-profit interests to be involved in the planning process; and

(3) Review and incorporation, if appropriate, of existing plans, studies, reports, and technical information.

(c) *Plan content.* The plan shall include the following:

(1) Documentation of the *planning process* used to develop the plan, including how it was prepared, who was involved in the process, and how the public was involved.

(2) A *risk assessment* that provides the factual basis for activities proposed in the strategy to reduce losses from identified hazards. Local risk assessments must provide sufficient information to enable the jurisdiction to identify and prioritize appropriate mitigation actions to reduce losses from identified hazards. The risk assessment shall include:

(i) A description of the type, location, and extent of all natural hazards that can affect the jurisdiction. The plan shall include information on previous occurrences of hazard events and on the probability of future hazard events.

(ii) A description of the jurisdiction's vulnerability to the hazards described in paragraph (c)(2)(i) of this section. This description shall include an overall summary of each hazard and its impact on the community. All plans approved after October 1, 2008 must also address NFIP insured structures that have been repetitively damaged by floods. The plan should describe vulnerability in terms of:

(A) The types and numbers of existing and future buildings, infrastructure, and critical facilities located in the identified hazard areas;

(B) An estimate of the potential dollar losses to vulnerable structures identified in paragraph (c)(2)(ii)(A) of this section and a description of the methodology used to prepare the estimate;

(C) Providing a general description of land uses and development trends within the community so that mitigation

options can be considered in future land use decisions.

(iii) For multi-jurisdictional plans, the risk assessment section must assess each jurisdiction's risks where they vary from the risks facing the entire planning area.

(3) A *mitigation strategy* that provides the jurisdiction's blueprint for reducing the potential losses identified in the risk assessment, based on existing authorities, policies, programs and resources, and its ability to expand on and improve these existing tools. This section shall include:

(i) A description of mitigation goals to reduce or avoid long-term vulnerabilities to the identified hazards.

(ii) A section that identifies and analyzes a comprehensive range of specific mitigation actions and projects being considered to reduce the effects of each hazard, with particular emphasis on new and existing buildings and infrastructure. All plans approved by FEMA after October 1, 2008, must also address the jurisdiction's participation in the NFIP, and continued compliance with NFIP requirements, as appropriate.

(iii) An action plan describing how the actions identified in paragraph (c)(3)(ii) of this section will be prioritized, implemented, and administered by the local jurisdiction. Prioritization shall include a special emphasis on the extent to which benefits are maximized according to a cost benefit review of the proposed projects and their associated costs.

(iv) For multi-jurisdictional plans, there must be identifiable action items specific to the jurisdiction requesting FEMA approval or credit of the plan.

(4) A *plan maintenance process* that includes:

(i) A section describing the method and schedule of monitoring, evaluating, and updating the mitigation plan within a five-year cycle.

(ii) A process by which local governments incorporate the requirements of the mitigation plan into other planning mechanisms such as comprehensive or capital improvement plans, when appropriate.

(iii) Discussion on how the community will continue public participation in the plan maintenance process.

(5) *Documentation* that the plan has been formally adopted by the governing body of the jurisdiction requesting approval of the plan (e.g., City Council, County Commissioner, Tribal Council). For multi-jurisdictional plans, each jurisdiction requesting approval of the plan must document that it has been formally adopted.

(d) *Plan review.* (1) Plans must be submitted to the State Hazard Mitigation Officer (SHMO) for initial review and coordination. The State will then send the plan to the appropriate FEMA Regional Office for formal review and approval. Where the State point of contact for the FMA program is different from the SHMO, the SHMO will be responsible for coordinating the local plan reviews between the FMA point of contact and FEMA.

(2) The Regional review will be completed within 45 days after receipt from the State, whenever possible.

(3) A local jurisdiction must review and revise its plan to reflect changes in development, progress in local mitigation efforts, and changes in priorities, and resubmit it for approval within 5 years in order to continue to be eligible for mitigation project grant funding.

(4) Managing States that have been approved under the criteria established by FEMA pursuant to 42 U.S.C. 5170c(c) will be delegated approval authority for local mitigation plans, and the review will be based on the criteria in this part. Managing States will review the plans within 45 days of receipt of the plans, whenever possible, and provide a copy of the approved plans to the Regional Office.

[67 FR 8848, Feb. 26, 2002, as amended at 67 FR 61515, Oct. 1, 2002; 68 FR 61370, Oct. 28, 2003; 69 FR 55096, Sept. 13, 2004; 72 FR 61748, Oct. 31, 2007; 74 FR 47482, Sept. 16, 2009]

§ 201.7 Tribal Mitigation Plans.

The Indian Tribal Mitigation Plan is the representation of the Indian tribal government's commitment to reduce risks from natural hazards, serving as a guide for decision makers as they commit resources to reducing the effects of natural hazards.

(a) *Plan requirement.* (1) Indian tribal governments applying to FEMA as a grantee must have an approved Tribal

§ 201.7

44 CFR Ch. I (10-1-11 Edition)

Mitigation Plan meeting the requirements of this section as a condition of receiving non-emergency Stafford Act assistance and FEMA mitigation grants. Emergency assistance provided under 42 U.S.C. 5170a, 5170b, 5173, 5174, 5177, 5179, 5180, 5182, 5183, 5184, 5192 will not be affected. Mitigation planning grants provided through the PDM program, authorized under section 203 of the Stafford Act, 42 U.S.C. 5133, will also continue to be available.

(2) An Indian Tribal government applying to FEMA as a grantee may choose to address severe repetitive loss properties in their plan, as identified in § 201.4(c)(3)(v), to receive the reduced cost share for the FMA and SRL programs.

(3) Indian Tribal governments applying through the State as a subgrantee must have an approved Tribal Mitigation Plan meeting the requirements of this section in order to receive HMGIP project grants and, the Administrator, at his discretion may require a Tribal Mitigation Plan for the Repetitive Flood Claims Program. A Tribe must have an approved Tribal Mitigation Plan in order to apply for and receive FEMA mitigation project grants, under all other mitigation grant programs. The provisions in § 201.6(a)(3) are available to Tribes applying as subgrantees.

(4) Multi-jurisdictional plans (e.g. county-wide or watershed plans) may be accepted, as appropriate, as long as the Indian tribal government has participated in the process and has officially adopted the plan. Indian tribal governments must address all the elements identified in this section to ensure eligibility as a grantee or as a subgrantee.

(b) An effective planning process is essential in developing and maintaining a good plan. The mitigation planning process should include coordination with other tribal agencies, appropriate Federal agencies, adjacent jurisdictions, interested groups, and be integrated to the extent possible with other ongoing tribal planning efforts as well as other FEMA mitigation programs and initiatives.

(c) *Plan content.* The plan shall include the following:

(1) Documentation of the *planning process* used to develop the plan, includ-

ing how it was prepared, who was involved in the process, and how the public was involved. This shall include:

(i) An opportunity for the public to comment on the plan during the drafting stage and prior to plan approval, including a description of how the Indian tribal government defined "public;"

(ii) As appropriate, an opportunity for neighboring communities, tribal and regional agencies involved in hazard mitigation activities, and agencies that have the authority to regulate development, as well as businesses, academia, and other private and nonprofit interests to be involved in the planning process;

(iii) Review and incorporation, if appropriate, of existing plans, studies, and reports; and

(iv) Be integrated to the extent possible with other ongoing tribal planning efforts as well as other FEMA programs and initiatives.

(2) A *risk assessment* that provides the factual basis for activities proposed in the strategy to reduce losses from identified hazards. Tribal risk assessments must provide sufficient information to enable the Indian tribal government to identify and prioritize appropriate mitigation actions to reduce losses from identified hazards. The risk assessment shall include:

(i) A description of the type, location, and extent of all natural hazards that can affect the tribal planning area. The plan shall include information on previous occurrences of hazard events and on the probability of future hazard events.

(ii) A description of the Indian tribal government's vulnerability to the hazards described in paragraph (c)(2)(i) of this section. This description shall include an overall summary of each hazard and its impact on the tribe. The plan should describe vulnerability in terms of:

(A) The types and numbers of existing and future buildings, infrastructure, and critical facilities located in the identified hazard areas;

(B) An estimate of the potential dollar losses to vulnerable structures identified in paragraph (c)(2)(ii)(A) of this section and a description of the

Federal Emergency Management Agency, DHS**§ 201.7**

methodology used to prepare the estimate;

(C) A general description of land uses and development trends within the tribal planning area so that mitigation options can be considered in future land use decisions; and

(D) Cultural and sacred sites that are significant, even if they cannot be valued in monetary terms.

(3) A *mitigation strategy* that provides the Indian tribal government's blueprint for reducing the potential losses identified in the risk assessment, based on existing authorities, policies, programs and resources, and its ability to expand on and improve these existing tools. This section shall include:

(i) A description of mitigation goals to reduce or avoid long-term vulnerabilities to the identified hazards.

(ii) A section that identifies and analyzes a comprehensive range of specific mitigation actions and projects being considered to reduce the effects of each hazard, with particular emphasis on new and existing buildings and infrastructure.

(iii) An action plan describing how the actions identified in paragraph (c)(3)(ii) of this section will be prioritized, implemented, and administered by the Indian Tribal government.

(iv) A discussion of the Indian tribal government's pre- and post-disaster hazard management policies, programs, and capabilities to mitigate the hazards in the area, including: An evaluation of tribal laws, regulations, policies, and programs related to hazard mitigation as well as to development in hazard-prone areas; and a discussion of tribal funding capabilities for hazard mitigation projects.

(v) Identification of current and potential sources of Federal, tribal, or private funding to implement mitigation activities.

(vi) An Indian Tribal government applying to FEMA as a grantee may request the reduced cost share authorized under § 79.4(c)(2) of this chapter of the FMA and SRL programs if they have an approved Tribal Mitigation Plan meeting the requirements of this section that also identifies actions the Indian Tribal government has taken to reduce the number of repetitive loss

properties (which must include severe repetitive loss properties), and specifies how the Indian Tribal government intends to reduce the number of such repetitive loss properties.

(4) A *plan maintenance process* that includes:

(i) A section describing the method and schedule of monitoring, evaluating, and updating the mitigation plan.

(ii) A system for monitoring implementation of mitigation measures and project closeouts.

(iii) A process by which the Indian tribal government incorporates the requirements of the mitigation plan into other planning mechanisms such as reservation master plans or capital improvement plans, when appropriate.

(iv) Discussion on how the Indian tribal government will continue public participation in the plan maintenance process.

(v) A system for reviewing progress on achieving goals as well as activities and projects identified in the mitigation strategy.

(5) *Plan Adoption Process.* The plan must be formally adopted by the governing body of the Indian tribal government prior to submittal to FEMA for final review and approval.

(6) *Assurances.* The plan must include assurances that the Indian tribal government will comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding, in compliance with § 13.11(c) of this chapter. The Indian tribal government will amend its plan whenever necessary to reflect changes in tribal or Federal laws and statutes as required in § 13.11(d) of this chapter.

(d) *Plan review and updates.* (1) Plans must be submitted to the appropriate FEMA Regional Office for formal review and approval. Indian tribal governments who would like the option of being a subgrantee under the State must also submit their plan to the State Hazard Mitigation Officer for review and coordination.

(2) The Regional review will be completed within 45 days after receipt from the Indian tribal government, whenever possible.

(3) Indian tribal governments must review and revise their plan to reflect changes in development, progress in local mitigation efforts, and changes in priorities, and resubmit it for approval within 5 years in order to continue to be eligible for non-emergency Stafford Act assistance and FEMA mitigation grant funding, with the exception of the Repetitive Flood Claims program.

[72 FR 61749, Oct. 31, 2007, as amended at 74 FR 47482, Sept. 16, 2009]

204.63 Allowable costs.

204.64 Reporting and audit requirements.

AUTHORITY: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207; Reorganization Plan No. 3 of 1978, 43 FR 41943; 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

SOURCE: 66 FR 57347, Nov. 14, 2001, unless otherwise noted.

PARTS 202-203 [RESERVED]

PART 204—FIRE MANAGEMENT ASSISTANCE GRANT PROGRAM

Subpart A—General

Sec.

204.1 Purpose.

204.2 Scope.

204.3 Definitions used throughout this part.

204.4-204.20 [Reserved]

Subpart B—Declaration Process

204.21 Fire management assistance declaration criteria.

204.22 Submitting a request for a fire management assistance declaration.

204.23 Processing a request for a fire management assistance declaration.

204.24 Determination on request for a fire management assistance declaration.

204.25 FEMA-State agreement for fire management assistance grant program.

204.26 Appeal of fire management assistance declaration denial.

204.27-204.40 [Reserved]

Subpart C—Eligibility

204.41 Applicant eligibility.

204.42 Eligible costs.

204.43 Ineligible costs.

204.44-204.50 [Reserved]

Subpart D—Application Procedures

204.51 Application and approval procedures for a fire management assistance grant.

204.52 Application and approval procedures for a subgrant under a fire management assistance grant.

204.53 Certifying costs and payments.

204.54 Appeals.

204.55-204.60 [Reserved]

Subpart E—Grant Administration

204.61 Cost share.

204.62 Duplication and recovery of assistance.

Subpart A—General

§ 204.1 Purpose.

This part provides information on the procedures for the declaration and grants management processes for the Fire Management Assistance Grant Program in accordance with the provisions of section 420 of the Stafford Act. This part also details applicant eligibility and the eligibility of costs to be considered under the program. We (FEMA) will actively work with State and Tribal emergency managers and foresters on the efficient delivery of fire management assistance as directed by this part.

§ 204.2 Scope.

This part is intended for those individuals responsible for requesting declarations and administering grants under the Fire Management Assistance Grant Program, as well as those applying for assistance under the program.

§ 204.3 Definitions used throughout this part.

Applicant. A State or Indian tribal government submitting an application to us for a fire management assistance grant, or a State, local, or Indian tribal government submitting an application to the Grantee for a subgrant under an approved fire management assistance grant.

Declared fire. An uncontrolled fire or fire complex, threatening such destruction as would constitute a major disaster, which the Administrator has approved in response to a State's request for a fire management assistance declaration and in accordance with the criteria listed in § 204.21.

Federal Emergency Management Agency, DHS**§ 204.3**

Demobilization. The process and procedures for deactivating, disassembling, and transporting back to their point of origin all resources that had been provided to respond to and support a declared fire.

FEMA Form 90-91. See Project Worksheet.

Fire complex. Two or more individual fires located in the same general area, which are assigned to a single Incident Commander.

Governor's Authorized Representative (GAR). The person empowered by the Governor to execute, on behalf of the State, all necessary documents for fire management assistance, including the request for a fire management assistance declaration.

Grant. An award of financial assistance, including cooperative agreements, by FEMA to an eligible Grantee. The grant award will be based on the projected amount of total eligible costs for which a State submits an application and that FEMA approves related to a declared fire.

Grantee. The Grantee is the government to which a grant is awarded which is accountable for the use of the funds provided. The Grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. Generally, the State, as designated in the FEMA-State Agreement for the Fire Management Assistance Grant Program, is the Grantee. However, after a declaration, an Indian tribal government may choose to be a Grantee, or it may act as a subgrantee under the State. An Indian tribal government acting as Grantee will assume the responsibilities of a "state", as described in this Part, for the purpose of administering the grant.

Hazard mitigation plan. A plan to develop actions the State, local, or tribal government will take to reduce the risk to people and property from all hazards. The intent of hazard mitigation planning under the Fire Management Assistance Grant Program is to identify wildfire hazards and cost-effective mitigation alternatives that produce long-term benefits. We address mitigation of fire hazards as part of the State's comprehensive Mitigation Plan, described in 44 CFR part 201.

Incident commander. The ranking official responsible for overseeing the management of fire operations, planning, logistics, and finances of the field response.

Incident period. The time interval during which the declared fire occurs. The Regional Administrator, in consultation with the Governor's Authorized Representative and the Principal Advisor, will establish the incident period. Generally, costs must be incurred during the incident period to be considered eligible.

Indian tribal government. An Indian tribal government is any Federally recognized governing body of an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian tribe under the Federally Recognized Tribe List Act of 1994, 25 U.S.C. 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

Individual assistance. Supplementary Federal assistance provided under the Stafford Act to individuals and families adversely affected by a major disaster or an emergency. Such assistance may be provided directly by the Federal Government or through State or local governments or disaster relief organizations. For further information, see subparts D, E, and F of part 206.

Local government. A local government is any county, municipality, city, town, township, public authority, school district, special district, intra-state district, council of governments (regardless of whether the council of governments is incorporated as a non-profit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government; any Indian tribal government or authorized tribal organization, or Alaska Native village or organization; and any rural community, unincorporated town or village, or other public entity, for which an application for assistance is made by a State or political subdivision of a State.

Mitigation, management, and control. Those activities undertaken, generally during the incident period of a declared fire, to minimize immediate adverse effects and to manage and control the

§§ 204.4–204.20

fire. Eligible activities may include associated emergency work and pre-positioning directly related to the declared fire.

Mobilization. The process and procedures used for activating, assembling, and transporting all resources that the Grantee requested to respond to support a declared fire.

Performance period. The time interval designated in block 13 on the Application for Federal Assistance (Standard Form 424) for the Grantee and all subgrantees to submit eligible costs and have those costs processed, obligated, and closed out by FEMA.

Pre-positioning. Moving existing fire prevention or suppression resources from an area of lower fire danger to one of higher fire danger in anticipation of an increase in fire activity likely to constitute the threat of a major disaster.

Principal advisor. An individual appointed by the Forest Service, United States Department of Agriculture, or Bureau of Land Management, Department of the Interior, who is responsible for providing FEMA with a technical assessment of the fire or fire complex for which a State is requesting a fire management assistance declaration. The Principal Advisor also frequently participates with FEMA on other wildland fire initiatives.

Project worksheet. FEMA Form 90-91, which identifies actual costs incurred by eligible applicants as a result of the eligible firefighting activities.

Public assistance. Supplementary Federal assistance provided under the Stafford Act to State and local governments or certain private, nonprofit organizations for eligible emergency measures and repair, restoration, and replacement of damaged facilities. For further information, see Subparts G and H of Part 206.

Regional Administrator. The administrator of a regional office of FEMA, or his/her designated representative.

Request for Federal Assistance. See Standard Form (SF) 424.

Standard Form (SF) 424. The SF 424 is the Request for Federal Assistance. This is the form the State submits to apply for a grant under a fire management assistance declaration.

44 CFR Ch. I (10-1-11 Edition)

Subgrant. An award of financial assistance under a grant by a Grantee to an eligible subgrantee.

Subgrantee. An applicant that is awarded a subgrant and is accountable to the Grantee for the use of grant funding provided.

Threat of a major disaster. The potential impact of the fire or fire complex is of a severity and magnitude that would result in a presidential major disaster declaration for the Public Assistance Program, the Individual Assistance Program, or both.

Uncontrolled fire. Any fire not safely confined to predetermined control lines as established by firefighting resources.

We, our, us mean FEMA.

[66 FR 57347, Nov. 14, 2001, as amended at 68 FR 61370, Oct. 28, 2003; 74 FR 15345, Apr. 3, 2009; 75 FR 50715, Aug. 17, 2010]

§§ 204.4–204.20 [Reserved]

Subpart B—Declaration Process

§ 204.21 Fire management assistance declaration criteria.

(a) *Determinations.* We will approve declarations for fire management assistance when the Administrator determines that a fire or fire complex threatens such destruction as would constitute a major disaster.

(b) *Evaluation criteria.* We will evaluate the threat posed by a fire or fire complex based on consideration of the following specific criteria:

(1) Threat to lives and improved property, including threats to critical facilities/infrastructure, and critical watershed areas;

(2) Availability of State and local firefighting resources;

(3) High fire danger conditions, as indicated by nationally accepted indices such as the National Fire Danger Ratings System;

(4) Potential major economic impact.

[66 FR 57347, Nov. 14, 2001, as amended at 75 FR 50715, Aug. 17, 2010]

§ 204.22 Submitting a request for a fire management assistance declaration.

The Governor of a State, or the Governor's Authorized Representative (GAR), may submit a request for a fire management assistance declaration.

The request must be submitted while the fire is burning uncontrolled and threatens such destruction as would constitute a major disaster. The request must be submitted to the Regional Administrator and should address the relevant criteria listed in § 204.21, with supporting documentation that contains factual data and professional estimates on the fire or fire complex. To ensure that we can process a State's request for a fire management assistance declaration as expeditiously as possible, the State should transmit the request by telephone, promptly followed by written documentation (FEMA Form 90-58).

§ 204.23 Processing a request for a fire management assistance declaration.

(a) In processing a State's request for a fire management assistance declaration, the Regional Administrator, in coordination with the Principal Advisor, will verify the information submitted in the State's request.

(b) The Principal Advisor, at the request of the Regional Administrator, is responsible for providing FEMA a technical assessment of the fire or fire complex for which the State is requesting a fire management assistance declaration. The Principal Advisor may consult with State agencies, usually emergency management or forestry, as well as the Incident Commander, in order to provide FEMA with an accurate assessment.

[75 FR 50715, Aug. 17, 2010]

§ 204.24 Determination on request for a fire management assistance declaration.

The Administrator will review all information submitted in the State's request along with the Principal Advisor's assessment and render a determination. The determination will be based on the conditions of the fire or fire complex existing at the time of the State's request. When possible, the Administrator will evaluate the request and make a determination within several hours. Once the Administrator renders a determination, FEMA will promptly notify the State of the determination.

[75 FR 50715, Aug. 17, 2010]

§ 204.25 FEMA-State agreement for fire management assistance grant program.

(a) After a State's request for a fire management assistance declaration has been approved, the Governor and Regional Administrator will enter into a standing FEMA-State Agreement (the Agreement) for the declared fire and for future declared fires in that calendar year. The State must have a signed and up-to-date FEMA-State Agreement before receiving Federal funding for fire management assistance grants. FEMA will provide no funding absent a signed and up-to-date Agreement. An Indian tribal government serving as Grantee, must sign a FEMA-Tribal Agreement, modeled upon the FEMA-State Agreement.

(b) The Agreement states the understandings, commitments, and conditions under which we will provide Federal assistance, including the cost share provision and articles of agreement necessary for the administration of grants approved under fire management assistance declarations. The Agreement must also identify the State legislative authority for firefighting, as well as the State's compliance with the laws, regulations, and other provisions applicable to the Fire Management Assistance Grant Program.

(c) For each subsequently declared fire within the calendar year, the parties must add a properly executed amendment, which defines the incident period and contains the official declaration number. Other amendments modifying the standing Agreement may be added throughout the year to reflect changes in the program or signatory parties.

§ 204.26 Appeal of fire management assistance declaration denial.

(a) *Submitting an appeal.* When a State's request for a fire management assistance declaration is denied, the Governor or GAR may appeal the decision in writing within 30 days after the date of the letter denying the request. The State should submit this one-time request for reconsideration in writing, with appropriate additional information to the Administrator through the

§§ 204.27–204.40

Regional Administrator. The Administrator will reevaluate the State's request and notify the State of the final determination within 90 days of receipt of the appeal or the receipt of additional requested information.

(b) *Requesting a time-extension.* The Administrator may extend the 30-day period for filing an appeal, provided that the Governor or the GAR submits a written

(c) *Request for such an extension within the 30-day period.* The Administrator will evaluate the need for an extension based on the reasons cited in the request and either approve or deny the request for an extension.

[75 FR 50715, Aug. 17, 2010]

§§ 204.27–204.40 [Reserved]

Subpart C—Eligibility

§ 204.41 Applicant eligibility.

(a) The following entities are eligible to apply through a State Grantee for a subgrant under an approved fire management assistance grant:

- (1) State agencies;
- (2) Local governments; and
- (3) Indian tribal governments.

(b) Entities that are not eligible to apply for a subgrant as identified in (a), such as privately owned entities and volunteer firefighting organizations, may be reimbursed through a contract or compact with an eligible applicant for eligible costs associated with the fire or fire complex.

(c) Eligibility is contingent upon a finding that the Incident Commander or comparable State official requested the applying entity's resources.

(d) The activities performed must be the legal responsibility of the applying entity, required as the result of the declared fire, and located within the designated area.

§ 204.42 Eligible costs.

(a) *General.* (1) All eligible work and related costs must be associated with the incident period of a declared fire.

(2) Before obligating Federal funds the Regional Administrator must review and approve the initial grant application, along with Project Worksheets submitted with the application

44 CFR Ch. I (10-1-11 Edition)

and any subsequent amendments to the application.

(3) Grantees will award Federal funds to subgrantees under State law and procedure and complying with 44 CFR part 13.

(b) *Equipment and supplies.* Eligible costs include:

(1) Personal comfort and safety items normally provided by the State under field conditions for firefighter health and safety, including:

(2) Firefighting supplies, tools, materials, expended or lost, to the extent not covered by reasonable insurance, will be replaced with comparable items.

(3) Operation and maintenance costs of publicly owned, contracted, rented, or volunteer firefighting department equipment used in eligible firefighting activities to the extent any of these costs are not included in applicable equipment rates.

(4) Use of U.S. Government-owned equipment based on reasonable costs as billed by the Federal agency and paid by the State. (Only direct costs for use of Federal Excess Personal Property (FEPP) vehicles and equipment on loan to State Forestry and local cooperators may be eligible.)

(5) Repair of equipment damaged in firefighting activities to the extent not covered by reasonable insurance. We will use the lowest applicable equipment rates, or other rates that we determine, to calculate the eligible cost of repairs.

(6) Replacement of equipment lost or destroyed in firefighting activities, to the extent not covered by reasonable insurance, will be replaced with comparable equipment.

(c) *Labor costs.* Eligible costs include:

(1) Overtime for permanent or re-assigned State and local employees.

(2) Regular time and overtime for temporary and contract employees hired to perform fire-related activities.

(d) *Travel and per diem costs.* Eligible costs include:

(1) Travel and per diem of employees who are providing services directly associated with eligible fire-related activities may be eligible.

(2) Provision of field camps and meals when made available in place of per diem;

(e) *Pre-positioning costs.* (1) The actual costs of pre-positioning Federal, out-of-State (including compact), and international resources for a limited period may be eligible when those resources are used in response to a declared fire.

(2) The Regional Administrator must approve all pre-positioning costs.

(i) Upon approval of a State's request for a fire management assistance declaration by the Assistant Administrator for the Disaster Assistance Directorate, the State should immediately notify the Regional Administrator of its intention to seek funding for pre-positioning resources.

(ii) The State must document the number of pre-positioned resources to be funded and their respective locations throughout the State, estimate the cost of the pre-positioned resources that were used on the declared fire and the amount of time the resources were pre-positioned, and provide a detailed explanation of the need to fund the pre-positioned resources.

(iii) The State will base the detailed explanation on recognized scientific indicators, that include, but are not limited to, drought indices, short-term weather forecasts, the current number of fires burning in the State, and the availability of in-State firefighting resources. The State may also include other quantitative indicators with which to measure the increased risk of the threat of a major disaster.

(iv) Based on the information contained in the State's notification, the Regional Administrator will determine the number of days of pre-positioning to be approved for Federal funding, up to a maximum of 21 days before the fire declaration.

(3) Upon rendering his/her determination on pre-positioning costs, the Regional Administrator will notify the Assistant Administrator for the Disaster Assistance Directorate of his/her determination.

(f) *Emergency work.* We may authorize the use of section 403 of the Stafford Act, Essential Assistance, under an approved fire management assistance grant when directly related to the mitigation, management, and control of the declared fire. Essential assistance activities that may be eligible in-

clude, but are not limited to, police barricading and traffic control, extraordinary emergency operations center expenses, evacuations and sheltering, search and rescue, arson investigation teams, public information, and the limited removal of trees that pose a threat to the general public.

(g) *Temporary repair of damage caused by firefighting activities.* Temporary repair of damage caused by eligible firefighting activities listed in this sub-part involves short-term actions to repair damage directly caused by the firefighting effort or activities. This includes minimal repairs to bulldozer lines, camps, and staging areas to address safety concerns; as well as minimal repairs to facilities damaged by the firefighting activities such as fences, buildings, bridges, roads, etc. All temporary repair work must be completed within thirty days of the close of the incident period for the declared fire.

(h) *Mobilization and demobilization.* Costs for mobilization to, and demobilization from, a declared fire may be eligible for reimbursement. Demobilization may be claimed at a delayed date if deployment involved one or more declared fires. If resources are being used on more than one declared fire, mobilization and demobilization costs must be claimed against the first declared fire.

(i) *Fires on co-mingled Federal/State lands.* Reasonable costs for the mitigation, management, and control of a declared fire burning on co-mingled Federal and State land may be eligible in cases where the State has a responsibility for suppression activities under an agreement to perform such action on a non-reimbursable basis. (This provision is an exception to normal FEMA policy under the Stafford Act and is intended to accommodate only those rare instances that involve State firefighting on a Stafford Act section 420 fire incident involving co-mingled Federal/State and privately-owned forest or grassland.)

§ 204.43 Ineligible costs.

Costs not directly associated with the incident period are ineligible. Ineligible costs include the following:

§§ 204.44–204.50

- (a) Costs incurred in the mitigation, management, and control of undeclared fires;
- (b) Costs related to planning, pre-suppression (*i.e.*, cutting fire-breaks without the presence of an imminent threat, training, road widening, and other similar activities), and recovery (*i.e.*, land rehabilitation activities, such as seeding, planting operations, and erosion control, or the salvage of timber and other materials, and restoration of facilities damaged by fire);
- (c) Costs for the straight or regular time salaries and benefits of a subgrantee's permanently employed or re-assigned personnel;
- (d) Costs for mitigation, management, and control of a declared fire on co-mingled Federal land when such costs are reimbursable to the State by a Federal agency under another statute (See 44 CFR part 51);
- (e) Fires fought on Federal land are generally the responsibility of the Federal Agency that owns or manages the land. Costs incurred while fighting fires on federally owned land are not eligible under the Fire Management Assistance Grant Program except as noted in § 204.42(i).

§§ 204.44–204.50 [Reserved]

Subpart D—Application Procedures

§ 204.51 Application and approval procedures for a fire management assistance grant.

(a) *Preparing and submitting an application.* (1) After the approval of a fire management assistance declaration, the State may submit an application package for a grant to the Regional Administrator. The application package must include the SF 424 (Request for Federal Assistance) and FEMA Form 20-16a (Summary of Assurances—Non-construction Programs), as well as supporting documentation for the budget.

(2) The State should submit its grant application within 9 months of the declaration. Upon receipt of the written request from the State, the Regional Administrator may grant an extension for up to 3 months. The State's request

44 CFR Ch. I (10-1-11 Edition)

must include a justification for the extension.

(b) *Fire cost threshold.* (1) We will approve the initial grant award to the State when we determine that the State's application demonstrates either of the following:

(i) Total eligible costs for the declared fire meet or exceed the individual fire cost threshold; or

(ii) Total costs of all declared and non-declared fires for which a State has assumed responsibility in a given calendar year meet the cumulative fire cost threshold.

(2) The individual fire cost threshold for a State is the greater of the following:

(i) \$100,000; or

(ii) Five percent \times \$1.07 \times the State population, adjusted annually for inflation using the Consumer Price Index for All Urban Consumers published annually by the Department of Labor.

(3) The cumulative fire cost threshold for a State is the greater of the following:

(i) \$500,000; or

(ii) Three times the five percent \times \$1.07 \times the State population as described in § 204.51(b)(2)(ii).

(4) States must document the total eligible costs for a declared fire on Project Worksheets, which they must submit with the grant application.

(5) We will not consider the costs of pre-positioning resources for the purposes of determining whether the grant application meets the fire cost threshold.

(6) When the State's total eligible costs associated with the fire management assistance declaration meet or exceed the fire cost threshold eligible costs will be cost shared in accordance with § 204.61.

(c) *Approval of the State's grant application.* The Regional Administrator has 45 days from receipt the State's grant application or an amendment to the State's grant application, including attached supporting Project Worksheet(s), to review and approve or deny the grant application or amendment; or to notify the Grantee of a delay in processing funding.

(d) *Obligation of the grant.* Before we approve the State's grant application, the State must have an up-to-date

Federal Emergency Management Agency, DHS**§ 204.52**

State Administrative Plan and a Hazard Mitigation Plan that has been reviewed and approved by the Regional Administrator. Once these plans are approved by the Regional Administrator, the State's grant application may be approved and we may begin to obligate the Federal share of funding for subgrants to the Grantee.

(1) *State administrative plan.* (i) The State must develop an Administrative Plan (or have a current Administrative Plan on file with FEMA) that describes the procedures for the administration of the Fire Management Assistance Grant Program. The Plan will include, at a minimum, the items listed below:

(A) The designation of the State agency or agencies which will have responsibility for program administration.

(B) The identification of staffing functions for the Fire Management Assistance Program, the sources of staff to fill these functions, and the management and oversight responsibilities of each.

(C) The procedures for:

(1) Notifying potential applicants of the availability of the program;

(2) Assisting FEMA in determining applicant eligibility;

(3) Submitting and reviewing subgrant applications;

(4) Processing payment for subgrants;

(5) Submitting, reviewing, and accepting subgrant performance and financial reports;

(6) Monitoring, close-out, and audit and reconciliation of subgrants;

(7) Recovering funds for disallowed costs;

(8) Processing appeal requests and requests for time extensions; and

(9) Providing technical assistance to applicants and subgrant recipients, including briefings for potential applicants and materials on the application procedures, program eligibility guidance and program deadlines.

(ii) The Grantee may request the Regional Administrator to provide technical assistance in the preparation of the State Administrative Plan.

(2) *Hazard Mitigation Plan.* As a requirement of receiving funding under a fire management assistance grant, a State, or tribal organization, acting as Grantee, must:

(i) Develop a Mitigation Plan in accordance with 44 CFR part 201 that addresses wildfire risks and mitigation measures; or

(ii) Incorporate wildfire mitigation into the existing Mitigation Plan developed and approved under 44 CFR part 201 that also addresses wildfire risk and contains a wildfire mitigation strategy and related mitigation initiatives.

[66 FR 57347, Nov. 14, 2001, as amended at 68 FR 61371, Oct. 28, 2003]

§ 204.52 Application and approval procedures for a subgrant under a fire management assistance grant.

(a) *Request for Fire Management Assistance.* (1) State, local, and tribal governments interested in applying for subgrants under an approved fire management assistance grant must submit a Request for Fire Management Assistance to the Grantee in accordance with State procedures and within timelines set by the Grantee, but no longer than 30 days after the close of the incident period.

(2) The Grantee will review and forward the Request to the Regional Administrator for final review and determination. The Grantee may also forward a recommendation for approval of the Request to the Regional Administrator when appropriate.

(3) The Regional Administrator will approve or deny the request based on the eligibility requirements outlined in § 204.41.

(4) The Regional Administrator will notify the Grantee of his/her determination; the Grantee will inform the applicant.

(b) *Preparing a Project Worksheet.* (1) Once the Regional Administrator approves an applicant's Request for Fire Management Assistance, the Regional Administrator's staff may begin to work with the Grantee and local staff to prepare Project Worksheets (FEMA Form 90-91).

(2) The Regional Administrator may request the Principal Advisor to assist in the preparation of Project Worksheets.

(3) The State will be the primary contact for transactions with and on behalf of the applicant.

§ 204.53

(c) *Submitting a Project Worksheet.* (1) Applicants should submit all Project Worksheets through the Grantee for approval and transmittal to the Regional Administrator as amendments to the State's application.

(2) The Grantee will determine the deadline for an applicant to submit completed Project Worksheets, but the deadline must be no later than six months from close of the incident period.

(3) At the request of the Grantee, the Regional Administrator may grant an extension of up to three months. The Grantee must include a justification in its request for an extension.

(4) Project Worksheets will not be accepted after the deadline and extension specified in paragraphs (c)(2) and (c)(3) of this section has expired.

(5) *\$1,000 Project Worksheet minimum.* When the costs reported are less than \$1,000, that work is not eligible and we will not approve that Project Worksheet.

§ 204.53 Certifying costs and payments.

(a) By submitting applicants' Project Worksheets to us, the Grantee is certifying that all costs reported on applicant Project Worksheets were incurred for work that was performed in compliance with FEMA laws, regulations, policy and guidance applicable to the Fire Management Assistance Grant Program, as well as with the terms and conditions outlined for the administration of the grant in the FEMA-State Agreement for the Fire Management Assistance Grant Program.

(b) Advancement/Reimbursement for State grant costs will be processed as follows:

(1) Through the U.S. Department of Health and Human Services SMARTLINK system; and

(2) In compliance with 44 CFR 13.21 and U. S. Treasury 31 CFR part 205, Cash Management Improvement Act.

§ 204.54 Appeals.

An eligible applicant, subgrantee, or grantee may appeal any determination we make related to an application for the provision of Federal assistance according to the procedures below.

44 CFR Ch. I (10-1-11 Edition)

(a) *Format and content.* The applicant or subgrantee will make the appeal in writing through the grantee to the Regional Administrator. The grantee will review and evaluate all subgrantee appeals before submission to the Regional Administrator. The grantee may make grantee-related appeals to the Regional Administrator. The appeal will contain documented justification supporting the appellant's position, specifying the monetary figure in dispute and the provisions in Federal law, regulation, or policy with which the appellant believes the initial action was inconsistent.

(b) *Levels of appeal.* (1) The Regional Administrator will consider first appeals for fire management assistance grant-related decisions under subparts A through E of this part.

(2) The Assistant Administrator for the Disaster Assistance Directorate will consider appeals of the Regional Administrator's decision on any first appeal under paragraph (b)(1) of this section.

(c) *Time limits.* (1) Appellants must file appeals within 60 days after receipt of a notice of the action that is being appealed.

(2) The grantee will review and forward appeals from an applicant or subgrantee, with a written recommendation, to the Regional Administrator within 60 days of receipt.

(3) Within 90 days following receipt of an appeal, the Regional Administrator (for first appeals) or Assistant Administrator for the Disaster Assistance Directorate (for second appeals) will notify the grantee in writing of the disposition of the appeal or of the need for additional information. A request by the Regional Administrator or Assistant Administrator for the Disaster Assistance Directorate for additional information will include a date by which the information must be provided. Within 90 days following the receipt of the requested additional information or following expiration of the period for providing the information, the Regional Administrator or Assistant Administrator for the Disaster Assistance Directorate will notify the grantee in writing of the disposition of the appeal. If the decision is to grant the appeal,

the Regional Administrator will take appropriate implementing action.

(d) *Technical advice.* In appeals involving highly technical issues, the Regional Administrator or may, at his or her discretion, submit the appeal to an independent scientific or technical person or group having expertise in the subject matter of the appeal for advice or recommendation. The period for this technical review may be in addition to other allotted time periods. Within 90 days of receipt of the report, the Regional Administrator or Assistant Administrator for the Disaster Assistance Directorate will notify the grantee in writing of the disposition of the appeal.

(e) The decision of the Assistant Administrator for the Disaster Assistance Directorate at the second appeal level will be the final administrative decision of FEMA.

§ 204.55-204.60 [Reserved]**Subpart E—Grant Administration****§ 204.61 Cost share.**

(a) All fire management assistance grants are subject to a cost share. The Federal cost share for fire management assistance grants is seventy-five percent (75%).

(b) As stated in § 204.25, the cost share provision will be outlined in the terms and conditions of the FEMA-State Agreement for the Fire Management Assistance Grant Program.

§ 204.62 Duplication and recovery of assistance.

(a) *Duplication of benefits.* We provide supplementary assistance under the Stafford Act, which generally may not duplicate benefits received by or available to the applicant from insurance, other assistance programs, legal awards, or any other source to address the same purpose. An applicant must notify us of all benefits that it receives or anticipates from other sources for the same purpose, and must seek all such benefits available to them. We will reduce the grant by the amounts available for the same purpose from another source. We may provide assistance under this Part when other benefits are available to an applicant, but the applicant will be liable to us for

any duplicative amounts that it receives or has available to it from other sources, and must repay us for such amounts.

(b) *Duplication of programs.* We will not provide assistance under this part for activities for which another Federal agency has more specific or primary authority to provide assistance for the same purpose. We may disallow or recoup amounts that fall within another Federal agency's authority. We may provide assistance under this part, but the applicant must agree to seek assistance from the appropriate Federal agency and to repay us for amounts that are within another Agency's authority.

(c) *Negligence.* We will provide no assistance to an applicant for costs attributable to applicant's own negligence. If the applicant suspects negligence by a third party for causing a condition for which we made assistance available under this Part, the applicant is responsible for taking all reasonable steps to recover all costs attributable to the negligence of the third party. We generally consider such amounts to be duplicated benefits available to the Grantee or subgrantee, and will treat them consistent with (a) of this section.

(d) *Intentional acts.* Any person who intentionally causes a condition for which assistance is provided under this part shall be liable to the United States to the extent that we incur costs attributable to the intentional act or omission that caused the condition. We may provide assistance under this part, but it will be conditioned on an agreement by the applicant to cooperate with us in efforts to recover the cost of the assistance from the liable party. A person shall not be liable under this section as a result of actions the person takes or omits in the course of rendering care or assistance in response to the fire.

§ 204.63 Allowable costs.

44 CFR 13.22 establishes general policies for determining allowable costs.

(a) We will reimburse direct costs for the administration of a fire management assistance grant under 44 CFR part 13.

§ 204.64

(b) We will reimburse indirect costs for the administration of a fire management assistance grant in compliance with the Grantee's approved indirect cost rate under OMB Circular A-87.

§ 204.64 Reporting and audit requirements

(a) *Reporting.* Within 90-days of the Performance Period expiration date, the State will submit a final Financial Status Report (FEMA Form 20-10), which reports all costs incurred within the incident period and all administrative costs incurred within the performance period; and

(b) *Audit.* (1) Audits will be performed, for both the Grantee and the subgrantees, under 44 CFR 13.26.

(2) FEMA may elect to conduct a program-specific Federal audit on the Fire Management Assistance Grant or a subgrant.

PART 205 [RESERVED]

PART 206—FEDERAL DISASTER ASSISTANCE

Subpart A—General

Sec.

- 206.1 Purpose.
- 206.2 Definitions.
- 206.3 Policy.
- 206.4 State emergency plans.
- 206.5 Assistance by other Federal agencies.
- 206.6 Donation or loan of Federal equipment and supplies.
- 206.7 Implementation of assistance from other Federal agencies.
- 206.8 Reimbursement of other Federal agencies.
- 206.9 Nonliability.
- 206.10 Use of local firms and individuals.
- 206.11 Nondiscrimination in disaster assistance.
- 206.12 Use and coordination of relief organizations.
- 206.13 Standards and reviews.
- 206.14 Criminal and civil penalties.
- 206.15 Recovery of assistance.
- 206.16 Audit and investigations.
- 206.17 Effective date.
- 206.18–206.30 [Reserved]

Subpart B—The Declaration Process

- 206.31 Purpose.
- 206.32 Definitions.
- 206.33 Preliminary damage assessment.

44 CFR Ch. I (10-1-11 Edition)

- 206.34 Request for utilization of Department of Defense (DOD) resources.
- 206.35 Requests for emergency declarations.
- 206.36 Requests for major disaster declarations.
- 206.37 Processing requests for declarations of a major disaster or emergency.
- 206.38 Presidential determination.
- 206.39 Notification.
- 206.40 Designation of affected areas and eligible assistance.
- 206.41 Appointment of disaster officials.
- 206.42 Responsibilities of coordinating officers.
- 206.43 Emergency support teams.
- 206.44 FEMA-State Agreements.
- 206.45 Loans of non-Federal share.
- 206.46 Appeals.
- 206.47 Cost-share adjustments.
- 206.48 Factors considered when evaluating a Governor's request for major disaster declaration.
- 206.49–206.60 [Reserved]

Subpart C—Emergency Assistance

- 206.61 Purpose.
- 206.62 Available assistance.
- 206.63 Provision of assistance.
- 206.64 Coordination of assistance.
- 206.65 Cost sharing.
- 206.66 Limitation on expenditures.
- 206.67 Requirement when limitation is exceeded.
- 206.68–206.100 [Reserved]

Subpart D—Federal Assistance to Individuals and Households

- 206.101 Temporary housing assistance for emergencies and major disasters declared on or before October 14, 2002.
- 206.102–206.109 [Reserved]
- 206.110 Federal assistance to individuals and households.
- 206.111 Definitions.
- 206.112 Registration period.
- 206.113 Eligibility factors.
- 206.114 Criteria for continued assistance.
- 206.115 Appeals.
- 206.116 Recovery of funds.
- 206.117 Housing assistance.
- 206.118 Disposal of housing units.
- 206.119 Financial assistance to address other needs.
- 206.120 State administration of other needs assistance.
- 206.121–206.130 [Reserved]

Subpart E—Individual and Family Grant Programs

- 206.131 Individual and Family Grant Program for major disasters declared on or before October 14, 2002.
- 206.132–206.140 [Reserved]

Subpart F—Other Individual Assistance

206.141 Disaster unemployment assistance.
 206.142–206.150 [Reserved]
 206.151 Food commodities.
 206.152–206.160 [Reserved]
 206.161 Relocation assistance.
 206.162–206.163 [Reserved]
 206.164 Disaster legal services.
 206.165–206.170 [Reserved]
 206.171 Crisis counseling assistance and training.
 206.172–206.180 [Reserved]
 206.181 Use of gifts and bequests for disaster assistance purposes.
 206.182–206.190 [Reserved]
 206.191 Duplication of benefits.
 206.192–206.199 [Reserved]

Subpart G—Public Assistance Project Administration

206.200 General.
 206.201 Definitions used in this subpart.
 206.202 Application procedures.
 206.203 Federal grant assistance.
 206.204 Project performance.
 206.205 Payment of claims.
 206.206 Appeals.
 206.207 Administrative and audit requirements.
 206.208 Direct Federal assistance.
 206.209 Arbitration for Public Assistance determinations related to Hurricanes Katrina and Rita (Major disaster declarations DR-1603, DR-1604, DR-1605, DR-1606, and DR-1607).
 206.210–206.219 [Reserved]

Subpart H—Public Assistance Eligibility

206.220 General.
 206.221 Definitions.
 206.222 Applicant eligibility.
 206.223 General work eligibility.
 206.224 Debris removal.
 206.225 Emergency work.
 206.226 Restoration of damaged facilities.
 206.227 Snow assistance.
 206.228 Allowable costs.
 206.229–206.249 [Reserved]

Subpart I—Public Assistance Insurance Requirements

206.250 General.
 206.251 Definitions.
 206.252 Insurance requirements for facilities damaged by flood.
 206.253 Insurance requirements for facilities damaged by disasters other than flood.
 206.254–206.339 [Reserved]

Subpart J—Coastal Barrier Resources Act

206.340 Purpose of subpart.
 206.341 Policy.
 206.342 Definitions.

206.343 Scope.
 206.344 Limitations on Federal expenditures.
 206.345 Exceptions.
 206.346 Applicability to disaster assistance.
 206.347 Requirements.
 206.348 Consultation.
 206.349 Consistency determinations.
 206.350–206.359 [Reserved]

Subpart K—Community Disaster Loans

206.360 Purpose.
 206.361 Loan program.
 206.362 Responsibilities.
 206.363 Eligibility criteria.
 206.364 Loan application.
 206.365 Loan administration.
 206.366 Loan cancellation.
 206.367 Loan repayment.
 206.368–206.369 [Reserved]
 206.370 Purpose and scope.
 206.371 Loan program.
 206.372 Responsibilities.
 206.373 Eligibility criteria.
 206.374 Loan application.
 206.375 Loan administration.
 206.376 Loan cancellation.
 206.377 Loan repayment.
 206.378–206.389 [Reserved]

Subpart L—Fire Suppression Assistance

206.390 General.
 206.391 FEMA-State Agreement.
 206.392 Request for assistance.
 206.393 Providing assistance.
 206.394 Cost eligibility.
 206.395 Grant administration.
 206.396–206.399 [Reserved]

Subpart M—Minimum Standards

206.400 General.
 206.401 Local standards.
 206.402 Compliance.

Subpart N—Hazard Mitigation Grant Program

206.430 General.
 206.431 Definitions.
 206.432 Federal grant assistance.
 206.433 State responsibilities.
 206.434 Eligibility.
 206.435 Project identification and selection criteria.
 206.436 Application procedures.
 206.437 State administrative plan.
 206.438 Project management.
 206.439 Allowable costs.
 206.440 Appeals.

AUTHORITY: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002,

§ 206.1

6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

SOURCE: 54 FR 11615, Mar. 21, 1989, unless otherwise noted.

Subpart A—General

SOURCE: 55 FR 2288, Jan. 23, 1990, unless otherwise noted.

§ 206.1 Purpose.

(a) *Purpose.* The purpose of this subpart is to prescribe the policies and procedures to be followed in implementing those sections of Public Law 93-288, as amended, delegated to the Administrator, Federal Emergency Management Agency (FEMA). The rules in this subpart apply to major disasters and emergencies declared by the President on or after November 23, 1988, the date of enactment of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*

(b) *Prior regulations.* Prior regulations relating to major disasters and emergencies declared by the President before November 23, 1988 were published in 44 CFR part 205 (see 44 CFR part 205 as contained in the CFR edition revised as of October 1, 1994).

[59 FR 53363, Oct. 24, 1994]

§ 206.2 Definitions.

(a) *General.* The following definitions have general applicability throughout this part:

(1) *The Stafford Act:* The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended.

(2) *Applicant:* Individuals, families, States and local governments, or private nonprofit organizations who apply for assistance as a result of a declaration of a major disaster or emergency.

(3) [Reserved]

(4) *Concurrent, multiple major disasters:* In considering a request for an advance, the term concurrent multiple major disasters means major disasters which occur within a 12-month period immediately preceding the major disaster for which an advance of the non-

44 CFR Ch. I (10-1-11 Edition)

Federal share is requested pursuant to section 319 of the Stafford Act.

(5) *Contractor:* Any individual, partnership, corporation, agency, or other entity (other than an organization engaged in the business of insurance) performing work by contract for the Federal Government or a State or local agency.

(6) *Designated area:* Any emergency or major disaster-affected portion of a State which has been determined eligible for Federal assistance.

(7) *Administrator:* The Administrator, FEMA.

(8) *Disaster Recovery Manager (DRM):* The person appointed to exercise the authority of a Regional Administrator for a particular emergency or major disaster.

(9) *Emergency:* Any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

(10) *Federal agency:* Any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, but shall not include the American National Red Cross.

(11) *Federal Coordinating Officer (FCO):* The person appointed by the Administrator, or in his absence, the Deputy Director, to coordinate Federal assistance in an emergency or a major disaster.

(12) *Governor:* The chief executive of any State or the Acting Governor.

(13) *Governor's Authorized Representative (GAR):* The person empowered by the Governor to execute, on behalf of the State, all necessary documents for disaster assistance.

(14) *Hazard mitigation:* Any cost effective measure which will reduce the potential for damage to a facility from a disaster event.

(15) *Individual assistance:* Supplementary Federal assistance provided under the Stafford Act to individuals and families adversely affected by a major disaster or an emergency. Such

Federal Emergency Management Agency, DHS**§ 206.2**

assistance may be provided directly by the Federal Government or through State or local governments or disaster relief organizations. For further information, see subparts D, E, and F of these regulations.

(16) *Local government:*

(i) A county, municipality, city, town, township, local public authority, school district, special district, intra-state district, council of governments (regardless of whether the council of governments is incorporated as a non-profit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;

(ii) An Indian tribe or authorized tribal organization, or Alaska Native village or organization; and

(iii) A rural community, unincorporated town or village, or other public entity, for which an application for assistance is made by a State or political subdivision of a State.

(17) *Major disaster:* Any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(18) *Mission assignment:* Work order issued to a Federal agency by the Regional Administrator, Assistant Administrator for the Disaster Operations Directorate, or Administrator, directing completion by that agency of a specified task and citing funding, other managerial controls, and guidance.

(19) *Private nonprofit organization:* Any nongovernmental agency or entity that currently has:

(i) An effective ruling letter from the U.S. Internal Revenue Service granting tax exemption under section 501 (c), (d), or (e) of the Internal Revenue Code of 1954; or

(ii) Satisfactory evidence from the State that the organization or entity is a nonprofit one organized or doing business under State law.

(20) *Public Assistance:* Supplementary Federal assistance provided under the Stafford Act to State and local governments or certain private, nonprofit organizations other than assistance for the direct benefit of individuals and families. For further information, see subparts G and H of this part. Fire Management Assistance Grants under section 420 of the Stafford Act are also considered Public Assistance. See subpart K of this part and part 204 of this chapter.

(21) *Regional Administrator:* An administrator of a regional office of FEMA, or his/her designated representative. As used in these regulations, Regional Administrator also means the Disaster Recovery Manager who has been appointed to exercise the authority of the Regional Administrator for a particular emergency or major disaster.

(22) *State:* Any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(23) *State Coordinating Officer (SCO):* The person appointed by the Governor to act in cooperation with the Federal Coordinating Officer to administer disaster recovery efforts.

(24) *State emergency plan:* As used in section 401 or section 501 of the Stafford Act means that State plan which is designated specifically for State-level response to emergencies or major disasters and which sets forth actions to be taken by the State and local governments, including those for implementing Federal disaster assistance.

(25) *Temporary housing:* Temporary accommodations provided by the Federal Government to individuals or families whose homes are made uninhabitable by an emergency or a major disaster.

(26) *United States:* The 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(27) *Voluntary organization:* Any chartered or otherwise duly recognized tax-

§ 206.3

exempt local, State, or national organization or group which has provided or may provide needed services to the States, local governments, or individuals in coping with an emergency or a major disaster.

(b) *Additional definitions.* Definitions which apply to individual subparts are found in those subparts.

[54 FR 11615, Mar. 21, 1989, as amended at 63 FR 17110, Apr. 8, 1998; 66 FR 57352, 57353, Nov. 14, 2001; 69 FR 24083, May 3, 2004; 74 FR 15346, Apr. 3, 2009]

§ 206.3 Policy.

It is the policy of FEMA to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage that result from major disasters and emergencies by:

(a) Providing Federal assistance programs for public and private losses and needs sustained in disasters;

(b) Encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the States and local governments;

(c) Achieving greater coordination and responsiveness of disaster preparedness and relief programs;

(d) Encouraging individuals, States, and local governments to obtain insurance coverage and thereby reduce their dependence on governmental assistance; and

(e) Encouraging hazard mitigation measures, such as development of land-use and construction regulations, floodplain management, protection of wetlands, and environmental planning, to reduce losses from disasters.

§ 206.4 State emergency plans.

The State shall set forth in its emergency plan all responsibilities and actions specified in the Stafford Act and these regulations that are required of the State and its political subdivisions to prepare for and respond to major disasters and emergencies and to facilitate the delivery of Federal disaster assistance. Although not mandatory, prior to the adoption of the final plan, the State is encouraged to circulate

44 CFR Ch. I (10-1-11 Edition)

the plan to local governments for review and comment.

[55 FR 2288, Jan. 23, 1990, 55 FR 5458, Feb. 15, 1990]

§ 206.5 Assistance by other Federal agencies.

(a) In any declared major disaster, the Administrator, Assistant Administrator for the Disaster Operations Directorate, or the Regional Administrator may direct any Federal agency to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) to support State and local assistance efforts.

(b) In any declared emergency, the Administrator, Assistant Administrator for the Disaster Operations Directorate, or the Regional Administrator may direct any Federal agency to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) to support emergency efforts by State and local governments to save lives; protect property, public health and safety; and lessen or avert the threat of a catastrophe.

(c) In any declared major disaster or emergency, the Administrator, Assistant Administrator for the Disaster Operations Directorate, or the Regional Administrator may direct any Federal agency to provide emergency assistance necessary to save lives and to protect property, public health, and safety by:

(1) Utilizing, lending, or donating to State and local governments Federal equipment, supplies, facilities, personnel, and other resources, other than the extension of credit, for use or distribution by such governments in accordance with the purposes of this Act;

(2) Distributing medicine, food, and other consumable supplies; or

(3) Performing work or services to provide emergency assistance authorized in the Stafford Act.

(d) Disaster assistance by other Federal agencies is subject to the coordination of the FCO. Federal agencies shall provide any reports or information about disaster assistance rendered

Federal Emergency Management Agency, DHS**§ 206.8**

under the provisions of these regulations or authorities independent of the Stafford Act, that the FCO or Regional Administrator considers necessary and requests from the agencies.

(e) Assistance furnished by any Federal agency under paragraphs (a), (b), or (c) of this section is subject to the criteria provided by the Assistant Administrator for the Disaster Operations Directorate under these regulations.

(f) Assistance under paragraphs (a), (b), or (c) of this section, when directed by the Administrator, Assistant Administrator for the Disaster Operations Directorate, or the Regional Administrator, does not apply to nor shall it affect the authority of any Federal agency to provide disaster assistance independent of the Stafford Act.

(g) In carrying out the purposes of the Stafford Act, any Federal agency may accept and utilize, with the consent of the State or local government, the services, personnel, materials, and facilities of any State or local government, agency, office, or employee. Such utilization shall not make such services, materials, or facilities Federal in nature nor make the State or local government or agency an arm or agent of the Federal Government.

(h) Any Federal agency charged with the administration of a Federal assistance program may, if so requested by the applicant State or local authorities, modify or waive, for a major disaster, such administrative conditions for assistance as would otherwise prevent the giving of assistance under such programs if the inability to meet such conditions is a result of the major disaster.

§ 206.6 Donation or loan of Federal equipment and supplies.

(a) In any major disaster or emergency, the Administrator, Assistant Administrator for the Disaster Operations Directorate, or the Regional Administrator may direct Federal agencies to donate or loan their equipment and supplies to State and local governments for use and distribution by them for the purposes of the Stafford Act.

(b) A donation or loan may include equipment and supplies determined under applicable laws and regulations to be surplus to the needs and respon-

sibilities of the Federal Government. The State shall certify that the surplus property is usable and necessary for current disaster purposes in order to receive a donation or loan. Such a donation or loan is made in accordance with procedures prescribed by the General Services Administration.

§ 206.7 Implementation of assistance from other Federal agencies.

All directives, known as mission assignments, to other Federal agencies shall be in writing, or shall be confirmed in writing if made orally, and shall identify the specific task to be performed and the requirements or criteria to be followed. If the Federal agency is to be reimbursed, the letter will also contain a dollar amount which is not to be exceeded in accomplishing the task without prior approval of the issuing official.

§ 206.8 Reimbursement of other Federal agencies.

(a) Assistance furnished under § 206.5 (a) or (b) of this subpart may be provided with or without compensation as considered appropriate by the Administrator, Assistant Administrator for the Disaster Assistance Directorate, or the Regional Administrator or Regional Director.

(b) The Administrator, Assistant Administrator for the Disaster Assistance Directorate, or the Regional Administrator or the Regional Director may not approve reimbursement of costs incurred while performing work pursuant to disaster assistance authorities independent of the Stafford Act.

(c) *Expenditures eligible for reimbursement.* The Administrator, Assistant Administrator for the Disaster Assistance Directorate, or the Regional Administrator or the Regional Director may approve reimbursement of the following costs which are incurred in providing requested assistance.

(1) Overtime, travel, and per diem of permanent Federal agency personnel.

(2) Wages, travel, and per diem of temporary Federal agency personnel assigned solely to performance of services directed by the Administrator, Assistant Administrator for the Disaster Assistance Directorate, or the Regional Administrator or the Regional Director

§ 206.9

in the major disaster or emergency area designated by the Regional Director.

(3) Travel and per diem of Federal military personnel assigned solely to the performance of services directed by the Administrator, Assistant Administrator for the Disaster Assistance Directorate, or the Regional Administrator or the Regional Director in the major disaster or emergency area designated by the Regional Director.

(4) Cost of work, services, and materials procured under contract for the purposes of providing assistance directed by the Administrator, Assistant Administrator for the Disaster Assistance Directorate, or the Regional Administrator or the Regional Director.

(5) Cost of materials, equipment, and supplies (including transportation, repair, and maintenance) from regular stocks used in providing directed assistance.

(6) All costs incurred which are paid from trust, revolving, or other funds, and whose reimbursement is required by law.

(7) Other costs submitted by an agency with written justification or otherwise agreed to in writing by the Administrator, Assistant Administrator for the Disaster Assistance Directorate, or the Regional Administrator or the Regional Director and the agency.

(d) *Procedures for reimbursement.* Federal agencies performing work under a mission assignment will submit requests for reimbursement, as follows:

(1) Federal agencies may submit requests for reimbursement of amounts greater than \$1,000 at any time. Requests for lesser amounts may be submitted only quarterly. An agency shall submit a final accounting of expenditures after completion of the agency's work under each directive for assistance. The time limit and method for submission of reimbursement requests will be stipulated in the mission assignment letter.

(2) An agency shall document its request for reimbursement with specific details on personnel services, travel, and all other expenses by object class as specified in OMB Circular A-12 and by any other subobject class used in the agency's accounting system. Where

44 CFR Ch. I (10-1-11 Edition)

contracts constitute a significant portion of the billings, the agency shall provide a listing of individual contracts and their associated costs.

(3) Reimbursement requests shall cite the specific mission assignment under which the work was performed, and the major disaster or emergency identification number. Requests for reimbursement of costs incurred under more than one mission assignment may not be combined for billing purposes.

(4) Unless otherwise agreed, an agency shall direct all requests for reimbursement to the Regional Administrator of the region in which the costs were incurred.

(5) A Federal agency requesting reimbursement shall retain all financial records, supporting documents, statistical records, and other records pertinent to the provision of services or use of resources by that agency. These materials shall be accessible to duly authorized representatives of FEMA and the U.S. Comptroller General, for the purpose of making audits, excerpts, and transcripts, for a period of 3 years starting from the date of submission of the final billing.

§ 206.9 Nonliability.

The Federal Government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of the Stafford Act.

§ 206.10 Use of local firms and individuals.

In the expenditure of Federal funds for debris removal, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities which may be carried out by contract or agreement with private organizations, firms, or individuals, preference shall be given, to the extent feasible and practicable, to those organizations, firms, and individuals residing or doing business primarily in the area affected by such major disaster or emergency. This shall not be considered to restrict the use of Department of Defense resources in the provision of

Federal Emergency Management Agency, DHS**§ 206.14**

major disaster assistance under the Stafford Act.

§ 206.11 Nondiscrimination in disaster assistance.

(a) Federal financial assistance to the States or their political subdivisions is conditioned on full compliance with 44 CFR part 7, Nondiscrimination in Federally-Assisted Programs.

(b) All personnel carrying out Federal major disaster or emergency assistance functions, including the distribution of supplies, the processing of the applications, and other relief and assistance activities, shall perform their work in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, or economic status.

(c) As a condition of participation in the distribution of assistance or supplies under the Stafford Act, or of receiving assistance under the Stafford Act, government bodies and other organizations shall provide a written assurance of their intent to comply with regulations relating to nondiscrimination.

(d) The agency shall make available to employees, applicants, participants, beneficiaries, and other interested parties such information regarding the provisions of this regulation and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this regulation.

§ 206.12 Use and coordination of relief organizations.

(a) In providing relief and assistance under the Stafford Act, the FCO or Regional Administrator may utilize, with their consent, the personnel and facilities of the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other voluntary organizations in the distribution of medicine, food, supplies, or other items, and in the restoration, rehabilitation, or reconstruction of community services and essential facilities, whenever the FCO or Regional Ad-

ministrator finds that such utilization is necessary.

(b) The Administrator is authorized to enter into agreements with the American Red Cross, The Salvation Army, the Mennonite Disaster Service, and other voluntary organizations engaged in providing relief during and after a major disaster or emergency. Any agreement shall include provisions assuring that use of Federal facilities, supplies, and services will be in compliance with § 206.11, Nondiscrimination in Disaster Assistance, and § 206.191, Duplication of Benefits, of these regulations and such other regulations as the Administrator may issue. The FCO may coordinate the disaster relief activities of the voluntary organizations which agree to operate under his/her direction.

(c) Nothing contained in this section shall be construed to limit or in any way affect the responsibilities of the American National Red Cross as stated in Public Law 58-4.

§ 206.13 Standards and reviews.

(a) The Administrator shall establish program standards and assess the efficiency and effectiveness of programs administered under the Stafford Act by conducting annual reviews of the activities of Federal agencies and State and local governments involved in major disaster or emergency response efforts.

(b) In carrying out this provision, the Administrator may direct Federal agencies to submit reports relating to their disaster assistance activities. The Administrator may request similar reports from the States relating to these activities on the part of State and local governments. Additionally, the Administrator may conduct independent investigations, studies, and evaluations as necessary to complete the reviews.

[55 FR 2288, Jan. 23, 1990; 55 FR 5458, Feb. 15, 1990]

§ 206.14 Criminal and civil penalties.

(a) *Misuse of funds.* Any person who knowingly misappropriates the proceeds of a loan or other cash benefit obtained under the Stafford Act shall be fined an amount equal to one and one-half times the misappropriated amount of the proceeds or cash benefit.

§ 206.15

44 CFR Ch. I (10-1-11 Edition)

(b) *Civil enforcement.* Whenever it appears that any person has violated or is about to violate any provision of the Stafford Act, including any civil penalty imposed under the Stafford Act, the Attorney General may bring a civil action for such relief as may be appropriate. Such action may be brought in an appropriate United States district court.

(c) *Referral to Attorney General.* The Office of Chief Counsel shall expeditiously refer to the Attorney General for appropriate action any evidence developed in the performance of functions under the Stafford Act that may warrant consideration for criminal prosecution.

(d) *Civil penalty.* Any individual who knowingly violates any order or regulation shall be subject to a civil penalty of not more than \$5,500 for each violation.

[55 FR 2288, Jan. 23, 1990, as amended at 74 FR 15346, Apr. 3, 2009; 74 FR 58850, Nov. 16, 2009]

§ 206.15 Recovery of assistance.

(a) *Party liable.* Any person who intentionally causes a condition for which Federal assistance is provided under this Act or under any other Federal law as a result of a declaration of a major disaster or emergency under this Act shall be liable to the United States for the reasonable costs incurred by the United States in responding to such disaster or emergency to the extent that such costs are attributable to the intentional act or omission of such person which caused such condition. Such action shall be brought in an appropriate United States District Court.

(b) *Rendering of care.* A person shall not be liable under this section for costs incurred by the United States as a result of actions taken or omitted by such person in the course of rendering care or assistance in response to a major disaster or emergency.

§ 206.16 Audit and investigations.

(a) Subject to the provisions of chapter 75 of title 31, United States Code, and 44 CFR part 13, relating to requirements for single audits, the Administrator, the Assistant Administrator for the Disaster Operations Directorate, or

the Regional Administrator shall conduct audits and investigations as necessary to assure compliance with the Stafford Act, and in connection therewith may question such persons as may be necessary to carry out such audits and investigations.

(b) For purposes of audits and investigations under this section, FEMA or State auditors, the Governor's Authorized Representative, the Administrator, the Regional Administrator, the Assistant Administrator for the Disaster Assistance Directorate, the DHS Inspector General, and the Comptroller General of the United States, or their duly authorized representatives, may inspect any books, documents, papers, and records of any person relating to any activity undertaken or funded under the Stafford Act.

[55 FR 2288, Jan. 23, 1990, as amended at 74 FR 15346, Apr. 3, 2009]

§ 206.17 Effective date.

These regulations are effective for all major disasters or emergencies declared on or after November 23, 1988.

§ 206.18–206.30 [Reserved]

Subpart B—The Declaration Process

SOURCE: 55 FR 2292, Jan. 23, 1990, unless otherwise noted.

§ 206.31 Purpose.

The purpose of this subpart is to describe the process leading to a Presidential declaration of a major disaster or an emergency and the actions triggered by such a declaration.

§ 206.32 Definitions.

All definitions in the Stafford Act and in § 206.2 apply. In addition, the following definitions apply:

(a) *Appeal:* A request for reconsideration of a determination on any action related to Federal assistance under the Stafford Act and these regulations. Specific procedures for appeals are contained in the relevant subparts of these regulations.

(b) *Commitment:* A certification by the Governor that the State and local governments will expend a reasonable

amount of funds to alleviate the effects of the major disaster or emergency, for which no Federal reimbursement will be requested.

(c) *Disaster Application Center*: A center established in a centralized location within the disaster area for individuals, families, or businesses to apply for disaster aid.

(d) *FEMA-State Agreement*: A formal legal document stating the understandings, commitments, and binding conditions for assistance applicable as the result of the major disaster or emergency declared by the President.

(e) *Incident*: Any condition which meets the definition of major disaster or emergency as set forth in § 206.2 which causes damage or hardship that may result in a Presidential declaration of a major disaster or an emergency.

(f) *Incident period*: The time interval during which the disaster-causing incident occurs. No Federal assistance under the Act shall be approved unless the damage or hardship to be alleviated resulted from the disaster-causing incident which took place during the incident period or was in anticipation of that incident. The incident period will be established by FEMA in the FEMA-State Agreement and published in the FEDERAL REGISTER.

§ 206.33 Preliminary damage assessment.

The preliminary damage assessment (PDA) process is a mechanism used to determine the impact and magnitude of damage and the resulting unmet needs of individuals, businesses, the public sector, and the community as a whole. Information collected is used by the State as a basis for the Governor's request, and by FEMA to document the recommendation made to the President in response to the Governor's request. It is in the best interest of all parties to combine State and Federal personnel resources by performing a joint PDA prior to the initiation of a Governor's request, as follows.

(a) *Preassessment by the State*. When an incident occurs, or is imminent, which the State official responsible for disaster operations determines may be beyond the State and local government capabilities to respond, the State will

request the Regional Administrator to perform a joint FEMA-State preliminary damage assessment. It is not anticipated that all occurrences will result in the requirement for assistance; therefore, the State will be expected to verify their initial information, in some manner, before requesting this support.

(b) *Damage assessment teams*. Damage assessment teams will be composed of at least one representative of the Federal Government and one representative of the State. A local government representative, familiar with the extent and location of damage in his/her community, should also be included, if possible. Other State and Federal agencies, and voluntary relief organizations may also be asked to participate, as needed. It is the State's responsibility to coordinate State and local participation in the PDA and to ensure that the participants receive timely notification concerning the schedule. A FEMA official will brief team members on damage criteria, the kind of information to be collected for the particular incident, and reporting requirements.

(c) *Review of findings*. At the close of the PDA, FEMA will consult with State officials to discuss findings and reconcile any differences.

(d) *Exceptions*. The requirement for a joint PDA may be waived for those incidents of unusual severity and magnitude that do not require field damage assessments to determine the need for supplemental Federal assistance under the Act, or in such other instances determined by the Regional Administrator upon consultation with the State. It may be necessary, however, to conduct an assessment to determine unmet needs for managerial response purposes.

§ 206.34 Request for utilization of Department of Defense (DOD) resources.

(a) *General*. During the immediate aftermath of an incident which may ultimately qualify for a Presidential declaration of a major disaster or emergency, when threats to life and property are present which cannot be effectively dealt with by the State or local

§ 206.34

44 CFR Ch. I (10-1-11 Edition)

governments, the Assistant Administrator for the Disaster Assistance Directorate may direct DOD to utilize DOD personnel and equipment for removal of debris and wreckage and temporary restoration of essential public facilities and services.

(b) *Request process.* The Governor of a State, or the Acting Governor in his/her absence, may request such DOD assistance. The Governor should submit the request to the Assistant Administrator for the Disaster Assistance Directorate through the appropriate Regional Administrator to ensure prompt acknowledgment and processing. The request must be submitted within 48 hours of the occurrence of the incident. Requests made after that time may still be considered if information is submitted indicating why the request for assistance could not be made during the initial 48 hours. The request shall include:

(1) Information describing the types and amount of DOD emergency assistance being requested;

(2) Confirmation that the Governor has taken appropriate action under State law and directed the execution of the State emergency plan;

(3) A finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and affected local governments and that Federal assistance is necessary for the preservation of life and property;

(4) A certification by the Governor that the State and local government will reimburse FEMA for the non-Federal share of the cost of such work; and

(5) An agreement:

(i) To provide all lands, easements and rights-of-way necessary to accomplish the approved work without cost to the United States;

(ii) To hold and save the United States free from damages due to the requested work, and to indemnify the Federal government against any claims arising from such work; and

(iii) To assist DOD in all support and local jurisdictional matters.

(c) *Processing the request.* Upon receipt of the request, the Regional Administrator shall gather adequate information to support a recommendation and forward it to the Assistant

Administrator for the Disaster Assistance Directorate. If the Assistant Administrator for the Disaster Assistance Directorate determines that such work is essential to save lives and protect property, he/she will issue a mission assignment to DOD authorizing direct Federal assistance to the extent deemed appropriate.

(d) *Implementation of assistance.* The performance of emergency work may not exceed a period of 10 days from the date of the mission assignment.

(e) *Limits.* Generally, no work shall be approved under this section which falls within the statutory authority of DOD or another Federal agency. However, where there are significant unmet needs of sufficient severity and magnitude, not addressed by other assistance, which could appropriately be addressed under this section of the Stafford Act, the involvement of other Federal agencies would not preclude the authorization of DOD assistance by the Assistant Administrator for the Disaster Assistance Directorate.

(f) *Federal share.* The Federal share of assistance under this section shall be not less than 75 percent of the cost of eligible work.

(g) *Project management.* DOD shall ensure that the work is completed in accordance with the approved scope of work, costs, and time limitations in the mission assignment. DOD shall also keep the Regional Administrator and the State advised of work progress and other project developments. It is the responsibility of DOD to ensure compliance with applicable Federal, State and local legal requirements. A final report will be submitted to the Regional Administrator upon termination of all direct Federal assistance work. Final reports shall be signed by a representative of DOD and the State. Once the final eligible cost is determined, DOD will request reimbursement from FEMA and FEMA will submit a bill to the State for the non-Federal share of the mission assignment.

(h) *Reimbursement of DOD.* Reimbursement will be made in accordance with § 206.8 of these regulations.

§ 206.35 Requests for emergency declarations.

(a) When an incident occurs or threatens to occur in a State, which would not qualify under the definition of a major disaster, the Governor of a State, or the Acting Governor in his/her absence, may request that the President declare an emergency. The Governor should submit the request to the President through the appropriate Regional Administrator to ensure prompt acknowledgment and processing. The request must be submitted within 5 days after the need for assistance under title V becomes apparent, but no longer than 30 days after the occurrence of the incident, in order to be considered. The period may be extended by the Assistant Administrator for the Disaster Assistance Directorate provided that a written request for such extension is made by the Governor, or Acting Governor, during the 30-day period immediately following the incident. The extension request must stipulate the reason for the delay.

(b) The basis for the Governor's request must be the finding that the situation:

(1) Is of such severity and magnitude that effective response is beyond the capability of the State and the affected local government(s); and

(2) Requires supplementary Federal emergency assistance to save lives and to protect property, public health and safety, or to lessen or avert the threat of a disaster.

(c) In addition to the above findings, the complete request shall include:

(1) Confirmation that the Governor has taken appropriate action under State law and directed the execution of the State emergency plan;

(2) Information describing the State and local efforts and resources which have been or will be used to alleviate the emergency;

(3) Information describing other Federal agency efforts and resources which have been or will be used in responding to this incident; and

(4) Identification of the type and extent of additional Federal aid required.

(d) *Modified declaration for Federal emergencies.* The requirement for a Governor's request under paragraph (a) of

this section can be waived when an emergency exists for which the primary responsibility rests in the Federal government because the emergency involves a subject area for which, under the Constitution or laws of the United States, the Federal government exercises exclusive or preeminent responsibility and authority. Any party may bring the existence of such a situation to the attention of the FEMA Regional Administrator. Any recommendation for a Presidential declaration of emergency in the absence of a Governor's request must be initiated by the Regional Administrator or transmitted through the Regional Administrator by another Federal agency. In determining that such an emergency exists, the Assistant Administrator for the Disaster Assistance Directorate or Regional Administrator shall consult the Governor of the affected State, if practicable.

(e) *Other authorities.* It is not intended for an emergency declaration to preempt other Federal agency authorities and/or established plans and response mechanisms in place prior to the enactment of the Stafford Act.

§ 206.36 Requests for major disaster declarations.

(a) When a catastrophe occurs in a State, the Governor of a State, or the Acting Governor in his/her absence, may request a major disaster declaration. The Governor should submit the request to the President through the appropriate Regional Administrator to ensure prompt acknowledgment and processing. The request must be submitted within 30 days of the occurrence of the incident in order to be considered. The 30-day period may be extended by the Assistant Administrator for the Disaster Assistance Directorate, provided that a written request for an extension is submitted by the Governor, or Acting Governor, during this 30-day period. The extension request will stipulate reasons for the delay.

(b) The basis for the request shall be a finding that:

(1) The situation is of such severity and magnitude that effective response is beyond the capabilities of the State and affected local governments; and

§ 206.37

(2) Federal assistance under the Act is necessary to supplement the efforts and available resources of the State, local governments, disaster relief organizations, and compensation by insurance for disaster-related losses.

(c) In addition to the above findings, the complete request shall include:

(1) Confirmation that the Governor has taken appropriate action under State law and directed the execution of the State emergency plan;

(2) An estimate of the amount and severity of damages and losses stating the impact of the disaster on the public and private sector;

(3) Information describing the nature and amount of State and local resources which have been or will be committed to alleviate the results of the disaster;

(4) Preliminary estimates of the types and amount of supplementary Federal disaster assistance needed under the Stafford Act; and

(5) Certification by the Governor that State and local government obligations and expenditures for the current disaster will comply with all applicable cost sharing requirements of the Stafford Act.

(d) For those catastrophes of unusual severity and magnitude when field damage assessments are not necessary to determine the requirement for supplemental Federal assistance, the Governor or Acting Governor may send an abbreviated written request through the Regional Administrator for a declaration of a major disaster. This may be transmitted in the most expeditious manner available. In the event the FEMA Regional Office is severely impacted by the catastrophe, the request may be addressed to the Administrator of FEMA. The request must indicate a finding in accordance with § 206.36(b), and must include as a minimum the information requested by § 206.36 (c)(1), (c)(3), and (c)(5). Upon receipt of the request, FEMA shall expedite the processing of reports and recommendations to the President. Notification to the Governor of the Presidential declaration shall be in accordance with 44 CFR 206.39. The Assistant Administrator for the Disaster Assistance Directorate shall assure that documentation of the declaration is later

44 CFR Ch. I (10-1-11 Edition)

assembled to comply fully with these regulations.

§ 206.37 Processing requests for declarations of a major disaster or emergency.

(a) *Acknowledgment.* The Regional Administrator shall provide written acknowledgment of the Governor's request.

(b) *Regional summary.* Based on information obtained by FEMA/State preliminary damage assessments of the affected area(s) and consultations with appropriate State and Federal officials and other interested parties, the Regional Administrator shall promptly prepare a summary of the PDA findings. The data will be analyzed and submitted with a recommendation to the Assistant Administrator for the Disaster Assistance Directorate. The Regional Analysis shall include a discussion of State and local resources and capabilities, and other assistance available to meet the major disaster or emergency-related needs.

(c) *FEMA recommendation.* Based on all available information, the Administrator shall formulate a recommendation which shall be forwarded to the President with the Governor's request.

(1) *Major disaster recommendation.* The recommendation will be based on a finding that the situation is or is not of such severity and magnitude as to be beyond the capabilities of the State and its local governments. It will also contain a determination of whether or not supplemental Federal assistance under the Stafford Act is necessary and appropriate. In developing a recommendation, FEMA will consider such factors as the amount and type of damages; the impact of damages on affected individuals, the State, and local governments; the available resources of the State and local governments, and other disaster relief organizations; the extent and type of insurance in effect to cover losses; assistance available from other Federal programs and other sources; imminent threats to public health and safety; recent disaster history in the State; hazard mitigation measures taken by the State or local governments, especially implementation of measures required as a

Federal Emergency Management Agency, DHS**§ 206.40**

result of previous major disaster declarations; and other factors pertinent to a given incident.

(2) *Emergency recommendation.* The recommendation will be based on a report which will indicate whether or not Federal emergency assistance under section 502 of the Stafford Act is necessary to supplement State and local efforts to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe. Only after it has been determined that all other resources and authorities available to meet the crisis are inadequate, and that assistance provided in section 502 of the Stafford Act would be appropriate, will FEMA recommend an emergency declaration to the President.

(d) *Modified Federal emergency recommendation.* The recommendation will be based on a report which will indicate that an emergency does or does not exist for which assistance under section 502 of the Stafford Act would be appropriate. An emergency declaration will not be recommended in situations where the authority to respond or coordinate is within the jurisdiction of one or more Federal agencies without a Presidential declaration. However, where there are significant unmet needs of sufficient severity and magnitude, not addressed by other assistance, which could appropriately be addressed under the Stafford Act, the involvement of other Federal agencies would not preclude a declaration of an emergency under the Act.

§ 206.38 Presidential determination.

(a) The Governor's request for a major disaster declaration may result in either a Presidential declaration of a major disaster or an emergency, or denial of the Governor's request.

(b) The Governor's request for an emergency declaration may result only in a Presidential declaration of an emergency, or denial of the Governor's request.

[55 FR 2292, Jan. 23, 1990; 55 FR 5458, Feb. 15, 1990]

§ 206.39 Notification.

(a) The Governor will be promptly notified by the Administrator or his/her designee of a declaration by the

President that an emergency or a major disaster exists. FEMA also will notify other Federal agencies and other interested parties.

(b) The Governor will be promptly notified by the Administrator or his/her designee of a determination that the Governor's request does not justify the use of the authorities of the Stafford Act.

(c) Following a major disaster or emergency declaration, the Regional Administrator or the Assistant Administrator for the Disaster Assistance Directorate will promptly notify the Governor of the designations of assistance and areas eligible for such assistance.

§ 206.40 Designation of affected areas and eligible assistance.

(a) *Eligible assistance.* The Assistant Administrator for the Disaster Assistance Directorate has been delegated authority to determine and designate the types of assistance to be made available. The initial designations will usually be announced in the declaration. Determinations by the Assistant Administrator for the Disaster Assistance Directorate of the types and extent of FEMA disaster assistance to be provided are based upon findings whether the damage involved and its effects are of such severity and magnitude as to be beyond the response capabilities of the State, the affected local governments, and other potential recipients of supplementary Federal assistance. The Assistant Administrator for the Disaster Assistance Directorate may authorize all, or only particular types of, supplementary Federal assistance requested by the Governor.

(b) *Areas eligible to receive assistance.* The Assistant Administrator for the Disaster Assistance Directorate also has been delegated authority to designate the affected areas eligible for supplementary Federal assistance under the Stafford Act. These designations shall be published in the FEDERAL REGISTER. An affected area designated by the Assistant Administrator for the Disaster Assistance Directorate includes all local government jurisdictions within its boundaries. The Assistant Administrator for the Disaster Assistance Directorate may, based upon

§ 206.41**44 CFR Ch. I (10-1-11 Edition)**

damage assessments in any given area, designate all or only some of the areas requested by the Governor for supplementary Federal assistance.

(c) *Requests for additional designations after a declaration.* After a declaration by the President, the Governor, or the GAR, may request that additional areas or types of supplementary Federal assistance be authorized by the Assistant Administrator for the Disaster Assistance Directorate. Such requests shall be accompanied by appropriate verified assessments and commitments by State and local governments to demonstrate that the requested designations are justified and that the unmet needs are beyond State and local capabilities without supplementary Federal assistance. Additional assistance or areas added to the declaration will be published in the **FEDERAL REGISTER**.

(d) *Time limits to request.* In order to be considered, all supplemental requests under paragraph (c) of this section must be submitted within 30 days from the termination date of the incident, or 30 days after the declaration, whichever is later. The 30-day period may be extended by the Assistant Administrator for the Disaster Assistance Directorate provided that a written request is made by the appropriate State official during this 30-day period. The request must include justification of the State's inability to meet the deadline.

[55 FR 2292, Jan. 23, 1990, as amended at 74 FR 60213, Nov. 20, 2009]

§ 206.41 Appointment of disaster officials.

(a) *Federal Coordinating Officer.* Upon a declaration of a major disaster or of an emergency by the President, the Administrator or Deputy Administrator shall appoint an FCO who shall initiate action immediately to assure that Federal assistance is provided in accordance with the declaration, applicable laws, regulations, and the FEMA-State Agreement.

(b) *Disaster Recovery Manager.* The Regional Administrator shall designate a DRM to exercise all the authority of the Regional Administrator in a major disaster or an emergency.

(c) *State Coordinating Officer.* Upon a declaration of a major disaster or of an emergency, the Governor of the affected State shall designate an SCO who shall coordinate State and local disaster assistance efforts with those of the Federal Government.

(d) *Governor's Authorized Representative.* In the FEMA-State Agreement, the Governor shall designate the GAR, who shall administer Federal disaster assistance programs on behalf of the State and local governments and other grant or loan recipients. The GAR is responsible for the State compliance with the FEMA-State Agreement.

§ 206.42 Responsibilities of coordinating officers.

(a) Following a declaration of a major disaster or an emergency, the FCO shall:

(1) Make an initial appraisal of the types of assistance most urgently needed;

(2) In coordination with the SCO, establish field offices and Disaster Application Centers as necessary to coordinate and monitor assistance programs, disseminate information, accept applications, and counsel individuals, families and businesses concerning available assistance;

(3) Coordinate the administration of relief, including activities of State and local governments, activities of Federal agencies, and those of the American Red Cross, the Salvation Army, the Mennonite Disaster Service, and other voluntary relief organizations which agree to operate under the FCO's advice and direction;

(4) Undertake appropriate action to make certain that all of the Federal agencies are carrying out their appropriate disaster assistance roles under their own legislative authorities and operational policies; and

(5) Take other action, consistent with the provisions of the Stafford Act, as necessary to assist citizens and public officials in promptly obtaining assistance to which they are entitled.

(b) The SCO coordinates State and local disaster assistance efforts with those of the Federal Government working closely with the FCO. The SCO is

the principal point of contact regarding coordination of State and local disaster relief activities, and implementation of the State emergency plan. The functions, responsibilities, and authorities of the SCO are set forth in the State emergency plan. It is the responsibility of the SCO to ensure that all affected local jurisdictions are informed of the declaration, the types of assistance authorized, and the areas eligible to receive such assistance.

§ 206.43 Emergency support teams.

The Federal Coordinating Officer may activate emergency support teams, composed of Federal program and support personnel, to be deployed into an area affected by a major disaster or emergency. These emergency support teams assist the FCO in carrying out his/her responsibilities under the Stafford Act and these regulations. Any Federal agency can be directed to detail personnel within the agency's administrative jurisdiction to temporary duty with the FCO. Each detail shall be without loss of seniority, pay, or other employee status.

§ 206.44 FEMA-State Agreements.

(a) *General.* Upon the declaration of a major disaster or an emergency, the Governor, acting for the State, and the FEMA Regional Administrator or his/her designee, acting for the Federal Government, shall execute a FEMA-State Agreement. The FEMA-State Agreement states the understandings, commitments, and conditions for assistance under which FEMA disaster assistance shall be provided. This Agreement imposes binding obligations on FEMA, States, their local governments, and private nonprofit organizations within the States in the form of conditions for assistance which are legally enforceable. No FEMA funding will be authorized or provided to any grantees or other recipients, nor will direct Federal assistance be authorized by mission assignment, until such time as this Agreement for the Presidential declaration has been signed, except where it is deemed necessary by the Regional Administrator to begin the process of providing essential emergency services or housing assistance

under the Individuals and Households Program.

(b) *Terms and conditions.* This Agreement describes the incident and the incident period for which assistance will be made available, the type and extent of the Federal assistance to be made available, and contains the commitment of the State and local government(s) with respect to the amount of funds to be expended in alleviating damage and suffering caused by the major disaster or emergency. The Agreement also contains such other terms and conditions consistent with the declaration and the provisions of applicable laws, Executive Order and regulations.

(c) *Provisions for modification.* In the event that the conditions stipulated in the original Agreement are changed or modified, such changes will be reflected in properly executed amendments to the Agreement, which may be signed by the GAR and the Regional Administrator or his/her designee for the specified major disaster or emergency. Amendments most often occur to close or amend the incident period, to add forms of assistance not originally authorized, or to designate additional areas eligible for assistance.

(d) In a modified declaration for a Federal emergency, a FEMA-State Agreement may or may not be required based on the type of assistance being provided.

[55 FR 2292, Jan. 23, 1990, as amended at 67 FR 61460, Sept. 30, 2002]

§ 206.45 Loans of non-Federal share.

(a) *Conditions for making loans.* At the request of the Governor, the Assistant Administrator for the Disaster Assistance Directorate together with the Chief Financial Officer may lend or advance to a State, either for its own use or for the use of public or private nonprofit applicants for disaster assistance under the Stafford Act, the portion of assistance for which the State or other eligible disaster assistance applicant is responsible under the cost-sharing provisions of the Stafford Act in any case in which:

(1) The State or other eligible disaster assistance applicant is unable to assume their financial responsibility under such cost sharing provisions:

§ 206.46

44 CFR Ch. I (10-1-11 Edition)

(i) As a result of concurrent, multiple major disasters in a jurisdiction, or

(ii) After incurring extraordinary costs as a result of a particular disaster;

(2) The damages caused by such disasters or disaster are so overwhelming and severe that it is not possible for the State or other eligible disaster assistance applicant to immediately assume their financial responsibility under the Act; and

(3) The State and the other eligible disaster applicants are not delinquent in payment of any debts to FEMA incurred as a result of Presidentially declared major disasters or emergencies.

(b) *Repayment of loans.* Any loan made to a State under paragraph (a) of this section must be repaid to the United States. The Governor must include a repayment schedule as part of the request for advance.

(1) The State shall repay the loan (the principal disbursed plus interest) in accordance with the repayment schedule approved by the Assistant Administrator for the Disaster Assistance Directorate together with the Chief Financial Officer.

(2) If the State fails to make payments in accordance with the approved repayment schedule, FEMA will offset delinquent amounts against the current, prior, or any subsequent disasters, or monies due the State under other FEMA programs, in accordance with the established Claims Collection procedures.

(c) *Interest.* Loans or advances under paragraph (a) of this section shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance. Simple interest will be computed from the date of the disbursement of each drawdown of the loan/advance by the State based on 365 days/year.

§ 206.46 Appeals.

(a) *Denial of declaration request.* When a request for a major disaster declaration or for any emergency declaration is denied, the Governor may appeal the

decision. An appeal must be made within 30 days after the date of the letter denying the request. This one-time request for reconsideration, along with appropriate additional information, is submitted to the President through the appropriate Regional Administrator. The processing of this request is similar to the initial request.

(b) *Denial of types of assistance or areas.* In those instances when the type of assistance or certain areas requested by the Governor are not designated or authorized, the Governor, or the GAR, may appeal the decision. An appeal must be submitted in writing within 30 days of the date of the letter denying the request. This one-time request for reconsideration, along with justification and/or additional information, is sent to the Assistant Administrator for the Disaster Assistance Directorate through the appropriate Regional Administrator.

(c) *Denial of advance of non-Federal share.* In those instances where the Governor's request for an advance is denied, the Governor may appeal the decision. An appeal must be submitted in writing within 30 days of the date of the letter denying the request. This one-time request for reconsideration, along with justification and/or additional information, is sent to the Assistant Administrator for the Disaster Assistance Directorate through the appropriate Regional Administrator.

(d) *Extension of time to appeal.* The 30-day period referred to in paragraphs (a), (b), or (c) of this section may be extended by the Assistant Administrator for the Disaster Assistance Directorate provided that a written request for such an extension, citing reasons for the delay, is made during this 30-day period, and if the Assistant Administrator for the Disaster Assistance Directorate agrees that there is a legitimate basis for extension of the 30-day period. Only the Governor may request a time extension for appeals covered in paragraphs (a) and (c) of this section. The Governor, or the GAR if one has been named, may submit the time extension request for appeals covered in paragraph (b) of this section.

§ 206.47 Cost-share adjustments.

(a) We pay seventy-five percent (75%) of the eligible cost of permanent restorative work under section 406 of the Stafford Act and for emergency work under section 403 and section 407 of the Stafford Act, unless the Federal share is increased under this section.

(b) We recommend an increase in the Federal cost share from seventy-five percent (75%) to not more than ninety percent (90%) of the eligible cost of permanent work under section 406 and of emergency work under section 403 and section 407 whenever a disaster is so extraordinary that actual Federal obligations under the Stafford Act, excluding FEMA administrative cost, meet or exceed a qualifying threshold of:

(1) Beginning in 1999 and effective for disasters declared on or after May 21, 1999, \$75 per capita of State population;

(2) Effective for disasters declared after January 1, 2000, and through December 31, 2000, \$85 per capita of State population;

(3) Effective for disasters declared after January 1, 2001, \$100 per capita of State population; and,

(4) Effective for disasters declared after January 1, 2002 and for later years, \$100 per capita of State population, adjusted annually for inflation using the Consumer Price Index for All Urban Consumers published annually by the Department of Labor.

(c) When we determine whether to recommend a cost-share adjustment we consider the impact of major disaster declarations in the State during the preceding twelve-month period.

(d) If warranted by the needs of the disaster, we recommend up to one hundred percent (100%) Federal funding for emergency work under section 403 and section 407, including direct Federal assistance, for a limited period in the initial days of the disaster irrespective of the per capita impact.

[64 FR 19498, Apr. 21, 1999]

§ 206.48 Factors considered when evaluating a Governor's request for a major disaster declaration.

When we review a Governor's request for major disaster assistance under the Stafford Act, these are the primary

factors in making a recommendation to the President whether assistance is warranted. We consider other relevant information as well.

(a) *Public Assistance Program.* We evaluate the following factors to evaluate the need for assistance under the Public Assistance Program.

(1) *Estimated cost of the assistance.* We evaluate the estimated cost of Federal and nonfederal public assistance against the statewide population to give some measure of the per capita impact within the State. We use a figure of \$1 per capita as an indicator that the disaster is of such size that it might warrant Federal assistance, and adjust this figure annually based on the Consumer Price Index for all Urban Consumers. We are establishing a minimum threshold of \$1 million in public assistance damages per disaster in the belief that we can reasonably expect even the lowest population States to cover this level of public assistance damage.

(2) *Localized impacts.* We evaluate the impact of the disaster at the county and local government level, as well as impacts at the American Indian and Alaskan Native Tribal Government levels, because at times there are extraordinary concentrations of damages that might warrant Federal assistance even if the statewide per capita is not met. This is particularly true where critical facilities are involved or where localized per capita impacts might be extremely high. For example, we have at times seen localized damages in the tens or even hundreds of dollars per capita though the statewide per capita impact was low.

(3) *Insurance coverage in force.* We consider the amount of insurance coverage that is in force or should have been in force as required by law and regulation at the time of the disaster, and reduce the amount of anticipated assistance by that amount.

(4) *Hazard mitigation.* To recognize and encourage mitigation, we consider the extent to which State and local government measures contributed to the reduction of disaster damages for the disaster under consideration. For example, if a State can demonstrate in its disaster request that a Statewide building code or other mitigation

§ 206.48**44 CFR Ch. I (10-1-11 Edition)**

measures are likely to have reduced the damages from a particular disaster, we consider that in the evaluation of the request. This could be especially significant in those disasters where, because of mitigation, the estimated public assistance damages fell below the per capita indicator.

(5) *Recent multiple disasters.* We look at the disaster history within the last twelve-month period to evaluate better the overall impact on the State or locality. We consider declarations under the Stafford Act as well as declarations by the Governor and the extent to which the State has spent its own funds.

(6) *Programs of other Federal assistance.* We also consider programs of other Federal agencies because at times their programs of assistance might more appropriately meet the needs created by the disaster.

(b) *Factors for the Individual Assistance Program.* We consider the following factors to measure the severity, magnitude and impact of the disaster and to evaluate the need for assistance to individuals under the Stafford Act.

(1) *Concentration of damages.* We evaluate the concentrations of damages to individuals. High concentrations of damages generally indicate a greater need for Federal assistance than widespread and scattered damages throughout a State.

(2) *Trauma.* We consider the degree of trauma to a State and to communities.

Some of the conditions that might cause trauma are:

- (i) Large numbers of injuries and deaths;
- (ii) Large scale disruption of normal community functions and services; and
- (iii) Emergency needs such as extended or widespread loss of power or water.

(3) *Special populations.* We consider whether special populations, such as low-income, the elderly, or the unemployed are affected, and whether they may have a greater need for assistance. We also consider the effect on American Indian and Alaskan Native Tribal populations in the event that there are any unique needs for people in these governmental entities.

(4) *Voluntary agency assistance.* We consider the extent to which voluntary agencies and State or local programs can meet the needs of the disaster victims.

(5) *Insurance.* We consider the amount of insurance coverage because, by law, Federal disaster assistance cannot duplicate insurance coverage.

(6) *Average amount of individual assistance by State.* There is no set threshold for recommending Individual Assistance, but the following averages may prove useful to States and voluntary agencies as they develop plans and programs to meet the needs of disaster victims.

AVERAGE AMOUNT OF ASSISTANCE PER DISASTER
[July 1994 to July 1999]

	Small states (under 2 million pop.)	Medium states (2-10 million pop.)	Large states (over 10 million pop.)
Average Population (1990 census data)	1,000,057	4,713,548	15,522,791
Number of Disaster Housing Applications Approved	1,507	2,747	4,679
Number of Homes Estimated Major Damage/Destroyed	173	582	801
Dollar Amount of Housing Assistance	\$2.8 million	\$4.6 million	\$9.5 million
Number of Individual and Family Grant Applications Approved	495	1,377	2,071
Dollar Amount of Individual and Family Grant Assistance	1.1 million	2.9 million	4.6 million
Disaster Housing/IFG Combined Assistance	3.9 million	7.5 million	14.1 million

NOTE: The high 3 and low 3 disasters, based on Disaster Housing Applications, are not considered in the averages. Number of Damaged/Destroyed Homes is estimated based on the number of owner-occupants who qualify for Eligible Emergency Rental Resources. Data source is FEMA's National Processing

Service Centers. Data are only available from July 1994 to the present.

Small Size States (under 2 million population, listed in order of 1990 population): Wyoming, Alaska, Vermont, District of Columbia, North Dakota, Delaware, South Dakota, Montana, Rhode Island, Idaho, Hawaii, New

Federal Emergency Management Agency, DHS**§ 206.66**

Hampshire, Nevada, Maine, New Mexico, Nebraska, Utah, West Virginia, U.S. Virgin Islands and all Pacific Island dependencies.

Medium Size States (2-10 million population, listed in order of 1990 population): Arkansas, Kansas, Mississippi, Iowa, Oregon, Oklahoma, Connecticut, Colorado, South Carolina, Arizona, Kentucky, Alabama, Louisiana, Minnesota, Maryland, Washington, Tennessee, Wisconsin, Missouri, Indiana, Massachusetts, Virginia, Georgia, North Carolina, New Jersey, Michigan, Puerto Rico.

Large Size States (over 10 million population, listed in order of 1990 population): Ohio, Illinois, Pennsylvania, Florida, Texas, New York, California.

[64 FR 47698, Sept. 1, 1999]

§§ 206.49-206.60 [Reserved]**Subpart C—Emergency Assistance**

SOURCE: 55 FR 2296, Jan. 23, 1990, unless otherwise noted.

§ 206.61 Purpose.

The purpose of this subpart is to identify the forms of assistance which may be made available under an emergency declaration.

§ 206.62 Available assistance.

In any emergency declaration, the Regional Administrator or Administrator may provide assistance, as follows:

(a) Direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical and advisory services) in support of State and local emergency assistance efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe;

(b) Coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments;

(c) Provide technical and advisory assistance to affected State and local governments for:

(1) The performance of essential community services;

(2) Issuance of warnings of risks or hazards;

(3) Public health and safety information, including dissemination of such information;

(4) Provision of health and safety measures; and

(5) Management, control, and reduction of immediate threats to public health and safety;

(d) Provide emergency assistance under the Stafford Act through Federal agencies;

(e) Remove debris in accordance with the terms and conditions of section 407 of the Stafford Act;

(f) Provide assistance in accordance with section 408 of the Stafford Act; and

(g) Assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance.

[55 FR 2296, Jan. 23, 1990, as amended at 67 FR 61460, Sept. 30, 2002]

§ 206.63 Provision of assistance.

Assistance authorized by an emergency declaration is limited to immediate and short-term assistance, essential to save lives, to protect property and public health and safety, or to lessen or avert the threat of a catastrophe.

§ 206.64 Coordination of assistance.

After an emergency declaration by the President, all Federal agencies, voluntary organizations, and State and local governments providing assistance shall operate under the coordination of the Federal Coordinating Officer.

§ 206.65 Cost sharing.

The Federal share for assistance provided under this title shall not be less than 75 percent of the eligible costs.

§ 206.66 Limitation on expenditures.

Total assistance provided in any given emergency declaration may not exceed \$5,000,000, except when it is determined by the Administrator that:

(a) Continued emergency assistance is immediately required;

(b) There is a continuing and immediate risk to lives, property, public health and safety; and

(c) Necessary assistance will not otherwise be provided on a timely basis.

§ 206.67

§ 206.67 Requirement when limitation is exceeded.

Whenever the limitation described in § 206.66 is exceeded, the Administrator must report to the Congress on the nature and extent of continuing emergency assistance requirements and shall propose additional legislation if necessary.

§§ 206.68–206.100 [Reserved]

Subpart D—Federal Assistance to Individuals and Households

§ 206.101 Temporary housing assistance for emergencies and major disasters declared on or before October 14, 2002.

(a) *Purpose.* This section prescribes the policy to be followed by the Federal Government or any other organization when implementing section 408 of the Stafford Act for Presidential declared emergencies and major disasters declared on or before October 14, 2002 (Note that the reference to section 408 of the Stafford Act refers to prior legislation amended by the Disaster Mitigation Act 2000).

(b) *Program intent.* Assistance under this program is made available to applicants who require temporary housing as a result of a major disaster or emergency that is declared by the President. Eligibility for assistance is based on need created by disaster-related unlivability of a primary residence or other disaster-related displacement, combined with a lack of adequate insurance coverage. Eligible applicants may be paid for authorized accommodations and/or repairs. In the interest of assisting the greatest number of people in the shortest possible time, applicants who are able to do so will be encouraged to make their own arrangements for temporary housing. Although numerous instances of minor damage may cause some inconvenience to the applicant, the determining eligibility factor must be the livability of the primary residence. FEMA has also determined that it is reasonable to expect applicants or their landlords to make some repairs of a minor nature. Temporary housing will normally consist of a check to cover housing-related costs wherever possible.

44 CFR Ch. I (10-1-11 Edition)

(c) *Definitions*—(1) *Adequate alternate housing* means housing that:

(i) Accommodates the needs of the occupants.

(ii) Is within reasonable commuting distance of work, school, or agricultural activities which provide over 25% of the household income.

(iii) Is within the financial ability of the occupant in the realization of a permanent housing plan.

(2) *Effective date of assistance* means the date the eligible applicant received temporary housing assistance but, where applicable, only after appropriate insurance benefits are exhausted.

(3) *Essential living area* means that area of the residence essential to normal living, i.e., kitchen, one bathroom, dining area, living room, entrances and exits, and essential sleeping areas. It does not include family rooms, guest rooms, garages, or other nonessential areas, unless hazards exist in these areas which impact the safety of the essential living area.

(4) *Fair market rent* means a reasonable amount to pay in the local area for the size and type of accommodations which meets the applicant's needs.

(5) *Financial ability* is the determination of the occupant's ability to pay housing costs. The determination is based upon the amount paid for housing before the disaster, provided the household income has not changed subsequent to or as a result of the disaster or 25 percent of gross post disaster income if the household income changed as a result of the disaster. When computing financial ability, extreme or unusual financial circumstances may be considered by the Regional Administrator.

(6) *Household* means all residents of the predisaster residence who request temporary housing assistance, plus any additions during the temporary housing period, such as infants, spouses, or part-time residents who were not present at the time of the disaster but who are expected to return during the temporary housing period.

(7) *Housing costs* means shelter rent and mortgage payments including principal, interest, real estate taxes, real

property insurance, and utility costs, where appropriate.

(8) *Occupant* means an eligible applicant residing in temporary housing provided under this section.

(9) *Owner-occupied* means that the residence is occupied by: the legal owner; a person who does not hold formal title to the residence and pays no rent but is responsible for the payment of taxes, or maintenance of the residence; or a person who has lifetime occupancy rights with formal title vested in another.

(10) *Primary residence* means the dwelling where the applicant normally lives during the major portion of the calendar year, a dwelling which is required because of proximity to employment, or to agricultural activities as referenced in paragraph (c)(1)(ii) of this section.

(d) *Duplication of benefits*—(1) *Requirement to avoid duplication*. Temporary housing assistance shall not be provided to an applicant if such assistance has been provided by any other source. If any State or local government or voluntary agency has provided temporary housing, the assistance under this section begins at the expiration of such assistance, and may continue for a period not to exceed 18 months from the date of declaration, provided the criteria for continued assistance in paragraph (k)(3) of this section are met. If it is determined that temporary housing assistance will be provided under this section, notification shall be given those agencies which have the potential for duplicating such assistance. In the instance of insured applicants, temporary housing assistance shall be provided only when:

(i) Payment of the applicable benefits has been significantly delayed;

(ii) Applicable benefits have been exhausted;

(iii) Applicable benefits are insufficient to cover the temporary housing need; or

(iv) Housing is not available on the private market.

(2) *Recovery of funds*. Prior to provision of assistance, the applicant must agree to repay to FEMA from insurance proceeds or recoveries from any other source an amount equivalent to the value of the temporary housing as-

sistance provided. In no event shall the amount repaid to FEMA exceed the amount recovered by the applicant. All claims shall be collected in accordance with agency procedures for debt collection.

(e) *Applications*—(1) *Application period*. The standard FEMA application period is the 60 days following the date the President declares an incident a major disaster or an emergency. The Regional Administrator may, however, extend the application period, when we anticipate that we need more time to collect applications from the affected population or to establish the same application deadline for contiguous Counties or States. After the application period has ended, FEMA will accept and process applications for an additional 60 days only from persons who can provide an acceptable explanation (and documentation to substantiate their explanation) for why they were not able to contact FEMA before the application period ended.

(2) *Household composition*. Members of a household shall be included on a single application and be provided one temporary housing residence unless it is determined by the Regional Administrator that the size of the household requires that more than one residence be provided.

(f) *General eligibility guidelines*. Temporary housing assistance may be made available to those applicants who, as a result of a major disaster or emergency declared by the President, are qualified for such assistance.

(1) *Conditions of eligibility*. Temporary housing assistance may be provided only when *both* of the following conditions are met:

(i) The applicant's primary residence has been made uninhabitable or the applicant has been displaced as the result of a major disaster or emergency because:

(A) The residence has been destroyed, essential utility service has been interrupted, or the essential living area has been damaged as a result of the disaster to such an extent as to constitute a serious health or safety hazard which did not exist prior to the disaster. The Regional Administrator shall prepare additional guidelines when necessary to respond to a particular disaster;

§ 206.101

44 CFR Ch. I (10-1-11 Edition)

(B) The residence has been made inaccessible as a result of the incident to the extent that the applicant cannot reasonably be expected to gain entry due to the disruption or destruction of transportation routes, other impediments to access, or restrictions placed on movement by a responsible official due to continued health and safety problems;

(C) The owner of the applicant's residence requires the residence to meet their personal needs because the owner's predisaster residence was made unlivable as a result of the disaster;

(D) Financial hardship resulting from the disaster has led to eviction or dis-possession; or

(E) Other circumstances resulting from the disaster, as determined by the Regional Administrator, prevent the applicant from occupying their predisaster primary residence.

(ii) Insured applicants have made every reasonable effort to secure insurance benefits, and the insured has agreed to repay FEMA from whatever insurance proceeds are later received, pursuant to paragraph (d)(2) of this section.

(2) *Conditions of ineligibility.* Except as provided for in section 408(b), Temporary Housing Assistance shall not be provided:

(i) To an applicant who is displaced from other than their primary residence; or

(ii) When the residence in question is livable, i.e., only minor damage exists and it can reasonably be expected to be repaired by the applicant/owner or the landlord; or

(iii) When the applicant owns a secondary or vacation residence, or unoccupied rental property which meets their temporary housing needs; or

(iv) To an applicant who has adequate rent-free housing accommodations; or

(v) To an applicant who has adequate insurance coverage and there is no indication that benefits will be delayed; or

(vi) When a late application is not approved for processing by the Regional Administrator; or

(vii) To an applicant who evacuated the residence in response to official warnings solely as a precautionary

measure, and who is able to return to the residence immediately after the incident (i.e., the applicant is not otherwise eligible for temporary housing assistance).

(g) *Forms of Temporary Housing Assistance.* All proceeds received or receivable by the applicant under § 206.101 shall be exempt from garnishment, seizure, encumbrance, levy, execution, pledge, attachment, release, or waiver. No rights under this provision are assignable or transferable.

(1) Temporary Housing Assistance is normally provided in the form of a check to cover the cost of rent or essential home repairs. The exceptions to this are when existing rental resources are not available and repairs to the home will not make it livable in a reasonable period of time, or when the eligible applicant is unable to physically leave the home due to the need to tend crops or livestock.

(i) *Government-owned, private, and commercial properties.* When an eligible applicant is unable to obtain an available temporary housing unit, FEMA may enter into a leasing agreement for the eligible applicant. Rent payments shall be in accordance with the fair market rent (FMR) rates established for each operation for the type and size residence.

(ii) *Transient accommodations.* Immediately following a Presidentially declared major disaster or emergency, disaster victims are expected to stay with family or friends without FEMA assistance, or to make use of mass shelters to the fullest extent possible for short-term housing. Transient accommodations may be provided when individual circumstances warrant such assistance for only a short period of time or pending provision of other temporary housing resources. Transient accommodations may be provided for up to 30 days unless this period is extended by the Regional Administrator. Authorized expenditures for transient accommodations shall be restricted to the rental cost including utilities except for those which are separately metered. Payment for food, telephone, or other similar services is not authorized under this section.

(2) Mobile homes, travel trailers, and other manufactured housing units.

Government-owned or privately owned mobile homes, travel trailers, and other manufactured housing units may be placed on commercial, private, or group sites. The placement must comply with applicable State and local codes and ordinances as well as FEMA's regulations at 44 CFR part 9, Floodplain Management and Protection of Wetlands, and the regulations at 44 CFR part 10, Environmental Considerations.

(i) A commercial site is a site customarily leased for a fee because it is fully equipped to accommodate a housing unit. In accordance with section 408(a)(2)(B), the Assistant Administrator for the Disaster Assistance Directorate has determined that leasing commercial sites at Federal expense is in the public interest. When the Regional Administrator determines that upgrading of commercial sites or installation of utilities on such sites will provide more cost-effective, timely, and suitable temporary housing than other types of resources, they may authorize such action at Federal expense.

(ii) A private site is a site provided or obtained by the applicant at no cost to the Federal Government. Also in accordance with section 408(a)(2)(B), the Assistant Administrator for the Disaster Assistance Directorate has determined that the cost of installation or repairs of essential utilities on private sites is authorized at Federal expense when such actions will provide more cost-effective, timely, and suitable temporary housing than other types of resources.

(iii) A group site is a site which accommodates two or more units. In accordance with section 408(a)(2)(A), locations for group sites shall be provided by State or local government complete with utilities. However, the Assistant Administrator for the Disaster Assistance Directorate may authorize development of group sites, including installation of essential utilities, by the Federal Government, based on a recommendation from the Regional Administrator; provided, however, that the Federal expense is limited to 75 percent of the cost of construction and development (including installation of utilities). In accordance with section 408(a)(4) of the Stafford Act, the State

or local government shall pay any cost which is not paid for from the Federal share, including long-term site maintenance such as snow removal, street repairs and other services of a governmental nature.

(3) *Temporary mortgage and rental payments.* Assistance in the form of mortgage or rental payments may be paid to or be provided on behalf of eligible applicants who, as a result of a major disaster or emergency, have received written notice of dispossession or eviction from their primary residence by foreclosure of any mortgage or lien, cancellation of any contract of sale, or termination of any lease entered into prior to the disaster. Written notice, for the purpose of this paragraph, means a communication in writing by a landlord, mortgage holder, or other party authorized under State law to file such notice. The purpose of such notice is to notify a person of impending termination of a lease, foreclosure of a mortgage or lien, or cancellation of any contract of sale, which would result in the person's dispossession or eviction. Applications for this type of assistance may be filed for up to 6 months following the date of declaration. This assistance may be provided for a period not to exceed 18 months or for the duration of the period of financial hardship, as determined by the Regional Administrator, whichever is less. The location of the residence of an applicant for assistance under this section shall not be a consideration of eligibility.

(4) *Home repairs.* Repairs may be authorized to quickly repair or restore to a livable condition that portion of or areas affecting the essential living area of, or private access to, an owner-occupied primary residence which was damaged as a result of the disaster. Installation of utilities or conveniences not available in the residence prior to the disaster shall not be provided. However, repairs which are authorized shall conform to applicable local and/or State building codes; upgrading of existing damaged utilities may be authorized when required by these codes.

(i) *Options for repairs.* Eligible applicants approved for repairs may be assisted through one or a combination of the following methods:

§ 206.101**44 CFR Ch. I (10-1-11 Edition)**

(A) *Cash payment.* Payment shall be limited to the reasonable costs for the repairs and replacements in the locality, as determined by the Regional Administrator. This will be the method normally used, unless unusual circumstances warrant the methods listed under paragraph (g)(4), (i) (B) or (C) of this section.

(B) Provision of materials and replacement items.

(C) Government awarded repair contracts when authorized by the Assistant Administrator for the Disaster Assistance Directorate.

(ii) *Feasibility.* Repairs may be provided to those eligible applicants:

(A) Who are owner-occupants of the residence to be made livable;

(B) Whose residence can be made livable by repairs to the essential living area within 30 days following the feasibility determination. The Regional Administrator may extend this period for extenuating circumstances by determining that this type of assistance is still more cost effective, timely and otherwise suitable than other forms for temporary housing; and

(C) Whose residence can be made livable by repairs to the essential living area, the cost of which do not exceed the dollar limitations established by the Assistant Administrator for the Disaster Assistance Directorate. The Regional Administrator may, on a case-by-case basis, waive the dollar limitations when repairs are more cost effective and appropriate than other forms of housing assistance or when extenuating circumstances warrant.

(iii) *Scope of work.* The type of repair or replacement authorized may vary depending upon the nature of the disaster. Items will be repaired where feasible or replaced only when necessary to insure the safety or health of the occupant. Replacement items shall be of average quality, size, and capacity taking into consideration the needs of the occupant. Repairs shall be disaster related and shall be limited to:

(A) Repairs to the plumbing system, including repairs to or replacement of fixtures, providing service to the kitchen and one bathroom;

(B) Repairs to the electrical system providing service to essential living

areas, including repairs to or replacement of essential fixtures;

(C) Repairs to the heating unit, including repairs to duct work, vents, and integral fuel and electrical systems. If repair or replacement through other forms of assistance cannot be accomplished before the start of the season requiring heat, home repairs may be authorized by the Regional Administrator when an inspection shows that the unit has been damaged beyond repair, or when the availability of necessary parts or components makes repair impossible;

(D) Repairs to or replacement of essential components of the fuel system to provide for cooking;

(E) Pumping and cleaning of the septic system, repairs to or replacement of the tank, drainfield, or repairs to sewer lines;

(F) Flushing and/or purifying the water well, and repairs to or replacement of the pump, controls, tank, and pipes;

(G) Repairs to or replacement of exterior doors, repair of windows and/or screens needed for health purposes;

(H) Repairs to the roof, when the damages affect the essential living area;

(I) Repairs to interior floors, when severe buckling or deterioration creates a serious safety hazard;

(J) Blocking, leveling, and anchoring of a mobile home; and reconnecting and/or resetting mobile home sewer, water, electrical and fuel lines, and tanks;

(K) Emergency repairs to private access routes, limited to those repairs that meet the minimum safety standards and using the most economical materials available. Such repairs are provided on a one-time basis when no alternative access facilities are immediately available and when the repairs are more cost effective, timely or otherwise suitable than other forms of temporary housing.

(L) Repairs to the foundation piers, walls or footings when the damages affect the structural integrity of the essential living area;

(M) Repairs to the stove and refrigerator, when feasible; and

(N) Elimination of other health and safety hazards or performance of essential repairs which are authorized by the Regional Administrator as not available through emergency services provided by voluntary or community agencies, and cannot reasonably be expected to be completed on a timely basis by the occupant without FEMA assistance.

(iv) Requirements of the Flood Disaster Protection Act. FEMA has determined that flood insurance purchase requirements need not be imposed as a condition of receiving assistance under paragraph (g)(4) of this section. Repair recipients will normally receive assistance for further repairs from other programs which will impose the purchase and maintenance requirements. Home repairs may not be provided in Zones A or V of a sanctioned or suspended community except for items that are not covered by flood insurance.

(h) *Appropriate form of temporary housing.* The form of temporary housing provided should not exceed occupants' minimum requirements, taking into consideration items such as timely availability, cost effectiveness, permanent housing plans, special needs (handicaps, the location of crops and livestock, etc.) of the occupants, and the requirements of FEMA'S floodplain management regulations at 44 CFR part 9. An eligible applicant shall receive one form of temporary housing, except for transient accommodations or when provision of an additional form is in the best interest of the Government. An eligible applicant is expected to accept the first offer of temporary housing; unwarranted refusal shall result in forfeiture of temporary housing assistance. Existing rental resources and home repairs shall be utilized to the fullest extent practicable prior to provision of government-owned mobile homes.

(i) *Utility costs and security deposits.* All utility costs shall be the responsibility of the occupant except where utility services are not metered separately and are therefore a part of the rental charge. Utility use charges and deposits shall always be the occupants responsibility. When authorized by the Regional Administrator, the Federal Government may pay security depos-

its; however, the owner or occupant shall reimburse the full amount of the security deposit to the Federal Government before or at the time that the temporary housing assistance is terminated.

(j) *Furniture.* An allowance for essential furniture may be provided to occupants when such assistance is required to occupy the primary or temporary housing residence. However, loss of furniture does not in and of itself constitute eligibility for temporary housing assistance. Luxury items shall not be provided.

(k) *Duration of assistance—*(1) *Commencement.* Temporary housing assistance may be provided as of the date of the incident of the major disaster or emergency as specified in the FEDERAL REGISTER notice and may continue for 18 months from the date of declaration. An effective date of assistance shall be established for each applicant.

(2) *Continued assistance.* Predisaster renters normally shall be provided no more than 1 month of assistance unless the Regional Administrator determines that continued assistance is warranted in accordance with paragraph (k)(3) of this section. All other occupants of temporary housing shall be certified eligible for continued assistance in increments not to exceed 3 months. Recertification of eligibility for continued assistance shall be in accordance with paragraph (k)(3) of this section, taking into consideration the occupant's permanent housing plan. A realistic permanent housing plan shall be established for each occupant requesting additional assistance no later than at the time of the first recertification.

(3) *Criteria for continued assistance.* A temporary housing occupant shall make every effort to obtain and occupy permanent housing at the earliest possible time. A temporary housing occupant will be required to provide receipts documenting disaster related housing costs and shall be eligible for continued assistance when:

(i) Adequate alternate housing is not available;

(ii) The permanent housing plan has not been realized through no fault of the occupant; or

(iii) In the case of FEMA-owner leases, the occupant is in compliance

§ 206.101

44 CFR Ch. I (10-1-11 Edition)

with the terms of the lease/rental agreement.

(l) *Period of assistance.* Provided the occupant is eligible for continued assistance, assistance shall be provided for a period not to exceed 18 months from the declaration date.

(m) *Appeals.* Occupants shall have the right to appeal a program determination in accordance with the following:

(1) An applicant declared ineligible for temporary housing assistance, an applicant whose application has been cancelled for cause, an applicant whose application has been refused because of late filing, and an occupant who received a direct housing payment but is not eligible for continued assistance in accordance with paragraph (k) of this section, shall have the right to dispute such a determination within 60 calendar days following notification of such action. The Regional Administrator shall reconsider the original decision within 15 calendar days after its receipt. The appellant shall be given a written notice of the disposition of the dispute. The decision of the Regional Administrator is final.

(2) An occupant who has been notified that his/her request to purchase a mobile home or manufactured housing unit or that a request for an adjustment to the sales price has been denied shall have the right to dispute such a determination within 60 business days after receipt of such notice. The Regional Administrator shall reconsider the original decision within 15 calendar days after receipt of the appeal. The appellant shall receive written notice of the disposition of the dispute. The decision of the Regional Administrator is final.

(3) Termination of assistance provided through a FEMA lease agreement shall be initiated with a 15-day written notice after which the occupant shall be liable for such additional charges as are deemed appropriate by the Regional Administrator including, but not limited to, the fair market rental for the temporary housing residence.

(i) *Grounds for termination.* Temporary housing assistance may be terminated for reasons including, but not limited to the following:

(A) Adequate alternate housing is available to the occupant(s);

(B) The temporary housing assistance was obtained either through misrepresentation or fraud; or

(C) Failure to comply with any term of the lease/rental agreement.

(ii) *Termination procedures.* These procedures shall be utilized in all instances except when a State is administering the Temporary Housing Assistance program. States shall be subject to their own procedures provided they afford the occupant(s) with due process safeguards described in paragraph (m)(2)(v)(B) of this section.

(A) *Notification to occupant.* Written notice shall be given by FEMA to the occupant(s) at least 15 days prior to the proposed termination of assistance. This notice shall specify: the reasons for termination of assistance/occupancy; the date of termination, which shall be not less than 15 days after receipt of the notice; the administrative procedure available to the occupant if they wish to dispute the action; and the occupant's liability after the termination date for additional charges.

(B) *Filing of appeal.* If the occupant desires to dispute the termination, upon receipt of the written notice specified in paragraph (m)(2)(i) of this section, he/she shall present an appeal in writing to the appropriate office in person or by mail within 60 days from the date of the termination notice. The appeal must be signed by the occupant and state the reasons why the assistance or occupancy should not be terminated. If a hearing is desired, the appeal should so state.

(C) *Response to appeal.* If a hearing pursuant to paragraph (m)(2)(ii) of this section has not been requested, the occupant has waived the right to a hearing. The appropriate program official shall deliver or mail a written response to the occupant within 5 business days after the receipt of the appeal.

(D) *Request for hearing.* If the occupant requests a hearing pursuant to paragraph (m)(2)(ii) of this section, FEMA shall schedule a hearing date within 10 business days from the receipt of the appeal, at a time and place reasonably convenient to the occupant, who shall be notified promptly thereof in writing. The notice of hearing shall specify the procedure governing the hearing.

(E) *Hearing*—(1) *Hearing officer*. The hearing shall be conducted by a Hearing Officer, who shall be designated by the Regional Administrator, and who shall not have been involved with the decision to terminate the occupant's temporary housing assistance, nor be a subordinate of any individual who was so involved.

(2) *Due process*. The occupant shall be afforded a fair hearing and provided the basic safeguards of due process, including cross-examination of the responsible official(s), access to the documents on which FEMA is relying, the right to counsel, the right to present evidence, and the right to a written decision.

(3) *Failure to appear*. If an occupant fails to appear at a hearing, the Hearing Officer may make a determination that the occupant has waived the right to a hearing, or may, for good cause shown, postpone the hearing for no more than 5 business days.

(4) *Proof*. At the hearing, the occupant must first attempt to establish that continued assistance is appropriate; thereafter, FEMA must sustain the burden of proof in justifying that termination of assistance is appropriate. The occupant shall have the right to present evidence and arguments in support of their complaint, to controvert evidence relied on by FEMA, and to cross examine all witnesses on whose testimony or information FEMA relies. The hearing shall be conducted by the Hearing Officer, and any evidence pertinent to the facts and issues raised may be received without regard to its admissibility under rules of evidence employed in formal judicial proceedings.

(F) *Decision*. The decision of the Hearing Officer shall be based solely upon applicable Federal and State law, and FEMA regulations and requirements promulgated thereunder. The Hearing Officer shall prepare a written decision setting forth a statement of findings and conclusions together with the reasons therefor, concerning all material issues raised by the complainant within 5 business days after the hearing. The decision of the Hearing Officer shall be binding on FEMA, which shall take all actions necessary to carry out the decision or refrain

from any actions prohibited by the decision.

(1) The decision shall include a notice to the occupant that he/she must vacate the premises within 3 days of receipt of the written notice or on the termination date stated in the original notice of termination, as required in paragraph (m)(2)(i) of this section, whichever is later. If the occupant does not quit the premises, appropriate action shall be taken and, if suit is brought, the occupant may be required to pay court costs and attorney fees.

(2) If the occupant is required to give a specific number of days' notice which exceeds the number of days in the termination notice, the Regional Administrator may approve the payment of rent for this period of time if requested by the occupant.

(n) *Disposition of temporary housing units*—(1) *Acquisition*. The Assistant Administrator for the Disaster Assistance Directorate may purchase mobile homes or other manufactured housing units for those who require temporary housing. After such temporary housing is vacated, it shall be returned to one of the FEMA-operated Strategic Storage Centers for refurbishment and storage until needed in a subsequent major disaster or emergency. When returning the unit to a Strategic Storage Center is not feasible or cost effective, the Assistant Administrator for the Disaster Assistance Directorate may prescribe a different method of disposition in accordance with applicable Federal statutes and regulations.

(2) *Sales*—(i) *Eligibility*. When adequate alternate housing is not available, the Regional Administrator shall make available for sale directly to a temporary housing occupant(s) any mobile home or manufactured housing unit acquired by purchase, in accordance with the following:

(A) The unit is to be used as a primary residence;

(B) The purchaser has a site that complies with local codes and ordinances as well as FEMA's floodplain management regulations at 44 CFR part 9 (in particular § 9.13(e)); and

§ 206.101

44 CFR Ch. I (10-1-11 Edition)

(C) The purchaser has sufficient funds to purchase and, if necessary, relocate the unit. The Assistant Administrator for the Disaster Assistance Directorate may approve the sale of a mobile home or manufactured housing unit to a temporary housing occupant when adequate alternate housing is available but only when such sales are clearly in the best interest of the Government.

(ii) *Sales price.* Units shall be sold at prices that are fair and equitable to the purchaser and to the Government, as determined by the Assistant Administrator for the Disaster Assistance Directorate. The purchaser shall pay the total sales price at the time of sale.

(iii) *Adjustment to the sales price.*

(A) Adjustments to the sales price may be provided only when both of the following conditions are met:

(1) There is a need to purchase the unit for use as the purchaser's primary residence because other adequate alternate housing is unavailable. Adequate alternate housing must meet the criteria in paragraph (c)(1) of this section, and may consist of:

(i) Existing housing;

(ii) Additional resources such as disaster-damaged rental accommodations which can reasonably be expected to be repaired and become available in the near future;

(iii) New housing construction or housing to be made available through Government subsidy which is included in the immediate recovery plans for the area; and

(iv) Residences which can be repaired by the predisaster owner/occupant through funds available from insurance, other disaster assistance programs, or through their own resources.

(2) In addition to his/her resources, the purchaser cannot obtain sufficient funds through insurance proceeds, disaster loans, grants, and commercial lending institutions to cover the sales price.

(B) To determine the adjusted sales price, the current available financial resources of the purchaser shall be calculated. If the financial resources are equal to or greater than the basic sales price, then no adjustment shall be approved. If the purchaser's financial resources are less than the basic sales

price, the sales price shall be adjusted to take into consideration the financial resources available but shall include some consideration. Deviations from this rule may be reviewed on a case-by-case basis by the Assistant Administrator for the Disaster Assistance Directorate.

(C) The Regional Administrator must approve all adjustments to the sales price of a mobile home.

(iv) *Other conditions of sale.*

(A) A unit shall be sold "as is, where is" except for repairs necessary to protect health or safety, which are to be completed prior to sale. There shall be no implied warranties. In addition, the purchaser must be informed that he/she may have to bring the unit up to codes and standards which are applicable at the proposed site.

(B) In accordance with the Flood Disaster Protection Act of 1973, Public Law 93-234, as amended, the sale of a unit for the purpose of meeting the permanent housing need of an individual or family may not be approved where the unit would be placed in a designated special flood hazard area which has been identified by the Administrator for at least 1 year as floodprone unless the community in which the unit is to be located after the sale is, at the time of approval, participating in the National Flood Insurance Program. The purchaser must agree to buy and maintain an adequate flood insurance policy for as long as the unit is occupied by the purchaser. An adequate policy for purposes of this paragraph shall mean one which provides coverage for the basic sales price of the unit. The purchaser must provide proof of purchase of the initial flood insurance policy.

(3) *Transfer.* The Assistant Administrator for the Disaster Assistance Directorate may lend temporary housing units purchased under section 408(a) of the Act directly to States, other Governmental entities, or voluntary organizations. Such transfers may be made only in connection with a Presidential declaration of a major disaster or emergency. Donations may be made only when it is in the best interest of the Government, such as when future re-use by the Federal Government would not be economically feasible. As

a condition of such transfers, the Assistant Administrator for the Disaster Assistance Directorate shall require that the recipient:

(i) Utilize the units for the purpose of providing temporary housing for victims of major disasters or emergencies in accordance with the written agreement; and

(ii) Comply with the current applicable FEMA policies and regulations, including this section; 44 CFR part 9 (especially §§9.13 and 9.14), Floodplain Management and Protection of Wetlands; 44 CFR part 10, Environmental Considerations. The Assistant Administrator for the Disaster Assistance Directorate may order returned any temporary housing unit made available under this section which is not used in accordance with the terms of transfer.

(o) *Reports.* The Assistant Administrator for the Disaster Assistance Directorate, Regional Administrator, or Federal Coordinating Officer may require from field operations such reports, plans, and evaluations as they deem necessary to carry out their responsibilities under the Act and these regulations.

(p) *Federal responsibility.* The Federal financial and operational responsibility for the Temporary Housing Assistance program shall not exceed 18 months from the date of the declaration of the major disaster or emergency. This period may be extended in writing by the Assistant Administrator for the Disaster Assistance Directorate, based on a determination that an extension is necessary and in the public interest. The Regional Administrator may authorize continued use on a non-reimbursable basis of Government property, office space, and equipment by a State, other Government entity, or voluntary organization after the 18 month period.

(q) *Applicant notification—(1) General.* All applicants for temporary housing assistance will be notified regarding the type and amount of assistance for which they are qualified. Whenever practicable, such notification will be provided within 7 days of their application and will be in writing.

(2) Eligible applicants for temporary housing assistance will be provided information regarding:

(i) All forms of housing assistance available;

(ii) The criteria which must be met to qualify for each type of assistance;

(iii) Any limitations which apply to each type of assistance; and

(iv) The address and telephone number of offices responsible for responding to appeals and requests for changes in the type or amount of assistance provided.

(r) *Location.* In providing temporary housing assistance, consideration will be given to the location of:

(1) The eligible applicants' home and place of business;

(2) Schools which the eligible applicant or members of the household attend; and

(3) Agricultural activities which provide 25 percent or more of the eligible applicants' annual income.

(s) *NonFederal administration of temporary housing assistance.* A State may request authority to administer all or part of the temporary housing assistance program in the Governor's request for a declaration or in a subsequent written request to the Regional Administrator from the Governor or his/her authorized representative. The Associate Director shall approve such a request based on the Regional Administrator's recommendation and based on a finding that State administration is both in the interest of the Federal Government and those needing temporary housing assistance. The State must have an approved plan prior to the incident and an approved operational annex within 3 days of the declaration in order to administer the program. When administering the program the State must comply with FEMA program regulations and policies.

(1) *State temporary housing assistance plan.* (i) States which have an interest in administering the Temporary Housing Assistance program shall be required to develop a plan that includes, at a minimum, the items listed below:

(A) Assignment of temporary housing assistance responsibilities to State and/or local officials and agencies;

(B) A description of the program, its functions, goals and objectives of the program, and proposed organization and staffing plan;

(C) Procedures for:

§ 206.101

44 CFR Ch. I (10-1-11 Edition)

(1) Accepting applications at Disaster Application Centers and subsequently at a State established disaster housing office;

(2) Determining eligibility utilizing FEMA's habitability contract and notifying applicants of the determination;

(3) Preventing duplication of benefits between temporary housing assistance and assistance from other means, as well as a recoupment procedure when duplication occurs;

(4) Providing the various types of assistance (home repairs, existing rental resources, transient accommodations, and mobile homes);

(5) Providing furniture assistance;

(6) Recertifying occupants for continued assistance;

(7) Terminating assistance;

(8) Contracting for services and/or supplies;

(9) Quality control;

(10) Maintaining a management information system;

(11) Financial management;

(12) Public information;

(13) Processing appeals; and

(14) Arranging for a program review.

(ii) The Governor or his/her designee may request the Regional Administrator to provide technical assistance in the preparation of an administrative plan.

(iii) The Governor or designee shall submit the plan to the Regional Administrator for approval. Plans shall be revised, as necessary, and shall be reviewed at least annually by the Regional Administrator.

(2) *Operational annex.* Prior to the State administering the program, the state must submit an operational annex which tailors the approved State plan to the particular disaster or emergency. The annex must be reviewed and approved by the Regional Administrator within 3 days of the declaration or the State shall not be permitted to administer the program. The operational annex shall include but not be limited to:

(i) Organization and staffing specific to the major disaster or emergency;

(ii) Pertinent goals and management objectives;

(iii) A proposed budget; and

(iv) A narrative which describes methods for orderly tracking and proc-

essing of applications; assuring timely delivery of assistance; identification of potential problem areas; and any deviations from the approved plan. The Regional Administrator may require additional annexes as necessary for subsequent phases of the operation.

(3) *Evaluation of capability.* State and local government assumption of the temporary housing assistance program for a particular disaster shall be approved by the Assistant Administrator for the Disaster Assistance Directorate based on an evaluation of the capabilities and commitment of the entity by the Regional Administrator. At a minimum, the evaluation shall include a review of the following:

(i) The State temporary housing assistance plan which has been approved by the Regional Administrator prior to the incident, and the specific operational annex which has been approved in accordance with paragraph (s)(2) of this section.

(ii) Past performance in administration of temporary housing assistance or other similar operations;

(iii) Management and staff capabilities; and

(iv) Demonstrated understanding of the tasks to be performed.

(4) *Grant application.* Approval of funding shall be obtained through submission of a project application by the State or local government through the Governor's Authorized Representative. The State shall maintain adequate documentation according to the requirements of 44 CFR part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, to enable analysis of the program. Final reimbursement to the State, or final debt collection, shall be based on an examination of the voucher filed by the State.

(5) *Authorized costs.* All expenditures associated with administering the program are authorized if in compliance with 44 CFR 13.22, Allowable Costs, and the associated OMB Circular A-87, Cost Principles for State and Local Governments. Examples of program costs allowable under the Temporary Housing Assistance program include home repairs, costs associated with rental payments, reimbursements for temporary

housing including transient accommodations and commercial site rental, mobile home installation and maintenance, mobile home private site development, cost of supplemental assistance, mortgage and rental payments, other necessary costs, when approved by the Assistant Administrator for the Disaster Assistance Directorate. All contracts require the review and approval of the Regional Administrator prior to award, in order to be considered as an authorized expenditure.

(6) *Federal monitoring and oversight.* The Regional Administrator shall monitor State-administered activities since he/she remains responsible for the overall delivery of temporary housing assistance. In addition, policy guidance and interpretations to meet specific needs of a disaster shall be provided through the oversight function.

(7) *Technical assistance.* The Regional Administrator shall provide technical assistance as necessary to support State-administered operations through training, procedural issuances, and by providing experienced personnel to assist the State and local staff.

(8) *Operational resources.* The Regional Administrator shall make available for use in State or locally administered temporary housing programs Federal stand-by contracts, memoranda of understanding with Government and voluntary agencies, and Federal property, such as government-owned mobile homes and travel trailers.

(9) *Program reviews and audits.* The State shall conduct program review of each operation. All operations are subject to Federal audit.

[55 FR 2296, Jan. 23, 1990, as amended at 61 FR 7224, Feb. 27, 1996; 64 FR 46853, Aug. 27, 1999; 67 FR 61460, Sept. 30, 2002; 74 FR 15347, Apr. 3, 2009]

§ 206.102–206.109 [Reserved]

§ 206.110 Federal assistance to individuals and households.

(a) *Purpose.* This section implements the policy and procedures set forth in section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5174, as amended by the Disaster Mitigation Act of 2000. This program provides financial assist-

ance and, if necessary, direct assistance to eligible individuals and households who, as a direct result of a major disaster or emergency, have uninsured or under-insured, necessary expenses and serious needs and are unable to meet such expenses or needs through other means.

(b) *Maximum amount of assistance.* No individual or household will receive financial assistance greater than \$25,000 under this subpart with respect to a single major disaster or emergency. FEMA will adjust the \$25,000 limit annually to reflect changes in the Consumer Price Index (CPI) for All Urban Consumers that the Department of Labor publishes.

(c) *Multiple types of assistance.* One or more types of housing assistance may be made available under this section to meet the needs of individuals and households in the particular disaster situation. FEMA shall determine the appropriate types of housing assistance to be provided under this section based on considerations of cost effectiveness, convenience to the individuals and households and the suitability and availability of the types of assistance. An applicant is expected to accept the first offer of housing assistance; unwarranted refusal of assistance may result in the forfeiture of future housing assistance. Temporary housing and repair assistance shall be utilized to the fullest extent practicable before other types of housing assistance.

(d) *Date of eligibility.* Eligibility for Federal assistance under this subpart will begin on the date of the incident that results in a presidential declaration that a major disaster or emergency exists, except that reasonable lodging expenses that are incurred in anticipation of and immediately preceding such event may be eligible for Federal assistance under this chapter.

(e) *Period of assistance.* FEMA may provide assistance under this subpart for a period not to exceed 18 months from the date of declaration. The Assistant Administrator for the Disaster Assistance Directorate may extend this period if he/she determines that due to extraordinary circumstances an extension would be in the public interest.

(f) *Assistance not counted as income.* Assistance under this subpart is not to

§ 206.110

44 CFR Ch. I (10-1-11 Edition)

be counted as income or a resource in the determination of eligibility for welfare, income assistance or income-tested benefit programs that the Federal Government funds.

(g) *Exemption from garnishment.* All assistance provided under this subpart is exempt from garnishment, seizure, encumbrance, levy, execution, pledge, attachment, release or waiver. Recipients of rights under this provision may not reassign or transfer the rights. These exemptions do not apply to FEMA recovering assistance fraudulently obtained or misapplied.

(h) *Duplication of benefits.* In accordance with the requirements of section 312 of the Stafford Act, 42 U.S.C. 5155, FEMA will not provide assistance under this subpart when any other source has already provided such assistance or when such assistance is available from any other source. In the instance of insured applicants, we will provide assistance under this subpart only when:

(1) Payment of the applicable benefits are significantly delayed;

(2) Applicable benefits are exhausted;

(3) Applicable benefits are insufficient to cover the housing or other needs; or

(4) Housing is not available on the private market.

(i) *Cost sharing.* (1) Except as provided in paragraph (i)(2) of this section, the Federal share of eligible costs paid under this subpart shall be 100 percent.

(2) Federal and State cost shares for "Other Needs" assistance under subsections 408 (e) and (f) of the Stafford Act will be as follows:

(i) The Federal share shall be 75 percent; and

(ii) The non-federal share shall be paid from funds made available by the State. If the State does not provide the non-Federal share to FEMA before FEMA begins to provide assistance to individuals and households under subsection 408(e) of the Stafford Act, FEMA will still process applications. The State will then be obliged to reimburse FEMA for the non-Federal cost share of such assistance on a monthly basis. If the State does not provide such reimbursement on a monthly basis, then FEMA will issue a Bill for Collection to the State on a monthly

basis for the duration of the program. FEMA will charge interest, penalties, and administrative fees on delinquent Bills for Collection in accordance with the Debt Collection Improvement Act. Cost shared funds, interest, penalties and fees owed to FEMA through delinquent Bills for Collections may be offset from other FEMA disaster assistance programs (*i.e.* Public Assistance) from which the State is receiving, or future grant awards from FEMA or other Federal Agencies. Debt Collection procedures will be followed as outlined in 44 CFR part 11.

(j) *Application of the Privacy Act.* (1) All provisions of the Privacy Act of 1974, 5 U.S.C. 552a, apply to this subpart. FEMA may not disclose an applicant's record except:

(i) In response to a release signed by the applicant that specifies the purpose for the release, to whom the release is to be made, and that the applicant authorizes the release;

(ii) In accordance with one of the published routine uses in our system of records; or

(iii) As provided in paragraph (j)(2) of this section.

(2) Under section 408(f)(2) of the Stafford Act, 42 U.S.C. 5174(f)(2), FEMA must share applicant information with States in order for the States to make available any additional State and local disaster assistance to individuals and households.

(i) States receiving applicant information under this paragraph must protect such information in the same manner that the Privacy Act requires FEMA to protect it.

(ii) States receiving such applicant information shall not further disclose the information to other entities, and shall not use it for purposes other than providing additional State or local disaster assistance to individuals and households.

(k) *Flood Disaster Protection Act requirement.* (1) The Flood Disaster Protection Act of 1973, Public Law 93-234, as amended (42 U.S.C. 4106), imposes certain restrictions on federal financial assistance for acquisition and construction purposes. For the purpose of this paragraph, *financial assistance for acquisition or construction purposes* means assistance to an individual or

household to buy, receive, build, repair or improve insurable portions of a home and/or to purchase or repair insurable contents. For a discussion of what elements of a home and contents are insurable, See 44 CFR part 61, Insurance Coverage and Rates.

(2) Individuals or households that are located in a special flood hazard area may not receive Federal Assistance for National Flood Insurance Program (NFIP)—insurable real and/or personal property, damaged by a flood, unless the community in which the property is located is participating in the NFIP (See 44 CFR part 59.1), or the exception in 42 U.S.C. 4105(d) applies. However, if the community in which the damaged property is located qualifies for and enters the NFIP during the six-month period following the declaration, the Governor's Authorized Representative may request a time extension for FEMA (See § 206.112) to accept registrations and to process assistance applications in that community.

(3) *Flood insurance purchase requirement:* (i) As a condition of the assistance and in order to receive any Federal assistance for future flood damage to any insurable property, individuals and households named by FEMA as eligible recipients under section 408 of the Stafford Act who receive assistance, due to flood damages, for acquisition or construction purposes under this subpart must buy and maintain flood insurance, as required in 42 U.S.C. 4012a, for at least the assistance amount. This applies only to real and personal property that is in or will be in a designated Special Flood Hazard Area and that can be insured under the National Flood Insurance Program.

(A) If the applicant is a homeowner, flood insurance coverage must be maintained at the address of the flood-damaged property for as long as the address exists. The flood insurance requirement is reassigned to any subsequent owner of the flood-damaged address.

(B) If the applicant is a renter, flood insurance coverage must be maintained on the contents for as long as the renter resides at the flood-damaged rental unit. The restriction is lifted once the renter moves from the rental unit.

(C) When financial assistance is used to purchase a dwelling, flood insurance coverage must be maintained on the dwelling for as long as the dwelling exists and is located in a designated Special Flood Hazard Area. The flood insurance requirement is reassigned to any subsequent owner of the dwelling.

(ii) FEMA may not provide financial assistance for acquisition or construction purposes to individuals or households who fail to buy and maintain flood insurance required under paragraph (k)(3)(i) of this section or required by the Small Business Administration.

(l) *Environmental requirements.* Assistance provided under this subpart must comply with the National Environmental Policy Act (NEPA) and other environmental laws and Executive Orders, consistent with 44 CFR part 10.

(m) *Historic preservation.* Assistance provided under this subpart generally does not have the potential to affect historic properties and thus is exempted from review in accordance with section 106 of the National Historic Preservation Act, with the exception of ground disturbing activities and construction related to §§ 206.117(b)(1)(ii) (Temporary housing), 206.117(b)(3) (Replacement housing), and 206.117(b)(4) (Permanent housing construction).

[67 FR 61452, Sept. 30, 2002; 67 FR 62896, Oct. 9, 2002]

§ 206.111 Definitions.

Adequate, alternate housing means housing that accommodates the needs of the occupants; is within the normal commuting patterns of the area or is within reasonable commuting distance of work, school, or agricultural activities that provide over 50 percent of the household income; and is within the financial ability of the occupant.

Alternative housing resources means any housing that is available or can quickly be made available in lieu of permanent housing construction and is cost-effective when compared to permanent construction costs. Some examples are rental resources, mobile homes and travel trailers.

Applicant means an individual or household who has applied for assistance under this subpart.

§ 206.111**44 CFR Ch. I (10-1-11 Edition)**

Assistance from other means includes monetary or in-kind contributions from voluntary or charitable organizations, insurance, other governmental programs, or from any sources other than those of the applicant.

Dependent means someone who is normally claimed as such on the Federal tax return of another, according to the Internal Revenue Code. It may also mean the minor children of a couple not living together, where the children live in the affected residence with the parent or guardian who does not actually claim them on the tax return.

Displaced applicant means one whose primary residence is uninhabitable, inaccessible, made unavailable by the landlord (to meet their disaster housing need) or not functional as a direct result of the disaster and has no other housing available in the area, *i.e.*, a secondary home or vacation home.

Effective date of assistance means the date that the applicant was determined eligible for assistance.

Eligible hazard mitigation measures are home improvements that an applicant can accomplish in order to reduce or prevent future disaster damages to essential components of the home.

Fair market rent means housing market-wide estimates of rents that provide opportunities to rent standard quality housing throughout the geographic area in which rental housing units are in competition. The fair market rent rates applied are those identified by the Department of Housing and Urban Development as being adequate for existing rental housing in a particular area.

Financial ability means the applicant's capability to pay housing costs. If the household income has not changed subsequent to or as a result of the disaster then the determination is based upon the amount paid for housing before the disaster. If the household income is reduced as a result of the disaster then the applicant will be deemed capable of paying 30 percent of gross post disaster income for housing. When computing financial ability, extreme or unusual financial circumstances may be considered by the Regional Administrator.

Financial assistance means cash that may be provided to eligible individuals

and households, usually in the form of a check or electronic funds transfer.

Functional means an item or home capable of being used for its intended purpose.

Household means all persons (adults and children) who lived in the pre-disaster residence who request assistance under this subpart, as well as any persons, such as infants, spouse, or part-time residents who were not present at the time of the disaster, but who are expected to return during the assistance period.

Housing costs means rent and mortgage payments, including principal, interest, real estate taxes, real property insurance, and utility costs.

Inaccessible means as a result of the incident, the applicant cannot reasonably be expected to gain entry to his or her pre-disaster residence due to the disruption, or destruction, of access routes or other impediments to access, or restrictions placed on movement by a responsible official due to continued health, safety or security problems.

In-kind contributions mean something other than monetary assistance, such as goods, commodities or services.

Lodging expenses means expenses for reasonable short-term accommodations that individuals or households incur in the immediate aftermath of a disaster. Lodging expenses may include but are not limited to the cost of brief hotel stays.

Manufactured housing sites means those sites used for the placement of government or privately owned mobile homes, travel trailers, and other manufactured housing units, including:

(1) *Commercial site*, a site customarily leased for a fee, which is fully equipped to accommodate a housing unit;

(2) *Private site*, a site that the applicant provides or obtains at no cost to the Federal Government, complete with utilities; and

(3) *Group site*, a site provided by the State or local government that accommodates two or more units and is complete with utilities.

Necessary expense means the cost associated with acquiring an item or items, obtaining a service, or paying for any other activity that meets a serious need.

Occupant means a resident of a housing unit.

Owner-occupied means that the residence is occupied by:

(1) The legal owner;

(2) A person who does not hold formal title to the residence and pays no rent, but is responsible for the payment of taxes or maintenance of the residence; or

(3) A person who has lifetime occupancy rights with formal title vested in another.

Permanent housing plan means a realistic plan that, within a reasonable timeframe, puts the disaster victim back into permanent housing that is similar to the victim's pre-disaster housing situation. A reasonable timeframe includes sufficient time for securing funds, locating a permanent dwelling, and moving into the dwelling.

Primary residence means the dwelling where the applicant normally lives, during the major portion of the calendar year; or the dwelling that is required because of proximity to employment, including agricultural activities, that provide 50 percent of the household's income.

Reasonable commuting distance means a distance that does not place undue hardship on an applicant. It also takes into consideration the traveling time involved due to road conditions, *e.g.*, mountainous regions or bridges out and the normal commuting patterns of the area.

Safe means secure from disaster-related hazards or threats to occupants.

Sanitary means free of disaster-related health hazards.

Serious need means the requirement for an item, or service, that is essential to an applicant's ability to prevent, mitigate, or overcome a disaster-related hardship, injury or adverse condition.

Significantly delayed means the process has taken more than 30 days.

Uninhabitable means the dwelling is not safe, sanitary or fit to occupy.

We, our, and us mean FEMA.

[67 FR 61452, Sept. 30, 2002; 67 FR 62896, Oct. 9, 2002]

§ 206.112 Registration period.

(a) *Initial period.* The standard FEMA registration period is 60 days following

the date that the President declares an incident a major disaster or an emergency.

(b) *Extension of the registration period.* The regional administrator or his/her designee may extend the registration period when the State requests more time to collect registrations from the affected population. The Regional Administrator or his/her designee may also extend the standard registration period when necessary to establish the same registration deadline for contiguous counties or States.

(c) *Late registrations.* After the standard or extended registration period ends, FEMA will accept late registrations for an additional 60 days. We will process late registrations for those registrants who provide suitable documentation to support and justify the reason for the delay in their registration.

[67 FR 61452, Sept. 30, 2002; 67 FR 62896, Oct. 9, 2002]

§ 206.113 Eligibility factors.

(a) *Conditions of eligibility.* In general, FEMA may provide assistance to individuals and households who qualify for such assistance under section 408 of the Stafford Act and this subpart. FEMA may only provide assistance:

(1) When the individual or household has incurred a disaster-related necessary expense or serious need in the state in which the disaster has been declared, without regard to their residency in that state;

(2) In a situation where the applicant has insurance, when the individual or household files a claim with their insurance provider for all potentially applicable types of insurance coverage and the claim is denied;

(3) In a situation where the applicant has insurance, when the insured individual or household's insurance proceeds have been significantly delayed through no fault of his, her or their own, and the applicant has agreed to repay the assistance to FEMA or the State from insurance proceeds that he, she or they receive later;

(4) In a situation where the applicant has insurance, when the insured individual or household's insurance proceeds are less than the maximum

§ 206.114

amount of assistance FEMA can authorize and the proceeds are insufficient to cover the necessary expenses or serious needs;

(5) In a situation where the applicant has insurance, when housing is not available on the private market;

(6) In a situation where the applicant has insurance, when the insured individual or household has accepted all assistance from other sources for which he, she, or they are eligible, including insurance, when the insured individual or household's insurance proceeds and all other assistance are less than the maximum amount of assistance FEMA can authorize and the proceeds are insufficient to cover the necessary expense or serious needs;

(7) When the applicant agrees to refund to FEMA or the State any portion of the assistance that the applicant receives or is eligible to receive as assistance from another source;

(8) With respect to housing assistance, if the primary residence has been destroyed, is uninhabitable, or is inaccessible; and

(9) With respect to housing assistance, if a renter's primary residence is no longer available as a result of the disaster.

(b) *Conditions of ineligibility.* We may not provide assistance under this subpart:

(1) For housing assistance, to individuals or households who are displaced from other than their pre-disaster primary residence;

(2) For housing assistance, to individuals or households who have adequate rent-free housing accommodations;

(3) For housing assistance, to individuals or households who own a secondary or vacation residence within reasonable commuting distance to the disaster area, or who own available rental property that meets their temporary housing needs;

(4) For housing assistance, to individuals or households who evacuated the residence in response to official warnings solely as a precautionary measure and who are able to return to the residence immediately after the incident;

(5) For housing assistance, for improvements or additions to the pre-disaster condition of property, except those required to comply with local

44 CFR Ch. I (10-1-11 Edition)

and State ordinances or eligible mitigation measures;

(6) To individuals or households who have adequate insurance coverage and where there is no indication that insurance proceeds will be significantly delayed, or who have refused assistance from insurance providers;

(7) To individuals or households whose damaged primary residence is located in a designated special flood hazard area, and in a community that is not participating in the National Flood Insurance Program, except that financial assistance may be provided to rent alternate housing and for medical, dental, funeral expenses and uninsurable items to such individuals or households. However, if the community in which the damaged property is located qualifies for and enters the NFIP during the six-month period following the declaration then the individual or household may be eligible;

(8) To individuals or households who did not fulfill the condition to purchase and maintain flood insurance as a requirement of receiving previous Federal disaster assistance;

(9) For business losses, including farm businesses and self-employment; or

(10) For any items not otherwise authorized by this section.

[67 FR 61452, Sept. 30, 2002; 67 FR 62896, Oct. 9, 2002]

§ 206.114 Criteria for continued assistance.

(a) FEMA expects all recipients of assistance under this subpart to obtain and occupy permanent housing at the earliest possible time. FEMA may provide continued housing assistance during the period of assistance, but not to exceed the maximum amount of assistance for the program, based on need, and generally only when adequate, alternate housing is not available or when the permanent housing plan has not been fulfilled through no fault of the applicant.

(b) *Additional criteria for continued assistance.* (1) All applicants requesting continued rent assistance must establish a realistic permanent housing plan no later than the first certification for continued assistance. Applicants will be required to provide documentation

showing that they are making efforts to obtain permanent housing.

(2) Applicants requesting continued rent assistance must submit rent receipts to show that they have exhausted the FEMA rent funds, and provide documentation identifying the continuing need.

(3) FEMA generally expects that pre-disaster renters will use their initial rental assistance to obtain permanent housing. However, we may certify them, during the period of assistance, for continued rent assistance when adequate, alternate housing is not available, or when they have not realized a permanent housing plan through no fault of their own.

(4) FEMA may certify pre-disaster owners for continued rent assistance, during the period of assistance, when adequate, alternate housing is not available, or when they have not realized a permanent housing plan through no fault of their own.

(5) Individuals or households requesting additional repair assistance will be required to submit information and/or documentation identifying the continuing need.

(6) Individuals or households requesting additional assistance for personal property, transportation, medical, dental, funeral, moving and storage, or other necessary expenses and serious needs will be required to submit information and/or documentation identifying the continuing need.

[67 FR 61452, Sept. 30, 2002; 67 FR 62896, Oct. 9, 2002]

§ 206.115 Appeals.

(a) Under the provisions of section 423 of the Stafford Act, applicants for assistance under this subpart may appeal any determination of eligibility for assistance made under this subpart. Applicants must file their appeal within 60 days after the date that we notify the applicant of the award or denial of assistance. Applicants may appeal the following:

- (1) Eligibility for assistance, including recoupment;
- (2) Amount or type of assistance;
- (3) Cancellation of an application;
- (4) The rejection of a late application;

(5) The denial of continued assistance under § 206.114, Criteria for continued assistance;

(6) FEMA's intent to collect rent from occupants of a housing unit that FEMA provides;

(7) Termination of direct housing assistance;

(8) Denial of a request to purchase a FEMA-provided housing unit at the termination of eligibility;

(9) The sales price of a FEMA-provided housing unit they want to purchase; or

(10) Any other eligibility-related decision.

(b) Appeals must be in writing and explain the reason(s) for the appeal. The applicant or person who the applicant authorizes to act on his or her behalf must sign the appeal. If someone other than the applicant files the appeal, then the applicant must also submit a signed statement giving that person authority to represent him, her or them.

(c) Applicants must appeal to the Regional Administrator or his/her designee for decisions made under this subpart, unless FEMA has made a grant to the State to provide assistance to individuals and households under § 206.120(a), State administration of other needs assistance; then the applicant must appeal to the State.

(d) An applicant may ask for a copy of information in his or her file by writing to FEMA or the State as appropriate. If someone other than the applicant is submitting the request, then the applicant must also submit a signed statement giving that person authority to represent him or her.

(e) The appropriate FEMA or State program official will notify the applicant in writing of the receipt of the appeal.

(f) The Regional Administrator or his/her designee or appropriate State official will review the original decision after receiving the appeal. FEMA or the State, as appropriate, will give the appellant a written notice of the disposition of the appeal within 90 days of the receiving the appeal. The decision of the appellate authority is final.

[67 FR 61452, Sept. 30, 2002; 67 FR 62896, Oct. 9, 2002]

§ 206.116

44 CFR Ch. I (10-1-11 Edition)

§ 206.116 Recovery of funds.

(a) The applicant must agree to repay to FEMA (when funds are provided by FEMA) and/or the State (when funds are provided by the State) from insurance proceeds or recoveries from any other source an amount equivalent to the value of the assistance provided. In no event must the amount repaid to FEMA and/or the State exceed the amount that the applicant recovers from insurance or any other source.

(b) An applicant must return funds to FEMA and/or the State (when funds are provided by the State) when FEMA and/or the State determines that the assistance was provided erroneously, that the applicant spent the funds inappropriately, or that the applicant obtained the assistance through fraudulent means.

[67 FR 61452, Sept. 30, 2002; 67 FR 62896, Oct. 9, 2002]

§ 206.117 Housing assistance.

(a) *Purpose.* FEMA may provide financial or direct assistance under this section to respond to the disaster-related housing needs of individuals and households.

(b) *Types of housing assistance*—(1) *Temporary housing assistance*—(i) *Financial assistance.* Eligible individuals and households may receive financial assistance to rent alternate housing resources, existing rental units, manufactured housing, recreational vehicles, or other readily fabricated dwellings. FEMA may also provide assistance for the reasonable cost of any transportation, utility hookups, or installation of a manufactured housing unit or recreational vehicle to be used for housing. This includes reimbursement for reasonable short-term lodging expenses that individuals or households incur in the immediate aftermath of a disaster.

(A) FEMA will include all members of a pre-disaster household in a single registration and will provide assistance for one temporary housing residence, unless the Regional Administrator or his/her designee determines that the size or nature of the household requires that we provide assistance for more than one residence.

(B) FEMA will base the rental assistance on the Department of Housing and

Urban Development's current fair market rates for existing rental units. FEMA will further base the applicable rate on the household's bedroom requirement and the location of the rental unit.

(C) All utility costs and utility security deposits are the responsibility of the occupant except where the utility does not meter utility services separately and utility services are a part of the rental charge.

(D) The occupant is responsible for all housing security deposits. In extraordinary circumstances, the Regional Administrator or his/her designee may authorize the payment of security deposits; however, the owner or occupant must reimburse the full amount of the security deposit to the Federal Government before or at the time that the temporary housing assistance ends.

(ii) *Direct assistance.* (A) FEMA may provide direct assistance in the form of purchased or leased temporary housing units directly to individuals or households who lack available housing resources and would be unable to make use of the assistance provided under paragraph (b)(1)(i) of this section.

(B) FEMA will include all members of a pre-disaster household in a single application and will provide assistance for one temporary housing residence, unless the Regional Administrator or his/her designee determines that the size or nature of the household requires that we provide assistance for more than one residence.

(C) Any site upon which a FEMA-provided housing unit is placed must comply with applicable State and local codes and ordinances, as well as 44 CFR part 9, Floodplain Management and Protection of Wetlands, and 44 CFR part 10, Environmental Considerations, and all other applicable environmental laws and Executive Orders.

(D) All utility costs and utility security deposits are the responsibility of the occupant except where the utility does not meter utility services separately and utility services are a part of the rental charge.

(E) FEMA-provided or funded housing units may be placed in the following locations:

(1) A commercial site that is complete with utilities; when the Regional Administrator or his/her designee determines that the upgrading of commercial sites, or installation of utilities on such sites, will provide more cost-effective, timely and suitable temporary housing than other types of resources, then Federal assistance may be authorized for such actions.

(2) A private site that an applicant provides, complete with utilities; when the Regional Administrator or his/her designee determines that the cost of installation or repairs of essential utilities on private sites will provide more cost effective, timely, and suitable temporary housing than other types of resources, then Federal assistance may be authorized for such actions.

(3) A group site that the State or local government provides that accommodates two or more units and is complete with utilities; when the Regional Administrator or his/her designee determines that the cost of developing a group site provided by the State or local government, to include installation or repairs of essential utilities on the sites, will provide more cost effective, timely, and suitable temporary housing than other types of resources, then Federal assistance may be authorized for such actions.

(4) A group site provided by FEMA, if the Regional Administrator or his/her designee determines that such a site would be more economical or accessible than one that the State or local government provides.

(F) After the end of the 18-month period of assistance, FEMA may begin to charge up to the fair market rent rate for each temporary housing unit provided. We will base the rent charged on the number of bedrooms occupied and needed by the household. When establishing the amount of rent, FEMA will take into account the financial ability of the household.

(G) We may terminate direct assistance for reasons that include, but are not limited to, the following:

(1) The period of assistance expired under § 206.110(e) and has not been extended;

(2) Adequate alternate housing is available to the occupant(s);

(3) The occupant(s) obtained housing assistance through either misrepresentation or fraud;

(4) The occupant(s) failed to comply with any term of the lease/rental agreement or other rules of the site where the unit is located.

(5) The occupant(s) does not provide evidence documenting that they are working towards a permanent housing plan.

(H) FEMA will provide a 15 day written notice when initiating the termination of direct assistance that we provide under our lease agreements. This notice will specify the reasons for termination of assistance and occupancy, the date of termination, the procedure for appealing the determination, and the occupant's liability for such additional charges as the Regional Administrator or his/her designee deems appropriate after the termination date, including fair market rent for the unit.

(I) Duplication of benefits may occur when an applicant has additional living expense insurance benefits to cover the cost of renting alternate housing. In these instances, FEMA may provide a temporary housing unit if adequate alternate housing is not available, or if doing so is in the best interest of the household and the government. We will establish fair market rent, not to exceed insurance benefits available.

(2) *Repairs.* (i) FEMA may provide financial assistance for the repairs of uninsured disaster-related damages to an owner's primary residence. The funds are to help return owner-occupied primary residences to a safe and sanitary living or functioning condition. Repairs may include utilities and residential infrastructure (such as private access routes, privately owned bridge, wells and/or septic systems) damaged by a major disaster.

(ii) The type of repair FEMA authorizes may vary depending upon the nature of the disaster. We may authorize repair of items where feasible or replacement when necessary to insure the safety or health of the occupant and to make the residence functional.

(iii) FEMA may also provide assistance for eligible hazard mitigation measures that reduce the likelihood of future damage to damaged residences, utilities or infrastructure.

§ 206.118**44 CFR Ch. I (10-1-11 Edition)**

(iv) Eligible individuals or households may receive up to \$5,000 under this paragraph, adjusted annually to reflect changes in the CPI, to repair damages to their primary residence without first having to show that the assistance can be met through other means, except insurance proceeds.

(v) The individual or household is responsible for obtaining all local permits or inspections that applicable State or local building codes may require.

(3) *Replacement.* FEMA may provide financial assistance under this paragraph to replace the primary residence of an owner-occupied dwelling if the dwelling was damaged by the disaster and there was at least \$10,000 of damage (as adjusted annually to reflect changes in the CPI). The applicant may either replace the dwelling in its entirety for \$10,000 (as adjusted annually to reflect changes in the CPI) or less, or may use the assistance toward the cost of acquiring a new permanent residence that is greater in cost than \$10,000 (as adjusted annually to reflect changes in the CPI). All replacement assistance awards must be individually approved by the Assistant Administrator for the Disaster Assistance Directorate. The Assistant Administrator for the Disaster Assistance Directorate may approve replacement assistance for applicants whose damages are less than \$10,000 in extraordinary circumstances where replacement assistance is more appropriate than other forms of housing assistance.

(4) *Permanent housing construction.* FEMA may provide financial or direct assistance to applicants for the purpose of constructing permanent housing in insular areas outside the continental United States and in other remote locations when alternative housing resources are not available and the types of financial or direct temporary housing assistance described at paragraph (b)(1) of this section are unavailable, infeasible, or not cost-effective.

(c) *Eligible costs.* (1) Repairs to the primary residence or replacement of items must be disaster-related and must be of average quality, size, and capacity, taking into consideration the needs of the occupant. Repairs to the primary residence are limited to res-

toration of the dwelling to a safe and sanitary living or functioning condition and may include:

(i) Repair or replacement of the structural components, including foundation, exterior walls, and roof;

(ii) Repair or replacement of the structure's windows and doors;

(iii) Repair or replacement of the structure's Heating, Ventilation and Air Conditioning System;

(iv) Repair or replacement of the structure's utilities, including electrical, plumbing, gas, water and sewage systems;

(v) Repair or replacement of the structure's interior, including floors, walls, ceilings, doors and cabinetry;

(vi) Repair to the structure's access and egress, including privately owned access road and privately owned bridge;

(vii) Blocking, leveling, and anchoring of a mobile home, and reconnecting or resetting mobile home sewer, water, electrical and fuel lines and tanks; and

(viii) Items or services determined to be eligible hazard mitigation measures.

(2) Replacement assistance, will be based on the verified disaster-related level of damage to the dwelling, or the statutory maximum, whichever is less.

(3) Permanent housing construction, in general, must be consistent with current minimal local building codes and standards where they exist, or minimal acceptable construction industry standards in the area, including reasonable hazard mitigation measures, and federal environmental laws and regulations. Dwellings will be of average quality, size and capacity, taking into consideration the needs of the occupant.

[67 FR 61452, Sept. 30, 2002; 67 FR 62896, Oct. 9, 2002]

§ 206.118 Disposal of housing units.

(a) FEMA may sell housing units purchased under § 206.117(b)(1)(ii). Temporary housing, direct assistance, as follows:

(1) Sale to an applicant.

(i) Sale to the individual or household occupying the unit, if the occupant lacks permanent housing, has a site that complies with local codes and ordinances and part 9 of this Title.

(ii) Adjustment to the sales price. FEMA may approve adjustments to the

sales price when selling a housing unit to the occupant of a unit if the purchaser is unable to pay the fair market value of the home or unit and when doing so is in the best interest of the applicant and FEMA.

(iii) FEMA may sell a housing unit to the occupant only on the condition that the purchaser agrees to obtain and maintain hazard insurance, as well as flood insurance on the unit if it is or will be in a designated Special Flood Hazard Area.

(2) Other methods of disposal:

(i) FEMA may sell, transfer, donate, or otherwise make a unit available directly to a State or other governmental entity, or to a voluntary organization, for the sole purpose of providing temporary housing to disaster victims in major disasters and emergencies. As a condition of the sale, transfer, or donation, or other method of provision, the State, governmental entity, or voluntary organization must agree to:

(A) Comply with the nondiscrimination provisions of the Stafford Act, 42 U.S.C. 5151; and

(B) Obtain and maintain hazard insurance on the unit, as well as flood insurance if the housing unit is or will be in a designated Special Flood Hazard Area.

(ii) FEMA may also sell housing units at a fair market value to any other person.

(b) A unit will be sold "as is, where is", except for repairs FEMA deems necessary to protect health or safety, which are to be completed before the sale. There will be no implied warranties. In addition, FEMA will inform the purchaser that he/she may have to bring the unit up to codes and standards that are applicable at the proposed site.

[67 FR 61452, Sept. 30, 2002; 67 FR 62896, Oct. 9, 2002]

§ 206.119 Financial assistance to address other needs.

(a) *Purpose.* FEMA and the State may provide financial assistance to individuals and households who have other disaster-related necessary expenses or serious needs. To qualify for assistance under this section, an applicant must also:

(1) Apply to the United States Small Business Administration's (SBA) Disaster Home Loan Program for all available assistance under that program; and

(2) Be declined for SBA Disaster Home Loan Program assistance; or

(3) Demonstrate that the SBA assistance received does not satisfy their total necessary expenses or serious needs arising out of the major disaster.

(b) *Types of assistance.* (1) Medical, dental, and funeral expenses. FEMA may provide financial assistance for medical, dental and funeral items or services to meet the disaster-related necessary expenses and serious needs of individuals and households.

(2) Personal property, transportation, and other expenses.

(i) FEMA may provide financial assistance for personal property and transportation items or services to meet the disaster-related necessary expenses and serious needs of individuals and households.

(ii) FEMA may provide financial assistance for other items or services that are not included in the specified categories for other assistance but which FEMA approves, in coordination with the State, as eligible to meet unique disaster-related necessary expenses and serious needs of individuals and households.

(c) *Eligible costs*—(1) *Personal property.* Necessary expenses and serious needs for repair or replacement of personal property are generally limited to the following:

(i) Clothing;

(ii) Household items, furnishings or appliances;

(iii) Tools, specialized or protective clothing, and equipment required by an employer as a condition of employment;

(iv) Computers, uniforms, schoolbooks and supplies required for educational purposes; and

(v) Cleaning or sanitizing any eligible personal property item.

(2) *Transportation.* Necessary expenses or serious needs for transportation are generally limited to the following:

(i) Repairing or replacing vehicles; and

§ 206.120**44 CFR Ch. I (10-1-11 Edition)**

(ii) Financial assistance for public transportation and any other transportation related costs or services.

(3) *Medical expenses.* Medical expenses are generally limited to the following:

- (i) Medical costs;
- (ii) Dental costs; and
- (iii) Repair or replacement of medical equipment.

(4) *Funeral expenses.* Funeral expenses are generally limited to the following

- (i) Funeral services;
- (ii) Burial or cremation; and
- (iii) Other related funeral expenses.

(5) *Moving and storage expenses.* Necessary expenses and serious needs related to moving and storing personal property to avoid additional disaster damage generally include storage of personal property while disaster-related repairs are being made to the primary residence, and return of the personal property to the individual or household's primary residence.

(6) *Other.* Other disaster-related expenses not addressed in this section may include:

(i) The purchase of a Group Flood Insurance Policy as described in paragraph (d) of this section.

(ii) Other miscellaneous items or services that FEMA, in consultation with the State, determines are necessary expenses and serious needs.

(d) *Group Flood Insurance purchase.* Individuals identified by FEMA as eligible for "Other Needs" assistance under section 408 of the Stafford Act as a result of flood damage caused by a Presidentially-declared major disaster and who reside in a special flood hazard area (SFHA) may be included in a Group Flood Insurance Policy (GFIP) established under the National Flood Insurance Program (NFIP) regulations at 44 CFR 61.17.

(1) The premium for the GFIP is a necessary expense within the meaning of this section. FEMA or the State shall withhold this portion of the Other Needs award and provide it to the NFIP on behalf of individuals and households who are eligible for coverage. The coverage shall be equivalent to the maximum assistance amount established under section 408 of the Stafford Act.

(2) FEMA or the State IHP staff shall provide the NFIP with records of individuals who received an "Other Needs"

award and are to be insured through the GFIP. Records of "Other Needs" applicants to be insured shall be accompanied by payments to cover the premium amounts for each applicant for the 3-year policy term. The NFIP will then issue a Certificate of Flood Insurance to each applicant. Flood insurance coverage becomes effective on the 30th day following the receipt of records of GFIP insureds and their premium payments from the State or FEMA, and such coverage terminates 36 months from the inception date of the GFIP, which is 60 days from the date of the disaster declaration.

(3) Insured applicants would not be covered if they are determined to be ineligible for coverage based on a number of exclusions established by the NFIP. Therefore, once applicants/policy-holders receive the Certificate of Flood Insurance that contains a list of the policy exclusions, they should review that list to see if they are ineligible for coverage. Those applicants who fail to do this may find that their property is, in fact, not covered by the insurance policy when the next flooding incident occurs and they file for losses. Once the applicants find that their damaged buildings, contents, or both, are ineligible for coverage, they should notify the NFIP in writing in order to have their names removed from the GFIP, and to have the flood insurance maintenance requirement expunged from the data-tracking system.

[67 FR 61452, Sept. 30, 2002; 67 FR 62896, Oct. 9, 2002]

§ 206.120 State administration of other needs assistance.

(a) *State administration of other needs assistance.* A State may request a grant from FEMA to provide financial assistance to individuals and households in the State under § 206.119. The State may also expend administrative costs not to exceed 5 percent of the amount of the grant in accordance with section 408(f)(1)(b) of the Stafford Act. Any State that administers the program to provide financial assistance to individuals and households must administer the program consistent with § 206.119 and the State Administrative Option and the State Administrative Plan

that we describe at paragraph (b) and (c) of this section.

(b) *State administrative options.* The delivery of assistance under § 206.119 is contingent upon the State choosing an administrator for the assistance. The State may either request that FEMA administer the assistance or the State may request a grant from FEMA for State administration. The Governor or designee will execute the State Administrative Option annually. During non-disaster periods the State may submit any proposed amendments to the administrative option in writing to the FEMA Regional Administrator. FEMA shall review the request and respond to the Governor or his/her designee within 45 days of receipt of the proposed amendment;

(c) *State Administrative Plan (SAP).* The delivery of assistance by a State under this section is contingent upon approval of a SAP, which describes the procedures the State will use to deliver assistance under section 408 of the Stafford Act, 42 U.S.C. 5174, when a State requests a grant to administer Other Needs assistance. All implementation procedures must be in compliance with Federal laws and requirements, State laws and procedures, and paragraphs (c) and (d) of this section.

(1) *Timeframe for submission of SAP.* A signed SAP, or renewal, must be provided to the FEMA Regional Administrator prior to November 30 of each year. A SAP shall be effective for at least one year, and must be resubmitted in full every three years.

(2) *Renewals.* Annual updates/revisions to the SAP must be submitted by November 30 of each year for FEMA's review and approval by December 31. If the SAP does not need to be updated/revised, a letter from the State stating the SAP is still current must be submitted by November 30 to document the SAP submission requirement.

(3) *Amendments.* The State may request amendments to the SAP at any time. An amendment is effective upon signature by the FEMA Regional Administrator and the Governor or his/her designee. The State may request an amendment to the administrative plan as follows:

(i) *During non-disaster periods.* The State may submit any proposed amend-

ments to the SAP in writing to the FEMA Regional Administrator. FEMA shall review the request and respond to the Governor or his/her designee within 45 days of receipt of the proposed amendment;

(ii) *During Presidentially-declared disasters.* The State shall submit any proposed amendments to the SAP in writing to FEMA within three days after disaster declaration. FEMA shall review the request and respond to the Governor or his/her designee within three days of receipt.

(d) *State administrative plan requirements.* The State shall develop a plan for the administration of the Other Needs assistance that describes, at a minimum, the following items:

(1) Assignment of grant program responsibilities to State officials or agencies.

(2) Staffing Schedule that identifies the position, salary and percent of time for each staff person assigned to program administration and/or implementation.

(3) Procedures for interaction with applicants:

(i) Procedures for notifying potential applicants of the availability of the program, to include the publication of application deadlines, pertinent program descriptions, and further program information on the requirements which must be met by the applicant in order to receive assistance;

(ii) Procedures for registration and acceptance of applications, including late applications, up to the prescribed time limitations as described in § 206.112;

(iii) Procedures for damage inspection and/or other verifications.

(iv) Eligibility determinations.

(A) *Under a cooperative agreement:* The procedure for eligibility determinations when the FEMA application and inspection systems are used by the State but additional eligibility criteria are necessary to make State eligibility determinations.

(B) *Under a grant:* The procedure for eligibility determinations when the FEMA application and inspection systems are not used by the State, including the method for determination of costs for personal property and provision of a standard list for personal

§ 206.120

property items with allowable costs identified for each item.

(v) Procedures for checking compliance for mandated flood insurance in accordance with § 206.110(k);

(vi) Procedures for notifying applicants of the State's eligibility decision;

(vii) Procedures for disbursement of funds to applicants;

(viii) Procedures for applicant appeal processing. Procedures must provide for any appealable determination as identified in § 206.115(a);

(ix) Procedures for expeditious reporting of allegations of fraud, waste or abuse to DHS Office of Inspector General.

(x) Capacity to investigate allegations of waste, fraud and abuse independently if requested by DHS OIG, or in conjunction with DHS OIG.

(xi) Provisions for safeguarding the privacy of applicants and the confidentiality of information, in accordance with § 206.110(j).

(xii) Provisions for complying with § 206.116(b), Recovery of funds.

(4) Procedures for financial management, accountability and oversight.

(i) Procedures for verifying by random sample that assistance funds are meeting applicants' needs, are not duplicating assistance from other means, and are meeting flood insurance requirements.

(ii) Provisions for specifically identifying, in the accounts of the State, all Federal and State funds committed to each grant program; and for immediately returning, upon discovery, all Federal funds that are excess to program needs.

(iii) Provisions for accounting for cash in compliance with State law and procedure and the Cash Management Improvement Act of 1990, as amended.

(iv) Reports.

(A) Procedures for preparing and submitting quarterly and final Financial Status Reports in compliance with 44 CFR 13.41.

(B) Procedures for submitting Program Status Reports in compliance with paragraph (f)(2)(iii) of this section.

(C) Procedures for preparing and submitting the PSC 272, Federal Cash Transactions Report.

44 CFR Ch. I (10-1-11 Edition)

(v) Procedures for inventory control, including a system for identifying and tracking placement of equipment purchased with grant funds or loaned by FEMA to the State for purposes of administering the Individuals and Households Program.

(vi) Procedures for return of funds to FEMA.

(vii) State criteria and requirements for closing out Federal grants.

(viii) Process for retention of records.

(e) *Application for assistance procedure.* This section describes the procedures that must be followed by the State to submit an application to administer the Individuals and Households Program through a Grant Award or a Cooperative Agreement.

(1) The State must submit an Other Needs assistance application to the Regional Administrator within 72 hours of the major disaster declaration before IHP assistance may be provided. FEMA will work with the State to approve the application or to modify it so it can be approved.

(2) The application shall include:

(i) Standard Form (SF) 424, Application for Federal Assistance;

(ii) FEMA Form (FF) 20-20 Budget Information—Non Construction Programs;

(iii) Copy of approved indirect cost rate from a Federal cognizant agency if indirect costs will be charged to the grant. Indirect costs will be included in the administrative costs of the grant allowed under paragraph (a) of this section; and

(iv) Disaster specific changes to the State Administrative Plan, if applicable.

(f) *Grants management oversight*—(1) *Period of assistance.* All costs must be incurred within the period of assistance, which is 18 months from the date of the disaster declaration. This period of assistance may be extended if requested in writing by the State and approved in writing by the Assistant Administrator for the Disaster Assistance Directorate. The State must include a justification for an extension of the assistance period.

(2) *Reporting requirements.* (i) The State shall provide financial status reports, as required by 44 CFR 13.41.

(ii) The State shall provide copies of PSC 272, Federal Cash Transactions Report to FEMA. The PSC 272 is required quarterly by the Department of Health and Human Services from users of its SMARTLINK service.

(iii) The State shall provide weekly program status reports which include the number and dollar amount of applications approved, the amount of assistance disbursed and the number of appeals received.

(3) *Ineligible costs.* Funds provided to the State for the administrative costs of administering Other Needs assistance shall not be used to pay regular time for State employees, but may be used to pay overtime for those employees.

(4) *Closeout.* The State has primary responsibility to closeout the tasks approved under the Grant Award. In compliance with the period of assistance, as identified in the award, the State must reconcile costs and payments, resolve negative audit findings, and submit final reports within 90 days of the end of the period of assistance. The State must also provide an inventory of equipment purchased with grant funds and loaned to it by FEMA for purposes of administering IHP, which lists the items, dates, and costs of equipment purchased.

(5) *Recovery of funds.* The State is responsible for recovering assistance awards from applicants obtained fraudulently, expended for unauthorized items or services, expended for items for which assistance is received from other means, and awards made in error.

(i) Adjustments to expenditures will be made as funding is recovered and will be reported quarterly on the Financial Status Report.

(ii) A list of applicants from whom recoveries are processed will be submitted on the quarterly progress report to allow FEMA to adjust its program and financial information systems.

(iii) The State will reimburse FEMA for the Federal share of awards not recovered through quarterly financial adjustments within the 90 day close out liquidation period of the grant award.

(iv) If the State does not reimburse FEMA within the 90 day close out liquidation period, a bill for collection will be issued. FEMA will charge inter-

est, penalties, and administrative fees on delinquent bills for collection in accordance with the Debt Collection Improvement Act. Recovered funds, interest, penalties, and fees owed to FEMA through delinquent bills for collection may be offset from other FEMA disaster assistance programs from which the State is receiving funds or future grant awards from FEMA or other Federal agencies. Debt collection procedures will be followed as outlined in 44 CFR part 11.

(6) *Audit requirements.* Pursuant to 44 CFR 13.26, uniform audit requirements apply to all grants provided under this subpart.

(7) *Document retention.* Pursuant to 44 CFR 13.42, States are required to retain records, including source documentation, to support expenditures/costs incurred against the grant award, for 3 years from the date of submission to FEMA of the final Financial Status Report. The State is responsible for resolving questioned costs that may result from an audit conducted during the three-year record retention period and for returning disallowed costs from ineligible activities.

[67 FR 61452, Sept. 30, 2002; 67 FR 62896, 62897, Oct. 9, 2002]

§§ 206.121–206.130 [Reserved]

Subpart E—Individual and Family Grant Programs

§ 206.131 Individual and Family Grant Program for major disasters declared on or before October 14, 2002.

(a) *General.* The Governor may request that a Federal grant be made to a State for the purpose of such State making grants to individuals or families who, as a result of a major disaster, are unable to meet disaster-related necessary expenses or serious needs for Presidential-declared major disasters declared on or before October 14, 2002 (Note that the reference to section 411 of the Stafford Act refers to prior legislation amended by the Disaster Mitigation Act 2000). The total Federal grant under this section will be equal to 75 percent of the actual cost of meeting necessary expenses or serious needs of individuals and families, plus

§ 206.131**44 CFR Ch. I (10-1-11 Edition)**

State administrative expenses not to exceed 5 percent of the Federal grant (see paragraph (g) of this section). The total Federal grant is made only on condition that the remaining 25 percent of the actual cost of meeting individuals' or families' necessary expenses or serious needs is paid from funds made available by the State. With respect to any one major disaster, an individual or family may not receive a grant or grants under this section totaling more than \$10,000 including both the Federal and State shares. The \$10,000 limit will be adjusted annually, at the beginning of each fiscal year, to reflect changes in the Consumer Price Index for all Urban Consumers. IFG assistance for damages or losses to real or personal property, or both, will be provided to individuals or families with those IFG-eligible losses totaling \$201 or more; those individuals with damages or losses of \$200 or less to real or personal property, or both, are ineligible. The Governor or his/her designee is responsible for the administration of the grant program. The provisions of this regulation are in accordance with 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(b) *Purpose.* The grant program is intended to provide funds to individuals or families to permit them to meet those disaster-related necessary expenses or serious needs for which assistance from other means is either unavailable or inadequate. Meeting those expenses and needs as expeditiously as possible will require States to make an early commitment of personnel and resources. States may make grants in instances where the applicant has not received other benefits to which he/she may be entitled by the time of application to the IFG program, and if the applicant agrees to repay all duplicated assistance to the State. The grant program is not intended to indemnify disaster losses or to permit purchase of items or services which may generally be characterized as nonessential, luxury, or decorative. Assistance under this program is not to be counted as income or a resource in the determination of eligibility for welfare or other income-tested programs supported by

the Federal Government, in that IFG assistance is intended to address only disaster-related needs.

(c) *Definitions used in this section.* (1) *Necessary expense* means the cost of a serious need.

(2) *Serious need* means the requirement for an item or service essential to an individual or family to prevent, mitigate, or overcome a disaster-related hardship, injury, or adverse condition.

(3) *Family* means a social unit living together and composed of:

(i) Legally married individuals or those couples living together as if they were married and their dependents; or

(ii) A single person and his/her dependents; or

(iii) Persons who jointly own the residence and their dependents.

(4) *Individual* means anyone who is not a member of a family as described above.

(5) *Dependent* means someone who is normally claimed as such on the Federal tax return of another, according to the Internal Revenue Code. It may also mean the minor children of a couple not living together where the children live in the affected residence with the parent who does not actually claim them on the tax return.

(6) *Expendable items* means consumables, as follows: linens, clothes, and basic kitchenware (pots, pans, utensils, dinnerware, flatware, small kitchen appliances).

(7) *Assistance from other means* means assistance including monetary or in-kind contributions, from other governmental programs, insurance, voluntary or charitable organizations, or from any sources other than those of the individual or family. It does not include expendable items.

(8) *Owner-occupied* means that the residence is occupied by: The legal owner; a person who does not hold formal title to the residence but is responsible for payment of taxes, maintenance of the residence, and pays no rent; or a person who has lifetime occupancy rights in the residence with formal title vested in another. In States where documentation proving ownership is not recorded or does not exist, the State is required to include in its administrative plan a State Attorney

General approved set of conditions describing adequate proof of ownership.

(9) *Flowage easement* means an area where the landowner has given the right to overflow, flood, or submerge the land to the government or other entity for a public purpose.

(d) *National eligibility criteria.* In administering the IFG program, a State shall determine the eligibility of an individual or family in accordance with the following criteria;

(1) *General.* (i) To qualify for a grant under this section, an individual or family representative must:

(A) Make application to all applicable available governmental disaster assistance programs for assistance to meet a necessary expense or serious need, and be determined not qualified for such assistance, or demonstrate that the assistance received does not satisfy the total necessary expense or serious need;

(B) Not have previously received or refused assistance from other means for the specific necessary expense or serious need, or portion thereof, for which application is made; and

(C) Certify to refund to the State that part of the grant for which assistance from other means is received, or which is not spent as identified in the grant award document.

(ii) Individuals and families who incur a necessary expense or serious need in the major disaster area may be eligible for assistance under this section without regard to their alienage, their residency in the major disaster area, or their residency within the State in which the major disaster has been declared except that for assistance in the "housing" category, ownership and residency in the declared disaster area are required (see paragraph (d)(2)(i) of this section).

(iii) The Flood Disaster Protection Act of 1973, Public Law 93-234, as amended, imposes certain restriction on approval of Federal financial assistance for acquisition and construction purposes. This paragraph states those requirements for the IFG program.

(A) For the purpose of this paragraph, *financial assistance for acquisition or construction purposes* means a grant to an individual or family to repair, replace, or rebuild the insurable portions

of a home, and/or to purchase or repair insurable contents. For a discussion of what elements of a home and contents are insurable, see 44 CFR part 61, Insurance Coverage and Rates.

(B) A State may not make a grant for acquisition or construction purposes where the structure to which the grant assistance relates is located in a designated special flood hazard area which has been identified by the Assistant Administrator for Mitigation for at least 1 year as floodprone, unless the community in which the structure is located is participating in the National Flood Insurance Program (NFIP). However, if a community qualifies for and enters the NFIP during the 6-month period following the major disaster declaration, the Governor's Authorized Representative (GAR) may request a time extension (see paragraph (j)(1)(ii) of this section) from the Regional Administrator for the purpose of accepting and processing grant applications in that community. The Regional Administrator or Assistant Administrator for the Disaster Assistance Directorate, as appropriate, may approve the State's request if those applicable governmental disaster assistance programs which were available during the original application period are available to the grant applicants during the extended application period.

(C)(1) The State may not make a grant for acquisition or construction purposes in a designated special flood hazard area in which the sale of flood insurance is available under the NFIP unless the individual or family obtains adequate flood insurance and maintains such insurance for as long as they live at that property address. The coverage shall equal the maximum grant amount established under § 411(f) of the Stafford Act. If the grantee is a homeowner, flood insurance coverage must be maintained on the residence at the flood-damaged property address for as long as the structure exists if the grantee, or any subsequent owner of that real estate, ever wishes to be assisted by the Federal government with any subsequent flood damages or losses to real or personal property, or both. If the grantee is a renter, flood insurance coverage must be maintained on the

§ 206.131

44 CFR Ch. I (10-1-11 Edition)

contents for as long as the renter resides at the flood-damaged property address. The restriction is lifted once the renter moves from the rental unit.

(2) Individuals named by a State as eligible recipients under § 411 of the Stafford Act for an IFG program award for flood damage as a result of a Presidential major disaster declaration will be included in a Group Flood Insurance Policy (GFIP) established under the National Flood Insurance Program (NFIP) regulations, at 44 CFR 61.17.

(i) The premium for the GFIP is a necessary expense within the meaning of this section. The State shall withhold this portion of the IFG award and provide it to the NFIP on behalf of individuals and families who are eligible for coverage. The coverage shall be equivalent to the maximum grant amount established under § 411(f) of the Stafford Act.

(ii) The State IFG program staff shall provide the NFIP with records of individuals who received an IFG award and are, therefore, to be insured. Records of IFG grantees to be insured shall be accompanied by payments to cover the premium amounts for each grantee for the 3-year policy term. The NFIP will then issue a Certificate of Flood Insurance to each grantee. Flood insurance coverage becomes effective on the 30th day following the receipt of records of GFIP insureds and their premium payments from the State, and terminates 36 months from the inception date of the GFIP, i.e., 60 days from the date of the disaster declaration.

(iii) Insured grantees would not be covered if they are determined to be ineligible for coverage based on a number of exclusions established by the NFIP. Therefore, once grantees/policyholders receive the Certificate of Flood Insurance that contains a list of the policy exclusions, they should review that list to see if they are ineligible for coverage. Those grantees who fail to do this may find that their property is, in fact, not covered by the insurance policy when the next flooding incident occurs and they file for losses. Once the grantees find that their damaged buildings, contents, or both, are ineligible for coverage, they should notify the NFIP in writing in order to have their names removed from the GFIP, and to

have the flood insurance maintenance requirement expunged from the NFIP data-tracking system. (If the grantee wishes to refer to or review a Standard Flood Insurance Policy, it will be made available by the NFIP upon request.)

(D) A State may not make a grant to any individual or family who received Federal disaster assistance for flood damage occurring after September 23, 1994, if that property has already received Federal flood-disaster assistance in a disaster declared after September 23, 1994, a flood insurance purchase and maintenance requirement was levied as a condition or result of receiving that Federal disaster assistance, and flood insurance was, in fact, not maintained in an amount at least equal to the maximum IFG grant amount. However, if that property was determined to be ineligible for NFIP flood insurance coverage and is in a special flood hazard area located in a community participating in the NFIP, then the State may continue to make grants to those individuals or families that receive additional damage in all subsequent Presidential declared major disasters involving floods.

(iv) In order to comply with the President's Executive Orders on Floodplain Management (E.O. 11988) and Protection of Wetlands (E.O. 11990), the State must implement the IFG program in accordance with FEMA regulations 44 CFR part 9. That part specifies which IFG program actions require a floodplain management decision-making process before a grant may be made, and also specifies the steps to follow in the decisionmaking process. Should the State determine that an individual or family is otherwise eligible for grant assistance, the State shall accomplish the necessary steps in accordance with that section, and request the Regional Administrator to make a final floodplain management determination.

(2) *Eligible categories.* Assistance under this section shall be made available to meet necessary expenses or serious needs by providing essential items or services in the following categories:

(i) Housing. With respect to primary residences (including mobile homes) which are owner-occupied at the time

of the disaster, grants may be authorized to:

- (A) Repair, replace, or rebuild;
- (B) Provide access. When an access serves more than one individual or family, an owner-occupant whose primary residence is served by the access may be eligible for a proportionate share of the cost of jointly repairing or providing such access. The owner-occupant may combine his/her grant funds with funds made available by the other individuals or families if a joint use agreement is executed (with no cost or charge involved) or if joint ownership of the access is agreed to;
- (C) Clean or make sanitary;
- (D) Remove debris from such residences. Debris removal is limited to the minimum required to remove health or safety hazards from, or protect against additional damage to the residence;
- (E) Provide or take minimum protective measures required to protect such residences against the immediate threat of damage, which means that the disaster damage is causing a potential safety hazard and, if not repaired, will cause actual safety hazards from common weather or environmental events (example: additional rain, flooding, erosion, wind); and
- (F) Minimization measures required by owner-occupants to comply with the provision of 44 CFR part 9 (Floodplain Management and Protection of Wetlands), to enable them to receive assistance from other means, and/or to enable them to comply with a community's floodplain management regulations.

(ii) Personal property. Proof of ownership of personal property is not required. This category includes:

- (A) Clothing;
- (B) Household items, furnishings, or appliances. If a predisaster renter receives a grant for household items, furnishings, or appliances and these items are an integral part of mobile home or other furnished unit, the predisaster renter may apply the funds awarded for these specific items toward the purchase of the furnished unit, and toward mobile home site development, towing, set-up, connecting and/or reconnecting;
- (C) Tools, specialized or protective clothing, and equipment which are re-

quired by an employer as a condition of employment;

(D) Repairing, cleaning or sanitizing any eligible personal property item; and

(E) Moving and storing to prevent or reduce damage.

(iii) Transportation. Grants may be authorized to repair, replace, or provide privately owned vehicles or to provide public transportation.

(iv) Medical or dental expenses.

(v) Funeral expenses. Grants may include funeral and burial (and/or cremation) and related expenses.

(vi) Cost of the first year's flood insurance premium to meet the requirement of this section.

(vii) Costs for estimates required for eligibility determinations under the IFG program. Housing and personal property estimates will be provided by the government. However, an applicant may appeal to the State if he/she feels the government estimate is inaccurate. The cost of an applicant-obtained estimate to support the appeal is not an eligible cost.

(viii) Other. A State may determine that other necessary expenses and serious needs are eligible for grant assistance. If such a determination is made, the State must summarize the facts of the case and thoroughly document its findings of eligibility. Should the State require technical assistance in making a determination of eligibility, it may provide a factual summary to the Regional Administrator and request guidance. The Assistant Administrator for the Disaster Assistance Directorate also may determine that other necessary expenses and serious needs are eligible for grant assistance. Following such a determination, the Assistant Administrator for the Disaster Assistance Directorate shall advise the State, through the Regional Administrator, and provide the necessary program guidance.

(3) *Ineligible categories.* Assistance under this section shall not be made available for any item or service in the following categories:

(i) Business losses, including farm businesses and self-employment;

(ii) Improvements or additions to real or personal property, except those

§ 206.131

required to comply with paragraph (d)(2)(i)(F) of this section;

- (iii) Landscaping;
- (iv) Real or personal property used exclusively for recreation; and
- (v) Financial obligations incurred prior to the disaster.

(4) *Verification.* The State will be provided most verification data on IFG applicants who were not required to first apply to the SBA. The FEMA Regional Administrator shall be responsible for performing most of the required verifications in the categories of housing (to include documentation of home ownership and primary residency); personal property; and transportation (to include notation of the plate or title number of the vehicle; the State may wish to follow up on this). Certain verifications may still be required to be performed by the State, such as on late applicants or reverifications, when FEMA or its contractors are no longer available, and on medical/dental, funeral and "other" categories. Eligibility determination functions shall be performed by the State. The SBA will provide copies of verification performed by SBA staff on housing and personal property (including vehicles) for those applicants who were first required to apply to SBA. This will enable the State to make an eligibility determination on those applicants. When an applicant disagrees with the grant award, he/she may appeal to the State. The cost of any estimate provided by the applicant in support of his/her appeal is not eligible under the program.

(e) *State administrative plan.* (1) The State shall develop a plan for the administration of the IFG program that includes, as a minimum, the items listed below.

- (i) Assignment of grant program responsibilities to State officials or agencies.

- (ii) Procedures for:

- (A) Notifying potential grant applicants of the availability of the program, to include the publication of application deadlines, pertinent program descriptions, and further program information on the requirements which must be met by the applicant in order to receive assistance;

44 CFR Ch. I (10-1-11 Edition)

- (B) Participating with FEMA in the registration and acceptance of applications, including late applications, up to the prescribed time limitations;

- (C) Reviewing verification data provided by FEMA and performing verifications for medical, dental, funeral, and "other" expenses, and also for all grant categories in the instance of late applications and appeals. FEMA will perform any necessary reverifications while its contract personnel are in the disaster area, and the State will perform any others;

- (D) Determining applicant eligibility and grant amounts, and notifying applicants of the State's decision;

- (E) Determining the requirement for flood insurance;

- (F) Preventing duplication of benefits between grant assistance and assistance from other means;

- (G) At the applicant's request, and at the State's option, reconsidering the State's determinations;

- (H) Processing applicant appeals, recognizing that the State has final authority. Such procedures must provide for:

- (1) The receipt of oral or written evidence from the appellate or representative;

- (2) A determination on the record; and

- (3) A decision by an impartial person or board;

- (I) Disbursing grants in a timely manner;

- (J) Verifying by random sample that grant funds are meeting applicants' needs, are not duplicating assistance from other means, and are meeting floodplain management and flood insurance requirements. Guidance on the sample size will be provided by the Regional Administrator;

- (K) Recovering grant funds obtained fraudulently, expended for unauthorized items or services, expended for items for which assistance is received from other means, or authorized for acquisition or construction purposes where proof of purchase of flood insurance is not provided to the State. Except for those mentioned in the previous sentence, grants made properly by the State on the basis of federally sponsored verification information are not subject to recovery by the State,

i.e., FEMA will not hold the State responsible for repaying to FEMA the Federal share of those grants. The State is responsible for its 25 percent share of those grants. As an attachment to its voucher, the State must identify each case where recovery actions have been taken or are to be taken, and the steps taken or to be taken to accomplish recovery;

(L) Conducting any State audits that might be performed in compliance with the Single Audit Act of 1984; and ensuring that appropriate corrective action is taken within 6 months after receipt of the audit report in instances of non-compliance with Federal laws and regulations;

(M) Reporting to the Regional Administrator, and to the Federal Coordinating Officer as required; and

(N) Reviewing and updating the plan each January.

(iii) National eligibility criteria as defined in paragraph (d) of this section.

(iv) Provisions for compliance with 44 CFR part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; 44 CFR part 11, Claims; the State's own debt collection procedures; and all applicable Federal laws and regulations.

(v) Pertinent time limitations for accepting applications, grant award activities, and administrative activities, to comply with Federal time limitations.

(vi) Provisions for specifically identifying, in the accounts of the State, all Federal and State funds committed to each grant program; for repaying the loaned State share as of the date agreed upon in the FEMA-State Agreement; and for immediately returning, upon discovery, all Federal funds that are excess to program needs.

(vii) Provisions for safeguarding the privacy of applicants and the confidentiality of information, except that the information may be provided to agencies or organizations who require it to make eligibility decisions for assistance programs, or to prevent duplication of benefits, to State agencies responsible for audit or program review, and to FEMA or the Government Accountability Office for the purpose of

making audits or conducting program reviews.

(viii) A section identifying the management and staffing functions in the IFG program, the sources of staff to fill these functions, and the management and oversight responsibilities of:

(A) The GAR;

(B) The department head responsible for the IFG program;

(C) The Grant Coordinating Officer, i.e., the State official assigned management responsibility for the IFG program; and

(D) The IFG program manager, where management responsibilities are assigned to such a person on a day-to-day basis.

(2) The Governor or his/her designee may request the Regional Administrator to provide technical assistance in the preparation of an administrative plan to implement this program.

(3) The Governor shall submit a revised State administrative plan each January to the Regional Administrator. The Regional Administrator shall review and approve the plan annually. In each disaster for which assistance under this section is requested, the Regional Administrator shall request the State to prepare any amendments required to meet current policy guidance. The Regional Administrator must then work with the State until the plan and amendment(s) are approved.

(4) The State shall make its approved administrative plan part of the State emergency plan, as described in subpart A of these regulations.

(f) *State initiation of the IFG program.* To make assistance under this section available to disaster victims, the Governor must, either in the request of the President for a major disaster declaration or by separate letter to the Regional Administrator, express his/her intention to implement the program. This expression of intent must include an estimate of the size and cost of the program. In addition, this expression of intent represents the Governor's agreement to the following:

(1) That the program is needed to satisfy necessary expenses and serious needs of disaster victims which cannot otherwise be met;

§ 206.131

44 CFR Ch. I (10-1-11 Edition)

(2) That the State will pay its 25 percent share of all grants to individuals and families;

(3) That the State will return immediately upon discovery advanced Federal funds that exceed actual requirements;

(4) To implement an administrative plan as identified in paragraph (e) of this section;

(5) To implement the grant program throughout the area designated as eligible for assistance by the Assistant Administrator for the Disaster Assistance Directorate; and

(6) To maintain close coordination with and provide reports to the Regional Administrator.

(g) *Funding.* (1) The Regional Administrator may obligate the Federal share of the IFG program based upon the determination that:

(i) The Governor has indicated the intention to implement the program, in accordance with paragraph (f) of this section;

(ii) The State's administrative plan meets the requirements of this section and current policy guidance; and

(iii) There is no excess advance of the Federal share due FEMA from a prior IFG program. The State may eliminate any such debt by paying it immediately, or by accepting an offset of the owed funds against other funds payable by FEMA to the State. When the excess Federal share has been repaid, the Regional Administrator may then obligate funds for the Federal share for the current disaster.

(2) The Regional Administrator may increase the State's letter of credit to meet the Federal share of program needs if the above conditions are met. The State may withdraw funds for the Federal share in the amount made available to it by the Regional Administrator. Advances to the State are governed by 44 CFR 13.21, Payment.

(3) The Regional Administrator may lend to the State its share in accordance with subpart A of these regulations.

(4) Payable costs are governed by 44 CFR 13.22, Allowable Costs, and the associated OMB Circular A-87, Cost Principles for State and Local Governments. Also, the costs must be in accordance with the national eligibility

criteria stated in paragraph (d) of this section, and the State's administrative plan, as stated in paragraph (e) of this section. The Federal contribution to this program shall be 75 percent of program costs and shall be made in accordance with 44 CFR 13.25, Matching or Cost-Sharing.

(h) *Final payment.* Final payment to the State for the Federal share of the IFG program plus administrative costs, is governed by 44 CFR 13.21, Payment, and 44 CFR 13.50, Closeout. The voucher is Standard Form 270, Request for Advance or Reimbursement. A separate voucher for the State share will be prepared, to include all disaster programs for which the State is requesting a loan of the nonFederal share. The FEMA Regional Administrator will analyze the voucher and approve, disapprove, or suspend approval until deficiencies are corrected.

(i) *Audits.* The State should perform the audits required by the Single Audit Act of 1984. Refer to 44 CFR part 13. All programs are subject to Federal audit.

(j) *Time limitations.* (1) In the administration of the IFG program:

(i) The Governor shall indicate his/her intention to implement the IFG program no later than 7 days following the day on which the major disaster was declared and in the manner set forth in paragraph (f) of this section;

(ii) Applications shall be accepted from individuals or families for a period of 60 days following the declaration, and for no longer than 30 days thereafter when the State determines that extenuating circumstances beyond the applicants' control (such as, but not limited to, hospitalization, illness, or inaccessibility to application centers) prevented them from applying in a timely manner. *Exception:* If applicants exercising their responsibility to first apply to the Small Business Administration do so after SBA's deadline, and SBA accepts their case for processing because of "substantial causes essentially beyond the control of the applicant," and provides a formal decline or insufficient loan based on lack of repayment ability, unsatisfactory credit, or unsatisfactory experience with prior loans (i.e., the reasons a loan denial client would normally be eligible for IFG assistance),

then such an application referred to the State by the SBA is considered as meeting the IFG filing deadline. The State may then apply its own criteria in determining whether to process the case for grant assistance. The State automatically has an extension of time to complete the processing, eligibility, and disbursement functions. However, the State must still complete all administrative activity within the 270-day period described in this section.

(iii) The State shall complete all grant award activity, including eligibility determinations, disbursement, and disposition of State level appeals, within 180 days following the declaration date. The Regional Administrator shall suspend all grant awards disbursed after the specified completion date; and

(iv) The State shall complete all administrative activities and submit final reports and vouchers to the Regional Administrator within 90 days of the completion of all grant award activity.

(2) The GAR may submit a request with appropriate justification for the extension of any time limitation. The Regional Administrator may approve the request for a period not to exceed 90 days. The Assistant Administrator for the Disaster Assistance Directorate may approve any request for a further extension of the time limitations.

(k) *Appeals—(1) Bills for collection (BFC's).* The State may appeal the issuance of a BFC by the Regional Administrator. Such an appeal shall be made in writing within 60 days of the issuance of the bill. The appeal must include information justifying why the bill is incorrect. The Regional Administrator shall review the material submitted and notify the State, in writing, within 15 days of receipt of the appeal, of his/her decision. Interest on BFC's starts accruing on the date of issuance of the BFC, but is not charged if the State pays within 30 days of issuance. If the State is successful in its appeal, interest will not be charged; if unsuccessful, interest is due and payable, as above.

(2) *Other appeals.* The State may appeal any other decision of the regional Administrator. Such appeals shall be made in writing within 60 days of the

Regional Administrator's decision. The appeal must include information justifying a reversal of the decision. The Regional Administrator shall review the material submitted and notify the State, in writing, within 15 days of receipt of the appeal, of his/her decision.

(3) *Appeals to the Assistant Administrator for the Disaster Assistance Directorate.* The State may further appeal the Regional Administrator's decisions to the Assistant Administrator for the Disaster Assistance Directorate. This appeal shall be made in writing within 60 days of the Regional Administrator's decision. The appeal must include information justifying a reversal of the decision. The Assistant Administrator for the Disaster Assistance Directorate shall review the material submitted and notify the State, in writing, within 15 days of receipt of the appeal, of his/her decision.

(1) *Exemption from garnishment.* All proceeds received or receivable under the IFG program shall be exempt from garnishment, seizure, encumbrance, levy, execution, pledge, attachment, release, or waiver. No rights under this provision are assignable or transferable. The above exemptions will not apply to the requirement imposed by paragraph (e)(1)(ii)(K) of this section.

(m) *Debt collection.* If the State has been unable to recover funds as stated in paragraph (e)(1)(k) of this section, the Regional Administrator shall institute debt collection activities against the individual according to the procedures outlined in 44 CFR part 11, Claims, and 44 CFR 13.52, Collection of Amounts Due.

[54 FR 11615, Mar. 21, 1989, as amended at 55 FR 28627, July 12, 1990; 60 FR 7130, Feb. 7, 1995; 61 FR 19201, May 1, 1996; 67 FR 61460, Sept. 30, 2002; 74 FR 15348, Apr. 3, 2009]

§ 206.132–206.140 [Reserved]

Subpart F—Other Individual Assistance

§ 206.141 Disaster unemployment assistance.

The authority to implement the disaster unemployment assistance (DUA) program authorized by section 410 of the Stafford Act, and the authority to

§§ 206.142–206.150**44 CFR Ch. I (10–1–11 Edition)**

issue regulations, are currently delegated to the Secretary of Labor.

§§ 206.142–206.150 [Reserved]**§ 206.151 Food commodities.**

(a) The Administrator will assure that adequate stocks of food will be ready and conveniently available for emergency mass feeding or distribution in any area of the United States which suffers a major disaster or emergency.

(b) In carrying out the responsibilities in paragraph (a) of this section, the Administrator may direct the Secretary of Agriculture to purchase food commodities in accordance with authorities prescribed in section 413(b) of the Stafford Act.

§§ 206.152–206.160 [Reserved]**§ 206.161 Relocation assistance.**

Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.

§§ 206.162–206.163 [Reserved]**§ 206.164 Disaster legal services.**

(a) Legal services, including legal advice, counseling, and representation in non fee-generating cases, except as provided in paragraph (b) of this section, may be provided to low-income individuals who require them as a result of a major disaster. For the purpose of this section, *low-income individuals* means those disaster victims who have insufficient resources to secure adequate legal services, whether the insufficiency existed prior to or results from the major disaster. In cases where questions arise about the eligibility of an individual for legal services, the Regional Administrator or his/her representative shall make a determination.

(b) Disaster legal services shall be provided free to such individuals. Fee-generating cases shall not be accepted by lawyers operating under these regu-

lations. For purposes of this section, a fee-generating case is one which would not ordinarily be rejected by local lawyers as a result of its lack of potential remunerative value. Where any question arises as to whether a case is fee-generating as defined in this section, the Regional Administrator or his/her representative, after any necessary consultation with local or State bar associations, shall make the determination. Any fee-generating cases shall be referred by the Regional Administrator or his/her representative to private lawyers, through existing lawyer referral services, or, where that is impractical or impossible, the Regional Director may provide a list of lawyers from which the disaster victim may choose. Lawyers who have rendered voluntary legal assistance under these regulations are not precluded from taking fee-generating cases referred to them in this manner while in their capacity as private lawyers.

(c) When the Regional Administrator determines after any necessary consultation with the State Coordinating Officer, that implementation of this section is necessary, provision of disaster legal services may be accomplished by:

(1) Use of volunteer lawyers under the terms of appropriate agreements;

(2) Use of Federal lawyers, provided that these lawyers do not represent an eligible disaster victim before a court or Federal agency in a matter directly involving the United States, and further provided that these lawyers do not act in a way which will violate the standards of conduct of their respective agencies or departments;

(3) Use of private lawyers who may be paid by the Federal Emergency Management Agency when the Regional Administrator has determined that there is no other means of obtaining adequate legal assistance for qualified disaster victims; or

(4) Any other arrangement the Regional Administrator deems appropriate.

The Assistant Administrator for the Disaster Assistance Directorate shall coordinate with appropriate Federal agencies and the appropriate national,

Federal Emergency Management Agency, DHS**§ 206.171**

state and local bar associations, as necessary, in the implementation of the disaster legal services programs.

(d) In the event it is necessary for FEMA to pay lawyers for the provision of legal services under these regulations, the Regional Administrator, in consultation with State and local bar associations, shall determine the amount of reimbursement due to the lawyers who have provided disaster legal services at the request of the Regional Administrator. At the Regional Administrator's discretion, administrative costs of lawyers providing legal services requested by him or her may also be paid.

(e) Provision of disaster legal services is confined to the securing of benefits under the Act and claims arising out of a major disaster.

(f) Any disaster legal services shall be provided in accordance with subpart A of these regulations, Non-discrimination in disaster assistance.

§§ 206.165–206.170 [Reserved]**§ 206.171 Crisis counseling assistance and training.**

(a) *Purpose.* This section establishes the policy, standards, and procedures for implementing section 416 of the Act, Crisis Counseling Assistance and Training. FEMA will look to the Director, National Institute of Mental Health (NIMH), as the delegate of the Secretary of the Department of Health and Human Services (DHHS).

(b) *Definitions.* (1) *Assistant Administrator* means the head of the Disaster Assistance Directorate; the official who approves or disapproves a request for assistance under section 416 of the Act, and is the final appeal authority.

(2) *Crisis* means any life situation resulting from a major disaster or its aftermath which so affects the emotional and mental equilibrium of a disaster victim that professional mental health counseling services should be provided to help preclude possible damaging physical or psychological effects.

(3) *Crisis counseling* means the application of individual and group treatment procedures which are designed to ameliorate the mental and emotional crises and their subsequent psychological and behavioral conditions re-

sulting from a major disaster or its aftermath.

(4) *Federal Coordinating Officer (FCO)* means the person appointed by the Administrator or Deputy Administrator to coordinate Federal assistance in an emergency or a major disaster.

(5) *Grantee* means the State mental health agency or other local or private mental health organization which is designated by the Governor to receive funds under section 416 of the Act.

(6) *Immediate services* means those screening or diagnostic techniques which can be applied to meet mental health needs immediately after a major disaster. Funds for immediate services may be provided directly by the Regional Administrator to the State or local mental health agency designated by the Governor, prior to and separate from the regular program application process of crisis counseling assistance.

(7) *Major disaster* means any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(8) *Project Officer* means the person assigned by the Secretary, DHHS, to monitor a crisis counseling program, provide consultation, technical assistance, and guidance, and be the contact point within the DHHS for program matters.

(9) *Regional Administrator* means the director of a regional office of FEMA, or the Disaster Recovery Manager, as the delegate of the Regional Administrator.

(10) *Secretary* means the Secretary of DHHS or his/her delegate.

(11) *State Coordinating Officer (SCO)* means the person appointed by the

§ 206.171

Governor to act in cooperation with the FCO.

(c) *Agency policy.* (1) It is agency policy to provide crisis counseling services, when required, to victims of a major disaster for the purpose of relieving mental health problems caused or aggravated by a major disaster or its aftermath. Assistance provided under this section is short-term in nature and is provided at no cost to eligible disaster victims.

(2) The Regional Administrator and Assistant Administrator for the Disaster Assistance Directorate, in fulfilling their responsibilities under this section, shall coordinate with the Secretary.

(3) In meeting the responsibilities under this section, the Secretary or his/her delegate will coordinate with the Assistant Administrator for the Disaster Assistance Directorate.

(d) *State initiation of the crisis counseling program.* To obtain assistance under this section, the Governor or his/her authorized representative must initiate an assessment of the need for crisis counseling services within 10 days of the date of the major disaster declaration. The purpose of the assessment is to provide an estimate of the size and cost of the program needed and to determine if supplemental Federal assistance is required. The factors of the assessment must include those described in paragraphs (f)(2) (ii) and (iii) and (g)(2) (iii) and (iv) of this section.

(e) *Public or private mental health agency programs.* If the Governor determines during the assessment that because of unusual circumstances or serious conditions within the State or local mental health network, the State cannot carry out the crisis counseling program, he/she may identify a public or private mental health agency or organization to carry out the program or request the Regional Administrator to identify, with the assistance of the Secretary, such an agency or organization. Preference should be given to the extent feasible and practicable to those public and private agencies or organizations which are located in or do business primarily in the major disaster area.

44 CFR Ch. I (10-1-11 Edition)

(f) *Immediate services.* If, during the course of the assessment, the State determines that immediate mental health services are required because of the severity and magnitude of the disaster, and if State or local resources are insufficient to provide these services, the State may request and the Regional Administrator, upon determining that State resources are insufficient, may provide funds to the State, separate from the application process for regular program funds (described at paragraph (g) of this section).

(1) The application must be submitted to the Regional Administrator no later than 14 days following the declaration of the major disaster. This application represents the Governor's agreement and/or certification:

(i) That the requirements are beyond the State and local governments' capabilities;

(ii) That the program, if approved, will be implemented according to the plan contained in the application approved by the Regional Administrator;

(iii) To maintain close coordination with and provide reports to the Regional Administrator; and

(iv) To include mental health disaster planning in the State's emergency plan prepared under title II of the Stafford Act.

(2) The application must include:

(i) The geographical areas within the designated disaster area for which services will be provided;

(ii) An estimate of the number of disaster victims requiring assistance;

(iii) A description of the State and local resources and capabilities, and an explanation of why these resources cannot meet the need;

(iv) A description of response activities from the date of the disaster incident to the date of application;

(v) A plan of services to be provided to meet the identified needs; and

(vi) A detailed budget, showing the cost of proposed services separately from the cost of reimbursement for any eligible services provided prior to application.

(3) *Reporting requirements.* The State shall submit to the Regional Administrator:

(i) A mid-program report only when a regular program grant application is

being prepared and submitted. This report will be included as part of the regular program grant application;

(ii) A final program report, a financial status report, and a final voucher 90 days after the last day of immediate services funding.

(4) Immediate services program funding:

(i) Shall not exceed 60 days following the declaration of the major disaster, except when a regular program grant application has been submitted;

(ii) May continue for up to 30 additional days when a regular program grant application has been submitted;

(iii) May be extended by the Regional Administrator, upon written request from the State, documenting extenuating circumstances; and

(iv) May reimburse the State for documented, eligible expenses from the date of the occurrence of the event or incurred in anticipation of and immediately preceding the disaster event which results in a declaration.

(v) Any funds granted pursuant to an immediate services program, paragraph (f) of this section, shall be expended solely for the purposes specified in the approved application and budget, these regulations, the terms and conditions of the award, and the applicable principles prescribed in 44 CFR part 13.

(5) *Appeals.* There are two levels of appeals. If a State submits appeals at both levels, the first appeal must be submitted early enough to allow the latter appeal to be submitted within 60 days following the date of the funding determination on the immediate services program application.

(i) The State may appeal the Regional Administrator's decision. This appeal must be submitted in writing within 60 days of the date of notification of the application decision, but early enough to allow for further appeal if desired. The appeal must include information justifying a reversal of the decision. The Regional Director shall review the material submitted, and after consultation with the Secretary, notify the State, in writing within 15 days of receipt of the appeal, of his/her decision;

(ii) The State may further appeal the Regional Administrator's decision to the Assistant Administrator for the

Disaster Assistance Directorate. This appeal shall be made in writing within 60 days of the date of the Regional Administrator's notification of the decision on the immediate services application. The appeal must include information justifying a reversal of the decision. The Assistant Administrator for the Disaster Assistance Directorate, or other impartial person, shall review the material submitted, and after consultation with the Secretary and Regional Administrator, notify the State, in writing, within 15 days of receipt of the appeal, of his/her decision.

(g) *Regular program.* (1) The application must be submitted by the Governor or his/her authorized representative to the Assistant Administrator for the Disaster Assistance Directorate through the Regional Administrator, and simultaneously to the Secretary no later than 60 days following the declaration of the major disaster. This application represents the Governor's agreement and/or certification:

(i) That the requirements are beyond the State and local governments' capabilities;

(ii) That the program, if approved, will be implemented according to the plan contained in the application approved by the Assistant Administrator for the Disaster Assistance Directorate;

(iii) To maintain close coordination with and provide reports to the Regional Administrator, the Assistant Administrator for the Disaster Assistance Directorate, and the Secretary; and

(iv) To include mental health disaster planning in the State's emergency plan prepared under title II of the Stafford Act.

(2) The application must include:

(i) Standard Form 424, Application for Federal Assistance;

(ii) The geographical areas within the designated disaster area for which services will be supplied;

(iii) An estimate of the number of disaster victims requiring assistance. This documentation of need should include the extent of physical, psychological, and social problems observed, the types of mental health problems encountered by victims, and a description of how the estimate was made;

§ 206.171

(iv) A description of the State and local resources and capabilities, and an explanation of why these resources cannot meet the need;

(v) A plan of services which must include at a minimum:

(A) The manner in which the program will address the needs of the affected population, including the types of services to be offered, an estimate of the length of time for which mental health services will be required, and the manner in which long-term cases will be handled;

(B) A description of the organizational structure of the program, including designation by the Governor of an individual to serve as administrator of the program. If more than one agency will be delivering services, the plan to coordinate services must also be described;

(C) A description of the training program for project staff, indicating the number of workers needing such training;

(D) A description of the facilities to be utilized, including plans for securing office space if necessary to the project; and

(E) A detailed budget, including identification of the resources the State and local governments will commit to the project, proposed funding levels for the different agencies if more than one is involved, and an estimate of the required Federal contribution.

(3) *Reporting requirements.* The State shall submit the following reports to the Regional Administrator, the Secretary, and the State Coordinating Officer:

(i) Quarterly progress reports, as required by the Regional Administrator or the Secretary, due 30 days after the end of the reporting period. This is consistent with 44 CFR 13.40, Monitoring and Reporting Program Performance;

(ii) A final program report, to be submitted within 90 days after the end of the program period. This is also consistent with 44 CFR 13.41, Financial Reporting, to be submitted with the final program report; and

(iii) An accounting of funds, in accordance with 44 CFR 13.41, Financial Reporting, to be submitted with the final program report; and

44 CFR Ch. I (10-1-11 Edition)

(iv) Such additional reports as the Regional Administrator, Secretary, or SCO may require.

(4) *Regular program funding:*

(i) Shall not exceed 9 months from the date of the DHHS notice of grant award, except that upon the request of the State to the Regional Administrator and the Secretary, the Assistant Administrator for the Disaster Assistance Directorate may authorize up to 90 days of additional program period because of documented extraordinary circumstances. In limited circumstances, such as disasters of a catastrophic nature, the Assistant Administrator for the Disaster Assistance Directorate may extend the program period for more than 90 days where he or she deems it to be in the public interest.

(ii) The amount of the regular program grant award will take into consideration the Secretary's estimate of the sum necessary to carry out the grant purpose.

(iii) Any funds granted pursuant to a regular program, paragraph (g) of this section, shall be expended solely for the purposes specified in the approved application and budget, these regulations, the terms and conditions of the award, and the applicable cost principles prescribed in subpart Q of 45 CFR part 92.

(5) *Appeals.* The State may appeal the Assistant Administrator for the Disaster Assistance Directorate's decision, in writing, within 60 days of the date of notification of the decision. The appeal must include information justifying a reversal of the decision. The Assistant Administrator for the Disaster Assistance Directorate, or other impartial person, in consultation with the Secretary and Regional Administrator, shall review the material submitted and notify the State, in writing within 15 days of receipt of the appeal, of his/her decision.

(h) *Eligibility guidelines.* (1) For services. An individual may be eligible for crisis counseling services if he/she was a resident of the designated major disaster areas or was located in the area at the time of the disaster event and if:

(i) He/she has a mental health problem which was caused or aggravated by the major disaster or its aftermath; or

(ii) He/she may benefit from preventive care techniques.

(2) For training. (i) The crisis counseling project staff or consultants to the project are eligible for the specific instruction that may be required to enable them to provide professional mental health crisis counseling to eligible individuals;

(ii) All Federal, State, and local disaster workers responsible for assisting disaster victims are eligible for general instruction designed to enable them to deal effectively and humanely with disaster victims.

(i) *Assignment of responsibilities.* (1) The Regional Administrator shall:

(i) In the case of an immediate services program application, acknowledge receipt of the request, verify (with assistance from the Secretary) that State resources are insufficient, approve or disapprove the State's application, obligate and advance funds for this purpose, review appeals, make a determination (with assistance from the Secretary), and notify the State;

(ii) In the case of a regular program grant application:

(A) Acknowledge receipt of the request;

(B) Request the Secretary to conduct a review to determine the extent to which assistance requested by the Governor or his/her authorized representative is warranted;

(C) Considering the Secretary's recommendation, recommend approval or disapproval of the application for assistance under this section; and forward the Regional Administrator's and Secretary's recommendations and documentation to the Assistant Administrator for the Disaster Assistance Directorate;

(D) Assist the State in preliminary surveys and provide guidance and technical assistance if requested to do so; and

(E) Maintain liaison with the Secretary and look to the Secretary for program oversight and monitoring.

(2) The Secretary shall:

(i) Provide technical assistance, consultation, and guidance to the Regional Administrator in reviewing a State's application, to a State during program implementation and development, and

to mental health agencies, as appropriate;

(ii) At the request of the Regional Administrator, conduct a review to verify the extent to which the requested assistance is needed and provide a recommendation on the need for supplementary Federal assistance. The review must include:

(A) A verification of the need for services with an indication of how the verification was conducted;

(B) Identification of the Federal mental health programs in the area, and the extent to which such existing programs can help alleviate the need;

(C) An identification of State, local, and private mental health resources, and the extent to which these resources can assume the workload without assistance under this section and the extent to which supplemental assistance is warranted;

(D) A description of the needs; and

(E) A determination of whether the plan adequately addresses the mental health needs;

(iii) If the application is approved, provide grant assistance to States or the designated public or private entities;

(iv) If the application is approved, monitor the progress of the program and perform program oversight;

(v) Coordinate with, and provide program reports to, the Regional Administrator, and the Assistant Administrator for the Disaster Assistance Directorate;

(vi) Make the appeal determination, for regular program grants, involving allowable costs and termination for cause as described in paragraph (j)(2) of this section;

(vii) As part of the project monitoring responsibilities, report to the Regional Administrator and Assistant Administrator for the Disaster Assistance Directorate at least quarterly on the progress of crisis counseling programs, in a report format jointly agreed upon by the Secretary and FEMA; provide special reports, as requested by the Regional Administrator, FCO, or Assistant Administrator for the Disaster Assistance Directorate;

§§ 206.172-206.180

44 CFR Ch. I (10-1-11 Edition)

(viii) Require progress reports and other reports from the grantee to facilitate his/her project monitoring responsibilities;

(ix) Properly account for all Federal funds made available to grantees under this section. Submit to the Assistant Administrator for the Disaster Assistance Directorate, within 120 days of completion of a program, a final accounting of all expenditures for the program and return to FEMA all excess funds. Attention is called to the reimbursement requirements of this part.

(3) The Assistant Administrator for the Disaster Assistance Directorate shall:

(i) Approve or disapprove a State's request for assistance based on recommendations of the Regional Administrator and the Secretary;

(ii) Obligate funds and authorize advances of funds to the DHHS;

(iii) Request that the Secretary designate a Project Officer;

(iv) Maintain liaison with the Secretary and Regional Administrator; and

(v) Review and make determinations on appeals, except for regular program appeals involving allowable costs and termination for cause as described in paragraph (j)(2) of this section, and notify the State of the decision.

(j) *Grant awards.* (1) Neither the approval of any application nor the award of any grant commits or obligates the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of any approved application.

(2) Several other regulations of the DHHS apply to grants under this section. These include, but are not limited to:

45 CFR part 16—DHHS grant appeals procedures

42 CFR part 50, subpart D—PHS grant appeals procedures

45 CFR part 74—Administration of grants

45 CFR part 75—Informal grant appeals procedures (indirect cost rates and other cost allocations)

45 CFR part 80—Nondiscrimination under programs receiving Federal assistance through the DHHS (effectuation of Title VI of the Civil Rights Act of 1964)

45 CFR part 81—Practice and procedure for hearings under part 80

45 CFR part 84—Nondiscrimination on the basis of handicap in federally assisted programs

45 CFR part 86—Nondiscrimination on the basis of sex in federally assisted programs

45 CFR part 91—Nondiscrimination on the basis of age in federally assisted programs

45 CFR part 92—Uniform administrative requirements for grants and cooperative agreements to State and local governments

(k) *Federal audits.* The crisis counseling program is subject to Federal audit. The Assistant Administrator for the Disaster Assistance Directorate, the Regional Administrator, the DHS Inspector General, The Secretary, and the Comptroller General of the United States, or their duly authorized representatives, shall have access to any books, documents, papers, and records that pertain to Federal funds, equipment, and supplies received under this section for the purpose of audit and examination.

[54 FR 11615, Mar. 21, 1989, as amended at 68 FR 9900, Mar. 3, 2003]

§§ 206.172-206.180 [Reserved]

§ 206.181 Use of gifts and bequests for disaster assistance purposes.

(a) *General.* FEMA sets forth procedures for the use of funds made possible by a bequest of funds from the late Cora C. Brown of Kansas City, Missouri, who left a portion of her estate to the United States for helping victims of natural disasters and other disasters not caused by or attributable to war. FEMA intends to use the funds, and any others that may be bequeathed under this authority, in the manner and under the conditions described below.

(b) *Purposes for awarding funds.* Money from the Cora Brown Fund may only be used to provide for disaster-related needs that have not been or will not be met by governmental agencies or any other organizations which have programs to address such needs; however, the fund is not intended to replace or supersede these programs. For example, if assistance is available from another source, including the Individual and Family Grant program and government-sponsored disaster loan assistance, then money from the Cora Brown Fund will not be available to

the applicant for the same purpose. Listed below are the general categories of assistance which can be provided by the Cora Brown Fund:

(1) Disaster-related home repair and rebuilding assistance to families for permanent housing purposes, including site acquisition and development, relocation of residences out of hazardous areas, assistance with costs associated with temporary housing or permanent rehousing (e.g., utility deposits, access, transportation, connection of utilities, etc.);

(2) Disaster-related unmet needs of families who are unable to obtain adequate assistance under the Act or from other sources. Such assistance may include but is not limited to: health and safety measures; evacuation costs; assistance delineated in the Act or other Federal, State, local, or volunteer programs; hazard mitigation or floodplain management purposes; and assistance to self-employed persons (with no employees) to reestablish their businesses; and

(3) Other services which alleviate human suffering and promote the well being of disaster victims. For example, services to the elderly, to children, or to handicapped persons, such as transportation, recreational programs, provision of special ramps, or hospital or home visiting services. The funds may be provided to individual disaster victims, or to benefit a group of disaster victims.

(c) *Conditions for use of the Cora Brown Fund.* (1) The Cora Brown Fund is available only when the President declares that a major disaster or emergency exists under the Act, only in areas designated as eligible for Federal disaster assistance through notice in the FEDERAL REGISTER, and only at the discretion of the Assistant Administrator for the Disaster Assistance Directorate. The fund is limited to the initial endowment plus accrued interest, and this assistance program will cease when the fund is used up.

(2) A disaster victim normally will receive no more than \$2,000 from this fund in any one declared disaster unless the Assistant Administrator for the Disaster Assistance Directorate determines that a larger amount is in the best interest of the disaster victim and

the Federal Government. Funds to provide service which benefit a group may be awarded in an amount determined by the Assistant Administrator for the Disaster Assistance Directorate, based on the Regional Administrator's recommendation.

(3) The fund may not be used in a way that is inconsistent with other federally mandated disaster assistance or insurance programs, or to modify other generally applicable requirements.

(4) Funds awarded to a disaster victim may be provided by FEMA jointly to the disaster victim and to a State or local agency, or volunteer organization, to enable such an agent to assist in providing the approved assistance to an applicant. Example: Repair funds may be provided jointly to an applicant and the Mennonite Disaster Service, who will coordinate the purchase of supplies and provide the labor.

(5) Money from this fund will not duplicate assistance for which a person is eligible from other sources.

(6) In order to comply with the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended, any award for acquisition or construction purposes shall carry a requirement that any adequate flood insurance policy be purchased and maintained. The Assistant Administrator for the Disaster Assistance Directorate shall determine what is adequate based on the purpose of the award.

(7) The fund shall be administered in an equitable and impartial manner without discrimination on the grounds of race, color, religion, national origin, sex, age, or economic status.

(8) Funds awarded to a disaster victim from this fund may be combined with funds from other sources.

(d) *Administrative procedures.* (1) The Assistant Administrator for the Disaster Assistance Directorate, shall be responsible for awarding funds and authorizing disbursement.

(2) The Chief Financial Officer shall be responsible for fund accountability and, in coordination with the Assistant Administrator for the Disaster Assistance Directorate, for liaison with the Department of the Treasury concerning the investment of excess

§§ 206.182–206.190

money in the fund pursuant to the provisions contained in section 601 of the Act.

(3) Each FEMA Regional Administrator may submit requests to the Assistant Administrator for the Disaster Assistance Directorate on a disaster victim's behalf by providing documentation describing the needs of the disaster victim, a verification of the disaster victim's claim, a record of other assistance which has been or will be available for the same purpose, and his/her recommendation as to the items and the amount. The Assistant Administrator for the Disaster Assistance Directorate shall review the facts and make a determination. If the award amount is below \$2,000, the Assistant Administrator for the Disaster Assistance Directorate may appoint a designee to have approval authority; approval authority of \$2,000 or above shall be retained by the Assistant Administrator for the Disaster Assistance Directorate. The Assistant Administrator for the Disaster Assistance Directorate shall notify the Chief Financial Officer of a decision for approval, and the Chief Financial Officer shall order a check to be sent to the disaster victim (or jointly to the disaster victim and an assistance organization), through the Regional Administrator. The Assistant Administrator for the Disaster Assistance Directorate shall also notify the Regional Administrator of the decision, whether for approval or disapproval. The Regional Administrator shall notify the disaster victim in writing, identify any award as assistance from the Cora Brown Fund, and advise the recipient of appeal procedures.

(4) If the award is to be for a service to a group of disaster victims, the Regional Administrator shall submit his/her recommendation and supporting documentation to the Assistant Administrator for the Disaster Assistance Directorate (or his/her designee if the award is below \$2,000), who shall review the information and make a determination. In cases of approval, the Assistant Administrator for the Disaster Assistance Directorate shall request the Chief Financial Officer to send a check to the intended recipient or provider, as appropriate. The Assistant

44 CFR Ch. I (10-1-11 Edition)

Administrator for the Disaster Assistance Directorate shall notify the Regional Administrator of the decision. The Regional Administrator shall notify a representative of the group in writing.

(5) The Chief Financial Officer shall process requests for checks, shall keep records of disbursements and balances in the account, and shall provide the Assistant Administrator for the Disaster Assistance Directorate with quarterly reports.

(e) *Audits.* The Inspector General of DHS may audit the use of money in this account to determine whether the funds are being administered according to these regulations and whether the financial management of the account is adequate. The Inspector General shall provide his/her findings to the Administrator, for information, comments and appropriate action. A copy shall be provided to the Chief Financial Officer for the same purpose.

§§ 206.182–206.190 [Reserved]**§ 206.191 Duplication of benefits.**

(a) *Purpose.* This section establishes the policies for implementing section 312 of the Stafford Act, entitled Duplication of Benefits. This section relates to assistance for individuals and families.

(b) *Government policy.* (1) Federal agencies providing disaster assistance under the Act or under their own authorities triggered by the Act, shall cooperate to prevent and rectify duplication of benefits, according to the general policy guidance of the Federal Emergency Management Agency. The agencies shall establish appropriate agency policies and procedures to prevent duplication of benefits.

(2) Major disaster and emergency assistance provided to individuals and families under the Act, and comparable disaster assistance provided by States, local governments, and disaster assistance organizations, is not considered as income or a resource when determining eligibility for or benefit levels under federally funded income assistance or resource-tested programs. Examples of federally funded income assistance or resource-tested programs are the food

stamp program and welfare assistance programs.

(c) *FEMA policy.* It is FEMA policy:

(1) To prevent duplication of benefits between its own programs and insurance benefits, and between its own programs and other disaster assistance. Assistance under the Act may be provided in instances where the applicant has not received other benefits to which he/she may be entitled by the time of application and if the applicant agrees to repay all duplicated assistance to the agency providing the Federal assistance;

(2) To examine a debt resulting from duplication to determine that the likelihood of collecting the debt and the best interests of the Federal Government justify taking the necessary recovery actions to remedy duplication which has occurred when other assistance has become available;

(3) To assure uniformity in preventing duplication of benefits, by consulting with other Federal agencies and by performing selected quality control reviews, that the other disaster relief agencies establish and follow policies and procedures to prevent and remedy duplication among their programs, other programs, and insurance benefits; and

(4) To coordinate the effort of agencies providing assistance so that each agency understands the prevention and remedial policies of the others and is able to fulfill its own responsibilities regarding duplication of benefits.

(d) *Guidance to prevent duplication of benefits.* (1) Delivery sequence. FEMA provides the following policy and procedural guidance to ensure uniformity in preventing duplication of benefits.

(i) Duplication occurs when an agency has provided assistance which was the primary responsibility of another agency, and the agency with primary responsibility later provides assistance. A delivery sequence establishes the order in which disaster relief agencies and organizations provide assistance. The specific sequence, in accordance with the mandates of the assistance programs, is to be generally followed in the delivery of assistance.

(ii) When the delivery sequence has been disrupted, the disrupting agency is responsible for rectifying the dupli-

cation. The delivery sequence pertains to that period of time in the recovery phase when most of the traditional disaster assistance programs are available.

(2) The delivery sequence is, in order of delivery:

(i) Volunteer agencies' emergency assistance (except expendable items such as clothes, linens, and basic kitchenware); insurance (including flood insurance);

(ii) Housing assistance pursuant to section 408 of the Stafford Act.

(iii) Small Business Administration and Farmers Home Administration disaster loans;

(iv) Other Needs assistance, pursuant to section 408 of the Stafford Act or its predecessor program, the Individual and Family Grant Program.

(v) Volunteer agencies' "additional assistance" programs; and

(vi) The "Cora Brown Fund."

(3) Two significant points about the delivery sequence are that:

(i) Each assistance agency should, in turn, offer and be responsible for delivering assistance without regard to duplication with a program later in the sequence; and

(ii) The sequence itself determines what types of assistance can duplicate other assistance (i.e., a Federal program can duplicate insurance benefits, however, insurance benefits cannot duplicate the Federal assistance). An agency's position in the sequence determines the order in which it should provide assistance and what other resources it must consider before it does so.

(4) If following the delivery sequence concept would adversely affect the timely receipt of essential assistance by a disaster victim, an agency may offer assistance which is the primary responsibility of another agency. There also may be cases when an agency (Agency B) delivers assistance which is normally the primary responsibility of another agency (Agency A) because Agency A has, for good cause, denied assistance. After the assistance is delivered, Agency A reopens the case. If the primary response Agency A then provides assistance, that Agency A is responsible for coordinating with Agency B to either:

§ 206.191**44 CFR Ch. I (10-1-11 Edition)**

(i) Assist Agency B in preventing the duplication of benefits, or

(ii) In the case where the disaster victim has refused assistance from Agency A, notify Agency B that it must recover assistance previously provided.

(e) *Program guidance*—(1) *Programs under the Act vs. other agency assistance*.

(i) In making an eligibility determination, the FEMA Regional Administrator, in the case of federally operated programs, or the State, in the case of State operated programs, shall determine whether assistance is the primary responsibility of another agency to provide, according to the delivery sequence; and determine whether that primary response agency can provide assistance in a timely way.

(ii) If it is determined that timely assistance can be provided by the agency with primary responsibility, refrain from providing assistance under the Act. If it is determined that assistance from the agency with primary responsibility will be delayed, assistance under the Act may be provided, but then must be recovered from the applicant when the other assistance becomes available.

(2) *Programs under the Act vs. insurance*. In making an eligibility determination, the FEMA Regional Administrator or State shall:

(i) Remind the applicant about his/her responsibility to pursue an adequate settlement. The applicant must provide information concerning insurance recoveries.

(ii) Determine whether the applicant's insurance settlement will be sufficient to cover the loss or need without disaster assistance; and

(iii) Determine whether insurance benefits (including flood insurance) will be provided in a timely way. Where flood insurance is involved, the Regional Administrator shall coordinate with the Federal Insurance Administration. The purpose of this coordination is to obtain information about flood insurance coverage and settlements.

(3) *Random sample*. Each disaster assistance agency is responsible for preventing and rectifying duplication of benefits under the coordination of the Federal Coordinating Officer (FCO) and the general authority of section 312. To

determine whether duplication has occurred and established procedures have been followed, the Regional Administrator shall, within 90 days after the close of the disaster assistance programs application period, for selected disaster declarations, examine on a random sample basis, FEMA's and other government and voluntary agencies' case files and document the findings in writing.

(4) *Duplication when assistance under the Act is involved*. If duplication is discovered, the Regional Administrator shall determine whether the duplicating agency followed its own remedial procedures.

(i) If the duplicating agency followed its procedures and was successful in correcting the duplication, the Regional Administrator will take no further action. If the agency was not successful in correcting the duplication, and the Regional Administrator is satisfied that the duplicating agency followed its remedial procedures, no further action will be taken.

(ii) If the duplicating agency did not follow its duplication of benefits procedures, or the Regional Administrator is not satisfied that the procedures were followed in an acceptable manner, then the Regional Administrator shall provide an opportunity for the agency to take the required corrective action. If the agency cannot fulfill its responsibilities for remedial action, the Regional Administrator shall notify the recipient of the excess assistance, and after examining the debt, if it is determined that the likelihood of collecting the debt and the best interests of the Federal Government justify taking the necessary recovery actions, then take those recovery actions in conjunction with agency representatives for each identified case in the random sample (or larger universe, at the Regional Administrator's discretion).

(5) *Duplication when assistance under other authorities is involved*. When the random sample shows evidence that duplication has occurred and corrective action is required, the Regional Administrator and the FCO shall urge the duplicating agency to follow its own procedures to take corrective action, and shall work with the agency toward that end. Under his/her authority in section

Federal Emergency Management Agency, DHS**§ 206.201**

312, the Regional Administrator shall require the duplicating agency to report to him/her on its attempt to correct the duplications identified in the sample.

(f) *Recovering FEMA funds: debt collection.* Funds due to FEMA are recovered in accordance with the Department of Homeland Security's Debt Collection Regulations (6 CFR part 11—Claims).

[54 FR 11615, Mar. 21, 1989, as amended at 67 FR 61460, Sept. 30, 2002; 74 FR 15350, Apr. 3, 2009]

§§ 206.192–206.199 [Reserved]**Subpart G—Public Assistance Project Administration**

SOURCE: 55 FR 2304, Jan. 23, 1990, unless otherwise noted.

§ 206.200 General.

(a) *Purpose.* This subpart establishes procedures for the administration of Public Assistance grants approved under the provisions of the Stafford Act.

(b) *What policies apply to FEMA public assistance grants?* (1) The Stafford Act requires that we deliver eligible assistance as quickly and efficiently as possible consistent with Federal laws and regulations. We expect the Grantee and the subgrantee to adhere to Stafford Act requirements and to these regulations when administering our public assistance grants.

(2) The regulations entitled “Uniform Requirements for Grants and Cooperative Agreements to State and Local Governments,” published at 44 CFR part 13, place requirements on the State in its role as Grantee and gives the Grantee discretion to administer federal programs under their own procedures. We expect the Grantee to:

(i) Inform subgrantees about the status of their applications, including notifications of our approvals of Project Worksheets and our estimates of when we will make payments;

(ii) Pay the full amounts due to subgrantees as soon as practicable after we approve payment, including the State contribution required in the FEMA-State Agreement; and

(iii) Pay the State contribution consistent with State laws.

[55 FR 2304, Jan. 23, 1990, as amended at 63 FR 64425, Nov. 20, 1998; 64 FR 55160, Oct. 12, 1999]

§ 206.201 Definitions used in this subpart.

(a) *Applicant* means a State agency, local government, or eligible private nonprofit organization, as identified in Subpart H of this regulation, submitting an application to the Grantee for assistance under the State's grant.

(b) *Emergency work* means that work which must be done immediately to save lives and to protect improved property and public health and safety, or to avert or lessen the threat of a major disaster.

(c) *Facility* means any publicly or privately owned building, works, system, or equipment, built or manufactured, or an improved and maintained natural feature. Land used for agricultural purposes is not a facility.

(d) *Grant* means an award of financial assistance. The grant award shall be based on the total eligible Federal share of all approved projects.

(e) *Grantee.* Grantee means the government to which a grant is awarded, and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. Generally, except as provided in § 206.202(f), the State for which the emergency or major disaster is declared is the grantee. However, an Indian Tribal government may choose to be a grantee, or it may act as a subgrantee under the State. If an Indian Tribal government is the grantee, it will assume the responsibilities of the “grantee” or “State” as described in this part with respect to administration of the Public Assistance program.

(f) *Hazard mitigation* means any cost effective measure which will reduce the potential for damage to a facility from a disaster event.

(g) *Host-State.* A State or Indian Tribal government that by agreement with

§ 206.202

FEMA provides sheltering and/or evacuation support to evacuees from an impact-State. An Indian Tribal government may also be referred to as a "Host-Tribe."

(h) *Impact-State*. The State for which the President has declared an emergency or major disaster and that, due to a need to evacuate and/or shelter affected individuals outside the State, requests such assistance from FEMA pursuant to § 206.208.

(i) *Indian Tribal government* means any federally recognized governing body of an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe under the Federally Recognized Tribe List Act of 1994, 25 U.S.C. 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

(j) *Permanent work* means that restorative work that must be performed through repairs or replacement, to restore an eligible facility on the basis of its predisaster design and current applicable standards.

(k) *Predisaster design* means the size or capacity of a facility as originally designed and constructed or subsequently modified by changes or additions to the original design. It does not mean the capacity at which the facility was being used at the time the major disaster occurred if different from the most recent designed capacity.

(l) A *project* is a logical grouping of work required as a result of the declared major disaster or emergency. The scope of work and cost estimate for a project are documented on a Project Worksheet (FEMA Form 90-91).

(1) We must approve a scope of eligible work and an itemized cost estimate before funding a project.

(2) A project may include eligible work at several sites.

(m) *Project approval* means the process in which the Regional Administrator, or designee, reviews and signs an approval of work and costs on a Project Worksheet or on a batch of Project Worksheets. Such approval is also an obligation of funds to the Grantee.

44 CFR Ch. I (10-1-11 Edition)

(n) *Subgrant* means an award of financial assistance under a grant by a grantee to an eligible subgrantee.

(o) *Subgrantee* means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

[55 FR 2304, Jan. 23, 1990, as amended at 63 FR 64425, Nov. 20, 1998; 64 FR 55160, Oct. 12, 1999; 74 FR 60213, Nov. 20, 2009]

§ 206.202 Application procedures.

(a) *General*. This section describes the policies and procedures that we use to process public assistance grants to States. Under this section the State is the Grantee. As Grantee you are responsible for processing subgrants to applicants under 44 CFR parts 13 and 206, and your own policies and procedures.

(b) *Grantee*. You are the grant administrator for all funds provided under the Public Assistance grant program. Your responsibilities under this section include:

(1) Providing technical advice and assistance to eligible subgrantees;

(2) Providing State support for project identification activities to include small and large project formulation and the validation of small projects;

(3) Ensuring that all potential applicants are aware of available public assistance; and

(4) Submitting documents necessary for the award of grants.

(c) *Request for Public Assistance (Request)*. The Grantee must send a completed *Request* (FEMA Form 90-49) to the Regional Administrator for each applicant who requests public assistance. You must send *Requests* to the Regional Administrator within 30 days after designation of the area where the damage occurred.

(d) *Project Worksheets*. (1) An applicant's authorized local representative is responsible for representing the applicant and for ensuring that the applicant has identified all eligible work and submitted all costs for disaster-related damages for funding.

(i) We or the applicant, assisted by the State as appropriate, will prepare a Project Worksheet (FEMA Form 90-91)

Federal Emergency Management Agency, DHS**§ 206.203**

for each project. The Project Worksheet must identify the eligible scope of work and must include a quantitative estimate for the eligible work.

(ii) The applicant will have 60 days following its first substantive meeting with us to identify and to report damage to us.

(2) When the estimated cost of work on a project is less than \$1,000, that work is not eligible and we will not approve a Project Worksheet for the project. Periodically we will review this minimum approval amount for a Project Worksheet and, if needed, will adjust the amount by regulation.

(e) *Grant approval.* (1) Before we obligate any funds to the State, the Grantee must complete and send to the Regional Administrator a Standard Form (SF) 424, Application for Federal Assistance, and a SF 424D, Assurances for Construction Programs. After we receive the SF 424 and SF 424D, the Regional Administrator will obligate funds to the Grantee based on the approved Project Worksheets. The Grantee will then approve subgrants based on the Project Worksheets approved for each applicant.

(2) When the applicant submits the Project Worksheets, we will have 45 days to obligate Federal funds. If we have a delay beyond 45 days we will explain the delay to the Grantee.

(f) *Exceptions.* The following are exceptions to the procedures and time limitations outlined in this section.

(1) *Host-State Evacuation and/or Sheltering.* (i) *General.* A grant to a host-State for sheltering and/or evacuation support is available under this section when an impact-State requests direct Federal assistance for sheltering and/or evacuation support pursuant to § 206.208. To receive this grant, a host-State must enter into a FEMA-Host-State Agreement, amend its State Administrative Plan pursuant to § 206.207, and submit a Standard Form SF424 *Application for Federal Assistance* directly to FEMA to apply for reimbursement of eligible costs for evacuating and/or sheltering individuals from an impact-State. Upon award, the host-State assumes the responsibilities of the "grantee" or "State" under this part with respect to its grant award.

(ii) *Force Account Labor Costs.* For the performance of eligible evacuation and sheltering support under sections 403 or 502 of the Stafford Act, the straight-time salaries and benefits of a host-State's permanently employed personnel are eligible for reimbursement. This is an exception to § 206.228(a)(2).

(2) *Time limitations.* The Regional Administrator may extend the time limitations shown in paragraphs (c) and (d) of this section when the Grantees justifies and makes a request in writing. The justification must be based on extenuating circumstances beyond the grantee's or subgrantee's control.

[64 FR 55160, Oct. 12, 1999, as amended at 74 FR 15350, Apr. 3, 2009; 74 FR 60213, Nov. 20, 2009]

§ 206.203 Federal grant assistance.

(a) *General.* This section describes the types and extent of Federal funding available under State disaster assistance grants, as well as limitations and special procedures applicable to each.

(b) *Cost sharing.* All projects approved under State disaster assistance grants will be subject to the cost sharing provisions established in the FEMA-State Agreement and the Stafford Act.

(c) *Project funding—(1) Large projects.* When the approved estimate of eligible costs for an individual project is \$35,000 or greater, Federal funding shall equal the Federal share of the actual eligible costs documented by a grantee. Such \$35,000 amount shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(2) *Small projects.* When the approved estimate of costs for an individual project is less than \$35,000, Federal funding shall equal the Federal share of the approved estimate of eligible costs. Such \$35,000 amount shall be adjusted annually as indicated in paragraph (c)(1) of this section.

(d) *Funding options—(1) Improved projects.* If a subgrantee desires to make improvements, but still restore the predisaster function of a damaged facility, the Grantee's approval must be obtained. Federal funding for such improved projects shall be limited to the Federal share of the approved estimate of eligible costs.

§ 206.204

(2) *Alternate projects.* In any case where a subgrantee determines that the public welfare would not be best served by restoring a damaged public facility or the function of that facility, the Grantee may request that the Regional Administrator approve an alternate project.

(i) The alternate project option may be taken only on permanent restorative work.

(ii) Federal funding for alternate projects for damaged public facilities will be 90 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.

(iii) Federal funding for alternate projects for damaged private nonprofit facilities will be 75 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.

(iv) Funds contributed for alternate projects may be used to repair or expand other selected public facilities, to construct new facilities, or to fund hazard mitigation measures. These funds may not be used to pay the nonFederal share of any project, nor for any operating expense.

(v) Prior to the start of construction of any alternate project the Grantee shall submit for approval by the Regional Administrator the following: a description of the proposed alternate project(s); a schedule of work; and the projected cost of the project(s). The Grantee shall also provide the necessary assurances to document compliance with special requirements, including, but not limited to floodplain management, environmental assessment, hazard mitigation, protection of wetlands, and insurance.

[55 FR 2304, Jan. 23, 1990, as amended at 66 FR 22444, May 4, 2001; 73 FR 20551, Apr. 16, 2008]

§ 206.204 Project performance.

(a) *General.* This section describes the policies and procedures applicable during the performance of eligible work.

(b) *Advances of funds.* Advances of funds will be made in accordance with 44 CFR 13.21, Payment.

44 CFR Ch. I (10-1-11 Edition)

(c) *Time limitations for completion of work—(1) Deadlines.* The project completion deadlines shown below are set from the date that a major disaster or emergency is declared and apply to all projects approved under State disaster assistance grants.

COMPLETION DEADLINES

Type of work	Months
Debris clearance	6
Emergency work	6
Permanent work	18

(2) *Exceptions.* (i) The Grantee may impose lesser deadlines for the completion of work under paragraph (c)(1) of this section if considered appropriate.

(ii) Based on extenuating circumstances or unusual project requirements beyond the control of the subgrantee, the Grantee may extend the deadlines under paragraph (c)(1) of this section for an additional 6 months for debris clearance and emergency work and an additional 30 months, on a project by project basis for permanent work.

(d) *Requests for time extensions.* Requests for time extensions beyond the Grantee's authority shall be submitted by the Grantee to the Regional Administrator and shall include the following:

(1) The dates and provisions of all previous time extensions on the project; and

(2) A detailed justification for the delay and a projected completion date. The Regional Administrator shall review the request and make a determination. The Grantee shall be notified of the Regional Administrator's determination in writing. If the Regional Administrator approves the request, the letter shall reflect the approved completion date and any other requirements the Regional Administrator may determine necessary to ensure that the new completion date is met. If the Regional Administrator denies the time extension request, the grantee may, upon completion of the project, be reimbursed for eligible project costs incurred only up to the latest approved completion date. If the project is not completed, no Federal funding will be provided for that project.

(e) *Cost Overruns.* (1) During the execution of approved work a subgrantee may find that the actual project costs exceed the approved Project Worksheet estimates. Such cost overruns normally fall into the following three categories:

- (i) Variations in unit prices;
- (ii) Change in the scope of eligible work; or
- (iii) Delays in timely starts or completion of eligible work.

(2) The subgrantee must evaluate each cost overrun and, when justified, submit a request for additional funding through the Grantee to the Regional Administrator for a final determination. All requests for the Regional Administrator's approval will contain sufficient documentation to support the eligibility of all claimed work and costs. The Grantee must include a written recommendation when forwarding the request. The Regional Administrator will notify the Grantee in writing of the final determination. FEMA will not normally review an overrun for an individual small project. The normal procedure for small projects will be that when a subgrantee discovers a significant overrun related to the total final cost for all small projects, the subgrantee may submit an appeal for additional funding in accordance with § 206.206, within 60 days following the completion of all its small projects.

(f) *Progress reports.* Progress reports will be submitted by the Grantee to the Regional Administrator quarterly. The Regional Administrator and Grantee shall negotiate the date for submission of the first report. Such reports will describe the status of those projects on which a final payment of the Federal share has not been made to the grantee and outline any problems or circumstances expected to result in non-compliance with the approved grant conditions.

[55 FR 2304, Jan. 23, 1990; 55 FR 5458, Feb. 15, 1990, as amended at 64 FR 55161, Oct. 12, 1999]

§ 206.205 Payment of claims.

(a) *Small Projects.* Final payment of the Federal share of these projects will be made to the Grantee upon approval of the Project Worksheet. The Grantee will make payment of the Federal

share to the subgrantee as soon as practicable after Federal approval of funding. Before the closeout of the disaster contract, the Grantee must certify that all such projects were completed in accordance with FEMA approvals and that the State contribution to the non-Federal share, as specified in the FEMA-State Agreement, has been paid to each subgrantee. Such certification is not required to specify the amount spent by a subgrantee on small projects. The Federal payment for small projects shall not be reduced if all of the approved funds are not spent to complete a project. However, failure to complete a project may require that the Federal payment be re-funded.

(b) *Large projects.* (1) The Grantee shall make an accounting to the Regional Administrator of eligible costs for each approved large project. In submitting the accounting the Grantee shall certify that reported costs were incurred in the performance of eligible work, that the approved work was completed, that the project is in compliance with the provisions of the FEMA-State Agreement, and that payments for that project have been made in accordance with 44 CFR 13.21, Payments. Each large project shall be submitted as soon as practicable after the subgrantee has completed the approved work and requested payment.

(2) The Regional Administrator shall review the accounting to determine the eligible amount of reimbursement for each large project and approve eligible costs. If a discrepancy between reported costs and approved funding exists, the Regional Administrator may conduct field reviews to gather additional information. If discrepancies in the claim cannot be resolved through a field review, a Federal audit may be conducted. If the Regional Administrator determines that eligible costs exceed the initial approval, he/she will obligate additional funds as necessary.

[55 FR 2304, Jan. 23, 1990, as amended at 64 FR 55161, Oct. 12, 1999]

§ 206.206 Appeals.

An eligible applicant, subgrantee, or grantee may appeal any determination

§ 206.207

previously made related to an application for or the provision of Federal assistance according to the procedures below.

(a) *Format and Content.* The applicant or subgrantee will make the appeal in writing through the grantee to the Regional Administrator. The grantee shall review and evaluate all subgrantee appeals before submission to the Regional Administrator. The grantee may make grantee-related appeals to the Regional Administrator. The appeal shall contain documented justification supporting the appellant's position, specifying the monetary figure in dispute and the provisions in Federal law, regulation, or policy with which the appellant believes the initial action was inconsistent.

(b) *Levels of Appeal.* (1) The Regional Administrator will consider first appeals for public assistance-related decisions under subparts A through L of this part.

(2) The Assistant Administrator for the Disaster Assistance Directorate will consider appeals of the Regional Administrator's decision on any first appeal under paragraph (b)(1) of this section.

(c) *Time Limits.* (1) Appellants must file appeals within 60 days after receipt of a notice of the action that is being appealed.

(2) The grantee will review and forward appeals from an applicant or subgrantee, with a written recommendation, to the Regional Administrator within 60 days of receipt.

(3) Within 90 days following receipt of an appeal, the Regional Administrator (for first appeals) or Assistant Administrator for the Disaster Assistance Directorate (for second appeals) will notify the grantee in writing of the disposition of the appeal or of the need for additional information. A request by the Regional Administrator or Assistant Administrator for the Disaster Assistance Directorate for additional information will include a date by which the information must be provided. Within 90 days following the receipt of the requested additional information or following expiration of the period for providing the information, the Regional Administrator or Assistant Administrator for the Disaster Assistance

44 CFR Ch. I (10-1-11 Edition)

Directorate will notify the grantee in writing of the disposition of the appeal. If the decision is to grant the appeal, the Regional Administrator will take appropriate implementing action.

(d) *Technical Advice.* In appeals involving highly technical issues, the Regional Administrator or Assistant Administrator for the Disaster Assistance Directorate may, at his or her discretion, submit the appeal to an independent scientific or technical person or group having expertise in the subject matter of the appeal for advice or recommendation. The period for this technical review may be in addition to other allotted time periods. Within 90 days of receipt of the report, the Regional Administrator or Assistant Administrator for the Disaster Assistance Directorate will notify the grantee in writing of the disposition of the appeal.

(e) *Transition.* (1) This rule is effective for all appeals pending on and appeals from decisions issued on or after May 8, 1998, except as provided in paragraph (e)(2) of this section.

(2) Appeals pending from a decision of an Assistant Administrator for the Disaster Assistance Directorate before May 8, 1998 may be appealed to the Administrator in accordance with 44 CFR 206.440 as it existed before May 8, 1998 (44 CFR, revised as of October 1, 1997).

(3) The decision of the FEMA official at the next higher appeal level shall be the final administrative decision of FEMA.

[63 FR 17110, Apr. 8, 1998; 63 FR 24970, May 6, 1998]

§ 206.207 Administrative and audit requirements.

(a) *General.* Uniform administrative requirements which are set forth in 44 CFR part 13 apply to all disaster assistance grants and subgrants.

(b) *State administrative plan.* (1) The State shall develop a plan for the administration of the Public Assistance program that includes at a minimum, the items listed below:

(i) The designation of the State agency or agencies which will have the responsibility for program administration.

(ii) The identification of staffing functions in the Public Assistance program, the sources of staff to fill these

Federal Emergency Management Agency, DHS**§ 206.208**

functions, and the management and oversight responsibilities of each.

(iii) Procedures for:

(A) Notifying potential applicants of the availability of the program;

(B) Conducting briefings for potential applicants and application procedures, program eligibility guidance and program deadlines;

(C) Assisting FEMA in determining applicant eligibility;

(D) Participating with FEMA in conducting damage surveys to serve as a basis for obligations of funds to subgrantees;

(E) Participating with FEMA in the establishment of hazard mitigation and insurance requirements;

(F) Processing appeal requests, requests for time extensions and requests for approval of overruns, and for processing appeals of grantee decisions;

(G) Compliance with the administrative requirements of 44 CFR parts 13 and 206;

(H) Compliance with the audit requirements of 44 CFR part 13;

(I) Processing requests for advances of funds and reimbursement; and

(J) Determining staffing and budgeting requirements necessary for proper program management.

(K) Determining the reasonable percentage or amount of pass-through funds for management costs provided under 44 CFR part 207 that the grantee will make available to subgrantees, and the basis, criteria, or formula for determining the subgrantee percentage or amount.

(2) The Grantee may request the Regional Administrator to provide technical assistance in the preparation of such administrative plan.

(3) In accordance with the Interim Rule published March 21, 1989, the Grantee was to have submitted an administrative plan to the RD for approval by September 18, 1989. An approved plan must be on file with FEMA before grants will be approved in a future major disaster. Thereafter, the Grantee shall submit a revised plan to the Regional Administrator annually. In each disaster for which Public Assistance is included, the Regional Administrator shall request the Grantee to prepare any amendments required to meet current policy guidance.

(4) The Grantee shall ensure that the approved administrative plan is incorporated into the State emergency plan.

(c) *Audit*—(1) *Nonfederal audit*. For grantees or subgrantees, requirements for nonfederal audit are contained in FEMA regulations at 44 CFR part 13 or OMB Circular A-110 as appropriate.

(2) *Federal audit*. In accordance with 44 CFR part 13, FEMA may elect to conduct a Federal audit of the disaster assistance grant or any of the subgrants.

[55 FR 2304, Jan. 23, 1990; 55 FR 5458, Feb. 15, 1990, as amended at 72 FR 57875, Oct. 11, 2007; 74 FR 15350, Apr. 3, 2009]

§ 206.208 Direct Federal assistance.

(a) *General*. When the State and local government lack the capability to perform or to contract for eligible emergency work and/or debris removal, under sections 402(1) and (4), 403, 407, 502(a)(1), (5) and (7) of the Act, the Grantee may request that the work be accomplished by a Federal agency. Such assistance is subject to the cost sharing provisions outlined in § 206.203(b) of this subpart. Direct Federal assistance is also subject to the eligibility criteria contained in Subpart H of these regulations. FEMA will reimburse other Federal agencies in accordance with Subpart A of these regulations.

(b) *Requests for assistance*. All requests for direct Federal assistance shall be submitted by the Grantee to the Regional Administrator and shall include:

(1) A written agreement that the State will:

(i) Provide without cost to the United States all lands, easements and rights-of-ways necessary to accomplish the approved work;

(ii) Hold and save the United States free from damages due to the requested work, and shall indemnify the Federal Government against any claims arising from such work;

(iii) Provide reimbursement to FEMA for the nonFederal share of the cost of such work in accordance with the provisions of the FEMA-State Agreement; and

(iv) Assist the performing Federal agency in all support and local jurisdictional matters.

§ 206.209**44 CFR Ch. I (10-1-11 Edition)**

(2) A statement as to the reasons the State and the local government cannot perform or contract for performance of the requested work.

(3) A written agreement from an eligible applicant that such applicant will be responsible for the items in subparagraph (b)(1) (i) and (ii) of this section, in the event that a State is legally unable to provide the written agreement.

(c) *Implementation.* (1) If the Regional Administrator approves the request, a mission assignment will be issued to the appropriate Federal agency. The mission assignment letter to the agency will define the scope of eligible work, the estimated cost of the eligible work and the billing period frequency. The Federal agency must not exceed the approved funding limit without the authorization of the Regional Administrator.

(2) If all or any part of the requested work falls within the statutory authority of another Federal agency, the Regional Administrator shall not approve that portion of the work. In such case, the unapproved portion of the request will be referred to the appropriate agency for action.

(3) If an impact-State requests assistance in providing evacuation and sheltering support outside an impact-State, FEMA may directly reimburse a host-State for such eligible costs through a grant to a host-State under an impact-State's declaration, consistent with § 206.202(f)(1). FEMA may award a grant to a host-State when FEMA determines that a host-State has sufficient capability to meet some or all of the sheltering and/or evacuation needs of an impact-State, and a host-State agrees in writing to provide such support to an impact-State.

(d) *Time limitation.* The time limitation for completion of work by a Federal agency under a mission assignment is 60 days after the President's declaration. Based on extenuating circumstances or unusual project requirements, the Regional Administrator may extend this time limitation.

(e) *Project management.* (1) The performing Federal agency shall ensure that the work is completed in accordance with the Regional Administrator's approved scope of work, costs and time limitations. The performing Fed-

eral agency shall also keep the Regional Administrator and Grantee advised of work progress and other project developments. It is the responsibility of the performing Federal agency to ensure compliance with applicable Federal, State and local legal requirements. A final inspection report will be completed upon termination of all direct Federal assistance work. Final inspection reports shall be signed by a representative of the performing Federal agency and the State. Once the final eligible cost is determined (including Federal agency overhead), the State will be billed for the non-Federal share of the mission assignment in accordance with the cost sharing provisions of the FEMA-State Agreement.

(2) Pursuant to the agreements provided in the request for assistance the Grantee shall assist the performing Federal agency in all State and local jurisdictional matters. These matters include securing local building permits and rights of entry, control of traffic and pedestrians, and compliance with local building ordinances.

[55 FR 2304, Jan. 23, 1990, as amended at 64 FR 55161, Oct. 12, 1999; 74 FR 60214, Nov. 20, 2009]

§ 206.209 Arbitration for Public Assistance determinations related to Hurricanes Katrina and Rita (Major disaster declarations DR-1603, DR-1604, DR-1605, DR-1606, and DR-1607).

(a) *Scope.* Pursuant to section 601 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, this section establishes procedures for arbitration to resolve disputed Public Assistance applications under the following major disaster declarations: DR-1603, DR-1604, DR-1605, DR-1606, and DR-1607.

(b) *Applicability.* An applicant or subgrantee (hereinafter "applicant" for purposes of this section) may request arbitration of a determination made by FEMA on an application for Public Assistance, provided that the total amount of the project is greater than \$500,000, and provided that:

(1) the applicant is eligible to file an appeal under § 206.206; or

Federal Emergency Management Agency, DHS**§ 206.209**

(2) the applicant had a first or second level appeal pending with FEMA pursuant to § 206.206 on or after February 17, 2009.

(c) *Governing rules.* An applicant that elects arbitration agrees to abide by this section and applicable guidance. The arbitration will be conducted pursuant to procedure established by the arbitration panel.

(d) *Limitations—(1) Election of remedies.* A request for arbitration under this section is in lieu of filing or continuing an appeal under § 206.206.

(2) *Final agency action under § 206.206.* Arbitration is not available for any matter that obtained final agency action by FEMA pursuant to § 206.206 prior to February 17, 2009. Arbitration is not available for determinations for which the applicant failed to file a timely appeal under the provisions of § 206.206 prior to August 31, 2009, or for determinations which received a decision on a second appeal from FEMA prior to February 17, 2009.

(e) *Request for arbitration—(1) Content of request.* The request for arbitration must contain a written statement and all documentation supporting the position of the applicant, the disaster number, and the name and address of the applicant's authorized representative or counsel.

(2) *Submission by the applicant to the Grantee, the FEMA Regional Administrator, and the arbitration administrator.* An applicant under paragraph (b)(1) of this section must submit its request for arbitration in writing simultaneously to the Grantee, the FEMA Regional Administrator, and the arbitration administrator within 30 calendar days after receipt of notice of the determination that is the subject of the arbitration request or by September 30, 2009, whichever is later. An applicant under paragraph (b)(2) of this section must make a request for arbitration in writing and, if FEMA has not issued a decision on the appeal, submit a withdrawal of the pending appeal, simultaneously to the Grantee, the FEMA Regional Administrator, and the arbitration administrator by October 30, 2009.

(3) *Submission by the Grantee to the arbitration administrator and FEMA.* Within 15 calendar days of receipt of the applicant's request for arbitration, the

Grantee must forward the name and address of the Grantee's authorized representative or counsel, and may forward a written recommendation in support or opposition to the applicant's request for arbitration, simultaneously to the FEMA Regional Administrator, the arbitration administrator, and the applicant.

(4) *Submission of FEMA's response.* FEMA will submit a memorandum in support of its position, a copy of the Project Worksheet(s), and any other supporting information, as well as the name and address of its authorized representative or counsel, simultaneously to the arbitration administrator, the Grantee, and the applicant, within 30 calendar days of receipt of the applicant's request for arbitration.

(5) *Process for submissions.* When submitting a request for arbitration, the applicant should describe its claim with sufficient detail so that the circumstances of the dispute are clear to the arbitration panel. All papers, notices, or other documents submitted to the arbitration administrator under this section by the applicant, the Grantee, or FEMA will be served on each party's authorized representative or counsel. The submitting party will make such service by courier or overnight delivery service (such as Federal Express, DHL, United Parcel Service, or the United States Postal Service overnight delivery), addressed to the party, representative, or counsel, as applicable, at its last known address.

(f) *Selection of arbitration panel.* The arbitration administrator will select the arbitration panel for arbitration and notify the applicant, FEMA, and the Grantee of the names and identities of the arbitrators selected for the panel.

(g) *Preliminary conference.* The arbitration panel will hold a preliminary conference with the parties and/or representatives of the parties within 10 business days of the panel's receipt of FEMA's response to the request for arbitration. The panel and the parties will discuss the future conduct of the arbitration, including clarification of the disputed issues, request for disqualification of an arbitrator (if applicable), and any other preliminary matters. The date and place of any oral

§ 206.209

hearing will be set at the preliminary conference. The preliminary conference will be conducted by telephone.

(h) *Hearing*—(1) *Request for hearing*. The panel will provide the applicant and FEMA with an opportunity to make an oral presentation on the substance of the applicant's claim in person, by telephone conference, or other means during which all the parties may simultaneously hear all other participants. If the applicant or FEMA would like to request an oral hearing, the request must be made no later than the preliminary conference.

(2) *Location of hearing*. If an in-person hearing is authorized, it will be held at a hearing facility of the arbitration panel's choosing.

(3) *Conduct of hearing*. Each party may present its position through oral presentations by individuals designated in advance of the hearing. These presentations may reference documents submitted pursuant to paragraph (e) of this section; the parties may not provide additional paper submissions at the hearing. If the panel deems it appropriate or necessary, it may request additional written materials from either or both parties or seek the advice or expertise of independent scientific or technical subject matter experts.

(4) *Closing of hearing*. The panel will inquire of each party whether it has any further argument. When satisfied that the record is complete, the panel will declare the hearing closed, unless a post-hearing submission of additional information or a memorandum of law is to be provided in accordance with this paragraph. The hearing will be declared closed as of the date set by the panel for the submission of the additional information or the memorandum of law.

(5) *Time limits*. The panel will endeavor to hold the hearing within 60 calendar days of the preliminary conference.

(6) *Postponement*. The arbitration panel may postpone a hearing upon agreement of the parties, or upon request of a party for good cause shown. Within 10 business days of the postponement, the arbitration panel will notify the parties of the rescheduled date of the hearing.

44 CFR Ch. I (10-1-11 Edition)

(7) *Record of the hearing*. There will be no recording of the hearing, unless a party specifically requests and arranges for such recording at its own expense.

(8) *Post-hearing submission of additional information*. A party may file with the arbitration panel additional information or a memorandum of law after the hearing upon the arbitration panel's request or upon the request of one of the parties with the panel's consent. The panel will set the time for submission of the additional information or the memorandum of law.

(9) *Reopening of hearing*. The hearing may be reopened on the panel's initiative under compelling circumstances at any time before the decision is made.

(i) *Review by the arbitration panel*. (1) *Determination of timeliness*. Upon notification by FEMA, or on its own initiative, the arbitration panel will determine whether the applicant timely filed a request for arbitration.

(2) *Substantive review*. The arbitration panel will consider all relevant written materials provided by the applicant, the Grantee, and FEMA, as well as oral presentations, if any. If the panel deems it appropriate or necessary, it may request additional written materials from either or both parties or seek the advice or expertise of independent scientific or technical subject matter experts.

(j) *Ex parte communications*. No party and no one acting on behalf of any party will engage in ex parte communications with a member of the arbitration panel. If a party or someone acting on behalf of any party engages in ex parte communications with a member of the arbitration panel, the party that engaged in such communication will provide a summary or a transcript of the entire communication to the other parties.

(k) *Decision*—(1) *Time limits*. The panel will make every effort to issue a written decision within 60 calendar days after the panel declares the hearing closed pursuant to paragraph (h)(4) of this section, or, if a hearing was not requested, within 60 calendar days following the receipt of FEMA's response to the request for arbitration. A decision of the panel may take longer than

Federal Emergency Management Agency, DHS**§ 206.221**

60 calendar days if the arbitration involves a highly technical or complex matter.

(2) *Form and content.* The decision of the panel will be in writing and signed by each member of the panel. The panel will issue a reasoned decision that includes a brief and informal discussion of the factual and legal basis for the decision.

(3) *Finality of decision.* A decision of the majority of the panel shall constitute a final decision, binding on all parties. Final decisions are not subject to further administrative review. Final decisions are not subject to judicial review, except as permitted by 9 U.S.C. 10.

(4) *Delivery of decision.* Notice and delivery of the decision will be by facsimile or other electronic means and by regular mail to each party or its authorized representative or counsel.

(l) *Costs.* FEMA will pay the fees associated with the arbitration panel, the costs of any expert retained by the panel, and the arbitration facility costs, if any. The expenses for each party, including attorney's fees, representative fees, copying costs, costs associated with attending any hearing, or any other fees not listed in this paragraph will be paid by the party incurring such costs.

(m) *Guidance.* FEMA may issue separate guidance as necessary to supplement this section.

[FR 44767, Aug. 31, 2009]

§§ 206.210-206.219 [Reserved]**Subpart H—Public Assistance Eligibility**

SOURCE: 55 FR 2307, Jan. 23, 1990, unless otherwise noted.

§ 206.220 General.

This subpart provides policies and procedures for determinations of eligibility of applicants for public assistance, eligibility of work, and eligibility of costs for assistance under sections 402, 403, 406, 407, 418, 419, 421(d), 502, and 503 of the Stafford Act. Assistance under this subpart must also conform to requirements of 44 CFR part 201, Mitigation Planning, and 44 CFR part

206, subparts G—Public Assistance Project Administration, I—Public Assistance Insurance Requirements, J—Coastal Barrier Resources Act, and M—Minimum Standards. Regulations under 44 CFR part 9—Floodplain Management and 44 CFR part 10—Environmental Considerations, also apply to this assistance.

[67 FR 8854, Feb. 26, 2002]

§ 206.221 Definitions.

(a) *Educational institution* means:

(1) Any elementary school as defined by section 801(c) of the Elementary and Secondary Education Act of 1965; or

(2) Any secondary school as defined by section 801(h) of the Elementary and Secondary Education Act of 1965; or

(3) Any institution of higher education as defined by section 1201 of the Higher Education Act of 1965.

(b) *Force account* means an applicant's own labor forces and equipment.

(c) *Immediate threat* means the threat of additional damage or destruction from an event which can reasonably be expected to occur within five years.

(d) *Improved property* means a structure, facility or item of equipment which was built, constructed or manufactured. Land used for agricultural purposes is not improved property.

(e) *Private nonprofit facility* means any private nonprofit educational, utility, emergency, medical, or custodial care facility, including a facility for the aged or disabled, and other facility providing essential governmental type services to the general public, and such facilities on Indian reservations. Further definition is as follows:

(1) *Educational facilities* means classrooms plus related supplies, equipment, machinery, and utilities of an educational institution necessary or appropriate for instructional, administrative, and support purposes, but does not include buildings, structures and related items used primarily for religious purposes or instruction.

(2) *Utility* means buildings, structures, or systems of energy, communication, water supply, sewage collection and treatment, or other similar public service facilities.

(3) *Irrigation facility* means those facilities that provide water for essential services of a governmental nature to

§ 206.222**44 CFR Ch. I (10-1-11 Edition)**

the general public. Irrigation facilities include water for fire suppression, generating and supplying electricity, and drinking water supply; they do not include water for agricultural purposes.

(4) *Emergency facility* means those buildings, structures, equipment, or systems used to provide emergency services, such as fire protection, ambulance, or rescue, to the general public, including the administrative and support facilities essential to the operation of such emergency facilities even if not contiguous.

(5) *Medical facility* means any hospital, outpatient facility, rehabilitation facility, or facility for long term care as such terms are defined in section 645 of the Public Health Service Act (42 U.S.C. 2910) and any similar facility offering diagnosis or treatment of mental or physical injury or disease, including the administrative and support facilities essential to the operation of such medical facilities even if not contiguous.

(6) *Custodial care facility* means those buildings, structures, or systems including those for essential administration and support, which are used to provide institutional care for persons who require close supervision and some physical constraints on their daily activities for their self-protection, but do not require day-to-day medical care.

(7) *Other essential governmental service facility* means museums, zoos, community centers, libraries, homeless shelters, senior citizen centers, rehabilitation facilities, shelter workshops and facilities which provide health and safety services of a governmental nature. All such facilities must be open to the general public.

(f) *Private nonprofit organization* means any nongovernmental agency or entity that currently has:

(1) An effective ruling letter from the U.S. Internal Revenue Service, granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954, or

(2) Satisfactory evidence from the State that the nonrevenue producing organization or entity is a nonprofit one organized or doing business under State law.

(g) *Public entity* means an organization formed for a public purpose whose

direction and funding are provided by one or more political subdivisions of the State.

(h) *Public facility* means the following facilities owned by a State or local government: any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; any non-Federal aid, street, road, or highway; and any other public building, structure, or system, including those used for educational, recreational, or cultural purposes; or any park.

(i) *Standards* means codes, specifications or standards required for the construction of facilities.

[55 FR 2307, Jan. 23, 1990, as amended at 58 FR 47994, Sept. 14, 1993; 66 FR 22445, May 4, 2001]

§ 206.222 Applicant eligibility.

The following entities are eligible to apply for assistance under the State public assistance grant:

(a) State and local governments.

(b) Private non-profit organizations or institutions which own or operate a private nonprofit facility as defined in § 205.221(e).

(c) Indian tribes or authorized tribal organizations and Alaska Native villages or organizations, but not Alaska Native Corporations, the ownership of which is vested in private individuals.

§ 206.223 General work eligibility.

(a) *General*. To be eligible for financial assistance, an item of work must:

(1) Be required as the result of the emergency or major disaster event;

(2) Be located within the designated area of a major disaster or emergency declaration, except that sheltering and evacuation activities may be located outside the designated area; and

(3) Be the legal responsibility of an eligible applicant.

(b) *Private nonprofit facilities*. To be eligible, all private nonprofit facilities must be owned and operated by an organization meeting the definition of a private nonprofit organization [see § 206.221(f)].

(c) *Public entities*. Facilities belonging to a public entity may be eligible for

Federal Emergency Management Agency, DHS**§ 206.225**

assistance when the application is submitted through the State or a political subdivision of the State.

(d) *Facilities serving a rural community or unincorporated town or village.* To be eligible for assistance, a facility not owned by an eligible applicant, as defined in § 206.222, must be owned by a private nonprofit organization; and provide an essential governmental service to the general public. Applications for these facilities must be submitted through a State or political subdivision of the State.

(e) *Negligence.* No assistance will be provided to an applicant for damages caused by its own negligence. If negligence by another party results in damages, assistance may be provided, but will be conditioned on agreement by the applicant to cooperate with FEMA in all efforts necessary to recover the cost of such assistance from the negligent party.

[55 FR 2307, Jan. 23, 1990, as amended at 71 FR 40027, July 14, 2006; 74 FR 60214, Nov. 20, 2009]

§ 206.224 Debris removal.

(a) *Public interest.* Upon determination that debris removal is in the public interest, the Regional Administrator may provide assistance for the removal of debris and wreckage from publicly and privately owned lands and waters. Such removal is in the public interest when it is necessary to:

(1) Eliminate immediate threats to life, public health, and safety; or

(2) Eliminate immediate threats of significant damage to improved public or private property; or

(3) Ensure economic recovery of the affected community to the benefit of the community-at-large; or

(4) Mitigate the risk to life and property by removing substantially damaged structures and associated appurtenances as needed to convert property acquired through a FEMA hazard mitigation program to uses compatible with open space, recreation, or wetlands management practices. Such removal must be completed within two years of the declaration date, unless the Assistant Administrator for the Disaster Assistance Directorate extends this period.

(b) *Debris removal from private property.* When it is in the public interest for an eligible applicant to remove debris from private property in urban, suburban and rural areas, including large lots, clearance of the living, recreational and working area is eligible except those areas used for crops and livestock or unused areas.

(c) *Assistance to individuals and private organizations.* No assistance will be provided directly to an individual or private organization, or to an eligible applicant for reimbursement of an individual or private organization, for the cost of removing debris from their own property. Exceptions to this are those private nonprofit organizations operating eligible facilities.

[55 FR 2307, Jan. 23, 1990, as amended at 66 FR 33901, June 26, 2001]

§ 206.225 Emergency work.

(a) *General.* (1) Emergency protective measures to save lives, to protect public health and safety, and to protect improved property are eligible.

(2) In determining whether emergency work is required, the Regional Administrator may require certification by local State, and/or Federal officials that a threat exists, including identification and evaluation of the threat and recommendations of the emergency work necessary to cope with the threat.

(3) In order to be eligible, emergency protective measures must:

(i) Eliminate or lessen immediate threats to life, public health or safety; or

(ii) Eliminate or lessen immediate threats of significant additional damage to improved public or private property through measures which are cost effective.

(b) *Emergency access.* An access facility that is not publicly owned or is not the direct responsibility of an eligible applicant for repair or maintenance may be eligible for emergency repairs or replacement provided that emergency repair or replacement of the facility economically eliminates the need for temporary housing. The work will be limited to that necessary for the access to remain passable through

§ 206.226**44 CFR Ch. I (10-1-11 Edition)**

events which can be considered an immediate threat. The work must be performed by an eligible applicant and will be subject to cost sharing requirements.

(c) *Emergency communications.* Emergency communications necessary for the purpose of carrying out disaster relief functions may be established and may be made available to State and local government officials as deemed appropriate. Such communications are intended to supplement but not replace normal communications that remain operable after a major disaster. FEMA funding for such communications will be discontinued as soon as the needs have been met.

(d) *Emergency public transportation.* Emergency public transportation to meet emergency needs and to provide transportation to public places and such other places as necessary for the community to resume its normal pattern of life as soon as possible is eligible. Such transportation is intended to supplement but not replace predisaster transportation facilities that remain operable after a major disaster. FEMA funding for such transportation will be discontinued as soon as the needs have been met.

§ 206.226 Restoration of damaged facilities.

Work to restore eligible facilities on the basis of the design of such facilities as they existed immediately prior to the disaster and in conformity with the following is eligible:

(a) *Assistance under other Federal agency (OFA) programs.* (1) Generally, disaster assistance will not be made available under the Stafford Act when another Federal agency has specific authority to restore facilities damaged or destroyed by an event which is declared a major disaster.

(2) An exception to the policy described in paragraph (a)(1) of this section exists for public elementary and secondary school facilities which are otherwise eligible for assistance from the Department of Education (ED) under 20 U.S.C. 241-1 and 20 U.S.C. 646. Such facilities are also eligible for assistance from FEMA under the Stafford Act, and grantees shall accept applica-

tions from local educational agencies for assistance under the Stafford Act.

(3) The exception does not cover payment of increased current operating expenses or replacement of lost revenues as provided in 20 U.S.C. 241-1(a) and implemented by 34 CFR 219.14. Such assistance shall continue to be granted and administered by the Department of Education.

(b) *Mitigation planning.* In order to receive assistance under this section, the State or Indian Tribal government applying to FEMA as a grantee must have in place a FEMA approved State or Tribal Mitigation Plan, as applicable, in accordance with 44 CFR part 201.

(c) *Private nonprofit facilities.* Eligible private nonprofit facilities may receive funding under the following conditions:

(1) The facility provides critical services, which include power, water (including water provided by an irrigation organization or facility in accordance with § 206.221(e)(3)), sewer services, wastewater treatment, communications, emergency medical care, fire department services, emergency rescue, and nursing homes; or

(2) The private nonprofit organization not falling within the criteria of § 206.226(c)(1) has applied for a disaster loan under section 7(b) of the Small Business Act (15 U.S.C. 636(b)) and

(i) The Small Business Administration has declined the organization's application; or

(ii) Has eligible damages greater than the maximum amount of the loan for which it is eligible, in which case the excess damages are eligible for FEMA assistance.

(d) *Standards.* For the costs of Federal, State, and local repair or replacement standards which change the predisaster construction of facility to be eligible, the standards must:

(1) Apply to the type of repair or restoration required;

(Standards may be different for new construction and repair work)

(2) Be appropriate to the predisaster use of the facility;

(3)(i) Be found reasonable, in writing, and formally adopted and implemented by the State or local government on or before the disaster declaration date or be a legal Federal requirement applicable to the type of restoration.

(ii) This paragraph (d) applies to local governments on January 1, 1999 and to States on January 1, 2000. Until the respective applicability dates, the standards must be in writing and formally adopted by the applicant prior to project approval or be a legal Federal or State requirement applicable to the type of restoration.

(4) Apply uniformly to all similar types of facilities within the jurisdiction of owner of the facility; and

(5) For any standard in effect at the time of a disaster, it must have been enforced during the time it was in effect.

(e) *Hazard mitigation.* In approving grant assistance for restoration of facilities, the Regional Administrator may require cost effective hazard mitigation measures not required by applicable standards. The cost of any requirements for hazard mitigation placed on restoration projects by FEMA will be an eligible cost for FEMA assistance.

(f) *Repair vs. replacement.* (1) A facility is considered repairable when disaster damages do not exceed 50 percent of the cost of replacing a facility to its predisaster condition, and it is feasible to repair the facility so that it can perform the function for which it was being used as well as it did immediately prior to the disaster.

(2) If a damaged facility is not repairable in accordance with paragraph (d)(1) of this section, approved restorative work may include replacement of the facility. The applicant may elect to perform repairs to the facility, in lieu of replacement, if such work is in conformity with applicable standards. However, eligible costs shall be limited to the less expensive of repairs or replacement.

(3) An exception to the limitation in paragraph (d)(2) of this section may be allowed for facilities eligible for or on the National Register of Historic Properties. If an applicable standard requires repair in a certain manner, costs associated with that standard will be eligible.

(g) *Relocation.* (1) The Regional Administrator may approve funding for and require restoration of a destroyed facility at a new location when:

(i) The facility is and will be subject to repetitive heavy damage;

(ii) The approval is not barred by other provisions of title 44 CFR; and

(iii) The overall project, including all costs, is cost effective.

(2) When relocation is required by the Regional Administrator, eligible work includes land acquisition and ancillary facilities such as roads and utilities, in addition to work normally eligible as part of a facility reconstruction. Demolition and removal of the old facility is also an eligible cost.

(3) When relocation is required by the Regional Administrator, no future funding for repair or replacement of a facility at the original site will be approved, except those facilities which facilitate an open space use in accordance with 44 CFR part 9.

(4) When relocation is required by the Regional Administrator, and, instead of relocation, the applicant requests approval of an alternate project [see § 206.203(d)(2)], eligible costs will be limited to 90 percent of the estimate of restoration at the original location excluding hazard mitigation measures.

(5) If relocation of a facility is not feasible or cost effective, the Regional Administrator shall disapprove Federal funding for the original location when he/she determines in accordance with 44 CFR parts 9, 10, 201, or subpart M of this part 206, that restoration in the original location is not allowed. In such cases, an alternative project may be applied for.

(h) *Equipment and furnishings.* If equipment and furnishings are damaged beyond repair, comparable items are eligible as replacement items.

(i) *Library books and publications.* Replacement of library books and publications is based on an inventory of the quantities of various categories of books or publications damaged or destroyed. Cataloging and other work incidental to replacement are eligible.

(j) *Beaches.* (1) Replacement of sand on an unimproved natural beach is not eligible.

(2) Improved beaches. Work on an improved beach may be eligible under the following conditions:

(i) The beach was constructed by the placement of sand (of proper grain size)

§ 206.227

to a designed elevation, width, and slope; and

(ii) A maintenance program involving periodic renourishment of sand must have been established and adhered to by the applicant.

(k) *Restrictions*—(1) *Alternative use facilities*. If a facility was being used for purposes other than those for which it was designed, restoration will only be eligible to the extent necessary to restore the immediate predisaster alternate purpose.

(2) *Inactive facilities*. Facilities that were not in active use at the time of the disaster are not eligible except in those instances where the facilities were only temporarily inoperative for repairs or remodeling, or where active use by the applicant was firmly established in an approved budget or the owner can demonstrate to FEMA's satisfaction an intent to begin use within a reasonable time.

[55 FR 2307, Jan. 23, 1990, as amended at 58 FR 55022, Oct. 25, 1993; 63 FR 5897, Feb. 5, 1998; 66 FR 22445, May 4, 2001; 67 FR 8854, Feb. 26, 2002; 68 FR 61371, Oct. 28, 2003; 69 FR 55097, Sept. 13, 2004; 74 FR 15350, Apr. 3, 2009; 74 FR 47482, Sept. 16, 2009]

§ 206.227 Snow assistance.

Emergency or major disaster declarations based on snow or blizzard conditions will be made only for cases of record or near record snowstorms, as established by official government records. Federal assistance will be provided for all costs eligible under 44 CFR 206.225 for a specified period of time which will be determined by the circumstances of the event.

[62 FR 45330, Aug. 27, 1997]

§ 206.228 Allowable costs.

General policies for determining allowable costs are established in 44 CFR 13.22. Exceptions to those policies as allowed in 44 CFR 13.4 and 13.6 are explained below.

(a) *Eligible direct costs*—(1) *Applicant-owned equipment*. Reimbursement for ownership and operation costs of applicant-owned equipment used to perform eligible work shall be provided in accordance with the following guidelines:

(i) *Rates established under State guidelines*. In those cases where an applicant uses reasonable rates which have been

44 CFR Ch. I (10-1-11 Edition)

established or approved under State guidelines, in its normal daily operations, reimbursement for applicant-owned equipment which has an hourly rate of \$75 or less shall be based on such rates. Reimbursement for equipment which has an hourly rate in excess of \$75 shall be determined on a case by case basis by FEMA.

(ii) *Rates established under local guidelines*. Where local guidelines are used to establish equipment rates, reimbursement will be based on those rates or rates in a Schedule of Equipment Rates published by FEMA, whichever is lower. If an applicant certifies that its locally established rates do not reflect actual costs, reimbursement may be based on the FEMA Schedule of Equipment Rates, but the applicant will be expected to provide documentation if requested. If an applicant wishes to claim an equipment rate which exceeds the FEMA Schedule, it must document the basis for that rate and obtain FEMA approval of an alternate rate.

(iii) *No established rates*. The FEMA Schedule of Equipment Rates will be the basis for reimbursement in all cases where an applicant does not have established equipment rates.

(2) *Force Account Labor Costs*. The straight- or regular-time salaries and benefits of a subgrantee's permanently employed personnel are not eligible in calculating the cost of eligible work under sections 403 and 407 of the Stafford Act, 42 U.S.C. 5170b and 5173. For the performance of eligible permanent restoration under section 406 of the Stafford Act, 42 U.S.C. 5172, straight-time salaries and benefits of a subgrantee's permanently employed personnel are eligible.

(3) Administrative and management costs for major disasters and emergencies will be paid in accordance with 44 CFR part 207.

(b) [Reserved]

[55 FR 2307, Jan. 23, 1990, as amended at 58 FR 47996, Sept. 14, 1993; 63 FR 64426, Nov. 20, 1998; 64 FR 55161, Oct. 12, 1999; 72 FR 57875, Oct. 11, 2007]

Federal Emergency Management Agency, DHS**§ 206.252****§§ 206.229–206.249 [Reserved]****Subpart I—Public Assistance Insurance Requirements**

SOURCE: 56 FR 64560, Dec. 11, 1991, unless otherwise noted.

§ 206.250 General.

(a) Sections 311 and 406(d) of the Stafford Act, and the Flood Disaster Protection Act of 1973, Public Law 93–234, set forth certain insurance requirements which apply to disaster assistance provided by FEMA. The requirements of this subpart apply to all assistance provided pursuant to section 406 of the Stafford Act with respect to any major disaster declared by the President after November 23, 1988.

(b) Insurance requirements prescribed in this subpart shall apply equally to private nonprofit (PNP) facilities which receive assistance under section 406 of the Act. PNP organizations shall submit the necessary documentation and assurances required by this subpart to the Grantee.

(c) Actual and anticipated insurance recoveries shall be deducted from otherwise eligible costs, in accordance with this subpart.

(d) The full coverage available under the standard flood insurance policy from the National Flood Insurance Program (NFIP) will be subtracted from otherwise eligible costs for a building and its contents within the special flood hazard area in accordance with § 206.252.

(e) The insurance requirements of this subpart should not be interpreted as a substitute for various hazard mitigation techniques which may be available to reduce the incidence and severity of future damage.

§ 206.251 Definitions.

(a) *Assistance* means any form of a Federal grant under section 406 of the Stafford Act to replace, restore, repair, reconstruct, or construct any facility and/or its contents as a result of a major disaster.

(b) *Building* means a walled and roofed structure, other than a gas, or liquid storage tank, that is principally above ground and affixed to a perma-

nent site, as well as a manufactured home on a permanent foundation.

(c) *Community* means any State or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaskan Native Village or authorized native organization which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

(d) *National Flood Insurance Program* (NFIP) means the program authorized by the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.*

(e) *Special flood hazard area* means an area having special flood, mudslide, and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary map (FHBM) or the Flood Insurance Rate Map (FIRM) issued by FEMA as Zone A, AO, A1–30, AE, A99, AH, VO, V1–30 VE, V, M, or E. “Special flood hazard area” is synonymous with “special hazard area”, as defined in 44 CFR part 59.

(f) *Standard Flood Insurance Policy* means the flood insurance policy issued by the Federal Insurance Administrator, or by a Write-Your-Own Company pursuant to 44 CFR 62.23.

§ 206.252 Insurance requirements for facilities damaged by flood.

(a) Where an insurable building damaged by flooding is located in a special flood hazard area identified for more than one year by the Administrator, assistance pursuant to section 406 of the Stafford Act shall be reduced. The amount of the reduction shall be the maximum amount of the insurance proceeds which would have been received had the building and its contents been fully covered by a standard flood insurance policy.

(b) The reduction stated above shall not apply to a PNP facility which could not be insured because it was located in a community not participating in the NFIP. However, the provisions of the Flood Disaster Protection Act of 1973 prohibit approval of assistance for the PNP unless the community agrees to participate in the NFIP within six months after the major disaster declaration date, and the required flood insurance is purchased.

§ 206.253**44 CFR Ch. I (10-1-11 Edition)**

(c) Prior to approval of a Federal grant for the restoration of a facility and its contents which were damaged by a flood, the Grantee shall notify the Regional Administrator of any entitlement to an insurance settlement or recovery. The Regional Administrator shall reduce the eligible costs by the amount of insurance proceeds which the grantee receives.

(d) The grantee or subgrantee is required to obtain and maintain flood insurance in the amount of eligible disaster assistance, as a condition of receiving Federal assistance that may be available. This requirement also applies to insurable flood damaged facilities located outside a special flood hazard area when it is reasonably available, adequate, and necessary. However, the Regional Administrator shall not require greater types and amounts of insurance than are certified as reasonable by the State Insurance Commissioner. The requirement to purchase flood insurance is waived when eligible costs for an insurable facility do not exceed \$5,000.

§ 206.253 Insurance requirements for facilities damaged by disasters other than flood.

(a) Prior to approval of a Federal grant for the restoration of a facility and its contents which were damaged by a disaster other than flood, the Grantee shall notify the Regional Administrator of any entitlement to insurance settlement or recovery for such facility and its contents. The Regional Administrator shall reduce the eligible costs by the actual amount of insurance proceeds relating to the eligible costs.

(b)(1) Assistance under section 406 of the Stafford Act will be approved only on the condition that the grantee obtain and maintain such types and amounts of insurance as are reasonable and necessary to protect against future loss to such property from the types of hazard which caused the major disaster. The extent of insurance to be required will be based on the eligible damage that was incurred to the damaged facility as a result of the major disaster. The Regional Administrator shall not require greater types and extent of insurance than are certified as

reasonable by the State Insurance Commissioner.

(2) Due to the high cost of insurance, some applicants may request to insure the damaged facilities under a blanket insurance policy covering all their facilities, an insurance pool arrangement, or some combination of these options. Such an arrangement may be accepted for other than flood damages. However, if the same facility is damaged in a similar future disaster, eligible costs will be reduced by the amount of eligible damage sustained on the previous disaster.

(c) The Regional Administrator shall notify the Grantee of the type and amount of insurance required. The grantee may request that the State Insurance Commissioner review the type and extent of insurance required to protect against future loss to a disaster-damaged facility, the Regional Administrator shall not require greater types and extent of insurance than are certified as reasonable by the State Insurance Commissioner.

(d) The requirements of section 311 of the Stafford Act are waived when eligible costs for an insurable facility do not exceed \$5,000. The Regional Administrator may establish a higher waiver amount based on hazard mitigation initiatives which reduce the risk of future damages by a disaster similar to the one which resulted in the major disaster declaration which is the basis for the application for disaster assistance.

(e) The Grantee shall provide assurances that the required insurance coverage will be maintained for the anticipated life of the restorative work or the insured facility, whichever is the lesser.

(f) No assistance shall be provided under section 406 of the Stafford Act for any facility for which assistance was provided as a result of a previous major disaster unless all insurance required by FEMA as a condition of the previous assistance has been obtained and maintained.

Federal Emergency Management Agency, DHS**§ 206.342****§§ 206.254–206.339 [Reserved]****Subpart J—Coastal Barrier Resources Act**

SOURCE: 55 FR 2311, Jan. 23, 1990, unless otherwise noted.

§ 206.340 Purpose of subpart.

This subpart implements the Coastal Barrier Resources Act (CBRA) (Pub. L. 97-348) as that statute applies to disaster relief granted to individuals and State and local governments under the Stafford Act. CBRA prohibits new expenditures and new financial assistance within the Coastal Barrier Resources System (CBRS) for all but a few types of activities identified in CBRA. This subpart specifies what actions may and may not be carried out within the CBRS. It establishes procedures for compliance with CBRA in the administration of disaster assistance by FEMA.

§ 206.341 Policy.

It shall be the policy of FEMA to achieve the goals of CBRA in carrying out disaster relief on units of the Coastal Barrier Resources System. It is FEMA's intent that such actions be consistent with the purpose of CBRA to minimize the loss of human life, the wasteful expenditure of Federal revenues, and the damage to fish, wildlife and other natural resources associated with coastal barriers along the Atlantic and Gulf coasts and to consider the means and measures by which the long-term conservation of these fish, wildlife, and other natural resources may be achieved under the Stafford Act.

§ 206.342 Definitions.

Except as otherwise provided in this subpart, the definitions set forth in part 206 of subchapter D are applicable to this subject.

(a) *Consultation* means that process by which FEMA informs the Secretary of the Interior through his/her designated agent of FEMA proposed disaster assistance actions on a designated unit of the Coastal Barrier Resources System and by which the Secretary makes comments to FEMA about the appropriateness of that ac-

tion. Approval by the Secretary is not required in order that an action be carried out.

(b) *Essential link* means that portion of a road, utility, or other facility originating outside of the system unit but providing access or service through the unit and for which no alternative route is reasonably available.

(c) *Existing facility* on a unit of CBRS established by Public Law 97-348 means a publicly owned or operated facility on which the start of a construction took place prior to October 18, 1982, and for which this fact can be adequately documented. In addition, a legally valid building permit or equivalent documentation, if required, must have been obtained for the construction prior to October 18, 1982. If a facility has been substantially improved or expanded since October 18, 1982, it is not an existing facility. For any other unit added to the CBRS by amendment to Public Law 97-348, the enactment date of such amendment is substituted for October 18, 1982, in this definition.

(d) *Expansion* means changing a facility to increase its capacity or size.

(e) *Facility* means "public facility" as defined in § 206.201. This includes any publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; and nonfederal-aid street, road, or highway; and any other public building, structure, or system, including those used for educational, recreational, or cultural purposes, or any park.

(f) *Financial assistance* means any form of Federal loan, grant guaranty, insurance, payment rebate, subsidy or any other form of direct or indirect Federal assistance.

(g) *New financial assistance* on a unit of the CBRS established by Public Law 97-348 means an approval by FEMA of a project application or other disaster assistance after October 18, 1982. For any other unit added to the CBRS by amendment to Public Law 97-348, the enactment date such amendment is substituted for October 18, 1982, in this definition.

§ 206.343**44 CFR Ch. I (10-1-11 Edition)**

(h) *Start of construction* for a structure means the first placement of permanent construction, such as the placement of footings or slabs or any work beyond the stage of excavation. Permanent construction for a structure does not include land preparation such as clearing, grading, and placement of fill, nor does it include excavation for a basement, footings, or piers. For a facility which is not a structure, start of construction means the first activity for permanent construction of a substantial part of the facility. Permanent construction for a facility does not include land preparation such as clearing and grubbing but would include excavation and placement of fill such as for a road.

(i) *Structure* means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a mobile home.

(j) *Substantial improvement* means any repair, reconstruction or other improvement of a structure or facility, that has been damaged in excess of, or the cost of which equals or exceeds, 50 percent of the market value of the structure or placement cost of the facility (including all "public facilities") as defined in the Stafford Act) either:

(1) Before the repair or improvement is started; or

(2) If the structure or facility has been damaged and is proposed to be restored, before the damage occurred. If a facility is a link in a larger system, the percentage of damage will be based on the relative cost of repairing the damaged facility to the replacement cost of that portion of the system which is operationally dependent on the facility. The term *substantial improvement* does not include any alteration of a structure or facility listed on the National Register of Historic Places or a State Inventory of Historic Places.

(k) *System unit* means any undeveloped coastal barrier, or combination of closely related undeveloped coastal barriers included within the Coastal Barrier Resources System as established by the section 4 of the CBRA, or as modified by the Secretary in accordance with that statute.

§ 206.343 Scope.

(a) The limitations on disaster assistance as set forth in this subpart apply only to FEMA actions taken on a unit of the Coastal Barrier Resources System or any conduit to such unit, including, but not limited to a bridge, causeway, utility, or similar facility.

(b) FEMA assistance having a social program orientation which is unrelated to development is not subject to the requirements of these regulations. This assistance includes:

(1) Individual and Family Grants that are not for acquisition or construction purposes;

(2) Crisis counseling;

(3) Disaster Legal services; and

(4) Disaster unemployment assistance.

§ 206.344 Limitations on Federal expenditures.

Except as provided in §§ 206.345 and 206.346, no new expenditures or financial assistance may be made available under authority of the Stafford Act for any purpose within the Coastal Barrier Resources System, including but not limited to:

(a) Construction, reconstruction, replacement, repair or purchase of any structure, appurtenance, facility or related infrastructure;

(b) Construction, reconstruction, replacement, repair or purchase of any road, airport, boat landing facility, or other facility on, or bridge or causeway to, any System unit; and

(c) Carrying out of any project to prevent the erosion of, or to otherwise stabilize, any inlet, shoreline, or inshore area, except that such assistance and expenditures may be made available on units designated pursuant to Section 4 on maps numbered S01 through S08 for purposes other than encouraging development and, in all units, in cases where an emergency threatens life, land, and property immediately adjacent to that unit.

§ 206.345 Exceptions.

The following types of disaster assistance actions are exceptions to the prohibitions of § 206.344.

Federal Emergency Management Agency, DHS**§ 206.346**

(a) After consultation with the Secretary of the Interior, the Regional Administrator may make disaster assistance available within the CBRS for:

(1) Replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system;

(2) Repair of any facility necessary for the exploration, extraction, or transportation of energy resources which activity can be carried out only on, in, or adjacent to coastal water areas because the use or facility requires access to the coastal water body; and

(3) Restoration of existing channel improvements and related structures, such as jetties, and including the disposal of dredge materials related to such improvements.

(b) After consultation with the Secretary of the Interior, the Regional Administrator may make disaster assistance available within the CBRS for the following types of actions, provided such assistance is consistent with the purposes of CBRA:

(1) Emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 402, 403, and 502 of the Stafford Act and are limited to actions that are necessary to alleviate the impacts of the event;

(2) Replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities, except as provided in § 206.347(c)(5);

(3) Repair of air and water navigation aids and devices, and of the access thereto;

(4) Repair of facilities for scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications;

(5) Repair of facilities for the study, management, protection and enhancement of fish and wildlife resources and habitats, including but not limited to, acquisition of fish and wildlife habitats and related lands, stabilization

projects for fish and wildlife habitats, and recreational projects; and

(6) Repair of nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.

§ 206.346 Applicability to disaster assistance.

(a) *Emergency assistance.* The Regional Administrator may approve assistance pursuant to sections 402, 403, or 502 of the Stafford Act, for emergency actions which are essential to the saving of lives and the protection of property and the public health and safety, are necessary to alleviate the emergency, and are in the public interest. Such actions include but are not limited to:

(1) Removal of debris from public property;

(2) Emergency protection measures to prevent loss of life, prevent damage to improved property and protect public health and safety;

(3) Emergency restoration of essential community services such as electricity, water or sewer;

(4) Provision of access to a private residence;

(5) Provision of emergency shelter by means of providing emergency repair of utilities, provision of heat in the season requiring heat, or provision of minimal cooking facilities;

(6) Relocation of individuals or property out of danger, such as moving a mobile home to an area outside of the CBRS (but disaster assistance funds may not be used to relocate facilities back into the CBRS);

(7) Home repairs to private owner-occupied primary residences to make them habitable;

(8) Housing eligible families in existing resources in the CBRS; and

(9) Mortgage and rental payment assistance.

(b) *Permanent restoration assistance.* Subject to the limitations set out below, the Regional Administrator may approve assistance for the repair, reconstruction, or replacement but not the expansion of the following publicly owned or operated facilities and certain private nonprofit facilities.

(1) Roads and bridges;

(2) Drainage structures, dams, levees;

§ 206.347

- (3) Buildings and equipment;
- (4) Utilities (gas, electricity, water, etc.); and
- (5) Park and recreational facilities.

§ 206.347 Requirements.

(a) *Location determination.* For each disaster assistance action which is proposed on the Atlantic or Gulf Coasts, the Regional Administrator shall:

(1) Review a proposed action's location to determine if the action is on or connected to the CBRS unit and thereby subject to these regulations. The appropriate Department of Interior map identifying units of the CBRS will be the basis of such determination. The CBRS units are also identified on FEMA Flood Insurance Maps (FIRM's) for the convenience of field personnel.

(2) If an action is determined not to be on or connected to a unit of the CBRS, no further requirements of these regulations needs to be met, and the action may be processed under other applicable disaster assistance regulations.

(3) If an action is determined to be on or connected to a unit of the CBRS, it is subject to the consultation and consistency requirements of CBRA as prescribed in §§ 206.348 and 206.349.

(b) *Emergency disaster assistance.* For each emergency disaster assistance action listed in § 206.346(a), the Regional Administrator shall perform the required consultation. CBRA requires that FEMA consult with the Secretary of the Interior before taking any action on a System unit. The purpose of such consultation is to solicit advice on whether the action is or is not one which is permitted by section 6 of CBRA and whether the action is or is not consistent with the purposes of CBRA as defined in section 1 of that statute.

(1) FEMA has conducted advance consultation with the Department of the Interior concerning such emergency actions. The result of the consultation is that the Secretary of the Interior through the Assistance Secretary for Fish and Wildlife and Parks has concurred that the emergency work listed in § 206.346(a) is consistent with the purposes of CBRA and may be approved by FEMA without additional consultation.

44 CFR Ch. I (10-1-11 Edition)

(2) *Notification.* As soon as practicable, the Regional Administrator will notify the designated Department of the Interior representative at the regional level of emergency projects that have been approved. Upon request from the Secretary of the Interior, the Director, Office of Environmental Planning and Historic Preservation, Mitigation Directorate will supply reports of all current emergency actions approved on CBRS units. Notification will contain the following information:

- (i) Identification of the unit in the CBRS;
- (ii) Description of work approved;
- (iii) Amount of Federal funding; and
- (iv) Additional measures required.

(c) *Permanent restoration assistance.* For each permanent restoration assistance action including but not limited to those listed in § 206.346(b), the Regional Administrator shall meet the requirements set out below.

(1) *Essential links.* For the repair or replacement of publicly owned or operated roads, structures or facilities which are essential links in a larger network or system:

- (i) No facility may be expanded beyond its predisaster design.
- (ii) Consultation in accordance with § 206.348 shall be accomplished.

(2) *Channel improvements.* For the repair of existing channels, related structures and the disposal of dredged materials:

(i) No channel or related structure may be repaired, reconstructed, or replaced unless funds were appropriated for the construction of such channel or structure before October 18, 1982;

(ii) Expansion of the facility beyond its predisaster design is not permitted;

(iii) Consultation in accordance with § 206.348 shall be accomplished.

(3) *Energy facilities.* For the repair of facilities necessary for the exploration, extraction or transportation of energy resources:

(i) No such facility may be repaired, reconstructed or replaced unless such function can be carried out only in, on, or adjacent to a coastal water area because the use or facility requires access to the coastal water body;

(ii) Consultation in accordance with § 206.348 shall be accomplished.

(4) *Special-purpose facilities.* For the repair of facilities used for the study, management, protection or enhancement of fish and wildlife resources and habitats and related recreational projects; air and water navigation aids and devices and access thereto; and facilities used for scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications; and, nonstructural facilities that are designed to mimic, enhance or restore natural shoreline stabilization systems:

(i) Consultation in accordance with § 206.348 shall be accomplished;

(ii) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with § 206.349.

(5) *Other public facilities.* For the repair, reconstruction, or replacement of publicly owned or operated roads, structures, or facilities that do not fall within the categories identified in paragraphs (c)(1), (2), (3), and (4) of this section:

(i) No such facility may be repaired, reconstructed, or replaced unless it is an “existing facility;”

(ii) Expansion of the facility beyond its predisaster design is not permitted;

(iii) Consultation in accordance with § 206.348 shall be accomplished;

(iv) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with § 206.349.

(6) *Private nonprofit facilities.* For eligible private nonprofit facilities as defined in these regulations and of the type described in paragraphs (c)(1), (2), (3), and (4) of this section:

(i) Consultation in accordance with § 206.348 shall be accomplished.

(ii) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with § 206.349.

(7) *Improved project.* An improved project may not be approved for a facility in the CBRS if such grant is to be combined with other funding, resulting in an expansion of the facility beyond the predisaster design. If a facility is exempt from the expansion prohibitions of CBRA by virtue of falling into

one of the categories identified in paragraph (c)(1), (2), (3), or (4) of this section, then an improved project for such facilities is not precluded.

(8) *Alternate project.* A new or enlarged facility may not be constructed on a unit of the CBRS under the provisions of the Stafford Act unless the facility is exempt from the expansion prohibition of CBRA by virtue of falling into one of the categories identified in paragraph (c)(1), (2), (3), or (4) of this section.

§ 206.348 Consultation.

As required by section 6 of the CBRA, the FEMA Regional Administrator will consult with the designated representative of the Department of the Interior (DOI) at the regional level before approving any action involving permanent restoration of a facility or structure on or attached to a unit of the CBRS.

(a) The consultation shall be by written memorandum to the DOI representative and shall contain the following:

(1) Identification of the unit within the CBRS;

(2) Description of the facility and the proposed repair or replacement work; including identification of the facility as an exception under section 6 of CBRA; and full justification of its status as an exception;

(3) Amount of proposal Federal funding;

(4) Additional mitigation measures required; and

(5) A determination of the action’s consistency with the purposes of CBRA, if required by these regulations, in accordance with § 206.349.

(b) Pursuant to FEMA understanding with DOI, the DOI representative will provide technical information and an opinion whether or not the proposed action meets the criteria for a CBRA exception, and on the consistency of the action with the purposes of CBRA (when such consistency is required). DOI is expected to respond within 12 working days from the date of the FEMA request for consultation. If a response is not received within the time limit, the FEMA Regional Administrator shall contact the DOI representative to determine if the request for consultation was received in a timely

§ 206.349

manner. If it was not, an appropriate extension for response will be given. Otherwise, he or she may assume DOI concurrence and proceed with approval of the proposed action.

(c) For those cases in which the regional DOI representative believes that the proposed action should not be taken and the matter cannot be resolved at the regional level, the FEMA Regional Administrator will submit the issue to the Director, Office of Environmental Planning and Historic Preservation, Mitigation Directorate. In coordination with the Office of Chief Counsel (OCC), consultation will be accomplished at the FEMA National Office with the DOI consultation officer. After this consultation, the Director, Office of Environmental Planning and Historic Preservation, Mitigation Directorate, determines whether or not to approve the proposed action.

§ 206.349 Consistency determinations.

Section 6(a)(6) of CBRA requires that certain actions be consistent with the purposes of that statute if the actions are to be carried out on a unit of the CBRA. The purpose of CBRA, as stated in section 2(b) of that statute, is to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with the coastal barriers along with Atlantic and Gulf coasts. For those actions where a consistency determination is required, the FEMA Regional Administrator shall evaluate the action according to the following procedures, and the evaluation shall be included in the written request for consultation with DOI.

(a) *Impact identification.* FEMA shall identify impacts of the following types that would result from the proposed action:

- (1) Risks to human life;
- (2) Risks of damage to the facility being repaired or replaced;
- (3) Risks of damage to other facilities;
- (4) Risks of damage to fish, wildlife, and other natural resources;
- (5) Condition of existing development served by the facility and the degree to which its redevelopment would be encouraged; and

44 CFR Ch. I (10-1-11 Edition)

(6) Encouragement of new development.

(b) *Mitigation.* FEMA shall modify actions by means of practicable mitigation measures to minimize adverse effects of the types listed in paragraph (a) of this section.

(c) *Conservation.* FEMA shall identify practicable measures that can be incorporated into the proposed action and will conserve natural and wildlife resources.

(d) *Finding.* For those actions required to be consistent with the purposes of CBRA, the above evaluation must result in a finding of consistency with CBRA by the Regional Administrator before funding may be approved for that action.

§§ 206.350–206.359 [Reserved]**Subpart K—Community Disaster Loans**

SOURCE: 55 FR 2314, Jan. 23, 1990, unless otherwise noted.

§ 206.360 Purpose.

This subpart provides policies and procedures for local governments and State and Federal officials concerning the Community Disaster Loan program under section 417 of the Stafford Act. Sections 206.360 through 206.367 of the subpart do not implement the Community Disaster Loan Act of 2005. (see § 206.370).

[70 FR 60446, Oct. 18, 2005]

§ 206.361 Loan program.

(a) *General.* The Assistant Administrator for the Disaster Assistance Directorate may make a Community Disaster Loan to any local government which has suffered a substantial loss of tax and other revenues as a result of a major disaster and which demonstrates a need for Federal financial assistance in order to perform its governmental functions.

(b) *Amount of loan.* The amount of the loan is based upon need, not to exceed 25 percent of the operating budget of the local government for the fiscal year in which the disaster occurs, but shall not exceed \$5 million. The term *fiscal year* as used in this subpart

Federal Emergency Management Agency, DHS**§ 206.362**

means the local government's fiscal year.

(c) *Interest rate.* The interest rate is the rate for five year maturities as determined by the Secretary of the Treasury in effect on the date that the Promissory Note is executed. This rate is from the monthly Treasury schedule of certified interest rates which takes into consideration the current average yields on outstanding marketable obligations of the United States, adjusted to the nearest $\frac{1}{8}$ percent.

(d) *Time limitation.* The Assistant Administrator for the Disaster Assistance Directorate may approve a loan in either the fiscal year in which the disaster occurred or the fiscal year immediately following that year. Only one loan may be approved under section 417(a) for any local government as the result of a single disaster.

(e) *Term of loan.* The term of the loan is 5 years, unless otherwise extended by the Assistant Administrator for the Disaster Assistance Directorate. The Assistant Administrator for the Disaster Assistance Directorate may consider requests for an extensions of loans based on the local government's financial condition. The total term of any loan under section 417(a) normally may not exceed 10 years from the date the Promissory Note was executed. However, when extenuating circumstances exist and the Community Disaster Loan recipient demonstrates an inability to repay the loan within the initial 10 years, but agrees to repay such loan over an extended period of time, additional time may be provided for loan repayment. (See § 206.367(c).)

(f) *Use of loan funds.* The local government shall use the loaned funds to carry on existing local government functions of a municipal operation character or to expand such functions to meet disaster-related needs. The funds shall not be used to finance capital improvements nor the repair or restoration of damaged public facilities. Neither the loan nor any cancelled portion of the loans may be used as the nonFederal share of any Federal program, including those under the Act.

(g) *Cancellation.* The Assistant Administrator for the Disaster Assistance Directorate shall cancel repayment of all or part of a Community Disaster

Loan to the extent that he/she determines that revenues of the local government during the 3 fiscal years following the disaster are insufficient to meet the operating budget of that local government because of disaster-related revenue losses and additional unreimbursed disaster-related municipal operating expenses.

(h) *Relation to other assistance.* Any community disaster loans including cancellations made under this subpart shall not reduce or otherwise affect any commitments, grants, or other assistance under the Act or these regulations.

[55 FR 2314, Jan. 23, 1990, as amended at 66 FR 22445, May 4, 2001]

§ 206.362 Responsibilities.

(a) The local government shall submit the financial information required by FEMA in the application for a Community Disaster Loan and in the application for loan cancellation, if submitted, and comply with the assurances on the application, the terms and conditions of the Promissory Note, and these regulations. The local government shall send all loan application, loan administration, loan cancellation, and loan settlement correspondence through the GAR and the FEMA Regional Office to the FEMA Assistant Administrator for the Disaster Assistance Directorate.

(b) The GAR shall certify on the loan application that the local government can legally assume the proposed indebtedness and that any proceeds will be used and accounted for in compliance with the FEMA-State Agreement for the major disaster. States are encouraged to take appropriate pre-disaster action to resolve any existing State impediments which would preclude a local government from incurring the increased indebtedness associated with a loan in order to avoid protracted delays in processing loan application requests in major disasters or emergencies.

(c) The Regional Administrator or designee shall review each loan application or loan cancellation request received from a local government to ensure that it contains the required documents and transmit the application to the Assistant Administrator for the

§ 206.363

Disaster Assistance Directorate. He/she may submit appropriate recommendations to the Assistant Administrator for the Disaster Assistance Directorate.

(d) The Assistant Administrator for the Disaster Assistance Directorate, or a designee, shall execute a Promissory Note with the local government, and the FEMA Finance Center, shall administer the loan until repayment or cancellation is completed and the Promissory Note is discharged.

(e) The Assistant Administrator for the Disaster Assistance Directorate or designee shall approve or disapprove each loan request, taking into consideration the information provided in the local government's request and the recommendations of the GAR and the Regional Administrator. The Assistant Administrator for the Disaster Assistance Directorate or designee shall approve or disapprove a request for loan cancellation in accordance with the criteria for cancellation in these regulations.

(f) The Chief Financial Officer shall establish and maintain a financial account for each outstanding loan and disburse funds against the Promissory Note.

§ 206.363 Eligibility criteria.

(a) *Local government.* (1) The local government must be located within the area designated by the Assistant Administrator for the Disaster Assistance Directorate as eligible for assistance under a major disaster declaration. In addition, State law must not prohibit the local government from incurring the indebtedness resulting from a Federal loan.

(2) Criteria considered by FEMA in determining the eligibility of a local government for a Community Disaster Loan include the loss of tax and other revenues as result of a major disaster, a demonstrated need for financial assistance in order to perform its governmental functions, the maintenance of an annual operating budget, and the responsibility to provide essential municipal operating services to the community. Eligibility for other assistance under the Act does not, by itself, establish entitlement to such a loan.

44 CFR Ch. I (10-1-11 Edition)

(b) *Loan eligibility*—(1) *General.* To be eligible, the local government must show that it may suffer or has suffered a substantial loss of tax and other revenues as a result of a major disaster or emergency, must demonstrate a need for financial assistance in order to perform its governmental functions, and must not be in arrears with respect to any payments due on previous loans. Loan eligibility is based on the financial condition of the local government and a review of financial information and supporting documentation accompanying the application.

(2) *Substantial loss of tax and other revenues.* The fiscal year of the disaster or the succeeding fiscal year is the base period for determining whether a local government may suffer or has suffered a substantial loss of revenue. Criteria used in determining whether a local government has or may suffer a substantial loss of tax and other revenue include the following disaster-related factors:

(i) Whether the disaster caused a large enough reduction in cash receipts from normal revenue sources, excluding borrowing, which affects significantly and adversely the level and/or categories of essential municipal services provided prior to the disaster;

(ii) Whether the disaster caused a revenue loss of over 5 percent of total revenue estimated for the fiscal year in which the disaster occurred or for the succeeding fiscal year;

(3) *Demonstrated need for financial assistance.* The local government must demonstrate a need for financial assistance in order to perform its governmental functions. The criteria used in making this determination include the following:

(i) Whether there are sufficient funds to meet current fiscal year operating requirements;

(ii) Whether there is availability of cash or other liquid assets from the prior fiscal year;

(iii) Current financial condition considering projected expenditures for governmental services and availability of other financial resources;

(iv) Ability to obtain financial assistance or needed revenue from State and other Federal agencies for direct program expenditures;

Federal Emergency Management Agency, DHS**§ 206.364**

- (v) Debt ratio (relationship of annual receipts to debt service);
- (vi) Ability to obtain financial assistance or needed revenue from State and other Federal agencies for direct program expenditures;
- (vii) Displacement of revenue-producing business due to property destruction;
- (viii) Necessity to reduce or eliminate essential municipal services; and
- (ix) Danger of municipal insolvency.

[55 FR 2314, Jan. 23, 1990, as amended at 66 FR 22445, May 4, 2001]

§ 206.364 Loan application.

(a) *Application.* (1) The local government shall submit an application for a Community Disaster Loan through the GAR. The loan must be justified on the basis of need and shall be based on the actual and projected expenses, as a result of the disaster, for the fiscal year in which the disaster occurred and for the 3 succeeding fiscal years. The loan application shall be prepared by the affected local government and be approved by the GAR. FEMA has determined that a local government, in applying for a loan as a result of having suffered a substantial loss of tax and other revenue as a result of a major disaster, is not required to first seek credit elsewhere (see § 206.367(c)).

(2) The State exercises administrative authority over the local government's application. The State's review should include a determination that the applicant is legally qualified, under State law, to assume the proposed debt, and may include an overall review for accuracy for the submission. The Governor's Authorized Representative may request the Regional Administrator to waive the requirement for a State review if an otherwise eligible applicant is not subject to State administration authority and the State cannot legally participate in the loan application process.

(b) *Financial requirements.* (1) The loan application shall be developed from financial information contained in the local government's annual operating budget (see § 206.364(b)(2)) and shall include a Summary of Revenue Loss and Unreimbursed Disaster-Related Expenses, a Statement of the Applicant's Operating Results—Cash Posi-

tion, a Debt History, Tax Assessment Data, Financial Projections, Other Information, a Certification, and the Assurances listed on the application.

(i) Copies of the local government's financial reports (Revenue and Expense and Balance Sheet) for the 3 fiscal years immediately prior to the fiscal year of the disaster and the applicant's most recent financial statement must accompany the application. The local government's financial reports to be submitted are those annual (or interim) consolidated and/or individual official annual financial presentations for the General Fund and all other funds maintained by the local government.

(ii) Each application for a Community Disaster Loan must also include:

(A) A statement by the local government identifying each fund (i.e. General Fund, etc.) which is included as its annual Operating budget, and

(B) A copy of the pertinent State statutes, ordinance, or regulations which prescribe the local government's system of budgeting, accounting and financial reporting, including a description of each fund account.

(2) *Operating budget.* For loan application purposes, the operating budget is that document or documents approved by an appropriating body, which contains an estimate of proposed expenditures, other than capital outlays for fixed assets for a stated period of time, and the proposed means of financing the expenditures. For loan cancellation purposes, FEMA interprets the term "operating budget" to mean actual revenues and expenditures of the local government as published in the official financial statements of the local government.

(3) *Operating budget increases.* Budget increases due to increases in the level of, or additions to, municipal services not rendered at the time of the disaster or not directly related to the disaster shall be identified.

(4) *Revenue and assessment information.* The applicant shall provide information concerning its method of tax assessment including assessment dates and the dates payments are due. Tax revenues assessed but not collected, or

§ 206.365

44 CFR Ch. I (10-1-11 Edition)

other revenues which the local government chooses to forgive, stay, or otherwise not exercise the right to collect, are not a legitimate revenue loss for purposes of evaluating the loan application.

(5) *Estimated disaster-related expense.* Unreimbursed disaster-related expenses of a municipal operating character should be estimated. These are discussed in § 206.366(b).

(c) *Federal review.* (1) The Assistant Administrator for the Disaster Assistance Directorate or designee shall approve a community disaster loan to the extent it is determined that the local government has suffered a substantial loss of tax and other revenues and demonstrates a need for financial assistance to perform its governmental function as the result of the disaster.

(2) *Resubmission of application.* If a loan application is disapproved, in whole or in part, by the Assistant Administrator for the Disaster Assistance Directorate because of inadequacy of information, a revised application may be resubmitted by the local government within sixty days of the date of the disapproval. Decision by the Assistant Administrator for the Disaster Assistance Directorate on the resubmission is final.

(d) *Community disaster loan.* (1) The loan shall not exceed the lesser of:

(i) The amount of projected revenue loss plus the projected unreimbursed disaster-related expenses of a municipal operating character for the fiscal year of the major disaster and the subsequent 3 fiscal years, or

(ii) 25 percent of the local government's annual operating budget for the fiscal year in which the disaster occurred.

(2) *Promissory note.* (i) Upon approval of the loan by the Assistant Administrator for the Disaster Assistance Directorate or designee, he or she, or a designated Loan Officer will execute a Promissory Note with the applicant. The Note must be co-signed by the State (see § 206.364(d)(2)(ii)). The applicant should indicate its funding requirements on the Schedule of Loan Increments on the Note.

(ii) If the State cannot legally cosign the Promissory Note, the local government must pledge collateral security,

acceptable to the Assistant Administrator for the Disaster Assistance Directorate, to cover the principal amount of the Note. The pledge should be in the form of a resolution by the local governing body identifying the collateral security.

[55 FR 2314, Jan. 23, 1990, as amended at 74 FR 15351, Apr. 3, 2009]

§ 206.365 Loan administration.

(a) *Funding.* (1) FEMA will disburse funds to the local government when requested, generally in accordance with the Schedule of Loan Increments in the Promissory Note. As funds are disbursed, interest will accrue against each disbursement.

(2) When each incremental disbursement is requested, the local government shall submit a copy of its most recent financial report (if not submitted previously) for consideration by FEMA in determining whether the level and frequency of periodic payments continue to be justified. The local government shall also provide the latest available data on anticipated and actual tax and other revenue collections. Desired adjustments in the disbursement schedule shall be submitted in writing at least 10 days prior to the proposed disbursement date in order to ensure timely receipt of the funds. A sinking fund should be established to amortize the debt.

(b) *Financial management.* (1) Each local government with an approved Community Disaster Loan shall establish necessary accounting records, consistent with local government's financial management system, to account for loan funds received and disbursed and to provide an audit trail.

(2) FEMA auditors, State auditors, the GAR, the Regional Administrator, the Assistant Administrator for the Disaster Assistance Directorate, and the Comptroller General of the United States or their duly authorized representatives shall, for the purpose of audits and examination, have access to any books, documents, papers, and records that pertain to Federal funds, equipments, and supplies received under these regulations.

(c) *Loan servicing.* (1) The applicant annually shall submit to FEMA copies

of its annual financial reports (operating statements, balance sheets, etc.) for the fiscal year of the major disaster, and for each of the 3 subsequent fiscal years.

(2) The Disaster Assistance Directorate, will review the loan periodically. The purpose of the reevaluation is to determine whether projected revenue losses, disaster-related expenses, operating budgets, and other factors have changed sufficiently to warrant adjustment of the scheduled disbursement of the loan proceeds.

(3) The Disaster Assistance Directorate, shall provide each loan recipient with a loan status report on a quarterly basis. The recipient will notify FEMA of any changes of the responsible municipal official who executed the Promissory Note.

(d) *Inactive loans.* If no funds have been disbursed from the Treasury, and if the local government does not anticipate a need for such funds, the note may be cancelled at any time upon a written request through the State and Regional Office to FEMA. However, since only one loan may be approved, cancellation precludes submission of a second loan application request by the same local government for the same disaster.

§ 206.366 Loan cancellation.

(a) *Policies.* (1) FEMA shall cancel repayment of all or part of a Community Disaster Loan to the extent that the Assistant Administrator for the Disaster Assistance Directorate determines that revenues of the local government during the full three fiscal year period following the disaster are insufficient, as a result of the disaster, to meet the operating budget for the local government, including additional unreimbursed disaster-related expenses for a municipal operating character. For loan cancellation purposes, FEMA interprets that term *operating budget* to mean actual revenues and expenditures of the local government as published in the official financial statements of the local government.

(2) If the tax and other revenues rates or the tax assessment valuation of property which was not damaged or destroyed by the disaster are reduced during the 3 fiscal years subsequent to

the major disaster, the tax and other revenue rates and tax assessment valuation factors applicable to such property in effect at the time of the major disaster shall be used without reduction for purposes of computing revenues received. This may result in decreasing the potential for loan cancellations.

(3) If the local government's fiscal year is changed during the "full 3 year period following the disaster" the actual period will be modified so that the required financial data submitted covers an inclusive 36-month period.

(4) If the local government transfers funds from its operating funds accounts to its capital funds account, utilizes operating funds for other than routine maintenance purposes, or significantly increases expenditures which are not disaster related, except increases due to inflation, the annual operating budget or operating statement expenditures will be reduced accordingly for purposes of evaluating any request for loan cancellation.

(5) It is not the purpose of this loan program to underwrite predisaster budget or actual deficits of the local government. Consequently, such deficits carried forward will reduce any amounts otherwise eligible for loan cancellation.

(b) *Disaster-related expenses of a municipal operation character.* (1) For purpose of this loan, unreimbursed expenses of a municipal operating character are those incurred for general government purposes, such as police and fire protection, trash collection, collection of revenues, maintenance of public facilities, flood and other hazard insurance, and other expenses normally budgeted for the general fund, as defined by the Municipal Finance Officers Association.

(2) Disaster-related expenses do not include expenditures associated with debt service, any major repairs, rebuilding, replacement or reconstruction of public facilities or other capital projects, intragovernmental services, special assessments, and trust and agency fund operations. Disaster expenses which are eligible for reimbursement under project applications or other Federal programs are not eligible for loan cancellation.

§ 206.366

(3) Each applicant shall maintain records including documentation necessary to identify expenditures for unreimbursed disaster-related expenses. Examples of such expenses include but are not limited to:

(i) Interest paid on money borrowed to pay amounts FEMA does not advance toward completion of approved Project Applications.

(ii) Unreimbursed costs to local governments for providing usable sites with utilities for mobile homes used to meet disaster temporary housing requirements.

(iii) Unreimbursed costs required for police and fire protection and other community services for mobile home parks established as the result of or for use following a disaster.

(iv) The cost to the applicant of flood insurance required under Public Law 93-234, as amended, and other hazard insurance required under section 311, Public Law 93-288, as amended, as a condition of Federal disaster assistance for the disaster under which the loan is authorized.

(4) The following expenses are not considered to be disaster-related for Community Disaster Loan purposes:

(i) The local government's share for assistance provided under the Act including flexible funding under section 406(c)(1) of the Act.

(ii) Improvements related to the repair or restoration of disaster public facilities approved on Project Applications.

(iii) Otherwise eligible costs for which no Federal reimbursement is requested as a part of the applicant's disaster response commitment, or cost sharing as specified in the FEMA-State Agreement for the disaster.

(iv) Expenses incurred by the local government which are reimbursed on the applicant's project application.

(c) *Cancellation application.* A local government which has drawn loan funds from the Treasury may request cancellation of the principal and related interest by submitting an Application for Loan Cancellation through the Governor's Authorized Representative to the Regional Administrator prior to the expiration date of the loan.

44 CFR Ch. I (10-1-11 Edition)

(1) Financial information submitted with the application shall include the following:

(i) Annual Operating Budgets for the fiscal year of the disaster and the 3 subsequent fiscal years;

(ii) Annual Financial Reports (Revenue and Expense and Balance Sheet) for each of the above fiscal years. Such financial records must include copies of the local government's annual financial reports, including operating statements balance sheets and related consolidated and individual presentations for each fund account. In addition, the local government must include an explanatory statement when figures in the Application for Loan Cancellation form differ from those in the supporting financial reports.

(iii) The following additional information concerning annual real estate property taxes pertaining to the community for each of the above fiscal years:

(A) The market value of the tax base (dollars);

(B) The assessment ratio (percent);

(C) The assessed valuation (dollars);

(D) The tax levy rate (mils);

(E) Taxes levied and collected (dollars).

(iv) Audit reports for each of the above fiscal years certifying to the validity of the Operating Statements. The financial statements of the local government shall be examined in accordance with generally accepted auditing standards by independent certified public accountants. The report should not include recommendations concerning loan cancellation or repayment.

(v) Other financial information specified in the Application for Loan Cancellation.

(2) *Narrative justification.* The application may include a narrative presentation to amplify the financial material accompanying the application and to present any extenuating circumstances which the local government wants the Assistant Administrator for the Disaster Assistance Directorate to consider in rendering a decision on the cancellation request.

(d) *Determination.* (1) If, based on a review of the Application for Loan Cancellation and FEMA audit, when determined necessary, the Assistant Administrator for the Disaster Assistance Directorate determines that all or part of the Community Disaster Loan funds should be canceled, the principal amount which is canceled will become a grant, and the related interest will be forgiven. The Assistant Administrator for the Disaster Assistance Directorate's determination concerning loan cancellation will specify that any uncancelled principal and related interest must be repaid immediately and that, if immediate repayment will constitute a financial hardship, the local government must submit for FEMA review and approval, a repayment schedule for settling the indebtedness on timely basis. Such repayments must be made to the Treasurer of the United States and be sent to FEMA, Attention: Chief Financial Officer.

(2) A loan or cancellation of a loan does not reduce or affect other disaster-related grants or other disaster assistance. However, no cancellation may be made that would result in a duplication of benefits to the applicant.

(3) The uncancelled portion of the loan must be repaid in accordance with § 206.367.

(4) *Appeals.* If an Application for Loan Cancellation is disapproved, in whole or in part, by the Assistant Administrator for the Disaster Assistance Directorate or designee, the local government may submit any additional information in support of the application within 60 days of the date of disapproval. The decision by the Assistant Administrator for the Disaster Assistance Directorate or designee on the submission is final.

[55 FR 2314, Jan. 23, 1990, as amended at 74 FR 15351, Apr. 3, 2009]

§ 206.367 Loan repayment.

(a) *Prepayments.* The local government may make prepayments against loan at any time without any prepayment penalty.

(b) *Repayment.* To the extent not otherwise cancelled, Community Disaster Loan funds become due and payable in accordance with the terms and condi-

tions of the Promissory Note. The note shall include the following provisions:

(1) The term of a loan made under this program is 5 years, unless extended by the Assistant Administrator for the Disaster Assistance Directorate. Interest will accrue on outstanding cash from the actual date of its disbursement by the Treasury.

(2) The interest amount due will be computed separately for each Treasury disbursement as follows: $I=P \times R \times T$, where I =the amount of simple interest, P =the principal amount disbursed; R =the interest rate of the loan; and, T =the outstanding term in years from the date of disbursement to date of repayment, with periods less than 1 year computed on the basis of 365 days/year. If any portion of the loan is cancelled, the interest amount due will be computed on the remaining principal with the shortest outstanding term.

(3) Each payment made against the loan will be applied first to the interest computed to the date of the payment, and then to the principal. Prepayments of scheduled installments, or any portion thereof, may be made at any time and shall be applied to the installments last to become due under the loan and shall not affect the obligation of the borrower to pay the remaining installments.

(4) The Assistant Administrator for the Disaster Assistance Directorate may defer payments of principal and interest until FEMA makes its final determination with respect to any Application for Loan Cancellation which the borrower may submit. However, interest will continue to accrue.

(5) Any costs incurred by the Federal Government in collecting the note shall be added to the unpaid balance of the loan, bear interest at the same rate as the loan, and be immediately due without demand.

(6) In the event of default on this note by the borrower, the FEMA claims collection officer will take action to recover the outstanding principal plus related interest under Federal debt collection authorities, including administrative offset against other Federal funds due the borrower and/or referral to the Department of Justice for judicial enforcement and collection.

§§ 206.368–206.369

44 CFR Ch. I (10-1-11 Edition)

(c) *Additional time.* In unusual circumstances involving financial hardship, the local government may request an additional period of time beyond the original 10 year term to repay the indebtedness. Such request may be approved by the Assistant Administrator for the Disaster Assistance Directorate subject to the following conditions:

(1) The local government must submit documented evidence that it has applied for the same credit elsewhere and that such credit is not available at a rate equivalent to the current Treasury rate.

(2) The principal amount shall be the original uncancelled principal plus related interest.

(3) The interest rate shall be the Treasury rate in effect at the time the new Promissory Note is executed but in no case less than the original interest rate.

(4) The term of the new Promissory Note shall be for the settlement period requested by the local government but not greater than 10 years from the date the new note is executed.

§§ 206.368–206.369 [Reserved]

§ 206.370 Purpose and scope.

(a) *Purpose.* Sections 206.370 through 206.377 provide procedures for local governments and State and Federal officials concerning the Special Community Disaster Loans program under section 417 of the Stafford Act (42 U.S.C. 5184), the Community Disaster Loan Act of 2005, Public Law 109-88, and the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006, Public Law 109-234.

(b) *Scope.* Sections 206.370 through 206.377 apply only to Special Community Disaster Loans issued under the Community Disaster Loan Act of 2005, Public Law 109-88, and the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006, Public Law 109-234.

[70 FR 60446, Oct. 18, 2005, as amended at 75 FR 2817, Jan. 19, 2010]

§ 206.371 Loan program.

(a) *General.* The Assistant Administrator for the Disaster Assistance Di-

rectorate may make a Special Community Disaster Loan to any local government which has suffered a substantial loss of tax and other revenues as a result of a major disaster and which demonstrates a need for Federal financial assistance in order to provide essential services.

(b) *Amount of loan.* The amount of the loan is based upon need, not to exceed 25 percent of the operating budget of the local government for the fiscal year in which the disaster occurs. The term fiscal year as used in this subpart means the local government's fiscal year.

(c) *Interest rate.* The interest rate is the rate for five year maturities as determined by the Secretary of the Treasury in effect on the date that the Promissory Note is executed. This rate is from the monthly Treasury schedule of certified interest rates which takes into consideration the current average yields on outstanding marketable obligations of the United States. If an applicant can demonstrate *unusual circumstances involving financial hardship*, the Assistant Administrator for the Disaster Assistance Directorate may approve a rate equal to the five year maturity rate plus 1 per centum, adjusted to the nearest $\frac{1}{4}$ percent, and further reduced by one-half.

(d) *Time limitation.* The Assistant Administrator for the Disaster Assistance Directorate may approve a loan in either the fiscal year in which the disaster occurred or the fiscal year immediately following that year.

(e) *Term of loan.* The term of the loan is 5 years, unless otherwise extended by the Assistant Administrator for the Disaster Assistance Directorate. The Assistant Administrator for the Disaster Assistance Directorate may consider a request for an extension of a loan based on the local government's financial condition. The total term of any loan under section 417(a) of the Stafford Act normally may not exceed 10 years from the date the Promissory Note was executed. However, when extenuating circumstances exist and the recipient demonstrates an inability to repay the loan within the initial 10 years, but agrees to repay such loan

over an extended period of time, additional time may be provided for loan repayment (see § 206.377(c)).

(f) *Use of loan funds.* The local government shall use the loaned funds to assist in providing essential services. The funds shall not be used to finance capital improvements nor the repair or restoration of damaged public facilities. Neither the loan nor any cancelled portion of the loans may be used as the non-Federal share of any Federal program, including those under the Stafford Act.

(g) *Relation to other assistance.* Any Special Community Disaster Loans including cancellations of loans made under this subpart shall not reduce or otherwise affect any commitments, grants, or other assistance provided under the authority of the Stafford Act or this part.

(h) *Cancellation.* The Director of the Public Assistance Division shall cancel repayment of all or part of a Special Community Disaster Loan to the extent that he/she determines that revenues of the local government during the three full fiscal years following the disaster are insufficient to meet the operating budget of that local government because of disaster-related revenue losses and additional unreimbursed disaster-related municipal operating expenses.

[70 FR 60446, Oct. 18, 2005, as amended at 75 FR 2817, Jan. 19, 2010]

§ 206.372 Responsibilities.

(a) The local government shall submit the financial information required by FEMA in the application for a Community Disaster Loan or other format specified by FEMA and comply with the assurances on the application, the terms and conditions of the Promissory Note, the application for loan cancellation, if submitted, and §§ 206.370 through 206.377. The local government shall send all loan application, loan administration, loan cancellation, and loan settlement correspondence through the Governor's Authorized Representative (GAR) and the FEMA Regional Office to the Director of the Public Assistance Division.

(b) The GAR shall certify on the loan application that the local government can legally assume the proposed in-

debt and that any proceeds will be used and accounted for in compliance with the FEMA-State Agreement for the major disaster. States are encouraged to take appropriate pre-disaster action to resolve any existing State impediments which would preclude a local government from incurring the increased indebtedness associated with a loan in order to avoid protracted delays in processing loan application requests resulting from major disasters.

(c) The Regional Administrator or designee shall review each loan application or loan cancellation request received from a local government to ensure that it contains the required documents and transmit the application to the Director of the Public Assistance Division. He/she may also submit appropriate recommendations to the Director of the Public Assistance Division.

(d) The Director of the Public Assistance Division or a designee, shall execute a Promissory Note with the local government and shall administer the loan until repayment or cancellation is completed and the Promissory Note is discharged.

(e) The Director of the Public Assistance Division shall approve or disapprove each loan request, taking into consideration the information provided in the local government's request and the recommendations of the GAR and the Regional Administrator. The Director of the Public Assistance Division shall approve or disapprove a request for loan cancellation in accordance with the criteria for cancellation in these regulations.

(f) The FEMA Chief Financial Officer shall establish and maintain a financial account for each outstanding loan and disburse funds against the Promissory Note.

[70 FR 60446, Oct. 18, 2005, as amended at 75 FR 2818, Jan. 19, 2010]

§ 206.373 Eligibility criteria.

(a) *Local government.* (1) The local government must be located within the area eligible for assistance under a major disaster declaration. In addition, State law must not prohibit the local government from incurring the indebtedness resulting from a Federal loan.

§ 206.374

(2) Criteria considered by FEMA in determining the eligibility of a local government for a Special Community Disaster Loan include the loss of tax and other revenues as result of a major disaster, a demonstrated need for financial assistance in order to perform essential governmental functions, the maintenance of an annual operating budget, and the responsibility to provide essential services to the community. Eligibility for other assistance under the Stafford Act does not, by itself, establish entitlement to such a loan.

(b) *Loan eligibility*—(1) *General*. To be eligible, the local government must show that it may suffer or has suffered a substantial loss of tax and other revenues as a result of a major disaster or emergency, and it must demonstrate a need for financial assistance in order to provide essential municipal services. Loan eligibility is based on the financial condition of the local government and a review of financial information and supporting documentation accompanying the application.

(2) *Substantial loss of tax and other revenues*. The fiscal year of the disaster or the succeeding fiscal year is the base period for determining whether a local government may suffer or has suffered a substantial loss of revenue. Criteria used in determining whether a local government has or may suffer a substantial loss of tax and other revenue include the following disaster-related factors:

(i) Whether the disaster caused a large enough reduction in cash receipts from normal revenue sources, excluding borrowing, which affects significantly and adversely the level and/or categories of essential services provided prior to the disaster;

(ii) Whether the disaster caused a revenue loss of over 5 percent of total revenue estimated for the fiscal year in which the disaster occurred or for the succeeding fiscal year.

(3) *Demonstrated need for financial assistance*. The local government must demonstrate a need for financial assistance in order to perform essential governmental functions. The criteria used in making this determination may include some or all of the following factors:

44 CFR Ch. I (10-1-11 Edition)

(i) Whether there are sufficient funds to meet current fiscal year operating requirements;

(ii) Whether there is availability of cash or other liquid assets from the prior fiscal year;

(iii) Current financial condition considering projected expenditures for governmental services and availability of other financial resources;

(iv) Ability to obtain financial assistance or needed revenue from State and other Federal agencies for direct program expenditures;

(v) Debt ratio (relationship of annual receipts to debt service);

(vi) Displacement of revenue-producing business due to property destruction;

(vii) Necessity to reduce or eliminate essential services; and

(viii) Danger of municipal insolvency.

[70 FR 60446, Oct. 18, 2005]

§ 206.374 Loan application.

(a) *Application*. (1) The local government shall submit an application for a Special Community Disaster Loan through the GAR. The loan must be justified on the basis of need and shall be based on the actual and projected expenses, as a result of the disaster, for the fiscal year in which the disaster occurred and for the 3 succeeding fiscal years. The loan application shall be prepared by the affected local government and be approved by the GAR. FEMA has determined that a local government, in applying for a loan as a result of having suffered a substantial loss of tax and other revenue as a result of a major disaster, is not required to first seek credit elsewhere (see § 206.377(c)).

(2) The State exercises administrative authority over the local government's application. The State's review should include a determination that the applicant is legally qualified, under State law, to assume the proposed debt, and may include an overall review for accuracy of the submission. The GAR may request the Regional Administrator to waive the requirement for a State review if an otherwise eligible applicant is not subject to State administration authority and the State

cannot legally participate in the loan application process.

(b) *Financial requirements.* (1) The loan application shall be developed from financial information contained in the local government's annual operating budget (see paragraph (b)(2) of this section) and shall include a Summary of Revenue Loss and Unreimbursed Disaster-Related Expenses, a Statement of the Applicant's Operating Results—Cash Position, and certification and assurances requested by the Assistant Administrator for the Disaster Assistance Directorate.

(i) Copies of the local government's financial reports (Revenue and Expense and Balance Sheet) for the 3 fiscal years immediately prior to the fiscal year of the disaster and the applicant's most recent financial statement must, unless impracticable, accompany the application. The local government's financial reports to be submitted are those annual (or interim) consolidated and/or individual official annual financial presentations for the General Fund and all other funds maintained by the local government.

(ii) Each application for a Special Community Disaster Loan must also include:

(A) A statement by the local government identifying each fund (i.e. General Fund, etc.) which is included as its annual Operating budget, and

(B) A copy of the pertinent State statutes, ordinances, or regulations which prescribe the local government's system of budgeting, accounting and financial reporting, including a description of each fund account.

(2) *Operating budget.* For loan application purposes, the operating budget is that document or documents approved by an appropriating body, which contains an estimate of proposed expenditures, other than capital outlays for fixed assets for a stated period of time, and the proposed means of financing the expenditures. For loan cancellation purposes, FEMA interprets the term "operating budget" to mean actual revenues and expenditures of the local government as published in the official financial statements of the local government.

(3) *Operating budget increases.* Budget increases due to increases in the level

of, or additions to, municipal services not rendered at the time of the disaster or not directly related to the disaster shall be identified.

(4) *Revenue and assessment information.* The applicant shall provide information concerning its method of tax assessment including assessment dates and the dates payments are due.

(5) *Estimated disaster-related expense.* Unreimbursed disaster-related expenses of a municipal operating character should be estimated.

(c) *Federal review.* (1) The Assistant Administrator for the Disaster Assistance Directorate or designee shall approve a Special Community Disaster Loan to the extent it is determined that the local government has suffered a substantial loss of tax and other revenues and demonstrates a need for financial assistance as the result of the disaster to provide essential municipal services.

(2) *Resubmission of application.* If a loan application is disapproved, in whole or in part, by the Assistant Administrator for the Disaster Assistance Directorate because of inadequacy of information, a revised application may be submitted by the local government within sixty days of the date of the disapproval. Decision by the Assistant Administrator for the Disaster Assistance Directorate on the resubmission is final.

(d) *Special Community Disaster Loan.* (1) The loan shall not exceed the lesser of:

(i) The amount of projected revenue loss plus the projected unreimbursed disaster-related expenses of a municipal operating character for the fiscal year of the major disaster and the subsequent 3 fiscal years, or

(ii) 25 percent of the local government's annual operating budget for the fiscal year in which the disaster occurred.

(2) *Promissory note.* (i) Upon approval of the loan by the Assistant Administrator for the Disaster Assistance Directorate or designee, he or she, or a designated Loan Officer will execute a Promissory Note with the applicant. The Note must be co-signed by the State (see paragraph (d)(2)(ii) of this section). The applicant should indicate

§ 206.375

its funding requirements on the Schedule of Loan Increments on the Note.

(ii) If the State cannot legally cosign the Promissory Note, the local government must pledge collateral security, acceptable to the Assistant Administrator for the Disaster Assistance Directorate, to cover the principal amount of the Note. The pledge should be in the form of a resolution by the local governing body identifying the collateral security.

(e) *Waiver of requirements.* Notwithstanding any other provision of this or other sections promulgated pursuant to Public Law 109-88, the Assistant Administrator for the Disaster Assistance Directorate may, upon the request of an applicant or loan recipient, waive any specific application requirement or financial reporting requirement (see, e.g., § 206.375(a)(2)) upon a finding by the Assistant Administrator for the Disaster Assistance Directorate that the effects of the major disaster prevent the applicant from fulfilling the application requirement and that waiving the requirements would be consistent with the purposes of the Community Disaster Loan Act of 2005.

[70 FR 60446, Oct. 18, 2005, as amended at 75 FR 2818, Jan. 19, 2010]

§ 206.375 Loan administration.

(a) *Funding.* (1) FEMA will disburse funds to the local government when requested, generally in accordance with the Schedule of Loan Increments in the Promissory Note. As funds are disbursed, interest will accrue against each disbursement.

(2) When each incremental disbursement is requested, the local government shall submit a copy of its most recent financial report (if not submitted previously) for consideration by FEMA in determining whether the level and frequency of periodic payments continue to be justified. The local government shall also provide the latest available data on anticipated and actual tax and other revenue collections. Desired adjustments in the disbursement schedule shall be submitted in writing at least 10 days prior to the proposed disbursement date in order to ensure timely receipt of the funds.

44 CFR Ch. I (10-1-11 Edition)

(b) *Financial management.* (1) Each local government with an approved Special Community Disaster Loan shall establish necessary accounting records, consistent with local government's financial management system, to account for loan funds received and disbursed and to provide an audit trail.

(2) FEMA auditors, State auditors, the GAR, the Regional Administrator, the Assistant Administrator for the Disaster Assistance Directorate, the Department of Homeland Security Inspector General, and the Comptroller General of the United States or their duly authorized representatives shall, for the purpose of audits and examination, have access to any books, documents, papers, and records that pertain to Federal funds, equipments, and supplies received under §§ 206.370 through 206.377.

(c) *Loan servicing.* (1) The applicant annually shall submit to FEMA copies of its annual financial reports (operating statements, balance sheets, etc.) for the fiscal year of the major disaster, and for each of the 3 subsequent fiscal years.

(2) FEMA will review the loan periodically. The purpose of the reevaluation is to determine whether projected revenue losses, disaster-related expenses, operating budgets, and other factors have changed sufficiently to warrant adjustment of the scheduled disbursement of the loan proceeds.

(3) FEMA shall provide each loan recipient with a loan status report on a quarterly basis. The recipient will notify FEMA of any changes of the responsible municipal official who executed the Promissory Note.

(d) *Inactive loans.* If no funds have been disbursed from the loan program, and if the local government does not anticipate a need for such funds, the note may be cancelled at any time upon a written request through the State and Regional Office to FEMA.

[70 FR 60446, Oct. 18, 2005]

§ 206.376 Loan cancellation.

(a) FEMA shall cancel repayment of all or part of a Special Community Disaster Loan to the extent that the Director of the Public Assistance Division determines that revenues of the local government during the three-full-

Federal Emergency Management Agency, DHS**§ 206.376**

fiscal-year period following the disaster are insufficient, as a result of the disaster, to meet the operating budget for the local government, including additional unreimbursed disaster-related expenses of a municipal operating character.

(b) *Definitions.* For loan cancellation purposes,

(1) "Operating budget" means actual revenues and expenditures of the local government as published in the official financial statements of the local government.

(2) "Revenue" means any source of income from taxes, fees, fines, and other sources of income, and will be recognized only as they become susceptible to accrual (measurable and available).

(3) "Three-full-fiscal-year period following the disaster" means either a 36-month period beginning on September 1, 2005, or the 36 months of the applicant's fiscal year as established before the disaster, at the applicant's discretion.

(4) "Operating expenses" means those expenses and expenditures incurred as a result of performing services, including salaries and benefits, contractual services, and commodities. Capital expenditures and debt service payments and capital leases are not considered operating expenses. Under accrual accounting, expenses are recognized as soon as a liability is incurred, regardless of the timing of related cash flows.

(c) *Revenue Calculation procedures.* (1) If the tax rates and other revenues or the tax assessment valuation of property which was not damaged or destroyed by the disaster are reduced during the three full fiscal years subsequent to the major disaster, the tax rates and other revenues and tax assessment valuation factors applicable to such property in effect at the time of the major disaster shall be used without reduction for purposes of computing revenues received.

(2) At the applicant's discretion, the three-full-fiscal-year period following the disaster is either a 36-month period beginning on September 1, 2005 or the 36 months of the applicant's fiscal year as established before the disaster. If the applicant's fiscal year is changed within the 36 months immediately fol-

lowing the disaster, the actual period will be modified so that the required financial data submitted covers an inclusive 36-month period. Should the applicant elect the 36-month period beginning September 1, 2005, FEMA will prorate the revenues and expenses for the partial years based on the applicant's annual financial statements.

(3) If the local government transfers funds from its operating funds accounts to its capital funds account, utilizes operating funds for other than routine maintenance purposes, or significantly increases expenditures which are not disaster related, except increases due to inflation, the annual operating budget or operating statement expenditures will be reduced accordingly for purposes of evaluating any request for loan cancellation.

(4) Notwithstanding paragraph (c)(3) of this section, the amount of property taxes that are transferred to other funds for Debt Service or Pension Obligations funding will not be excluded from the calculation of the operating budget or from expenditures in calculation of the operating deficit, to the extent that the property tax revenues in the General Fund are less than they were pre-disaster. FEMA will consider the impact of the loss of property tax revenue in Debt Service or Pension Funds (non-operating funds) if all of the following conditions are met:

(i) The entity experienced a loss of property tax revenue as a result of the disaster and the assessed value during the three years following the disaster, in the aggregate, is less than the pre-disaster assessed value;

(ii) the entity has a property tax cap limitation on the ability to raise property taxes post-disaster; and

(iii) the property taxes are levied through the General Operating Fund and transfers for obligations mandated by law are made to fund Debt Service or Pension Obligations which result in the entity experiencing a reduction of property tax revenues in the General Fund.

(5) It is not the purpose of this loan program to underwrite pre-disaster budget or actual deficits of the local government. Consequently, such deficits carried forward will reduce any

§ 206.376**44 CFR Ch. I (10-1-11 Edition)**

amounts otherwise eligible for loan cancellation.

(6) The provisions of this section apply to all Special Community Disaster loans issued from the dates of enactment of Public Law 109-88 and Public Law 109-234.

(d) *Disaster-related expenses of a municipal operation character.* (1) For purposes of this loan, unreimbursed expenses of a municipal operating character are those incurred for general government purposes, including but not limited to police and fire protection, trash collection, collection of revenues, maintenance of public facilities, flood and other hazard insurance.

(2) Disaster-related expenses do not include expenditures associated with debt service, any major repairs, rebuilding, replacement or reconstruction of public facilities or other capital projects, intragovernmental services, special assessments, and trust and agency fund operations. Disaster expenses which are eligible for reimbursement under project applications or other Federal programs are not eligible for loan cancellation.

(3) Each applicant shall maintain records including documentation necessary to identify expenditures for unreimbursed disaster-related expenses. Examples of such expenses include but are not limited to:

(i) Interest paid on money borrowed to pay amounts FEMA does not advance toward completion of approved Project Applications.

(ii) Unreimbursed costs to local governments for providing usable sites with utilities for mobile homes used to meet disaster temporary housing requirements.

(iii) Unreimbursed costs required for police and fire protection and other community services for mobile home parks established as the result of or for use following a disaster.

(iv) The cost to the applicant of flood insurance required under Public Law 93-234, as amended, and other hazard insurance required under section 311, Public Law 93-288, as amended, as a condition of Federal disaster assistance for the disaster under which the loan is authorized.

(4) The following expenses are not considered to be disaster-related for

Special Community Disaster Loan purposes:

(i) The local government's share for assistance provided under the Stafford Act including flexible funding under section 406(c)(1) of the Act (42 U.S.C. 5172).

(ii) Improvements related to the repair or restoration of disaster public facilities approved on Project Applications.

(iii) Otherwise eligible costs for which no Federal reimbursement is requested as a part of the applicant's disaster response commitment, or cost sharing as specified in the FEMA-State Agreement for the disaster.

(iv) Expenses incurred by the local government which are reimbursed on the applicant's Project Application.

(e) *Cancellation application.* A local government which has drawn loan funds from the U.S. Treasury may request cancellation of the principal and related interest by submitting an Application for Loan Cancellation through the Governor's Authorized Representative to the Regional Administrator prior to the expiration date of the loan.

(1) Financial information submitted with the application shall include the following:

(i) Annual Operating Budgets for the fiscal year of the disaster and the three subsequent fiscal years;

(ii) Annual Financial Reports (Revenue and Expense and Balance Sheet) for each of the above fiscal years. Such financial records must include copies of the local government's annual financial reports, including operating statements and balance sheets and related consolidated and individual presentations for each fund account. In addition, the local government must include an explanatory statement when figures in the Application for Loan Cancellation form differ from those in the supporting financial reports.

(iii) The following additional information concerning annual real estate property taxes pertaining to the community for each of the above fiscal years:

(A) The market value of the tax base (dollars);

(B) The assessment ratio (percent);

(C) The assessed valuation (dollars);

Federal Emergency Management Agency, DHS**§ 206.377**

(D) The tax levy rate (mils);
(E) Taxes levied and collected (dollars).

(iv) Audit reports for each of the above fiscal years certifying to the validity of the Operating Statements. The financial statements of the local government shall be examined in accordance with generally accepted auditing standards by independent certified public accountants. The report should not include recommendations concerning loan cancellation or repayment.

(v) Other financial information specified in the Application for Loan Cancellation.

(2) *Narrative justification.* The application may include a narrative presentation to supplement the financial material accompanying the application and to present any extenuating circumstances which the local government wants the Director of the Public Assistance Division to consider in rendering a decision on the cancellation request.

(f) *Determination.* (1) The Director of the Public Assistance Division will make a cancellation determination within 60 days of the date the applicant submits all required and requested information, including documentation in support of un-reimbursed disaster related expenses.

(2) If, based on a review of the Application for Loan Cancellation and FEMA audit, the Director of the Public Assistance Division determines that all or part of the Special Community Disaster Loan funds should be canceled, the amount of principal canceled and the related interest will be forgiven. The Director of the Public Assistance Division's determination concerning loan cancellation will specify that any uncancelled principal and related interest must be repaid in accordance with the terms and conditions of the Promissory Note, and that, if repayment will constitute a financial hardship, the local government must submit for FEMA review and approval, a repayment schedule for settling the indebtedness on a timely basis. Such repayments must be made to the Treasurer of the United States and be sent to FEMA, Attention: Office of the Chief Financial Officer.

(3) A loan or cancellation of a loan does not reduce or affect other disaster-related grants or other disaster assistance. However, no cancellation may be made that would result in a duplication of benefits to the applicant.

(4) The uncancelled portion of the loan must be repaid in accordance with § 206.377.

(5) *Appeals.* If an Application for Loan Cancellation is disapproved, in whole or in part, by the Director of the Public Assistance Division, the local government may submit any additional information in support of the application within 60 days of the date of disapproval. The decision by the Assistant Administrator for the Disaster Assistance Directorate on the additional information is final.

[75 FR 2818, Jan. 19, 2010]

§ 206.377 Loan repayment.

(a) *Prepayments.* The local government may make prepayments against loan at any time without any prepayment penalty.

(b) *Repayment.* To the extent not otherwise cancelled, loan funds become due and payable in accordance with the terms and conditions of the Promissory Note. The note shall include the following provisions:

(1) The term of a loan made under this program is 5 years, unless extended by the Assistant Administrator for the Disaster Assistance Directorate. Interest will accrue on outstanding cash from the actual date of its disbursement by FEMA or FEMA's designated Disbursing Agency.

(2) The interest amount due will be computed separately for each Treasury disbursement as follows: $I = P \times R \times T$, where I = the amount of simple interest, P = the principal amount disbursed; R = the interest rate of the loan; and, T = the outstanding term in years from the date of disbursement to date of repayment, with periods less than 1 year computed on the basis of 365 days/year. If any portion of the loan is cancelled, the interest amount due will be computed on the remaining principal with the shortest outstanding term.

(3) Each payment made against the loan will be applied first to the interest computed to the date of the payment,

§§ 206.378–206.389**44 CFR Ch. I (10-1-11 Edition)**

and then to the principal. Prepayments of scheduled installments, or any portion thereof, may be made at any time and shall be applied to the installments last to become due under the loan and shall not affect the obligation of the borrower to pay the remaining installments.

(4) The Assistant Administrator for the Disaster Assistance Directorate may defer payments of principal and interest until FEMA makes its final determination with respect to any Application for Loan Cancellation which the borrower may submit. However, interest will continue to accrue.

(5) Any costs incurred by the Federal Government in collecting the note shall be added to the unpaid balance of the loan, bear interest at the same rate as the loan, and be immediately due without demand.

(6) In the event of default on this note by the borrower, the FEMA claims collection officer will take action to recover the outstanding principal plus related interest under Federal debt collection authorities, including administrative offset against other Federal funds due the borrower and/or referral to the Department of Justice for judicial enforcement and collection.

(c) *Additional time.* In unusual circumstances involving financial hardship, the local government may request an additional period of time beyond the original 10 year term to repay the indebtedness. Such request may be approved by the Assistant Administrator for the Disaster Assistance Directorate subject to the following conditions:

(1) The local government must submit documented evidence that it has applied for the same credit elsewhere and that such credit is not available at a rate equivalent to the current Treasury rate.

(2) The principal amount shall be the original uncancelled principal plus related interest less any payments made.

(3) The interest rate shall be the Treasury rate in effect at the time the new Promissory Note is executed but in no case less than the original interest rate. A reduced rate may not be applied if was it was not previously applied to the loan.

(4) The term of the new Promissory Note shall be for the settlement period

requested by the local government but not greater than 10 years from the date the new note is executed.

[70 FR 60446, Oct. 18, 2005, as amended at 75 FR 2820, Jan. 19, 2010]

§§ 206.378–206.389 [Reserved]**Subpart L—Fire Suppression Assistance**

SOURCE: 55 FR 2318, Jan. 23, 1990, unless otherwise noted.

§ 206.390 General.

When the Assistant Administrator for the Disaster Assistance Directorate determines that a fire or fires threaten such destruction as would constitute a major disaster, assistance may be authorized, including grants, equipment, supplies, and personnel, to any State for the suppression of any fire on publicly or privately owned forest or grassland.

§ 206.391 FEMA-State Agreement.

Federal assistance under section 420 of the Act is provided in accordance with a continuing FEMA-State Agreement for Fire Suppression Assistance (the Agreement) signed by the Governor and the Regional Administrator. The Agreement contains the necessary terms and conditions, consistent with the provisions of applicable laws, Executive Orders, and regulations, as the Assistant Administrator for the Disaster Assistance Directorate may require and specifies the type and extent of Federal assistance. The Governor may designate authorized representatives to execute requests and certifications and otherwise act for the State during fire emergencies. Supplemental agreements shall be executed as required to update the continuing Agreement.

§ 206.392 Request for assistance.

When a Governor determines that fire suppression assistance is warranted, a request for assistance may be initiated. Such request shall specify in detail the factors supporting the request for assistance. In order that all actions in processing a State request are executed as rapidly as possible, the

Federal Emergency Management Agency, DHS**§ 206.395**

State may submit a telephone request to the Regional Administrator, promptly followed by a confirming telegram or letter.

[55 FR 2318, Jan. 23, 1990, as amended at 74 FR 15352, Apr. 3, 2009]

§ 206.393 Providing assistance.

Following the Assistant Administrator for the Disaster Assistance Directorate's decision on the State request, the Regional Administrator will notify the Governor and the Federal firefighting agency involved. The Regional Administrator may request assistance from Federal agencies if requested by the State. For each fire or fire situation, the State shall prepare a separate Fire Project Application based on Federal Damage Survey Reports and submit it to the Regional Administrator for approval.

§ 206.394 Cost eligibility.

(a) *Cost principles.* See 44 CFR 13.22, Allowable Costs, and the associated OMB Circular A-87, Cost Principles for State and Local Governments.

(b) *Program specific eligible costs.* (1) Expenses to provide field camps and meals when made available to the eligible employees in lieu of per diem costs.

(2) Costs for use of publicly owned equipment used on eligible fire suppression work based on reasonable State equipment rates.

(3) Costs to the State for use of U.S. Government-owned equipment based on reasonable costs as billed by the Federal agency and paid by the State. Only direct costs for use of Federal Excess Personal Property (FEPP) vehicles and equipment on loan to State Forestry and local cooperators, can be paid.

(4) Cost of firefighting tools, materials, and supplies expended or lost, to the extent not covered by reasonable insurance.

(5) Replacement value of equipment lost in fire suppression, to the extent not covered by reasonable insurance.

(6) Costs for personal comfort and safety items normally provided by the State under field conditions for firefighter health and safety.

(7) Mobilization and demobilization costs directly relating to the Federal fire suppression assistance approved by

the Assistant Administrator for the Disaster Assistance Directorate.

(8) Eligible costs of local governmental firefighting organizations which are reimbursed by the State pursuant to an existing cooperative mutual aid agreement, in suppressing an approved incident fire.

(9) State costs for suppressing fires on Federal land in cases in which the State has a responsibility under a cooperative agreement to perform such action on a nonreimbursable basis. This provision is an exception to normal FEMA policy under the Act and is intended to accommodate only those rare instances that involve State fire suppression of section 420 incident fires involving co-mingled Federal/State and privately owned forest or grassland.

(10) In those instances in which assistance under section 420 of the Act is provided in conjunction with existing Interstate Forest Fire Protection Compacts, eligible costs are reimbursed in accordance with eligibility criteria established in this section.

(c) *Program specific ineligible costs.* (1) Any costs for presuppression, salvaging timber, restoring facilities, seeding and planting operations.

(2) Any costs not incurred during the incident period as determined by the Regional Administrator other than reasonable and directly related mobilization and demobilization costs.

(3) State costs for suppressing a fire on co-mingled Federal land where such costs are reimbursable to the State by a Federal agency under another statute (see 44 CFR part 151).

§ 206.395 Grant administration.

(a) Project administration shall be in accordance with 44 CFR part 13, and applicable portions of subpart G, 44 CFR part 206.

(b) In those instances in which reimbursement includes State fire suppression assistance on co-mingled State and Federal lands (§ 206.394(b)(9)), the Regional Administrator shall coordinate with other Federal programs to preclude any duplication of payments. (See 44 CFR part 151.)

(c) Audits shall be in accordance with the Single Audit Act of 1984, Pub. L. 98-502. (See subpart G of this part.)

§§ 206.396–206.399

(d) A State may appeal a determination by the Regional Administrator on any action related to Federal assistance for fire suppression. Appeal procedures are contained in 44 CFR 206.206.

§§ 206.396–206.399 [Reserved]

Subpart M—Minimum Standards

SOURCE: 67 FR 8852, Feb. 26, 2002, unless otherwise noted.

§ 206.400 General.

(a) As a condition of the receipt of any disaster assistance under the Stafford Act, the applicant shall carry out any repair or construction to be financed with the disaster assistance in accordance with applicable standards of safety, decency, and sanitation and in conformity with applicable codes, specifications and standards.

(b) Applicable codes, specifications, and standards shall include any disaster resistant building code that meets the minimum requirements of the National Flood Insurance Program (NFIP) as well as being substantially equivalent to the recommended provisions of the National Earthquake Hazards Reduction Program (NEHRP). In addition, the applicant shall comply with any requirements necessary in regards to Executive Order 11988, Floodplain Management, Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction, and any other applicable Executive orders.

(c) In situations where there are no locally applicable standards of safety, decency and sanitation, or where there are no applicable local codes, specifications and standards governing repair or construction activities, or where the Regional Administrator determines that otherwise applicable codes, specifications, and standards are inadequate, then the Regional Administrator may, after consultation with appropriate State and local officials, require the use of nationally applicable codes, specifications, and standards, as well as safe land use and construction practices in the course of repair or construction activities.

(d) The mitigation planning process that is mandated by section 322 of the

44 CFR Ch. I (10–1–11 Edition)

Stafford Act and 44 CFR part 201 can assist State and local governments in determining where codes, specifications, and standards are inadequate, and may need to be upgraded.

§ 206.401 Local standards.

The cost of repairing or constructing a facility in conformity with minimum codes, specifications and standards may be eligible for reimbursement under section 406 of the Stafford Act, as long as such codes, specifications, and standards meet the criteria that are listed at 44 CFR 206.226(d).

[74 FR 47482, Sept. 16, 2009]

§ 206.402 Compliance.

A recipient of disaster assistance under the Stafford Act must document for the Regional Administrator its compliance with this subpart following the completion of any repair or construction activities.

Subpart N—Hazard Mitigation Grant Program

SOURCE: 55 FR 35537, Aug. 30, 1990, unless otherwise noted.

§ 206.430 General.

This subpart provides guidance on the administration of hazard mitigation grants made under the provisions of section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170c, hereafter Stafford Act, or the Act.

[59 FR 24356, May 11, 1994]

§ 206.431 Definitions.

Activity means any mitigation measure, project, or action proposed to reduce risk of future damage, hardship, loss or suffering from disasters.

Applicant means a State agency, local government, Indian tribal government, or eligible private nonprofit organization, submitting an application to the grantee for assistance under the HMGP.

Enhanced State Mitigation Plan is the hazard mitigation plan approved under 44 CFR part 201 as a condition of receiving increased funding under the HMGP.

Grant application means the request to FEMA for HMGP funding, as outlined in § 206.436, by a State or tribal government that will act as grantee.

Grant award means total of Federal and non-Federal contributions to complete the approved scope of work.

Grantee means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. Generally, the State for which the major disaster is declared is the grantee. However, an Indian tribal government may choose to be a grantee, or it may act as a subgrantee under the State. An Indian tribal government acting as a grantee will assume the responsibilities of a “state”, under this subpart, for the purposes of administering the grant.

Indian Tribal government means any Federally recognized governing body of an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian Tribe under the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

Local Mitigation Plan is the hazard mitigation plan required of a local government acting as a subgrantee as a condition of receiving a project subgrant under the HMGP as outlined in 44 CFR 201.6.

Standard State Mitigation Plan is the hazard mitigation plan approved under 44 CFR part 201, as a condition of receiving Stafford Act assistance as outlined in § 201.4.

State Administrative Plan for the Hazard Mitigation Grant Program means the plan developed by the State to describe the procedures for administration of the HMGP.

Subgrant means an award of financial assistance under a grant by a grantee to an eligible subgrantee.

Subgrant application means the request to the grantee for HMGP funding by the eligible subgrantee, as outlined in § 206.436.

Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided. Subgrantees can be a State agency, local government, private non-profit organizations, or Indian tribal government as outlined in § 206.433. Indian tribal governments acting as a subgrantee are accountable to the State grantee.

Tribal Mitigation Plan is the hazard mitigation plan required of an Indian Tribal government acting as a grantee or subgrantee as a condition of receiving a project grant or subgrant under the HMGP as outlined in 44 CFR 201.7.

[67 FR 8852, Feb. 26, 2002, as amended at 74 FR 47482, Sept. 16, 2009; 74 FR 60214, Nov. 20, 2009]

§ 206.432 Federal grant assistance.

(a) *General.* This section describes the extent of Federal funding available under the State's grant, as well as limitations and special procedures applicable to each.

(b) *Amounts of Assistance.* The total Federal contribution of funds is based on the estimated aggregate grant amount to be made under 42 U.S.C. 5170b, 5172, 5173, 5174, 5177, and 5183 of the Stafford Act for the major disaster (less associated administrative costs), and shall be as follows:

(1) *Standard percentages.* Not to exceed 15 percent for the first \$2,000,000,000 or less of such amounts; not to exceed 10 percent of the portion of such amounts over \$2,000,000,000 and not more than \$10,000,000,000; and not to exceed 7.5 percent of the portion of such amounts over \$10,000,000,000 and not more than \$35,333,000,000.

(2) *Twenty (20) percent.* A State with an approved Enhanced State Mitigation Plan, in effect before the disaster declaration, which meets the requirements outlined in § 201.5 of this subchapter shall be eligible for assistance under the HMGP not to exceed 20 percent of such amounts, for amounts not more than \$35.333 billion.

(3) The estimates of Federal assistance under this paragraph (b) shall be based on the Regional Administrator's estimate of all eligible costs, actual grants, and appropriate mission assignments.

§ 206.433

(c) *Cost sharing.* All mitigation measures approved under the State's grant will be subject to the cost sharing provisions established in the FEMA-State Agreement. FEMA may contribute up to 75 percent of the cost of measures approved for funding under the Hazard Mitigation Grant Program for major disasters declared on or after June 10, 1993. FEMA may contribute up to 50 percent of the cost of measures approved for funding under the Hazard Mitigation Grant Program for major disasters declared before June 10, 1993. The nonFederal share may exceed the Federal share. FEMA will not contribute to costs above the Federally approved estimate.

[55 FR 35537, Aug. 30, 1990, as amended at 59 FR 24356, May 11, 1994; 67 FR 8853, Feb. 26, 2002; 67 FR 61515, Oct. 1, 2002; 69 FR 55097, Sept. 13, 2004; 72 FR 61750, Oct. 31, 2007; 74 FR 47482, Sept. 16, 2009]

§ 206.433 State responsibilities.

(a) *Grantee.* The State will be the Grantee to which funds are awarded and will be accountable for the use of those funds. There may be subgrantees within the State government.

(b) *Priorities.* The State will determine priorities for funding. This determination must be made in conformance with § 206.435.

(c) *Hazard Mitigation Officer.* The State must appoint a Hazard Mitigation Officer who serves as the responsible individual for all matters related to the Hazard Mitigation Grant Program.

(d) *Administrative plan.* The State must have an approved administrative plan for the Hazard Mitigation Grant Program in conformance with § 206.437.

[55 FR 35537, Aug. 30, 1990, as amended at 72 FR 61750, Oct. 31, 2007]

§ 206.434 Eligibility.

(a) *Applicants.* The following are eligible to apply for the Hazard Mitigation Program Grant:

- (1) State and local governments;
- (2) Private nonprofit organizations that own or operate a private nonprofit facility as defined in § 206.221(e). A qualified conservation organization as defined at § 80.3(h) of this chapter is the only private nonprofit organization eli-

44 CFR Ch. I (10-1-11 Edition)

gible to apply for acquisition or relocation for open space projects;

(3) Indian tribes or authorized tribal organizations and Alaska Native villages or organizations, but not Alaska native corporations with ownership vested in private individuals.

(b) *Plan requirement.* (1) Local and Indian Tribal government applicants for project subgrants must have an approved local or Tribal Mitigation Plan in accordance with 44 CFR part 201 before receipt of HMGP subgrant funding for projects.

(2) Regional Administrators may grant an exception to this requirement in extraordinary circumstances, such as in a small and impoverished community when justification is provided. In these cases, a plan will be completed within 12 months of the award of the project grant. If a plan is not provided within this timeframe, the project grant will be terminated, and any costs incurred after notice of grant's termination will not be reimbursed by FEMA.

(c) *Minimum project criteria.* To be eligible for the Hazard Mitigation Grant Program, a project must:

(1) Be in conformance with the State Mitigation Plan and Local or Tribal Mitigation Plan approved under 44 CFR part 201; or for Indian Tribal governments acting as grantees, be in conformance with the Tribal Mitigation Plan approved under 44 CFR 201.7;

(2) Have a beneficial impact upon the designated disaster area, whether or not located in the designated area;

(3) Be in conformance with 44 CFR part 9, Floodplain Management and Protection of Wetlands, and 44 CFR part 10, Environmental Considerations;

(4) Solve a problem independently or constitute a functional portion of a solution where there is assurance that the project as a whole will be completed. Projects that merely identify or analyze hazards or problems are not eligible;

(5) Be cost-effective and substantially reduce the risk of future damage, hardship, loss, or suffering resulting from a major disaster. The grantee must demonstrate this by documenting that the project;

(i) Addresses a problem that has been repetitive, or a problem that poses a

significant risk to public health and safety if left unsolved.

(ii) Will not cost more than the anticipated value of the reduction in both direct damages and subsequent negative impacts to the area if future disasters were to occur,

(iii) Has been determined to be the most practical, effective, and environmentally sound alternative after consideration of a range of options,

(iv) Contributes, to the extent practicable, to a long-term solution to the problem it is intended to address,

(v) Considers long-term changes to the areas and entities it protects, and has manageable future maintenance and modification requirements.

(d) *Eligible activities*—(1) *Planning*. Up to 7% of the State's HMGP grant may be used to develop State, tribal and/or local mitigation plans to meet the planning criteria outlined in 44 CFR part 201.

(2) *Types of projects*. Projects may be of any nature that will result in protection to public or private property. Activities for which implementation has already been initiated or completed are not eligible for funding. Eligible projects include, but are not limited to:

(i) Structural hazard control or protection projects;

(ii) Construction activities that will result in protection from hazards;

(iii) Retrofitting of facilities;

(iv) Property acquisition or relocation, as defined in paragraph (e) of this section;

(v) Development of State or local mitigation standards;

(vi) Development of comprehensive mitigation programs with implementation as an essential component;

(vii) Development or improvement of warning systems.

(e) *Property acquisitions and relocation requirements*. Property acquisitions and relocation projects for open space proposed for funding pursuant to a major disaster declared on or after December 3, 2007 must be implemented in accordance with part 80 of this chapter. For major disasters declared before December 3, 2007, a project involving property acquisition or the relocation of structures and individuals is eligible for assistance only if the applicant enters

into an agreement with the FEMA Regional Administrator that provides assurances that:

(1) The following restrictive covenants shall be conveyed in the deed to any property acquired, accepted, or from which structures are removed (hereafter called in section (d) the property):

(i) The property shall be dedicated and maintained in perpetuity for uses compatible with open space, recreational, or wetlands management practices; and

(ii) No new structure(s) will be built on the property except as indicated below:

(A) A public facility that is open on all sides and functionally related to a designated open space or recreational use;

(B) A rest room; or

(C) A structure that is compatible with open space, recreational, or wetlands management usage and proper floodplain management policies and practices, which the Administrator approves in writing before the construction of the structure begins.

(iii) After completion of the project, no application for additional disaster assistance will be made for any purpose with respect to the property to any Federal entity or source, and no Federal entity or source will provide such assistance.

(2) In general, allowable open space, recreational, and wetland management uses include parks for outdoor recreational activities, nature reserves, cultivation, grazing, camping (except where adequate warning time is not available to allow evacuation), temporary storage in the open of wheeled vehicles which are easily movable (except mobile homes), unimproved, previous parking lots, and buffer zones.

(3) Any structures built on the property according to paragraph (d)(1) of this section, shall be floodproofed or elevated to the Base Flood Elevation plus one foot of freeboard.

(f) *Duplication of programs*. Section 404 funds cannot be used as a substitute or replacement to fund projects or programs that are available under other Federal authorities, except under limited circumstances in which there are

§ 206.435

extraordinary threats to lives, public health or safety or improved property.

(g) *Packaging of programs.* Section 404 funds may be packaged or used in combination with other Federal, State, local, or private funding sources when appropriate to develop a comprehensive mitigation solution, though section 404 funds cannot be used as a match for other Federal funds.

[55 FR 35537, Aug. 30, 1990, as amended at 59 FR 24356, May 11, 1994; 67 FR 8853, Feb. 26, 2002; 67 FR 61515, Oct. 1, 2002; 69 FR 55097, Sept. 13, 2004; 72 FR 61750, Oct. 31, 2007; 74 FR 47483, Sept. 16, 2009]

§ 206.435 Project identification and selection criteria.

(a) *Identification.* It is the State's responsibility to identify and select eligible hazard mitigation projects. All funded projects must be consistent with the State Mitigation Plan. Hazard Mitigation projects shall be identified and prioritized through the State, Indian tribal, and local planning process.

(b) *Selection.* The State will establish procedures and priorities for the selection of mitigation measures. At a minimum, the criteria must be consistent with the criteria stated in § 206.434(c) and include:

(1) Measures that best fit within an overall plan for development and/or hazard mitigation in the community, disaster area, or State;

(2) Measures that, if not taken, will have a severe detrimental impact on the applicant, such as potential loss of life, loss of essential services, damage to critical facilities, or economic hardship on the community;

(3) Measures that have the greatest potential impact on reducing future disaster losses;

(c) *Other considerations.* In addition to the selection criteria noted above, consideration should be given to measures that are designed to accomplish multiple objectives including damage reduction, environmental enhancement, and economic recovery, when appropriate.

[55 FR 35537, Aug. 30, 1990, as amended at 66 FR 8853, Feb. 26, 2002; 68 FR 63738, Nov. 10, 2003]

44 CFR Ch. I (10-1-11 Edition)

§ 206.436 Application procedures.

(a) *General.* This section describes the procedures to be used by the grantee in submitting an application for HMGP funding. Under the HMGP, the State or Indian tribal government is the grantee and is responsible for processing subgrants to applicants in accordance with 44 CFR part 13 and this part 206. Subgrantees are accountable to the grantee.

(b) *Governor's Authorized Representative.* The Governor's Authorized Representative serves as the grant administrator for all funds provided under the Hazard Mitigation Grant Program. The Governor's Authorized Representative's responsibilities as they pertain to procedures outlined in this section include providing technical advice and assistance to eligible subgrantees, and ensuring that all potential applicants are aware of assistance available and submission of those documents necessary for grant award.

(c) *Hazard mitigation application.* Upon identification of mitigation measures, the State (Governor's Authorized Representative) will submit its Hazard Mitigation Grant Program application to the FEMA Regional Administrator. The application will identify one or more mitigation measures for which funding is requested. The application must include a Standard Form (SF) 424, Application for Federal Assistance, SF 424D, Assurances for Construction Programs, if appropriate, and a narrative statement. The narrative statement will contain any pertinent project management information not included in the State's administrative plan for Hazard Mitigation. The narrative statement will also serve to identify the specific mitigation measures for which funding is requested. Information required for each mitigation measure shall include the following:

- (1) Name of the subgrantee, if any;
- (2) State or local contact for the measure;
- (3) Location of the project;
- (4) Description of the measure;
- (5) Cost estimate for the measure;
- (6) Analysis of the measure's cost-effectiveness and substantial risk reduction, consistent with § 206.434(c);
- (7) Work schedule;
- (8) Justification for selection;

Federal Emergency Management Agency, DHS**§ 206.438**

(9) Alternatives considered;
(10) Environmental information consistent with 44 CFR part 9, Floodplain Management and Protection of Wetlands, and 44 CFR part 10, Environmental Considerations.

(d) *Application submission time limit.* The State's application may be amended as the State identifies and selects local project applications to be funded. The State must submit all local HMGMP applications and funding requests for the purpose of identifying new projects to the Regional Administrator within 12 months of the date of disaster declaration.

(e) *Extensions.* The State may request the Regional Administrator to extend the application time limit by 30 to 90 day increments, not to exceed a total of 180 days. The grantee must include a justification in its request.

(f) *FEMA approval.* The application and supplement(s) will be submitted to the FEMA Regional Administrator for approval. FEMA has final approval authority for funding of all projects.

(g) *Indian tribal grantees.* Indian tribal governments may submit a SF 424 directly to the Regional Administrator.

[67 FR 8853, Feb. 26, 2002]

§ 206.437 State administrative plan.

(a) *General.* The State shall develop a plan for the administration of the Hazard Mitigation Grant Program.

(b) *Minimum criteria.* At a minimum, the State administrative plan must include the items listed below:

(1) Designation of the State agency will have responsibility for program administration;

(2) Identification of the State Hazard Mitigation Officer responsible for all matters related to the Hazard Mitigation Grant Program.

(3) Determination of staffing requirements and sources of staff necessary for administration of the program;

(4) Establishment of procedures to:

(i) Identify and notify potential applicants (subgrantees) of the availability of the program;

(ii) Ensure that potential applicants are provided information on the application process, program eligibility and key deadlines;

(iii) Determine applicant eligibility;

(iv) Conduct environmental and floodplain management reviews;

(v) Establish priorities for selection of mitigation projects;

(vi) Process requests for advances of funds and reimbursement;

(vii) Monitor and evaluate the progress and completion of the selected projects;

(viii) Review and approve cost overruns;

(ix) Process appeals;

(x) Provide technical assistance as required to subgrantee(s);

(xi) Comply with the administrative and audit requirements of 44 CFR parts 13 and 206;

(xii) Provide quarterly progress reports to the Regional Administrator on approved projects.

(xiii) Determine the percentage or amount of pass-through funds for management costs provided under 44 CFR part 207 that the grantee will make available to subgrantees, and the basis, criteria, or formula for determining the subgrantee percentage or amount.

(c) *Format.* The administrative plan is intended to be a brief but substantive plan documenting the State's process for the administration of the Hazard Mitigation Grant Program and management of the section 404 funds. This administrative plan should become a part of the State's overall emergency response or operations plan as a separate annex or chapter.

(d) *Approval.* The State must submit the administrative plan to the Regional Administrator for approval. Following each major disaster declaration, the State shall prepare any updates, amendments, or plan revisions required to meet current policy guidance or changes in the administration of the Hazard Mitigation Grant Program. Funds shall not be awarded until the State administrative plan is approved by the FEMA Regional Administrator.

[55 FR 35537, Aug. 30, 1990, as amended at 55 FR 52172, Dec. 20, 1990; 72 FR 57875, Oct. 11, 2007; 74 FR 15352, Apr. 3, 2009]

§ 206.438 Project management.

(a) *General.* The State serving as grantee has primary responsibility for project management and accountability of funds as indicated in 44 CFR

§ 206.439

part 13. The State is responsible for ensuring that subgrantees meet all program and administrative requirements.

(b) *Cost overruns.* During the execution of work on an approved mitigation measure the Governor's Authorized Representative may find that actual project costs are exceeding the approved estimates. Cost overruns which can be met without additional Federal funds, or which can be met by offsetting cost underruns on other projects, need not be submitted to the Regional Administrator for approval, so long as the full scope of work on all affected projects can still be met. For cost overruns which exceed Federal obligated funds and which require additional Federal funds, the Governor's Authorized Representative shall evaluate each cost overrun and shall submit a request with a recommendation to the Regional Administrator for a determination. The applicant's justification for additional costs and other pertinent material shall accompany the request. The Regional Administrator shall notify the Governor's Authorized Representative in writing of the determination and process a supplement, if necessary. All requests that are not justified shall be denied by the Governor's Authorized Representative. In no case will the total amount obligated to the State exceed the funding limits set forth in § 206.432(b). Any such problems or circumstances affecting project costs shall be identified through the quarterly progress reports required in paragraph (c) of this section.

(c) *Progress reports.* The grantee shall submit a quarterly progress report to FEMA indicating the status and completion date for each measure funded. Any problems or circumstances affecting completion dates, scope of work, or project costs which are expected to result in noncompliance with the approved grant conditions shall be described in the report.

(d) *Payment of claims.* The Governor's Authorized Representative shall make a claim to the Regional Administrator for reimbursement of allowable costs for each approved measure. In submitting such claims the Governor's Authorized Representative shall certify that reported costs were incurred in the performance of eligible work, that

44 CFR Ch. I (10-1-11 Edition)

the approved work was completed and that the mitigation measure is in compliance with the provisions of the FEMA-State Agreement. The Regional Administrator shall determine the eligible amount of reimbursement for each claim and approve payment. If a mitigation measure is not completed, and there is not adequate justification for noncompletion, no Federal funding will be provided for that measure.

(e) *Audit requirements.* Uniform audit requirements as set forth in 44 CFR part 13 apply to all grant assistance provided under this subpart. FEMA may elect to conduct a Federal audit on the disaster assistance grant or on any of the subgrants.

[55 FR 35537, Aug. 30, 1990, as amended at 74 FR 15352, Apr. 3, 2009]

§ 206.439 Allowable costs.

(a) General requirements for determining allowable costs are established in 44 CFR 13.22. Exceptions to those requirements as allowed in 44 CFR 13.4 and 13.6 are explained in paragraph (b) of this section.

(b) Administrative and management costs for major disasters will be paid in accordance with 44 CFR part 207.

(c) *Pre-award costs.* FEMA may fund eligible pre-award planning or project costs at its discretion and as funds are available. Grantees and subgrantees may be reimbursed for eligible pre-award costs for activities directly related to the development of the project or planning proposal. These costs can only be incurred during the open application period of the grant program. Costs associated with implementation of the activity but incurred prior to grant award are not eligible. Therefore, activities where implementation is initiated or completed prior to award are not eligible and will not be reimbursed.

[72 FR 57875, Oct. 11, 2007, as amended at 72 FR 61750, Oct. 31, 2007]

§ 206.440 Appeals.

An eligible applicant, subgrantee, or grantee may appeal any determination previously made related to an application for or the provision of Federal assistance according to the procedures below.

(a) *Format and Content.* The applicant or subgrantee will make the appeal in writing through the grantee to the Regional Administrator. The grantee shall review and evaluate all subgrantee appeals before submission to the Regional Administrator. The grantee may make grantee-related appeals to the Regional Administrator. The appeal shall contain documented justification supporting the appellant's position, specifying the monetary figure in dispute and the provisions in Federal law, regulation, or policy with which the appellant believes the initial action was inconsistent.

(b) *Levels of Appeal.* (1) The Regional Administrator will consider first appeals for hazard mitigation grant program-related decisions under subparts M and N of this part.

(2) The Assistant Administrator for the Mitigation Directorate will consider appeals of the Regional Administrator's decision on any first appeal under paragraph (b)(1) of this section.

(c) *Time Limits.* (1) Appellants must make appeals within 60 days after receipt of a notice of the action that is being appealed.

(2) The grantee will review and forward appeals from an applicant or subgrantee, with a written recommendation, to the Regional Administrator within 60 days of receipt.

(3) Within 90 days following receipt of an appeal, the Regional Administrator (for first appeals) or Assistant Administrator for the Mitigation Directorate (for second appeals) will notify the grantee in writing of the disposition of the appeal or of the need for additional information. A request by the Regional Administrator or Assistant Administrator for the Mitigation Directorate for additional information will include a date by which the information must be provided. Within 90 days following the receipt of the requested additional information or following expiration of the period for providing the information, the Regional Administrator or Assistant Administrator for the Mitigation Directorate will notify the grantee in writing of the disposition of the appeal. If the decision is to grant the appeal, the Regional Administrator will take appropriate implementing action.

(d) *Technical Advice.* In appeals involving highly technical issues, the Regional Administrator or Assistant Administrator for the Mitigation Directorate may, at his or her discretion, submit the appeal to an independent scientific or technical person or group having expertise in the subject matter of the appeal for advice or recommendation. The period for this technical review may be in addition to other allotted time periods. Within 90 days of receipt of the report, the Regional Administrator or Assistant Administrator for the Mitigation Directorate will notify the grantee in writing of the disposition of the appeal.

(e) *Transition.* (1) This rule is effective for all appeals pending on and appeals from decisions issued on or after May 8, 1998, except as provided in paragraph (e)(2) of this section.

(2) Appeals pending from a decision of an Assistant Administrator for the Mitigation Directorate before May 8, 1998 may be appealed to the Administrator in accordance with 44 CFR 206.440 as it existed before May 8, 1998.

(3) The decision of the FEMA official at the next higher appeal level shall be the final administrative decision of FEMA.

[63 FR 17111, Apr. 8, 1998]

PART 207—MANAGEMENT COSTS

Sec.

- 207.1 Purpose.
- 207.2 Definitions.
- 207.3 Applicability and eligibility.
- 207.4 Responsibilities.
- 207.5 Determination of management cost funding.
- 207.6 Use of funds.
- 207.7 Procedures for requesting management cost funding.
- 207.8 Management cost funding oversight.
- 207.9 Declarations before November 13, 2007.
- 207.10 Review of management cost rates.

AUTHORITY: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

SOURCE: 72 FR 57875, Oct. 11, 2007, unless otherwise noted.

§ 207.1

44 CFR Ch. I (10-1-11 Edition)

§ 207.1 Purpose.

The purpose of this part is to implement section 324 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5165b.

§ 207.2 Definitions.

Cap means the maximum dollar amount that may be provided to a grantee for management cost funds for a single declaration pursuant to § 207.5(c) of this part.

Chief Financial Officer (CFO) is the Chief Financial Officer of FEMA, or his/her designated representative.

Cognizant Agency means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed on behalf of all Federal agencies. The Office of Management and Budget (OMB) publishes a listing of cognizant agencies.

Grant means an award of financial assistance making payment in cash, property, or in kind for a specified purpose, by the Federal Government to an eligible grantee.

Grantee for purposes of this part means the government to which a Public Assistance (PA) or Hazard Mitigation Grant Program (HMGP) grant is awarded that is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. Generally, the State is the grantee. However, after a declaration, an Indian tribal government may choose to be a grantee, or may act as a subgrantee under the State for purposes of administering a grant under PA, HMGP, or both. When an Indian tribal government has chosen to act as grantee, it will also assume the responsibilities of a "grantee" under this part for the purposes of administering management cost funding.

Hazard Mitigation Grant Program (HMGP) means the program implemented at part 206, subpart N of this chapter.

HMGP lock-in ceiling means the level of HMGP funding available to a grantee for a particular disaster declaration.

HMGP project narrative refers to the request submitted for HMGP funding.

Indian tribal government is a Federally recognized governing body of an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian tribe under the Federally Recognized Tribe List Act of 1994, 25 U.S.C. 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

Indirect Costs means costs that are incurred by a grantee for a common or joint purpose benefiting more than one cost objective that are not readily assignable to the cost objectives specifically benefited.

Lock-in means the amount of management cost funds available to a grantee for PA or HMGP, respectively, for a particular major disaster or emergency, as FEMA determines at 30 days, 6 months, and 12 months or upon calculation of the final HMGP lock-in ceiling, whichever is later.

Management Costs means any indirect costs, administrative expenses, and any other expenses not directly chargeable to a specific project that are reasonably incurred by a grantee or subgrantee in administering and managing a PA or HMGP grant award. For HMGP, management cost funding is provided outside of Federal assistance limits defined at § 206.432(b) of this chapter.

Project refers to a project as defined at § 206.201(i) of this chapter for PA or eligible activities as defined at § 206.434(d) of this chapter for HMGP.

Project Worksheet (PW) refers to FEMA Form 90-91, or any successor form, on which the scope of work and cost estimate for a logical grouping of work required under the PA program as a result of a declared major disaster or emergency is documented.

Public Assistance (PA) means the program implemented at part 206, subparts G and H of this chapter.

Regional Administrator is the head of a FEMA regional office, or his/her designated representative, appointed under section 507 of the Post-Katrina Emergency Management Reform Act of 2006 (Pub. L. 109-295). The term also refers to Regional Directors as discussed in part 2 of this chapter.

Federal Emergency Management Agency, DHS**§ 207.5**

Stafford Act refers to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121–5206).

State is any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Subgrantee means the government or other legal entity to which a grantee awards a subgrant and which is accountable to the grantee for the use of the funds provided. Subgrantees can be a State agency, local government, private nonprofit organization, or Indian tribal government.

§ 207.3 Applicability and eligibility.

Only PA and HMGPs grantees with PA and HMGPs grants awarded pursuant to major disasters and emergencies declared by the President on or after November 13, 2007 are eligible to apply to FEMA for management cost funding under this part.

§ 207.4 Responsibilities.

(a) *General.* This section identifies key responsibilities of FEMA and grantees in carrying out section 324 of the Stafford Act, 42 U.S.C. 5165b. These responsibilities are unique to the administration of this part and are in addition to common Federal Government requirements of grantees and subgrantees, consistent with OMB circulars and other applicable requirements, such as part 13 of this chapter.

(b) *FEMA.* FEMA is responsible for:

(1) Determining the lock-in amount for management costs in accordance with § 207.5.

(2) Obligating funds for management costs in accordance with § 207.5(b).

(3) Deobligating funds provided for management costs not disbursed in accordance with § 207.8(b).

(4) Reviewing management cost rates not later than 3 years after this rule is in effect and periodically thereafter.

(c) *Grantee.* The grantee must:

(1) Administer management cost funds to ensure that PA and HMGPs, as applicable, are properly implemented and closed out in accordance with program timeframes and guidance.

(2) Determine the reasonable amount or percentage of management cost funding to be passed through to subgrantees for contributions to their costs for administering PA and HMGPs projects and ensure that it provides such funds to subgrantees.

(3) Address procedures for subgrantee management costs amount or percentage determination, pass through, close-out, and audit in the State administrative plan required in § 206.207(b) of this chapter for PA and § 206.437 of this chapter for HMGPs.

§ 207.5 Determination of management cost funding.

(a) *General.* This section describes how FEMA determines the amount of funds that it will contribute under this part for management costs for PA and/or HMGPs for a particular major disaster or emergency.

(b) *Lock-in.* FEMA will determine the amount of funds that it will make available for management costs by a lock-in, which will act as a ceiling for funds available to a grantee, including its subgrantees.

(1) Not earlier than 30 days and not later than 35 days from the date of declaration, FEMA will provide the grantee preliminary lock-in amount(s) for management costs based on the projections at that time of the Federal share for financial assistance for PA and HMGPs, as applicable. In accordance with § 207.7(c), FEMA will obligate 25 percent of the estimated lock-in amount(s) to the grantee.

(2) For planning purposes, FEMA will revise the lock-in amount(s) at 6 months after the date of the declaration. In accordance with § 207.7(e), FEMA may obligate interim amount(s) to the grantee.

(3) FEMA will determine the final lock-in amount(s) 12 months after date of declaration or after determination of the final HMGPs lock-in ceiling, whichever is later. FEMA will obligate the remainder of the lock-in amount(s) to the grantee in accordance with § 207.7(f).

(4) *Rates.* (i) For major disaster declarations, FEMA will determine the

§ 207.6

lock-in for PA based on a flat percentage rate of the Federal share of projected eligible program costs for financial assistance pursuant to sections 403, 406, and 407 of the Stafford Act, 42 U.S.C. 5170b, 5172, and 5173, respectively, but not including direct Federal assistance. For major disaster declarations on or after November 13, 2007, the PA rate will be 3.34 percent.

(ii) For major disaster declarations, FEMA will determine the lock-in for HMGP based on a flat percentage rate of the Federal share of projected eligible program costs under section 404 of the Stafford Act, 42 U.S.C. 5170c. For major disaster declarations on or after November 13, 2007, the HMGP rate will be 4.89 percent.

(iii) For emergency declarations, FEMA will determine the lock-in for PA based on a flat percentage rate of the Federal share of projected eligible program costs for financial assistance (sections 502 and 503 of the Stafford Act, 42 U.S.C. 5192 and 5193, respectively), but not including direct Federal assistance. For emergency declarations on or after November 13, 2007 the rate will be 3.90 percent.

(c) The dollar amount provided to a grantee for management cost funds for a single declaration will not exceed 20,000,000, except as described in paragraphs (d) and (e) of this section.

(d) The grantee must justify in writing to the Regional Administrator any requests to change the amount of the lock-in or the cap, extend the time period before lock-in, or request an interim obligation of funding at the time of the 6-month lock-in adjustment. The Regional Administrator will recommend to the Chief Financial Officer whether to approve the extension, change, or interim obligation. Extensions, changes to the lock-in, or interim obligations will not be made without the approval of the Chief Financial Officer.

(e) The Chief Financial Officer may change the amount of the lock-in or the cap, or extend the time before lock-in, if the Chief Financial Officer determines that the projections used to determine the lock-in were inaccurate to such a degree that the change to the lock-in would be material, or for other reasons in his or her discretion that

44 CFR Ch. I (10-1-11 Edition)

may reasonably warrant such changes. The Chief Financial Officer will not make such changes without consultation with the grantee and the Regional Administrator.

§ 207.6 Use of funds.

(a) The grantee or subgrantee must use management cost funds provided under this part in accordance with § 13.22 of this chapter and only for costs related to administration of PA or HMGP, respectively. All charges must be properly documented in accordance with § 207.8(f).

(b) Indirect costs may not be charged directly to a project or reimbursed separately, but rather are considered to be eligible management costs under this part.

(c) Activities and costs that can be directly charged to a project with proper documentation are not eligible for funding under this part.

§ 207.7 Procedures for requesting management cost funding.

(a) *General.* This section describes the procedures to be used by the grantee in requesting management cost funding.

(b) *State Administrative Plan Requirements.* State administrative plans, as required in § 206.207(b) of this chapter for PA and § 206.437 of this chapter for HMGP, must be amended to include procedures for subgrantee management costs amount or percentage determination, pass through, closeout, and audit, as required by § 207.4(c)(3) before management cost funds will be provided under this part.

(c) *Initial Funding Request Submission.* Upon notification of the preliminary lock-in amount(s) for management costs based on the Federal share of the projected eligible program costs for financial assistance at that time for PA and HMGP, as applicable, the grantee must submit its initial management cost funding request to the Regional Administrator. FEMA must receive the initial funding request before it will provide any management cost funds under this part.

(1) For PA management costs, funding requests shall be submitted using a PW.

Federal Emergency Management Agency, DHS**§ 207.8**

(2) For HMGP management costs, funding requests shall be submitted using an HMGP project narrative.

(d) *Request Documentation.* The grantee is required to submit, no later than 120 days after the date of declaration, documentation to support costs and activities for which the projected lock-in for management cost funding will be used. In extraordinary circumstances, FEMA may approve a request by a grantee to submit support documentation after 120 days. FEMA will work with the grantee to approve or reject the request within 30 days of receipt of the request. If the request is rejected, the grantee will have 30 days to resubmit it for reconsideration and approval. FEMA will not obligate the balance of the management costs lock-in pursuant to a final funding request as described in paragraph (f) of this section or any interim amounts as allowed under paragraph (e) of this section unless the grantee's documentation is approved. The documentation must include:

(1) A description of activities, personnel requirements, and other costs for which the grantee will use management cost funding provided under this part;

(2) The grantee's plan for expending and monitoring the funds provided under this part and ensuring sufficient funds are budgeted for grant closeout; and

(3) An estimate of the percentage or amount of pass-through funds for management costs provided under this part that the grantee will make available to subgrantees, and the basis, criteria, or formula for determining the subgrantee percentage or amount (e.g., number of projects, complexity of projects, X percent to any subgrantee).

(e) *Interim Funding Request.* If the grantee can justify a bona fide need for an additional obligation of management cost funds at 6 months, the grantee may submit a request to the Regional Administrator. Any interim obligations by FEMA must be approved by the Chief Financial Officer and will not exceed an amount equal to 10 percent of the 6-month lock-in amount, except in extraordinary circumstances.

(f) *Final Funding Request.* Upon notification of the final lock-in amount(s),

the grantee must submit a final management cost funding request to the Regional Administrator. Any necessary revisions to supporting documentation must be attached to the final funding request.

§ 207.8 Management cost funding oversight.

(a) *General.* The grantee has primary responsibility for grants management activities and accountability of funds provided for management costs as required by part 13 of this chapter, especially §§13.20 and 13.36. The grantee is responsible for ensuring that subgrantees meet all program and administrative requirements.

(b) *Period of availability.* (1) For major disaster declarations, the grantee may expend management cost funds for allowable costs for a maximum of 8 years from the date of the major disaster declaration or 180 days after the latest performance period date of a non-management cost PA PW or HMGP project narrative, respectively, whichever is sooner.

(2) For emergency declarations, the grantee may expend management cost funds for allowable costs for a maximum of 2 years from the date of the emergency declaration or 180 days after the latest performance period of a non-management cost PA PW, whichever is sooner.

(3) The period of availability may be extended only at the written request of the grantee, with the recommendation of the Regional Administrator, and with the approval of the Chief Financial Officer. The grantee must include a justification in its request for an extension, and must demonstrate that there is work in progress that can be completed within the extended period of availability. In no case will an extended period of availability allow more than 180 days after the expiration of any performance period extensions granted under PA or HMGP for project completion. FEMA will deobligate any funds not liquidated by the grantee in accordance with §13.23 of this chapter.

(c) *Reporting requirements.* The grantee must provide quarterly progress reports on management cost funds to the Regional Administrator as required by the FEMA-State Agreement.

§ 207.9

44 CFR Ch. I (10-1-11 Edition)

(d) *Closeout.* The grantee has primary responsibility for the closeout tasks associated with both the program and subgrantee requirements. Complying with each program's performance period requirement, the grantee must conduct final inspections for projects, reconcile subgrantee expenditures, resolve negative audit findings, obtain final reports from subgrantees and reconcile the closeout activities of subgrantees with PA and HMGP grant awards.

(e) *Audit requirements.* Uniform audit requirements in § 13.26 of this chapter apply to all assistance provided under this part.

(f) *Document Retention.* In compliance with State law and procedures and with § 13.42 of this chapter, grantees must retain records, including source documentation to support expenditures/costs incurred for management costs, for 3 years from the date of submission of the final Financial Status Report to FEMA that is required for PA and HMGP. The grantee is responsible for resolving questioned costs that may result from audit findings during the 3-year-record-retention period and returning any disallowed costs from ineligible activities.

§ 207.9 Declarations before November 13, 2007.

(a) *General.* This section describes how FEMA provides administrative and management cost funding for PA and HMGP for major disasters or emergencies declared before November 13, 2007.

(b) *Eligible direct costs.* Eligible direct costs to complete approved activities are governed by part 13 of this chapter. The eligible direct costs for administration and management of the program are divided into two categories as follows:

(1) *Grantee.* (i) *Statutory administrative costs.* FEMA may provide funds to the grantee to cover the extraordinary costs incurred in preparing project worksheets or applications, final inspection reports, quarterly reports, final audits, and related field inspections by State employees, including overtime pay and per diem and travel expenses, but not including regular time for such employees. FEMA will

base the funds on the following percentages of the total amount of assistance provided (Federal share) for all subgrantees in the State under sections 403, 404, 406, 407, 502, and 503 of the Stafford Act (42 U.S.C. 5170b, 5170c, 5172, 5173, 5192, and 5193, respectively):

(A) For the first 100,000 of total assistance provided (Federal share), 3 percent of such assistance.

(B) For the next 900,000, 2 percent of such assistance.

(C) For the next 4,000,000, 1 percent of such assistance.

(D) For assistance over \$5,000,000, one-half of 1 percent of such assistance.

(ii) *State management administrative costs.* Except for the items listed in paragraph (b)(1)(i) of this section, other administrative costs will be paid in accordance with § 13.22 of this chapter. The grantee and FEMA will share such costs under the cost share provisions of applicable PA and HMGP regulations.

(2) *Subgrantee.* The grantee may provide funds to the subgrantee to cover necessary costs of requesting, obtaining, and administering Federal disaster assistance subgrants, based on the following percentages of net eligible costs under sections 403, 404, 406, 407, 502, and 503 of the Stafford Act (42 U.S.C. 5170b, 5170c, 5172, 5173, 5192, and 5193, respectively), for an individual applicant (applicants in this context include State agencies):

(i) For the first \$100,000 of net eligible costs, 3 percent of such costs.

(ii) For the next \$900,000, 2 percent of such costs.

(iii) For the next \$4,000,000, 1 percent of such costs.

(iv) For those costs over \$5,000,000, one-half of 1 percent of such costs.

(c) *Eligible indirect costs:* (1) *Grantee.* Indirect costs of administering the disaster program are eligible in accordance with the provisions of part 13 of this chapter and OMB Circular No. A-87, if the grantee provides FEMA with a current Indirect Cost Rate Agreement approved by its Cognizant Agency.

(2) *Subgrantee.* No indirect costs of a subgrantee are separately eligible because the percentage allowance in paragraph (b)(2) of this section covers

necessary costs of requesting, obtaining and administering Federal assistance.

(d) *Availability.* (1) For major disaster declarations, FEMA will reimburse grantee eligible costs as described in this section at (b)(1)(ii) and (c)(1) for a maximum of 8 years from the date of the major disaster declaration or 180 days after the latest performance period date of a non-management cost PA PW or predecessor form or HMGP project narrative, respectively, whichever is sooner.

(2) For emergency declarations, FEMA will reimburse grantee eligible costs as described in this section at (b)(1)(ii) and (c)(1) for a maximum of 2 years from the date of the emergency declaration or 180 days after the latest performance period of a non-management cost PA PW or predecessor form, whichever is sooner.

(3) The reimbursement of grantee eligible costs as described in this section at (b)(1)(ii) and (c)(1) may be provided by FEMA after the periods of availability described in this section only at the written request of the grantee, with the recommendation of the Regional Administrator, and with the approval of the Chief Financial Officer. The grantee must include a justification in its request for further reimbursement, and must demonstrate that there is work in progress that can be completed within the extended period of reimbursement. In no case will reimbursement be provided after 180 days after the expiration of any performance period extensions granted under PA or HMGP for project completion.

§ 207.10 Review of management cost rates.

(a) FEMA will review management cost rates not later than 3 years after this rule is in effect and periodically thereafter.

(b) In order for FEMA to review the management cost rates established, and in accordance with part 13 of this chapter, the grantee and subgrantee must document all costs expended for management costs (including cost overruns). After review of this documentation, FEMA will determine whether the established management cost rates are adequate for the admin-

istration and closeout of the PA and HMGP programs.

PART 208—NATIONAL URBAN SEARCH AND RESCUE RESPONSE SYSTEM

Subpart A—General

Sec.

- 208.1 Purpose and scope of this part.
- 208.2 Definitions of terms used in this part.
- 208.3 Authority for the National US&R Response System.
- 208.4 Purpose for System.
- 208.5 Authority of the Assistant Administrator for the Disaster Operations Directorate.
- 208.6 System resource reports.
- 208.7 Enforcement.
- 208.8 Code of conduct.
- 208.9 Agreements between Sponsoring Agencies and Participating Agencies.
- 208.10 Other regulations.
- 208.11 Federal status of System Members.
- 208.12 Maximum Pay Rate Table.
- 208.13–208.20 [Reserved]

Subpart B—Preparedness Cooperative Agreements

- 208.21 Purpose.
- 208.22 Preparedness Cooperative Agreement process.
- 208.23 Allowable costs under Preparedness Cooperative Agreements.
- 208.24 Purchase and maintenance of items not listed on Equipment Cache List.
- 208.25 Obsolete equipment.
- 208.26 Accountability for use of funds.
- 208.27 Title to equipment.
- 208.28–208.30 [Reserved]

Subpart C—Response Cooperative Agreements

- 208.31 Purpose.
- 208.32 Definitions of terms used in this subpart.
- 208.33 Allowable costs.
- 208.34 Agreements between Sponsoring Agencies and others.
- 208.35 Reimbursement for Advisory.
- 208.36 Reimbursement for Alert.
- 208.37 Reimbursement for equipment and supply costs incurred during Activation.
- 208.38 Reimbursement for re-supply and logistics costs incurred during Activation.
- 208.39 Reimbursement for personnel costs incurred during Activation.
- 208.40 Reimbursement of fringe benefit costs during Activation.
- 208.41 Administrative allowance.
- 208.42 Reimbursement for other administrative costs.
- 208.43 Rehabilitation.

§ 208.1

44 CFR Ch. I (10-1-11 Edition)

208.44 Reimbursement for other costs.
208.45 Advance of funds.
208.46 Title to equipment.
208.47-208.50 [Reserved]

Subpart D—Reimbursement Claims and Appeals

208.51 General.
208.52 Reimbursement procedures.
208.53-208.59 [Reserved]
208.60 Determination of claims.
208.61 Payment of claims.
208.62 Appeals.
208.63 Request by DHS for supplemental information.
208.64 Administrative and audit requirements.
208.65 Mode of transmission.
208.66 Reopening of claims for retrospective or retroactive adjustment of costs.
208.67-208.70 [Reserved]

AUTHORITY: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

SOURCE: 70 FR 9194, Feb. 24, 2005, unless otherwise noted.

Subpart A—General

§ 208.1 Purpose and scope of this part.

(a) **Purpose.** The purpose of this part is to prescribe policies and procedures pertaining to the Department of Homeland Security's (DHS) National Urban Search and Rescue Response System.

(b) **Scope.** This part applies to Sponsoring Agencies and other participants in the National Urban Search and Rescue Response System that have executed agreements governed by this part. Part 206 of this chapter does not apply to activities undertaken under this part, except as provided in §§ 208.5 and 208.10 of this part. This part does not apply to reimbursement under part 206, subpart H, of this chapter.

§ 208.2 Definitions of terms used in this part.

(a) **General.** Any capitalized word in this part is a defined term unless such capitalization results from the application of standard capitalization or style rules for Federal regulations. The fol-

lowing definitions have general applicability throughout this part:

Activated or *Activation* means the status of a System resource placed at the direction, control and funding of DHS in response to, or in anticipation of, a presidential declaration of a major disaster or emergency under the Stafford Act.

Activation Order means the DHS communication placing a System resource under the direction, control, and funding of DHS.

Advisory means a DHS communication to System resources indicating that an event has occurred or DHS anticipates will occur that may require Alert or Activation of System resources.

Alert means the status of a System resource's readiness when triggered by an Alert Order indicating that DHS may Activate the System resource.

Alert Order means the DHS communication that places a System resource on Alert status.

Assistant Administrator means the Assistant Administrator for the Disaster Operations Directorate.

Assistance Officer means the DHS employee who has legal authority to bind DHS by awarding and amending Cooperative Agreements.

Backfill means the personnel practice of temporarily replacing a person in his or her usual position with another person.

Cooperating Agency means a State or Local Government that has executed a Cooperative Agreement to provide Technical Specialists.

Cooperative Agreement means a legal instrument between DHS and a Sponsoring Agency or Cooperating Agency that provides funds to accomplish a public purpose and anticipates substantial Federal involvement during the performance of the contemplated activity.

Daily Cost Estimate means a Sponsoring Agency's estimate of Task Force personnel compensation, itemized fringe benefit rates and amounts including calculations, and Backfill expenditures for a 24-hour period of Activation.

Deputy Assistant Administrator means the Deputy Assistant Administrator

Federal Emergency Management Agency, DHS**§ 208.2**

for the Disaster Operations Directorate, or other person the Assistant Administrator designates.

DHS means the Department of Homeland Security.

Disaster Search Canine Team means a disaster search canine and handler who have successfully completed the written examination and demonstrated the performance skills required by the Disaster Search Canine Readiness Evaluation Process. A disaster search canine is a dog that has successfully completed the DHS Disaster Search Canine Readiness Evaluation criteria for Type II or both Type II and Type I.

Emergency means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

Equipment Cache List means the DHS issued list that defines:

(1) The equipment and supplies that US & R will furnish to Sponsoring Agencies; and

(2) The maximum quantities and types of equipment and supplies that a Sponsoring Agency may purchase and maintain with DHS funds.

Federal Excess Property means any Federal personal property under the control of a Federal agency that the agency head or a designee determines is not required for its needs or for the discharge of its responsibilities.

Federal Response Plan means the signed agreement among various Federal departments and agencies that provides a mechanism for coordinating delivery of Federal assistance and resources to augment efforts of State and Local Governments overwhelmed by a Major Disaster or Emergency, supports implementation of the Stafford Act, as well as individual agency statutory authorities, and supplements other Federal emergency operations plans developed to address specific hazards.

Joint Management Team or *JMT* means a multi-disciplinary group of National Disaster Medical System (NDMS), Urban Search and Rescue (US&R), and other specialists combined to provide operations, planning, logistics, finance

and administrative support for US&R and NDMS resources, and to provide technical advice and assistance to States and Local Governments.

Local Government means any county, city, village, town, district, or other political subdivision of any State; any federally recognized Indian tribe or authorized tribal organization; and any Alaska Native village or organization.

Major Disaster means any natural catastrophe (including any hurricane, tornado, storm, high water, wind driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or regardless of cause, any fire, flood, or explosion, in any part of the United States, that in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Stafford Act to supplement the efforts and available resources of States, Local Governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

Memorandum of Agreement (MOA) means the document signed by DHS, a Sponsoring Agency and its State that describes the relationship of the parties with respect to the National Urban Search & Rescue Response System.

Participating Agency means a State or Local Government, non-profit organization, or private organization that has executed an agreement with a Sponsoring Agency to participate in the National US&R Response System.

Personnel Rehabilitation Period means the period allowed by DHS for a person's rehabilitation to normal conditions of living following an Activation.

Preparedness Cooperative Agreement means the agreement between DHS and a Sponsoring Agency for reimbursement of allowable expenditures incurred by the Sponsoring Agency to develop and maintain System capabilities and operational readiness.

Program Directive means guidance and direction for action to ensure consistency and standardization across the National US&R Response System.

Program Manager means the individual, or his or her designee, within DHS who is responsible for day-to-day

§ 208.3

44 CFR Ch. I (10-1-11 Edition)

administration of the National US&R Response System.

Program Office means the organizational entity within DHS that is responsible for day-to-day administration of the National US&R Response System.

Response Cooperative Agreement means an agreement between DHS and a Sponsoring Agency for reimbursement of allowable expenditures incurred by the Sponsoring Agency as a result of an Alert or Activation.

Sponsoring Agency means a State or Local Government that has executed an MOA with DHS to organize and administer a Task Force.

Stafford Act means the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5206.

State means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia or the Republic of the Marshall Islands.

Support Specialist means a person participating in the System who assists the Task Force with administrative or other support during mobilization, ground transportation and demobilization as directed.

System or *National US&R Response System* means the national US&R response capability administered by DHS.

System Member means any Task Force Member, JMT Member, Technical Specialist, Support Specialist or Disaster Search Canine Team.

Task Force means an integrated US&R organization of multi-disciplinary resources with common communications and a leader, organized and administered by a Sponsoring Agency and meeting DHS standards.

Task Force Member means a person occupying a position on a Task Force.

Technical Specialist means a person participating in the System contributing technical knowledge and skill who may be placed on Alert or Activated as a single resource and not as a part of a JMT or a Task Force.

US&R means urban search and rescue, the process of searching for, extricating, and providing for the imme-

diate medical stabilization of victims who are entrapped in collapsed structures.

(b) *Additional definitions.* Definitions for certain terms that apply only to individual subparts of this part are located in those subparts.

[70 FR 9194, Feb. 24, 2005, as amended at 74 FR 15353, Apr. 3, 2009]

§ 208.3 Authority for the National US&R Response System.

(a) *Enabling legislation.* The Federal Emergency Management Agency established and operated the System under the authority of §§ 303, 306(a), 306(b), 403(a)(3)(B) and 621(c) of the Stafford Act, 42 U.S.C. 5144, 5149(a), 5149(b), 5170b(a)(3)(B) and 5197(c), respectively. Section 503 of the Homeland Security Act of 2002, 6 U.S.C. 313, transferred the functions of the Administrator of FEMA to the Secretary of Homeland Security. The President redelegated to the Secretary of Homeland Security in Executive Order 13286 those authorities of the President under the Stafford Act that had been delegated previously to the Administrator of FEMA under Executive Order 12148.

(b) *Implementing plan.* The National Response Plan identifies DHS as the primary Federal agency with responsibility for Emergency Support Function 9, Urban Search and Rescue.

§ 208.4 Purpose for System.

It is DHS policy to develop and provide a national system of standardized US&R resources to respond to Emergencies and Major Disasters that are beyond the capabilities of affected State and Local Governments.

§ 208.5 Authority of the Assistant Administrator for the Disaster Operations Directorate.

(a) *Participation in activities of the System.* The Assistant Administrator is responsible for determining participation in the System and any activity thereof, including but not limited to whether a System resource is operationally ready for Activation.

(b) *Standards for and measurement of System efficiency and effectiveness.* In addition to the authority provided in § 206.13 of this chapter, the Assistant

Federal Emergency Management Agency, DHS**§ 208.11**

Administrator may establish performance standards and assess the efficiency and effectiveness of System resources.

§ 208.6 System resource reports.

(a) *Reports to Assistant Administrator.* The Assistant Administrator may request reports from any System resource relating to its activities as part of the System.

(b) *Reports to FEMA Regional Administrators.* Any FEMA Regional Administrator may request through the Assistant Administrator reports from any System resource used within or based within the Regional Administrator's jurisdiction.

(c) *Audits, investigations, studies and evaluations.* DHS and the General Accounting Office may conduct audits, investigations, studies, and evaluations as necessary. Sponsoring Agencies, Participating Agencies and System Members are expected to cooperate fully in such audits, investigations, studies and evaluations.

§ 208.7 Enforcement.

(a) *Remedies for noncompliance.* In accordance with the provisions of 44 CFR 13.43, if a Sponsoring Agency, Participating Agency, Affiliated Personnel or other System Member materially fails to comply with a term of a Cooperative Agreement, Memorandum of Agreement, System directive or other Program Directive, the Assistant Administrator may take one or more of the actions provided in 44 CFR 13.43(a)(1) through (5). Any such enforcement action taken by the Assistant Administrator will be subject to the hearings, appeals, and effects of suspension and termination provisions of 44 CFR 13.43(b) and (c).

(b) The enforcement remedies identified in this section, including suspension and termination, do not preclude a Sponsoring Agency, Participating Agency, Affiliated Personnel or other System Member from being subject to "Debarment and Suspension" under E.O. 12549, as amended, in accordance with 44 CFR 13.43(d).

(c) *Other authority for sanctions.* Nothing in this section limits or precludes the application of other authority to

impose civil or criminal sanctions, including 42 U.S.C. 5156.

§ 208.8 Code of conduct.

The Assistant Administrator will develop and implement a code of conduct for System Members acting under DHS's direction and control. Nothing in this section or the DHS code of conduct will limit the authority of a Sponsoring Agency, Participating Agency or Cooperating Agency to apply its own code of conduct to its System Members or employees. If the DHS code is more restrictive, it controls.

§ 208.9 Agreements between Sponsoring Agencies and Participating Agencies.

Every agreement between a Sponsoring Agency and a Participating Agency regarding the System must include a provision making this part applicable to the Participating Agency and its employees who engage in System activities.

§ 208.10 Other regulations.

The following provisions of title 44 CFR, Chapter I also apply to the program in this part:

(a) Section 206.9, which deals with the non-liability of DHS in certain circumstances.

(b) Section 206.11, which prescribes nondiscrimination in the provision of disaster assistance.

(c) Section 206.14, which deals with criminal and civil penalties.

(d) Section 206.15, which permits recovery of assistance by DHS.

§ 208.11 Federal status of System Members.

The Assistant Administrator will appoint all Activated System Members as temporary excepted Federal volunteers. The Assistant Administrator may appoint a System Member who participates in Alert activities as such a Federal volunteer. The Assistant Administrator may also appoint each System Member who participates in DHS-sanctioned preparedness activities as a temporary excepted Federal volunteer. DHS intends these appointments to secure protection for such volunteers under the Federal Employees Compensation Act and the Federal Tort

§ 208.12

Claims Act and do not intend to interfere with any preexisting employment relationship between a System Member and a Sponsoring Agency, Cooperating Agency or Participating Agency. System Members whom DHS appoints as temporary excepted Federal volunteers will not receive any compensation or employee benefit directly from the United States of America for their service, but will be compensated through their Sponsoring Agency.

§ 208.12 Maximum Pay Rate Table.

(a) *Purpose.* This section establishes the process for creating and updating the Maximum Pay Rate Table (Table), and the Table's use to reimburse Affiliated Personnel (Task Force Physicians, Task Force Engineers, and Canine Handlers) and Backfill for Activated System Members employed by or otherwise associated with a for-profit Participating Agency. Section 208.32 defines the "Maximum Pay Rate Table" as "the DHS-issued table that identifies the maximum pay rates for selected System positions that may be used for reimbursement of Affiliated Personnel compensation and Backfill for Activated System Members employed by or otherwise associated with a for-profit Participating Agency." In that same section, the term "Affiliated Personnel" is defined as "individuals not normally employed by a Sponsoring Agency or Participating Agency and individuals normally affiliated with a Sponsoring Agency or Participating Agency as volunteers."

(b) *Scope of this section.* (1) The Maximum Pay Rate Table applies to those individuals who are not normally employed by a Sponsoring Agency or Participating Agency, or whose affiliation with a Sponsoring Agency or Participating Agency is as a volunteer; that is, an individual whom the Sponsoring Agency or Participating Agency does not normally compensate in any way, at any rate.

(2) The Table also applies to Backfill for Activated System Members employed by or otherwise associated with a for-profit Participating Agency.

(c) *Method for determining maximum pay rates.* (1) DHS uses the United States Office of Personnel Management's salary rates, computed under 5

44 CFR Ch. I (10-1-11 Edition)

U.S.C. 5504, as the basis for the maximum pay rate schedule. DHS considers System members' experience and sets maximum pay rates at the maximum grade, middle step for each position, which demonstrates an experience level of five years.

(2) The Office of Personnel Management (OPM) publishes salary and locality pay schedules each calendar year.

(i) *Physicians.* DHS uses the latest Special Salary Rate Table Number 0290 for Medical Officers (Clinical) Worldwide for physicians. The rates used in the initial Table can be found at http://www.opm.gov/oca/03_tables/SSR/HTML/0290.asp.

(ii) *Engineers and Canine Handlers.* DHS uses the latest General Schedule pay scale for both positions. Both specialties are compared to the General Schedule pay scale to ensure parity with like specialties on a task force (canine handlers are equated with rescue specialists). The rates used in the initial Table can be found at <http://www.opm.gov/oca/03tables/html/gs.asp>.

(iii) *Locality Pay.* To determine adjustments for locality pay DHS uses the latest locality pay areas (including the "Rest of U.S." area) established by OPM. The rates used in the initial Table can be found at <http://www.opm.gov/oca/03tables/locdef.asp>.

(3) *Review and update.* DHS will review and update the Table periodically, at least annually. The comments of Sponsoring and Participating Agencies and their experience with the Table will be considered and evaluated in the course of the reviews.

(4) *Initial rates and subsequent revisions.* DHS will publish the initial maximum pay rate table in the FEDERAL REGISTER as a notice with request for comments. Subsequent revisions will be made to the pay rate table as OPM changes salary rates as described in this section. When subsequent revisions are made to the maximum pay rate table DHS will publish the new maximum pay rate table in the FEDERAL REGISTER. The rates will be effective for the latest year indicated by OPM.¹

¹In some years the latest year may not be the current calendar year. For instance,

Federal Emergency Management Agency, DHS**§ 208.22**

(d) *Application of the maximum pay rate table*—(1) *Applicability*. The Maximum Pay Rate Table sets forth maximum rates for which DHS will reimburse the Sponsoring Agency for compensation paid to Activated Affiliated Personnel and as Backfill for Activated System Members employed by or otherwise associated with a for-profit Participating Agency.

(2) *Higher rates*. The Sponsoring Agency may choose to pay Affiliated Personnel at a higher rate, but DHS will not reimburse the increment above the maximum rate specified in the Maximum Pay Rate Table. Likewise, the Sponsoring Agency may choose to enter into a Participating Agency agreement with the individual's employer, rather than use the individual as an Affiliated Personnel, in which case the Maximum Pay Rate Table would not apply.

(3) *Compensation for Sponsoring Agency employees serving as Affiliated Personnel*. An employee of a Sponsoring Agency serving on a Task Force in a capacity other than his or her normal job, *e.g.*, a fire department dispatcher affiliated with the Task Force as a canine search specialist, as an Affiliated Personnel, would not necessarily be subject to the Maximum Pay Rate Table for reimbursement for salary and benefits for that individual. However, Sponsoring Agencies may use the rates in the Maximum Pay Rate Table as a guide for establishing compensation levels for such individuals.

(4) *Backfill expenses for Affiliated Personnel under § 208.39(g)*. (i) The only way that DHS can reimburse for Backfill costs incurred for Affiliated Personnel is through Participating Agencies. If reimbursement for Backfill expenses is needed for Affiliated Personnel, DHS encourages them to urge their employers or professional association to seek Participating Agency status.

(ii) *Private, for-profit organizations*. Participating Agency status is available to private, for-profit organizations, *e.g.*, HMOs or medical or engineering professional associations, under the revised definition of "Participating Agency" set forth in this In-

terim rule. (See Definitions, § 208.2, *Participating Agency*, and § 208.32, *Maximum Pay Rate Table*). When a for-profit Participating Agency must backfill an Activated System Member's position we will compensate that Participating Agency up to the maximum rate provided in the Table.

(iii) *Compensation costs*. DHS will reimburse for-profit organizations, for purposes of reimbursement and Backfill, for the System Member's actual compensation or the actual compensation of the individual who Backfills a position (which includes salary and benefits, as described in §§ 208.39 and 208.40), but will not reimburse for billable or other rates that might be charged for services rendered to commercial clients or patients.

§§ 208.13–208.20 [Reserved]**Subpart B—Preparedness Cooperative Agreements****§ 208.21 Purpose.**

Subpart B of this part provides guidance on the administration of Preparedness Cooperative Agreements.

§ 208.22 Preparedness Cooperative Agreement process.

(a) *Application*. To obtain DHS funding for an award or amendment of a Preparedness Cooperative Agreement, the Sponsoring Agency must submit an application. Standard form SF-424 "Application for Federal Assistance" generally will be used. However, the application must be in a form that the Assistance Officer specifies.

(b) *Award*. DHS will award a Preparedness Cooperative Agreement to each Sponsoring Agency to provide Federal funding to develop and maintain System resource capabilities and operational readiness. For the purposes of the Preparedness Cooperative Agreement, the Sponsoring Agency will be considered the "recipient."

(c) *Amendment*—(1) *Procedure*. Absent special circumstances, DHS will fund and amend Preparedness Cooperative Agreements on an annual basis. Before amendment, the Assistance Officer will issue a call for Cooperative Agreement

OPM did not change its pay rates for calendar year 2004, and the 2003 schedules apply.

§ 208.23**44 CFR Ch. I (10-1-11 Edition)**

amendment applications. The Assistance Officer will specify required application forms and supporting documentation to be submitted with the application.

(2) *Period of performance.* Absent special circumstances, the period of performance for Preparedness Cooperative Agreements will be 1 year from the date of award. The Assistance Officer may allow for an alternate period of performance with the approval of the Assistant Administrator.

(3) *Assistance Officer.* The Assistance Officer is the only individual authorized to award or modify a Preparedness Cooperative Agreement.

(d) *Award amounts.* The Assistant Administrator will determine award amounts on an annual basis. A Task Force is eligible for an annual award only if the Program Manager receives and approves the Task Force's current-year Daily Cost Estimate.

(e) *DHS priorities.* The Assistant Administrator will establish overall priorities for the use of Preparedness Cooperative Agreement funds taking into consideration the results of readiness evaluations and actual Activations, overall priorities of DHS, and other factors, as appropriate.

(f) *Cost sharing.* The Assistant Administrator may subject Preparedness Cooperative Agreement awards to cost sharing provisions. In the call for Preparedness Cooperative Agreement amendment applications, the Assistance Officer must inform Sponsoring Agencies about any cost sharing obligations.

(g) *Sponsoring Agency priorities.* The Sponsoring Agency should indicate its spending priorities in the application. The Program Manager will review these priorities and will make recommendations to the Assistance Officer for negotiating the final agreement.

(h) *Responsibility to maintain integrity of the equipment cache.* The Sponsoring Agency is responsible to maintain the integrity of the equipment cache, including but not limited to, maintenance of the cache, replacement of equipment or supplies expended in training, activations, or local use of the cache, and timely availability of the cache for Task Force Activations.

§ 208.23 Allowable costs under Preparedness Cooperative Agreements.

System Members may spend Federal funds that DHS provides under any Preparedness Cooperative Agreement and any required matching funds under 44 CFR 13.22 and this section to pay reasonable, allowable, necessary and allocable costs that directly support System activities, including the following:

(a) Administration, including:

(1) Management and administration of day-to-day System activities such as personnel compensation and benefits relating to System maintenance and development, record keeping, inventory of equipment, and correspondence;

(2) Travel to and from System activities, meetings, conferences, training, drills and exercises;

(3) Tests and examinations, including vaccinations, immunizations and other tests that are not normally required or provided in the course of a System Member's employment, and that DHS requires to meet its standards.

(b) Training:

(1) Development and delivery of, and participation in, System-related training courses, exercises, and drills;

(2) Construction, maintenance, lease or purchase of System-related training facilities or materials;

(3) Personnel compensation expenses, including overtime and other related expenses associated with System-related training, exercises, or drills;

(4) System-required evaluations and certifications other than the certifications that DHS requires System Members to possess at the time of entry into the System. For instance, DHS will not pay for a medical school degree, paramedic certification or re-certification, civil engineering license, etc.

(c) Equipment:

(1) Procurement of equipment and supplies specifically identified on the then-current DHS-approved Equipment Cache List;

(2) Maintenance and repair of equipment included on the current Equipment Cache List;

(3) Maintenance and repair of equipment acquired with DHS approval through the Federal Excess Property

Federal Emergency Management Agency, DHS**§ 208.32**

program, except as provided in § 208.25 of this part;

(4) Purchase, construction, maintenance or lease of storage facilities and associated equipment for System equipment and supplies.

(d) Disaster search canine expenses limited to:

(1) Procurement for use as a System resource;

(2) Training and certification expenses;

(3) Veterinary care.

(e) Management and administrative costs, actually incurred but not otherwise specified in this section that directly support the Sponsoring Agency's US&R capability, provided that such costs do not exceed 7.5 percent of the award/amendment amount.

§ 208.24 Purchase and maintenance of items not listed on Equipment Cache List.

(a) Requests for purchase or maintenance of equipment and supplies not appearing on the Equipment Cache List, or that exceed the number specified in the Equipment Cache List, must be made in writing to the Program Manager. No Federal funds provided under any Preparedness Cooperative Agreement may be expended to purchase or maintain any equipment or supply item unless:

(1) The equipment and supplies directly support the Sponsoring Agency's US&R capability;

(2) The Program Manager approves the expenditure and gives written notice of his or her approval to the Sponsoring Agency before the Sponsoring Agency purchases the equipment or supply item.

(b) Maintenance of items approved for purchase under this section is eligible for reimbursement, except as provided in § 208.26 of this subpart.

§ 208.25 Obsolete equipment.

(a) The Assistant Administrator will periodically identify obsolete items on the Equipment Cache List and provide such information to Sponsoring Agencies.

(b) Neither funds that DHS provides nor matching funds required under a Preparedness Cooperative Agreement may be used to maintain or repair

items that DHS has identified as obsolete.

§ 208.26 Accountability for use of funds.

The Sponsoring Agency is accountable for the use of funds as provided under the Preparedness Cooperative Agreement, including financial reporting and retention and access requirements according to 44 CFR 13.41 and 13.42.

§ 208.27 Title to equipment.

Title to equipment purchased by a Sponsoring Agency with funds provided under a DHS Preparedness Cooperative Agreement vests in the Sponsoring Agency, provided that DHS reserves the right to transfer title to the Federal Government or a third party that DHS may name, under 44 CFR 13.32(g), for example, when a Sponsoring Agency indicates or demonstrates that it cannot fulfill its obligations under the Memorandum of Agreement.

§§ 208.28–208.30 [Reserved]**Subpart C—Response Cooperative Agreements****§ 208.31 Purpose.**

Subpart C of this part provides guidance on the administration of Response Cooperative Agreements.

§ 208.32 Definitions of terms used in this subpart.

Affiliated Personnel means individuals not normally employed by a Sponsoring Agency or Participating Agency and individuals normally affiliated with a Sponsoring Agency or Participating Agency as volunteers.

Demobilization Order means a DHS communication that terminates an Alert or Activation and identifies cost and time allowances for rehabilitation.

Exempt means any System Member who is exempt from the requirements of the Fair Labor Standards Act, 29 U.S.C. 201 *et seq.*, pertaining to overtime compensation and other labor standards.

Maximum Pay Rate Table means the DHS-issued table that identifies the

§ 208.33**44 CFR Ch. I (10-1-11 Edition)**

maximum pay rates for selected System positions that may be used for reimbursement of Affiliated Personnel compensation and Backfill for Activated System Members employed by or otherwise associated with a for-profit Participating Agency. The Maximum Pay Rate Table does not apply to a System member whom a Sponsoring Agency or Participating Agency employs.

Mobilization means the process of assembling equipment and personnel in response to an Alert or Activation.

Non-Exempt means any System Member who is covered by 29 U.S.C. 201 *et seq.*

Rehabilitation means the process of returning personnel and equipment to a pre-incident state of readiness after DHS terminates an Activation.

§ 208.33 Allowable costs.

(a) *Cost neutrality.* DHS policy is that an Alert or Activation should be as cost neutral as possible to Sponsoring Agencies and Participating Agencies. To make an Alert or Activation cost-neutral, DHS will reimburse under this subpart all reasonable, allowable, necessary and allocable costs that a Sponsoring Agency or Participating Agency incurs during the Alert or Activation.

(b) *Actual costs.* Notwithstanding any other provision of this chapter, DHS will not reimburse a Sponsoring Agency or Participating Agency for any costs greater than those that the Sponsoring Agency or Participating Agency actually incurs during an Alert, Activation.

(c) *Normal or predetermined practices.* Consistent with Office of Management and Budget (OMB) Circulars A-21, A-87, A-102 and A-110 (2 CFR part 215), as applicable, Sponsoring Agencies and Participating Agencies must adhere to their own normal and predetermined practices and policies of general application when requesting reimbursement from DHS except as it sets out in this subpart.

(d) *Indirect costs.* Indirect costs beyond the administrative and management costs allowance established by § 208.41 of this part are not allowable.

§ 208.34 Agreements between Sponsoring Agencies and others.

Sponsoring Agencies are responsible for executing such agreements with Participating Agencies and Affiliated Personnel as may be necessary to implement the Sponsoring Agency's Response Cooperative Agreement with DHS. Those agreements must identify established hourly or daily rates of pay for System Members. The hourly or daily rates of pay for Affiliated Personnel must be in accordance with, and must not exceed, the maximum pay rates contained in the then-current Maximum Pay Rate Table.

§ 208.35 Reimbursement for Advisory.

DHS will not reimburse costs incurred during an Advisory.

§ 208.36 Reimbursement for Alert.

(a) *Allowable costs.* DHS will reimburse costs incurred during an Alert, up to the dollar limit specified in the Alert Order, for the following activities:

(1) Personnel costs, including Backfill, incurred to prepare for Activation.

(2) Transportation costs relating to hiring, leasing, or renting vehicles and drivers.

(3) The administrative allowance provided in § 208.41 of this part.

(4) Food and beverages for Task Force Members and Support Specialists when DHS does not provide meals during the Alert. DHS will limit food and beverage reimbursement to the amount of the then-current Federal meals daily allowance published in the FEDERAL REGISTER for the locality where such food and beverages were provided, multiplied by the number of personnel who received them.

(b) *Calculation of Alert Order dollar limit.* The Alert Order dollar limit will equal:

(1) An allowance of 10 percent of the Task Force's Daily Cost Estimate; and

(2) A supplemental allowance of 1 percent of the Task Force's Daily Cost Estimate for each 24-hour period beyond the first 72 hours of Alert.

(c) *Non-allowable costs.* DHS will not reimburse costs incurred or relating to the leasing, hiring or chartering of aircraft or the purchase of any equipment, aircraft, or vehicles.

Federal Emergency Management Agency, DHS**§ 208.39****§ 208.37 Reimbursement for equipment and supply costs incurred during Activation.**

(a) *Allowable costs.* DHS will reimburse costs incurred for the emergency procurement of equipment and supplies in the number, type, and up to the cost specified in the current approved Equipment Cache List, and up to the aggregate dollar limit specified in the Activation Order. The Assistant Administrator may determine emergency procurement dollar limits, taking into account previous Activation history, available funding, the extent and nature of the incident, and the current state of Task Force readiness.

(b) *Non-Allowable costs.* DHS will not reimburse costs incurred for items that are not listed on the Equipment Cache List; for items purchased greater than the cost or quantity identified in the Equipment Cache List; or for any purchase of non-expendable items that duplicate a previous purchase under a Preparedness or Response Cooperative Agreement.

§ 208.38 Reimbursement for re-supply and logistics costs incurred during Activation.

With the exception of emergency procurement authorized in the Activation Order, and replacement of consumable items provided for in § 208.43(a)(2) of this subpart, DHS will not reimburse costs incurred for re-supply and logistical support during Activation. Re-supply and logistical support of Task Forces needed during Activation are the responsibility of the Joint Management Team.

§ 208.39 Reimbursement for personnel costs incurred during Activation.

(a) *Compensation.* DHS will reimburse the Sponsoring Agency for costs incurred for the compensation of each Activated System Member during Activation. Reimbursement of compensation costs for Activated Support Specialists will be limited to periods of time during which they were actively supporting the Activation or traveling to or from locations at which they were actively supporting the Activation.

tion. The provisions of § 208.40 of this part govern costs incurred for providing fringe benefits to System Members.

(b) *Public Safety Exemption not applicable.* DHS will reimburse Sponsoring Agencies for costs incurred by Non-Exempt System Members in accordance with 29 U.S.C. 207(a) of the Fair Labor Standards Act, without regard to the public safety exemption contained in 29 U.S.C. 207(k). In other words, DHS will reimburse Sponsoring Agencies on an overtime basis for any hours worked by Non-Exempt System Members greater than 40 hours during a regular workweek.

(c) *Tour of duty.* The tour of duty for all Activated System Members will be 24 hours. DHS will reimburse the Sponsoring Agency for salary and overtime costs incurred in compensating System Members for meal periods and regularly scheduled sleep periods during Activation. Activated System Members are considered “on-duty” and must be available for immediate response at all times during Activation.

(d) *Regular rate.* The regular rate for purposes of calculating allowable salary and overtime costs is the amount determined in accordance with § 208.39(e)(1) through (3) of this subpart.

(e) *Procedures for calculating compensation during Activation.* A Sponsoring Agency or Participating Agency must:

(1) Convert the base hourly wage of any Non-Exempt System Member regularly paid under 29 U.S.C. 207(k) to its equivalent for a 40-hour work week;

(2) Convert the annual salary of any salaried Non-Exempt System Member to its hourly equivalent for a 40-hour workweek;

(3) Calculate the daily compensation of Exempt System Members based on their current annual salary, exclusive of fringe benefits;

(4) Calculate the total number of hours worked by each System Member to be included in the Sponsoring Agency’s request for reimbursement; and

(5) Submit a request for reimbursement under § 208.52 of this part according to the following table:

§ 208.40**44 CFR Ch. I (10-1-11 Edition)**

If the Sponsoring Agency or Participating Agency * * *	And the Sponsoring Agency or Participating Agency * * *	Then the following compensation costs are allowable:
(i) Customarily and usually compensates Exempt System Members by paying a salary, but not overtime,	Does not customarily and usually grant compensatory time or other form of overtime substitute to Exempt System members.	The daily compensation equivalent calculated under § 208.39(e)(3) of this part for each Activated Exempt System Member for each full or partial day during Activation.
(ii) Customarily and usually compensates Exempt System Members by paying a salary but not overtime	Customarily and usually awards compensatory time or other overtime substitute for Exempt System Members for hours worked above a predetermined hours threshold (for example, the Sponsoring Agency customarily and usually grants compensatory time for all hours worked above 60 in a given week).	The daily compensation equivalent calculated under § 208.39(e)(3) of this part for each Activated Exempt System Member for each full or partial day during Activation AND the dollar value at the time of accrual of the compensatory time or other overtime substitute for each Activated Exempt System Member based on the duration of the Activation.
(iii) Customarily and usually compensates Exempt System Members by paying a salary and overtime,	Customarily and usually calculates overtime for Exempt System Members by paying a predetermined overtime payment for each hour worked above a predetermined hours threshold.,	The daily compensation equivalent calculated under § 208.39(e)(3) of this part for each Activated Exempt System Member for each full or partial day during Activation AND the predetermined overtime payment for each hour during the Activation above the previously determined hours threshold for each Activated Exempt System Member.
(iv) Customarily and usually compensates Non-Exempt System Members by paying overtime after 40 hours per week,	Does not customarily and usually grant compensatory time or other form of overtime substitute to Non-Exempt System members.,	For each seven-day period during the Activation, the hourly wage of each Activated Non-Exempt System Member for the first 40 hours AND the overtime payment for each Activated Non-Exempt System Member for every hour over 40.
(v) Customarily and usually compensates Non-Exempt System Members according to a compensation plan established under 29 U.S.C. 207(k),	Does not customarily and usually grant compensatory time or other form of overtime substitute to Non-Exempt System Members.,	For each seven-day period during the Activation, the hourly wage equivalent of each Activated Non-Exempt System Member calculated under § 208.39(e)(1) of this part for the first 40 hours AND the overtime payment equivalent for each Activated Non-Exempt System Member calculated under § 208.39(e)(1) of this part for every hour over 40.
(vi) Activates Personnel, who are customarily and usually paid an hourly wage according to the Maximum Pay Rate Table,	For each seven-day period during the Activation, the hourly wage for each Activated Affiliated Personnel for the first 40 hours and one and one-half times the hourly wage for each Activated Affiliated Personnel for every hour over 40.
(vii) Activates Affiliated Personnel who are customarily and usually paid a daily compensation rate according to the Maximum Pay Rate Table,	The daily compensation rate for each Activated Affiliated Personnel for each full or partial day during the Activation.

(f) *Reimbursement of additional salary and overtime costs.* DHS will reimburse any identified additional salary and overtime cost incurred by a Sponsoring Agency as a result of the temporary conversion of a Non-Exempt System Member normally compensated under 29 U.S.C. 207(k) to a 40-hour work week under 29 U.S.C. 207(a).

(g) *Reimbursement for Backfill costs upon Activation.* DHS will reimburse the cost to Backfill System Members. Backfill costs consist of the expenses generated by filling the position in which the Activated System Member should have been working. These costs are calculated by subtracting the non-overtime compensation, including fringe benefits, of Activated System

Members from the total costs (non-overtime and overtime compensation, including fringe benefits) paid to Backfill the Activated System Members. Backfill reimbursement is available only for those positions that are normally Backfilled by the Sponsoring Agency or Participating Agency during Activation. Employees exempt under the Fair Labor Standards Act (FLSA) not normally Backfilled by the Sponsoring Agency or Participating Agency are not eligible for Backfill during Activation.

§ 208.40 Reimbursement of fringe benefit costs during Activation.

(a) Except as specified in § 208.40 (c) of this subpart, DHS will reimburse the

Federal Emergency Management Agency, DHS**§ 208.43**

Sponsoring Agency for fringe benefit costs incurred during Activation according to the following table:

If the Sponsoring Agency or Participating Agency * * *	Then the Sponsoring Agency or Participating Agency must * * *	Example
(1) Incurs a fringe benefit cost based on the number of base hours worked by a System Member,	Bill DHS for a pro-rata share of the premium based on the number of base hours worked during Activation.	The City Fire Department incurs a premium of 3 percent for dental coverage based on the number of base hours worked in a week (53 hours). The City should bill DHS an additional 3 percent of the firefighter's converted compensation for the first 40 hours Activation.
(2) Incurs a fringe benefit cost based on the number of hours a System Member actually worked (base hours and overtime),	Bill DHS for a pro-rata share of the premium based on the number of hours each System Member worked during Activation.	The City Fire Department pays a premium of 12 percent for retirement based on the number of hours worked by a firefighter. The City should bill DHS an additional 12 percent of the firefighter's total compensation during Activation.
(3) Incurs a fringe benefit cost on a yearly basis based on the number of people employed full-time during the year,	Bill DHS for a pro-rata share of those fringe benefit costs based on the number of non-overtime hours worked during Activation by System Members employed full time.	The City Fire Department pays workers compensation premiums into the City risk fund for the following year, based on the number of full-time firefighters employed during the current year. The City should bill DHS for workers compensation premium costs by multiplying the hourly fringe benefit rate or amount by the number of non-overtime hours worked during Activation by full time firefighters who are System Members.

(b) *Differential pay.* DHS will reimburse the Sponsoring Agency for direct costs incurred because of any separate differential compensation paid for work performed during an Activation including, but not limited to, differentials paid for holidays, night work, hazardous duty, or other paid fringe benefits, provided such differentials are not otherwise reimbursed under paragraph (a) of this section. A detailed explanation of the differential payment for which the Sponsoring Agency seeks reimbursement must accompany any request for reimbursement under this section together with identification of every fringe benefit sought under § 208.40(a) of this part and the method used to calculate each such payment and the reimbursement sought from DHS.

(c) DHS will not reimburse the Sponsoring Agency for fringe benefit costs for Affiliated Personnel.

§ 208.41 Administrative allowance.

(a) The administrative allowance is intended to defray costs of the following activities, to the extent provided in paragraph (b) of this section:

- (1) Collecting expenditure information from Sponsoring Agencies and Participating Agencies;
- (2) Compiling and summarizing cost records and reimbursement claims;

(3) Duplicating cost records and reimbursement claims; and

(4) Submitting reimbursement claims, including mailing, transmittal, and related costs.

(b) The administrative allowance will be equal to the following:

(1) If total allowable costs are less than \$100,000, 3 percent of total allowable costs included in the reimbursement claim;

(2) If total allowable costs are \$100,000 or more but less than \$1,000,000, \$3,000 plus 2 percent of costs included in the reimbursement claim greater than \$100,000;

(3) If total allowable costs are \$1,000,000 or more, \$21,000 plus 1 percent of costs included in the reimbursement claim greater than \$1,000,000.

§ 208.42 Reimbursement for other administrative costs.

Costs incurred for conducting after-action meetings and preparing after-action reports must be billed as direct costs in accordance with DHS administrative policy.

§ 208.43 Rehabilitation.

DHS will reimburse costs incurred to return System equipment and personnel to a state of readiness following Activation as provided in this section.

§ 208.44**44 CFR Ch. I (10-1-11 Edition)**

(a) *Costs for Equipment Cache List items*—(1) *Non-consumable items*. DHS will reimburse costs incurred to repair or replace any non-consumable item on the Equipment Cache List that was lost, damaged, destroyed, or donated at DHS direction to another entity, during Activation. For each such item, the Sponsoring Agency must document, in writing, the circumstances of the loss, damage, destruction, or donation.

(2) *Consumable items*. DHS will reimburse costs incurred to replace any consumable item on the Equipment Cache List that was consumed during Activation.

(3) *Personnel costs associated with equipment cache rehabilitation*. DHS will reimburse costs incurred for the compensation, including benefits, payable for actual time worked by each person engaged in rehabilitating the equipment cache following Activation, in accordance with the standard pay policy of the Sponsoring Agency or Participating Agency and without regard to the provisions of § 208.39(e)(1) of this part, up to the number of hours specified in the Demobilization Order. Fringe benefits are reimbursed under the provisions of § 208.40 of this part.

(b) *Costs for personnel rehabilitation*. DHS will reimburse costs incurred for the compensation, including benefits and Backfill, of each Activated System Member regularly scheduled to work during the rehabilitation period specified in the Demobilization Order, in accordance with the standard pay policy of the Sponsoring Agency or Participating Agency and without regard to the provisions of § 208.39(e)(1) of this part.

(c) *Other allowable costs*—(1) *Local transportation*. DHS will reimburse costs incurred for transporting Task Force Members from the point of assembly to the point of departure and from the point of return to the location where they are released from duty. DHS will also reimburse transportation costs incurred for assembling and moving the equipment cache from its usual place(s) of storage to the point of departure, and from the point of return to its usual place(s) of storage. Such reimbursement will include costs to return the means of transportation to its point of origin.

(2) *Ground transportation*. When DHS orders a Sponsoring Agency to move its Task Force Members and equipment cache by ground transportation, DHS will reimburse costs incurred for such transportation, including but not limited to charges for contract carriers, rented vehicles, contract vehicle operators, fleet vehicles, fuel and associated transportation expenses. The Assistant Administrator has authority to issue schedules of maximum hourly or per mile reimbursement rates for fleet and contract vehicles.

(3) *Food and beverages*. DHS will reimburse expenditures for food and beverages for Activated Task Force Members and Support Specialists when the Federal government does not provide meals during Activation. Reimbursement of food and beverage costs for Activated Support Specialists will be limited to periods of time during which they were actively supporting the Activation or traveling to or from locations at which they were actively supporting the Activation. Food and beverage reimbursement will be limited to the amount of the then-current Federal meals and incidental expenses daily allowance published in the FEDERAL REGISTER for the locality where such food and beverages were provided, multiplied by the number of personnel who received the same.

§ 208.44 Reimbursement for other costs.

(a) Except as allowed under paragraph (b) of this section, DHS will not reimburse other costs incurred preceding, during or upon the conclusion of an Activation unless, before making the expenditure, the Sponsoring Agency has requested, in writing, permission for a specific expenditure and has received written permission from the Program Manager or his or her designee to make such expenditure.

(b) At the discretion of the Program Manager or his or her designee, a request for approval of costs presented after the costs were incurred must be in writing and establish that:

(1) The expenditure was essential to the Activation and was reasonable;

(2) Advance written approval by the Program Manager was not feasible; and

Federal Emergency Management Agency, DHS**§ 208.62**

(3) Advance verbal approval by the Program Manager had been requested and was given.

§ 208.45 Advance of funds.

At the time of Activation of a Task Force, the Task Force will develop the documentation necessary to request an advance of funds be paid to such Task Force's Sponsoring Agency. Upon approval, DHS will submit the documentation to the Assistance Officer and will request an advance of funds up to 75 percent of the estimated personnel costs for the Activation. The estimated personnel costs will include the salaries, benefits, and Backfill costs for Task Force Members and an estimate of the salaries, benefits and Backfill costs required for equipment cache rehabilitation. The advance of funds will not include any costs for equipment purchase.

§ 208.46 Title to equipment.

Title to equipment purchased by a Sponsoring Agency with funds provided under a DHS Response Cooperative Agreement vests in the Sponsoring Agency, provided that DHS reserves the right to transfer title to the Federal Government or a third party that DHS may name, under 44 CFR 13.32(g), when a Sponsoring Agency indicates or demonstrates that it cannot fulfill its obligations under the Memorandum of Agreement.

§ 208.47-208.50 [Reserved]

**Subpart D—Reimbursement
Claims and Appeals****§ 208.51 General.**

(a) *Purpose.* This subpart identifies the procedures that Sponsoring Agencies must use to request reimbursement from DHS for costs incurred under Response Cooperative Agreements.

(b) *Policy.* It is DHS policy to reimburse Sponsoring Agencies as expeditiously as possible consistent with Federal laws and regulations.

§ 208.52 Reimbursement procedures.

(a) *General.* A Sponsoring Agency must present a claim for reimburse-

ment to DHS in such manner as the Assistant Administrator specifies.

(b) *Time for submission.* (1) Claims for reimbursement must be submitted within 90 days after the end of the Personnel Rehabilitation Period specified in the Demobilization Order.

(2) The Assistant Administrator may extend and specify the time limitation in paragraph (b)(1) of this section when the Sponsoring Agency justifies and requests the extension in writing.

§§ 208.53-208.59 [Reserved]

§ 208.60 Determination of claims.

When DHS receives a reviewable claim for reimbursement, DHS will review the claim to determine whether and to what extent reimbursement is allowable. Except as provided in § 208.63 of this part, DHS will complete its review and give written notice to the Sponsoring Agency of its determination within 90 days after the date DHS receives the claim. If DHS determines that any item of cost is not eligible for reimbursement, its notice of determination will specify the grounds on which DHS disallowed reimbursement.

§ 208.61 Payment of claims.

DHS will reimburse all allowable costs for which a Sponsoring Agency requests reimbursement within 30 days after DHS determines that reimbursement is allowable, in whole or in part, at any stage of the reimbursement and appeal processes identified in this subpart.

§ 208.62 Appeals.

(a) *Initial appeal.* The Sponsoring Agency may appeal to the Program Manager any determination made under § 208.60 of this part to disallow reimbursement of an item of cost:

(1) The appeal must be in writing and submitted within 60 days after receipt of DHS's written notice of disallowance under § 208.60 of this part.

(2) The appeal must contain legal and factual justification for the Sponsoring Agency's contention that the cost is allowable.

(3) Within 90 days after DHS receives an appeal, the Program Manager will review the information submitted, make such additional investigations as

§ 208.63

necessary, make a determination on the appeal, and submit written notice of the determination of the appeal to the Sponsoring Agency.

(b) *Final appeal.* (1) If the Program Manager denies the initial appeal, in whole or in part, the Sponsoring Agency may submit a final appeal to the Deputy Assistant Administrator. The appeal must be made in writing and must be submitted not later than 60 days after receipt of written notice of DHS's determination of the initial appeal.

(2) Within 90 days following the receipt of a final appeal, the Deputy Assistant Administrator will render a determination and notify the Sponsoring Agency, in writing, of the final disposition of the appeal.

(c) *Failure to file timely appeal.* If the Sponsoring Agency does not file an appeal within the time periods specified in this section, DHS will deem that the Sponsoring Agency has waived its right to appeal any decision that could have been the subject of an appeal.

§ 208.63 Request by DHS for supplemental information.

(a) At any stage of the reimbursement and appeal processes identified in this subpart, DHS may request the Sponsoring Agency to provide supplemental information that DHS considers necessary to determine either a claim for reimbursement or an appeal. The Sponsoring Agency must exercise its best efforts to provide the supplemental information and must submit to DHS a written response that includes such supplemental information as the Sponsoring Agency is able to provide within 30 days after receiving DHS's request.

(b) If DHS makes a request for supplemental information at any stage of the reimbursement and appeal processes, the applicable time within which its determination of the claim or appeal is to be made will be extended by 30 days. However, without the consent of the Sponsoring Agency, no more than one such time extension will be allowed for any stage of the reimbursement and appeal processes.

44 CFR Ch. I (10-1-11 Edition)**§ 208.64 Administrative and audit requirements.**

(a) *Non-Federal audit.* For Sponsoring Agencies and States, requirements for non-Federal audit are contained in 44 CFR 13.26, in accordance with OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations.

(b) *Federal audit.* DHS or the Government Accountability Office may elect to conduct a Federal audit of any payment made to a Sponsoring Agency or State.

§ 208.65 Mode of transmission.

When sending all submissions, determinations, and requests for supplemental information under this subpart, all parties must use a means of delivery that permits both the sender and addressee to verify the dates of delivery.

§ 208.66 Reopening of claims for retrospective or retroactive adjustment of costs.

(a) Upon written request by the Sponsoring Agency DHS will reopen the time period for submission of a request for reimbursement after the Sponsoring Agency has submitted its request for reimbursement, if:

(1) The salary or wage rate applicable to the period of an Activation is retroactively changed due to the execution of a collective bargaining agreement, or due to the adoption of a generally applicable State or local law, ordinance or wage order or a cost-of-living adjustment;

(2) The Sponsoring Agency or any Participating Agency incurs an additional cost because of a legally-binding determination; or

(3) The Deputy Director determines that other extenuating circumstances existed that prevented the Sponsoring Agency from including the adjustment of costs in its original submission.

(c) The Sponsoring Agency must notify DHS as early as practicable that it anticipates such a request.

Federal Emergency Management Agency, DHS**§ 209.2****§§ 208.67-208.70 [Reserved]****PART 209—SUPPLEMENTAL PROPERTY ACQUISITION AND ELEVATION ASSISTANCE**

Sec.

- 209.1 Purpose.
- 209.2 Definitions.
- 209.3 Roles and responsibilities.
- 209.4 Allocation and availability of funds.
- 209.5 Applicant eligibility.
- 209.6 Project eligibility.
- 209.7 Priorities for project selection.
- 209.8 Application and review process.
- 209.9 Appeals.
- 209.10 Project implementation requirements.
- 209.11 Grant administration.
- 209.12 Oversight and results.

AUTHORITY: Pub. L. 106-113, Div. B, sec. 1000(a)(5) (enacting H.R. 3425 by cross-reference), 113 Stat. 1501, 1536; Pub. L. 106-246, 114 Stat. 511, 568; Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412.

SOURCE: 66 FR 32669, June 15, 2001, unless otherwise noted.

§ 209.1 Purpose.

This part provides guidance on the administration of a program to provide supplemental property acquisition and elevation assistance made available by Congress to provide funds for the acquisition or elevation, for hazard mitigation purposes, of properties that have been made uninhabitable by floods in areas that were declared major disasters in federal fiscal years 1999 and 2000.

§ 209.2 Definitions.

Except as noted in this part, the definitions listed at §§ 206.2 and 206.431 apply to the implementation of this part.

Allowable open space uses means recreational and wetland management uses including: Parks for outdoor recreational activities; nature reserves; cultivation; grazing; camping (except where adequate warning time is not available to allow evacuation); temporary storage in the open of wheeled vehicles which are easily movable (ex-

cept mobile homes); unimproved, permeable parking lots; and buffer zones. Allowable uses generally do not include walled buildings, flood reduction levees, highways or other uses that obstruct the natural and beneficial functions of the floodplain.

Applicant means a State agency, local government, or qualified private non-profit organization that submits an application for acquisition or elevation assistance to the State or to FEMA.

Cost-effective means that the mitigation activity will not cost more than the anticipated value of the reduction in both direct damages and subsequent negative impacts to the area if future disasters were to occur. Both costs and benefits will be computed on a net present value basis. The State will complete an analysis of the cost effectiveness of the project, in accordance with FEMA guidance and using a FEMA-approved methodology. FEMA will review the State's analysis.

Pre-event fair market value means the value a willing buyer would have paid and a willing seller would have sold a property for had the disaster not occurred.

Principal residence means a residence that is occupied by the legal owner and is the dwelling where the legal owner normally lives during the major portion of the calendar year.

Qualified alien means an alien who meets one of the following criteria:

(1) An alien lawfully admitted for permanent residence under the Immigration and Nationality Act (INA);

(2) An alien granted asylum under section 208 of the INA;

(3) A refugee admitted to the United States under section 207 of the INA;

(4) An alien paroled into the United States under section 212(d)(5) of the INA for at least one year;

(5) An alien whose deportation is being withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or section 241(b)(8) of the INA;

(6) An alien granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980;

(7) An alien who is a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980); or

§ 209.3

(8) An alien who (or whose child or parent) has been battered and meets the requirements of 8 U.S.C. 1641(c).

Qualified private nonprofit organization means an organization with a conservation mission as qualified under section 170(h) of the Internal Revenue Code of 1954, as amended, and the regulations applicable under that section.

Repetitive Loss Structure means a structure covered by a contract for flood insurance under the National Flood Insurance Program (NFIP) that has incurred flood-related damage on two occasions during a 10-year period, each resulting in at least a \$1000 claim payment;

State Hazard Mitigation Plan means the hazard mitigation plan that reflects the State's systematic evaluation of the nature and extent of vulnerability to the effects of natural hazards typically present in the State and includes a description of actions needed to minimize future vulnerability to hazards.

Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided. Subgrantees can be a State agency, local government, qualified private nonprofit organizations, or Indian tribes as outlined in 44 CFR 206.434;

Substantial Damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred;

Uninhabitable means that properties are certified by the appropriate State or local official normally empowered to make such certifications as meeting one or more of the following criteria:

(1) Determined by an authorized local government official to be substantially damaged, according to National Flood Insurance Program criteria contained in 44 CFR 59.1;

(2) Have been red- or yellow-tagged and declared uninhabitable due to environmental contamination by floodwaters, or otherwise determined to be uninhabitable by a State or local official in accordance with current codes or ordinances; or

44 CFR Ch. I (10-1-11 Edition)

(3) Have been demolished due to damage or environmental contamination by floodwaters.

We, our, or us means FEMA.

[66 FR 32669, June 15, 2001; 66 FR 49554, Sept. 28, 2001]

§ 209.3 Roles and responsibilities.

The following describes the general roles of FEMA, the State, local communities or other organizations that receive grant assistance, and participating homeowners.

(a) *Federal.* We will notify States about the availability of funds, and will allocate available funding to States that received major disaster declarations during the period covered by the supplemental authority. Our Regional Administrators will verify project eligibility, provide technical assistance to States upon request, make grant awards, and oversee program implementation.

(b) *State.* The State will be the Grantee to which we award funds and will be accountable for the use of those funds. The State will determine priorities for funding within the State. This determination must be made in conformance with the HMGP project identification and selection criteria (44 CFR 206.435). The State also will provide technical assistance and oversight to applicants for project development and to subgrantees for project implementation. The State will report program progress and results to us. The States also will recover and return to us any funds made available from other sources for the same purposes. When Native American tribes apply directly to us, they will be the grantee and carry out "state" roles.

(c) *Applicant (pre-award) and subgrantee (post-award).* The applicant (a State agency, local government, or qualified private nonprofit organization) will coordinate with interested homeowners to complete an application to the State. The subgrantee implements all approved projects, generally takes title to all property, and agrees to dedicate and maintain the property in perpetuity for uses compatible with open-space, recreational, or wetlands management practices. The subgrantee will receive, review and

Federal Emergency Management Agency, DHS**§ 209.7**

make final decisions about any appraisal disputes that are brought by participating homeowners. The subgrantee is accountable to the State, as well as to us, for the use of funds.

(d) *Participating homeowners.* The participating homeowners will notify the community of their interest to participate; provide necessary information to the community coordinator about property ownership, disaster damage, and other disaster benefits received or available; review the offer made from the community; and accept it or request a review appraisal.

§ 209.4 Allocation and availability of funds.

(a) We will allocate available funds based on the number and value of properties that meet the eligibility criteria and whose owners want to participate in an acquisition or elevation project.

(b) We may reallocate funds for which we do not receive and approve adequate applications. We will obligate most available funds within 12 months following the deadline for submitting applications, unless extenuating circumstances exist.

§ 209.5 Applicant eligibility.

The following are eligible to apply to the State for a grant:

- (a) State and local governments;
- (b) Indian tribes or authorized tribal organizations. A tribe may apply either to the State or directly to us; and
- (c) Qualified private nonprofit organizations.

§ 209.6 Project eligibility.

(a) *Eligible types of project activities.* This grant authority is for projects to acquire floodprone properties and demolish or relocate structures per § 209.10(i), or to elevate floodprone structures. Approved projects must meet the following criteria and comply with all other program requirements described in this rule;

(b) *Eligibility criteria.* To be eligible, projects must:

(1) Be cost effective. The State will complete an analysis of the cost-effectiveness of the project, in accordance with our guidance and using a methodology that we approve. We will review the State's analysis;

(2) Include only properties that:

(i) For acquisition, the owner agrees to sell voluntarily;

(ii) Are within the 100-year floodplain

based on best available data or as identified by a FIRM or FEMA-approved

Disaster Recovery Map;

(iii) Were made uninhabitable (as certified by an appropriate State or local official) by the effects of a declared major disaster during federal fiscal years 1999 or 2000;

(iv) For acquisition, had a pre-event fair market value of less than \$300,000 just before the disaster event. Properties submitted for buyout under Pub. L. 106-113 (the original Hurricane Floyd supplemental buyout program) are exempt from this policy, with the limitation that in no case does the Federal share or offer for any such property exceed \$225,000; and

(v) Served as the principal residence for the owner. For multifamily units such as condominium buildings, all units within the structure should be principal residences of the owners and not sublet.

(3) Conform with 44 CFR part 9, Floodplain Management and Protection of Wetlands; 44 CFR part 10, Environmental Considerations; and any applicable environmental and historic preservation laws and regulations.

(c) For acquisition projects, an owner who is not a United States citizen or qualified alien may receive current fair market value for his or her property. He or she may not receive additional amounts for pre-event fair market value.

(d) Funds available under Pub. L. 106-113 (the original Floyd supplemental appropriation) are limited to use for acquisition purposes only.

§ 209.7 Priorities for project selection.

(a) It is the State's responsibility to identify and select eligible buyout projects for funding under the supplemental grant program. All funded projects must be consistent with the State Hazard Mitigation Plan. The mitigation planning process or any other appropriate means may identify buyout and elevation projects.

(b) States will set priorities in their State mitigation plan to use as the basis for selecting projects for funding.

§ 209.8

44 CFR Ch. I (10-1-11 Edition)

The State's priorities will address, at a minimum, substantially damaged properties, repetitive loss target properties, and such other criteria that the State deems necessary to comply with the law. States and subgrantees are to give priority consideration to projects for acquisition or elevations of repetitive loss properties, and must include all eligible repetitive loss properties in the projects submitted to us for funding.

[66 FR 32669, June 15, 2001; 66 FR 49554, Sept. 28, 2001, as amended at 74 FR 15353, Apr. 3, 2009]

§ 209.8 Application and review process.

(a) *General.* This section describes the procedures to be used by the State in submitting an application for funding under the Supplemental Property Acquisition and Elevation Assistance program. Under this program, the State is the grantee and is responsible for processing subgrants to applicants in accordance with 44 CFR part 13 and this part.

(b) *Timeframes.* We will establish deadlines for States to submit applications, and States will set local application deadlines. States may begin forwarding applications to us immediately upon Notice of Availability of Funds and must forward all applications not later than the date set by the Regional Administrator. States must provide to us the information described below in paragraph (c) of this section for each property proposed for acquisition or elevation in support of the supplemental allocation requested and within the timeframe that we establish. We will verify project eligibility estimates provided by States in order to assure that all projects meet the criteria for the supplemental grant awards. We will perform an independent verification of this information for not less than 50 percent of the properties submitted.

(c) *Format.* The State will forward its application to the Regional Administrator. The Application will include: a Standard Form (SF) 424, Application for Federal Assistance; FEMA form 20-15, Budget Information—Construction Programs; Project Narrative (section 209.8(c)—community project applications (buyout plans) selected by the

State); FEMA form 20-16, 20-16b and 20-16c Assurances and Certifications; Standard Form LLL, Disclosure of Lobbying Activities; FEMA form 20-10, Financial Status Report; the Performance/Progress Report format; and the State's certification that the State has reviewed all applications and that they meet program eligibility criteria. The Project Narrative (community project applications) will include:

- (1) Community applicant information, including contact names and numbers;
- (2) Description of the problem addressed by the proposed project;
- (3) Description of the applicant's decision-making process, including alternatives considered;
- (4) Project description, including property locations/addresses and scope of activities;
- (5) Project cost estimate and match source;
- (6) For acquisition projects, open space use description and maintenance assurance;
- (7) Risk and cost-effectiveness information, or State's benefit-cost analysis;
- (8) Environmental and historic preservation information including
 - (i) Whether the property is now or ever has been used for commercial or industrial purposes, and
 - (ii) Any information regarding historic preservation that is readily available;
- (9) Attachments for each property as follows:
 - (i) A photograph of the structure from the street;
 - (ii) Owner's name;
 - (iii) Complete address, including zip code;
 - (iv) Latitude and longitude;
 - (v) The date of construction;
 - (vi) Proximity to the 100-year floodplain;
 - (vii) Panel and date of the applicable Flood Insurance Rate Map, if any;
 - (viii) The elevation of the first habitable floor and an estimate of the depth of flooding in the structure;
 - (ix) The estimated pre-event fair market value of the home. Applicants will estimate the value of properties using the best available information, such as inspections, public records and

market values of similar properties in similar neighborhoods to arrive at a pre-event fair market value that reflects what a willing buyer would have paid a willing seller had the disaster not occurred. If tax assessment data are used as the basis, the applicant should add the relevant adjustment percentage for that jurisdiction to adjust the tax assessment to the current fair market value. These adjustment data should be obtained from the jurisdiction's tax assessor's office. For any jurisdictions where the adjustment factor is over 25 percent, applicants should include a justification for the high adjustment factor. Applicants should not include any other project costs in the property values. These costs will be reflected elsewhere;

(x) Indication whether flood insurance was in force at the time of the loss, and policy number, if available.

(xi) Indications that the property will meet the definition of uninhabitable:

(A) Substantial damage determination, and name and title of determining official, or if not yet determined then:

(1) For manufactured homes (mobile homes), inundation of 1 foot or more of water above the first habitable floor or other evidence of substantial damage; or

(2) For permanent structures other than manufactured homes, inundation of 5 feet or more of water above the first above-ground habitable floor or other evidence of substantial damage. Habitable floors do not include basements.

(B) Were red- or yellow-tagged and declared uninhabitable due to environmental contamination by floodwaters, or otherwise determined to be uninhabitable by a State or local official under current codes or ordinances; or

(C) Were demolished due to damage or environmental contamination by floodwaters.

(xii) Information regarding whether the structure is on the NFIP repetitive loss list (provide NFIP Repetitive Loss Property Locator Number, if available); and

(xiii) Observations on whether acquisition or elevation of the structure may result in a mixture of vacant lots

and lots with structures remaining on them; and

(10) *FEMA review and approval.* We will review and verify the State's eligibility determination and either approve, deny, or request additional information within 60 days. The Regional Administrator may extend this time-frame if complicated issues arise. We have final approval authority for funding of all projects.

[66 FR 32669, June 15, 2001; 66 FR 49554, Sept. 28, 2001; 74 FR 15353, Apr. 3, 2009]

§ 209.9 Appeals.

The State may appeal any decision that we make regarding projects submitted for funding in the Supplemental Property Acquisition and Elevation Assistance program. The State must submit the appeal in writing to the Regional Administrator and must include documentation that justifies the request for reconsideration. The appeal must specify the monetary figure in dispute and the provisions in Federal law, regulation, or policy with which the appellant believes the initial action was inconsistent. The applicant must appeal within 60 days of the applicant's receipt of our funding decision. The State must forward any appeal from an applicant or subgrantee with a written recommendation to the Regional Administrator within 60 days of receipt. Within 90 days following the receipt of an appeal, the Regional Administrator will notify the State in writing as to the new decision or the need for more information.

§ 209.10 Project implementation requirements.

Subgrantees must enter into an agreement with the State, with the written concurrence of the Regional Administrator, that provides the following assurances:

(a) The subgrantee will administer the grant and implement the project in accordance with program requirements, 44 CFR part 13, the grant agreement, and with applicable Federal, State, and local laws and regulations.

(b) The State and subgrantee will administer the grant in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, or economic

§ 209.10

44 CFR Ch. I (10-1-11 Edition)

status in compliance with section 308 of the Stafford Act (42 U.S.C. 5151) and Title VI of the Civil Rights Act. In implementing the grant, the State and the subgrantee will ensure that no discrimination is practiced.

(c) The State and subgrantee will ensure that projects involving alterations to existing structures comply with all applicable State and local codes.

(d) The State and subgrantee will ensure that projects comply with applicable State and local floodplain management requirements. Structures will be elevated to the Base Flood Elevation.

(e) Property owners participating in acquisition projects may receive assistance up to the pre-event fair market value of their real property, except as limited by the eligibility criteria.

(f) The subgrantee will establish a process, which we must approve, whereby property owners participating in acquisition projects may request a review of the appraisal for their property, or request a second appraisal.

(g) The State will reduce buyout assistance by any duplication of benefits from other sources. Such benefits include, but are not limited to, payments made to the homeowner for repair assistance; insurance settlements; legal settlements; Small Business Administration loans; and any other payments made by any source to address the property loss unless the property owner can provide receipts showing that the benefits were used for their intended purpose to make repairs to the property.

(h) Increased Cost of Compliance coverage benefits under the National Flood Insurance Program (NFIP) may be used to match elevation or acquisition and relocation projects. Increased Cost of Compliance claims can only be used for NFIP-approved costs; these can then be applied to the project grant match. This coverage does not pay for property acquisition, but can pay demolition or structure relocation.

(i) The following restrictive covenants must be conveyed in the deed to any property acquired, accepted, or from which structures are removed ("the property"):

(1) The property must be dedicated and maintained in perpetuity for uses compatible with open space, rec-

reational, or wetlands management practices; and

(2) No new structure(s) will be built on the property except as indicated in this paragraph:

(A) A public facility that is open on all sides and functionally related to a designated open space or recreational use;

(B) A public rest room; or

(C) A structure that is compatible with open space, recreational, or wetlands management usage and proper floodplain management policies and practices, which the Administrator of FEMA approves in writing before the construction of the structure begins.

(D) In general, allowable open space, recreational, and wetland management uses include parks for outdoor recreational activities, nature reserves, cultivation, grazing, camping (except where adequate warning time is not available to allow evacuation), temporary storage in the open of wheeled vehicles that are easily movable (except mobile homes), unimproved, permeable parking lots and buffer zones. Allowable uses generally do not include walled buildings, flood reduction levees, highways or other uses that obstruct the natural and beneficial functions of the floodplain.

(3) After completing the acquisition project, no application for future disaster assistance will be made for any purpose with respect to the property to any Federal entity or source, and no Federal entity or source will provide such assistance, even for the allowable uses of the property described above.

(4) Any structures built on the property according to paragraph (i)(2) of this section, must be: Located to minimize the potential for flood damage; floodproofed; or elevated to the Base Flood Elevation plus one foot of freeboard.

(5) The subgrantee or other public property owner will seek the approval of the State grantee agency and our Regional Administrator before conveying any interest in the property to any other party. The subgrantee or other public entity or qualified private nonprofit organization must retain all development rights to the property. Our Regional Administrator will only approve the transfer of properties that

Federal Emergency Management Agency, DHS**§ 209.12**

meet the criteria identified in this paragraph.

(6) In order to carry out tasks associated with monitoring, we, the subgrantee, or the State have the right to enter the parcel, with notice to the parcel owner, to ensure compliance with land use restrictions. Subgrantees may identify the open space nature of the property on local tax maps to assist with monitoring. Whether the subgrantee obtains full title or a conservation easement on the parcel, the State must work with subgrantees to ensure that the parcel owner maintains the property in accordance with land use restrictions. Specifically, the State may:

(i) Monitor and inspect the parcel every two years and certify that the owner continues to use the inspected parcel for open space or agricultural purposes; and

(ii) Take measures to bring a non-compliant parcel back into compliance within 60 days of notice.

(7) Only as a last resort, we reserve the right to require the subgrantee to bring the property back into compliance and transfer the title and easement to a qualified third party for future maintenance.

(8) Every 2 years on October 1st, the subgrantee will report to the State, certifying that the property continues to be maintained consistent with the provisions of the agreement. The State will report the certification to us.

[66 FR 32669, June 15, 2001, as amended at 74 FR 15353, Apr. 3, 2009]

§ 209.11 Grant administration.

(a) *Cost share.* We may contribute up to 75 percent of the total eligible costs. The State must ensure that non-Federal sources contribute not less than 25 percent of the total eligible costs for the grant. The State or any subgrantee cannot use funds that we provide under this Act as the non-Federal match for other Federal funds nor can the State or any subgrantee use other Federal funds as the required non-Federal match for these funds, except as provided by statute.

(b) *Allowable costs.* A State may find guidance on allowable costs for States and subgrantees in Office of Management and Budget (OMB) Circulars A-87

and A-122 on Cost Principles. States may use up to 7 percent of the grant funds for management costs of the grant. The State should include management costs in its application. Subgrantees must include reasonable costs to administer the grant as a direct project cost in their budget.

(c) *Progress reports.* The State must provide a quarterly progress report to us under 44 CFR 13.40, indicating the status and completion date for each project funded. The report will include any problems or circumstances affecting completion dates, scope of work, or project costs that may result in non-compliance with the approved grant conditions.

(d) *Financial reports.* The State must provide a quarterly financial report to us under 44 CFR 13.41.

(e) *SMARTLINK Drawdowns.* The State will make SMARTLINK drawdowns to reimburse or advance allowable costs to subgrantees for approved projects.

(f) *Audit requirements.* Uniform audit requirements as set forth in 44 CFR part 13 apply to all grant assistance provided under this subpart. We may elect to conduct a Federal audit on the disaster assistance grant or on any of the subgrants.

(g) If a mitigation measure is not completed, and there is not adequate justification for non-completion, no Federal funding will be provided for that project.

[66 FR 32669, June 15, 2001, as amended at 74 FR 15353, Apr. 3, 2009]

§ 209.12 Oversight and results.

(a) *FEMA oversight.* Our Regional Administrators are responsible for overseeing this grant authority and for ensuring that States and subgrantees meet all program requirements. Regional Administrators will review program progress quarterly.

(b) *Monitoring and enforcement.* We, subgrantees, and States will monitor the properties purchased under this authority and ensure that the properties are maintained in open space use. We and the State may enforce the agreement by taking any measures that we or they deem appropriate.

(c) *Program results.* The State will review the effectiveness of approved

§ 209.12**44 CFR Ch. I (10-1-11 Edition)**

projects after each future flood event in the affected area to monitor whether projects are resulting in expected savings. The State will report to us on program effectiveness after project

completion and after each subsequent flood event.

PARTS 210-294 [RESERVED]