

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 208

RIN 3067-AC93

National Urban Search and Rescue Response System

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: We (FEMA) propose to standardize the financing, administration and operation of the National Urban Search and Rescue Response System, a cooperative effort of FEMA, participating State emergency management agencies and local public safety agencies across the country. The proposed rule addresses the relationship between Urban Search & Rescue (US&R) Task Forces and FEMA, funding for preparedness and response activities, including the acquisition of equipment and supplies and training.

DATES: We invite your comments on this proposed rule and will accept them through February 3, 2003.

ADDRESSES: Please send comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (facsimile) (202) 646-4536, or (e-mail) rules@fema.gov.

FOR FURTHER INFORMATION CONTACT: Michael Tamillow, United States Fire Administration, Federal Emergency Management Agency, 500 C Street, SW., room 326, Washington, DC 20472, (202) 646-2549, or (e-mail) michael.tamillow@fema.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 303 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5144, authorizes the President of the United States to form emergency support teams of Federal personnel to be deployed in an area affected by a major disaster or emergency. The President delegated this function to the Director of the Federal Emergency Management Agency (FEMA) under Executive Order 12148. Section 306(a) of the Stafford Act authorizes the Federal Emergency Management Agency to accept and use the services or facilities of any State or local government, or of any agency, officer or employee thereof, with the consent of such government in the performance of its responsibilities under the Stafford Act. Section 306(b) authorizes the

Director to appoint and fix the compensation of temporary personnel without regard to U.S. Code provisions governing appointments in the competitive service. Section 403(a)(3)(B) provides further that the President may authorize Federal agencies to perform work on public or private lands essential to save lives and protect property, including search and rescue and emergency medical care, and other essential needs. Under section 621(c) the Director may accept and use the services of State or local governments, and use voluntary services by individuals or organizations as needed.

We¹ (FEMA) established the National Urban Search and Rescue Response System (National US&R Response System) under these authorities. The system provides specialized lifesaving assistance during major disasters or emergencies that the President declares under the Stafford Act. US&R operational activities include locating, extracting and providing on-site medical treatment to victims trapped in collapsed structures, weapons of mass destruction events, and when assigned, incident command or coordination of other operational activities.

Created in consultation with State emergency management agencies and local public safety agencies, the system is built around a core of Task Forces prepared to deploy immediately and initiate US&R operations at FEMA's direction. The Task Forces are staffed primarily by local fire department and emergency services personnel who are experienced in collapsed structure search and rescue operations, incident management, and other emergency operational activities. On activation by FEMA, US&R Task Forces are activated as temporary federal resources.

The system presently comprises 28 Task Forces in 19 States, each of which is sponsored by a State agency or local public safety agency (Sponsoring Organization). While the Sponsoring Organizations are solely responsible for the administrative management of their respective Task Forces, many invite other public safety agencies in their vicinity to contribute personnel and other resources to the Task Force. These agencies are Participating Agencies.

FEMA provides financial support in the form of grants or cooperative agreements (Grants) to each of the Sponsoring Organizations under the disaster preparedness authorities of the Stafford Act. The Sponsoring Organizations use these grants to train Task Force personnel, maintain a state

of readiness and to acquire necessary equipment and supplies. We award and administer Grants under 44 CFR Part 13. In return for this financial support, each Task Force must be available for deployment as a federal resource when activated by FEMA.² Task Forces also must maintain minimum training requirements that we prescribe.

Separate non-standardized Memoranda of Agreement, which were individually negotiated at different stages in the system's development, govern the relationship between FEMA and each of the US&R Task Forces. In addition, we required the Task Forces to enter into separate Cooperative Agreements on forms that our Office of Financial Management prescribed. As the National US&R Response System has matured, the participants have concluded that it is desirable to standardize these relationships through a set of comprehensive regulations. We developed the proposed rule with the assistance of the National Urban Search and Rescue Advisory Committee and its Legal Issues Working Group.

Adoption of the proposed rule will enable us to standardize our agreements with the Task Forces. Following adoption of the final rule, we will ask each of the Task Forces to enter into a new, streamlined MOA as well as a Preparedness Cooperative Agreement, as described in subpart B of the proposed rule and a Response Cooperative Agreement, as described in subpart C of the proposed rule. These new, standardized agreements will document our relationship with the Sponsoring Organizations.³

Organization of the Proposed Rule

We divide the proposed rule into five subparts. Subpart A addresses the

² The Task Forces also respond to disasters and emergencies in their home states as State resources. FEMA does not directly reimburse Task Forces for the costs that they incur when deploying in their home state, although in a State deployment Task Forces may use equipment that they purchased with FEMA grant funds and federal property that is in their custody. Subpart C of this Proposed Rule does not cover in-state deployment of US&R resources. However, federal reimbursement for the cost of an in-state deployment may be available through FEMA's Public Assistance Program under regulations published at 44 CFR Part 206. In addition, the Office of Foreign Disaster Assistance of the U.S. Agency for International Development (USAID) often uses the services of US&R Task Forces to deliver humanitarian assistance abroad under agreements to which FEMA is not a party. The Proposed Rule would not affect the relationships between USAID and the Task Forces.

³ Following adoption of the final rule, FEMA also expects to release an Administrative Manual, which will contain system policies and explain other federal regulations, and will govern the operation of the National US&R Response System. The Administrative Manual will be updated periodically.

¹ Throughout this preamble and the proposed rule the terms "we", "our" and "us" mean FEMA.

organization of the National US&R System, explains the relationship among the various components of the system, incorporates by reference certain provisions of other FEMA regulations and provides for sanctions if US&R regulations and directives are violated.

Subpart B describes the process through which we provide grant funds to the Sponsoring Organizations to maintain Task Force readiness. Sponsoring Organizations use these grant funds to administer the Task Forces, provide initial and recurrent training⁴, and to acquire and maintain a uniform cache of equipment and supplies. Following adoption of the final rule, we will ask each Task Force to enter into a Preparedness Cooperative Agreement with us. From time to time FEMA will purchase equipment and supplies for each Task Force.

Subpart C addresses the deployment of Task Forces as a federal resource and the reimbursement of the Sponsoring Organizations for the costs that they incur as a result of these deployments. This subpart also explains the Response Cooperative Agreement that we will ask each Sponsoring Organization to sign following adoption of the final rule.

Subpart D establishes the procedures by which Sponsoring Organizations may present claims to FEMA for reimbursement of costs incurred when we use the Task Forces as federal resources, the timeframes in which they must present such claims, and any appeals.

A glossary of defined terms that we use throughout the rule and in subpart A appears in section 208.2. Sub-glossaries of defined terms used in subsequent subparts of the rule appear in sections 208.22 (subpart B), 208.32 (subpart C), and 208.52 (subpart D).

Sectional Analysis

The sectional analysis does not explain the provisions of each section of the proposed rule. We believe that most provisions are self-explanatory. We focus on providing a detailed explanation of the cost neutrality and personnel reimbursement provisions of subpart C because we believe that they

are more complex than other provisions of the proposed rule. We welcome your questions and comments about any of the provisions in the proposed rule or this preamble. We will address them in the preamble to the final rule.

Section 208.33 sets forth the principles under which we will reimburse Sponsoring Organizations for participating in Alerts and Activations. Subsection (a) expresses our policy that participation in Alerts and Activations be cost neutral to Sponsoring Organizations and Participating Agencies. This commitment is critical to securing the participation of system resources. It is unreasonable to put local fire departments, which are the predominant sponsors of the Task Forces, at risk for the cost of providing emergency services outside of their respective jurisdictions. Payments are subject to 44 CFR part 13, particularly sections 13.21 (payment) and 13.22 (allowable cost). Section 13.22 incorporates various Office of Management and Budget circulars that address allowable cost. However, in the event of a conflict between this regulation and 44 CFR part 13 or the OMB Circulars, this regulation would control.

Section 208.39 explains how we will compensate Sponsoring Organizations for personnel costs during Activations. In order to understand section 208.39, one must first understand the employment relationships among FEMA, the Sponsoring Organization or Participating Agency and the individual. When we deploy individual members of US&R Task Forces we appoint them into federal service as Excepted Temporary Federal Volunteers and they work under our direction and control for the duration of the deployment. However, Task Force members who are regularly employed by a Sponsoring Organization or Participating Agency retain their concurrent employment relationship with their usual employers.⁵ The maintenance of this concurrent employment relationship is a fundamental principle of the National US&R System, which dates from the inception of the system. We adopted the principle after consultations with the States, local governments and public safety employee organizations and we intend it to prevent Task Force members

from suffering a break in their service to the usual employer while away on the federal deployment. While on a federal deployment, these Task Force members receive pay and benefits from their usual employers during the federal deployment just as they would if they were not Activated.

Section 208.39(a) provides that we will reimburse the Sponsoring Organization for personnel costs that result from the Activation and are consistent with these regulations. The Sponsoring Organization is responsible for reimbursing the personnel costs of its Participating Agencies in accordance with the provisions of section 208.39.

Section 208.39(b) speaks to how we will compensate Sponsoring Organizations for overtime costs that might not have been incurred but for the federal deployment. Section 7(k) of the Fair Labor Standards Act exempts public safety organizations from paying their employees overtime under certain circumstances. As interpreted by Department of Labor regulations and court decisions, the section 7(k) exemption does not apply unless the employee in question is trained in fire protection, has the legal authority and responsibility to engage in fire suppression, is employed by a public safety agency engaged in fire suppression and actually engages in fire suppression at least 80% of the time.

The scope of section 7(k) is frequently litigated and is sometimes narrowed as a result of litigation. After reviewing section 7(k), the Department of Labor regulations and court decisions, we are uncertain whether the rescue activities undertaken by US&R Task Forces are analogous to fire suppression. We also note that some Task Force personnel will not fall within the section 7(k) exemption because they are not regularly employed in fire suppression. It would be unfair not to compensate these individuals at an overtime rate, when fellow members of their Task Force, who may be volunteers or part-time fire service employees, are compensated at an overtime rate. For these reasons, we propose to disregard the section 7(k) exemption in reimbursing personnel costs and reimburse Sponsoring Organizations for regular wages and overtime wages as described in section 208.39(d), (e) and (f).⁶ This will not create a windfall for Sponsoring Organizations and Participating Agencies. The Sponsoring Organizations cannot bill FEMA for

⁴ FEMA is authorized by sections 306(a) and 621(c) of the Stafford Act, 42 U.S.C. §§ 5149(a), 5197(c) to federalize US&R Task Forces to participate in preparedness activities. US&R teams are periodically federalized to participate in FEMA sanctioned training exercises, also known as mobilization exercises. During these periods, they are not Activated, within the meaning of section 208.2 of the proposed rule and therefore the provisions of subpart C do not apply to FEMA sanctioned training exercises. Funding for participation in FEMA sanctioned training exercises may be available under section 208.24(b) of the proposed rule.

⁵ In some cases, the relationship between the individual and the Sponsoring Organization or Participating Agency is a contractual relationship or a volunteer relationship. These regulations do not create a common law employment relationship between an individual and a Sponsoring Organization or Participating Agency where none otherwise exists.

⁶ Section 208.40(b) of the Proposed Rule addresses reimbursement for differential pay in.

personnel costs in excess of those that they actually and normally incur.

Section 208.39(c) establishes a uniform 24-hour tour of duty during the federal deployment. We propose to reimburse the Sponsoring Organizations for 24 hours of pay for each day that a Task Force member is deployed, from his or her arrival at the pre-deployment staging area (Point of Arrival)⁷ until his or her release from service (Point of Return). This is known as "portal to portal" pay. We are not establishing a different rate of reimbursement for meal periods or scheduled sleep periods. Once deployed, all Task Force members must be available for immediate response twenty-four hours a day during the entire deployment period. Meal periods and sleep periods will be interrupted if Task Force members are needed to engage in vital lifesaving activities, just as they are in the firehouse.

Fundamentally, we believe that search and rescue professionals who are expected to respond on a moment's notice at any time during a 24-hour period should be compensated for 24 hours of work. Activated Task Force Members often work the first 24 to 48 hours of the Activation continuously, as this initial period involves packaging the Task Force for transport, loading and unloading equipment, attending briefings, receiving and adjusting to changes in operational objectives, establishing the base of operations and initiating the search for live victims. Once the search begins, we control Task Force activities during the entire 24-hour period and they must be available for immediate response at any time.

Section 208.39(g) provides for the reimbursement of backfill expenses. The National US&R System depends upon the voluntary participation of public safety agencies. We recognize that these public safety agencies may be short-handed when some of their personnel are away on a federal deployment. If a public safety agency ordinarily backfills a position in situations where a regular employee is unavailable for a period of time similar to that spent on a US&R deployment, e.g., Family and Medical Leave, participation in an extended mutual aid assignment, injury or disability, then it may bill us for the cost of backfilling the position for the period that the incumbent is away on a federal

deployment. We propose to reimburse for incremental overtime salary and benefit expenses associated with the replacement employee. We do not believe that it would be proper to reimburse the backfilling agency for the regular salary and overtime cost of the replacement employee because the public safety agency would have to pay this cost if the federal deployment had not occurred.

National Environmental Policy Act. 44 CFR 10.8(d)(2)(ii) categorically excludes actions that qualify for categorical exclusion, such as the preparation, revision, and adoption of regulations, and specifically 44 CFR 10.8(d)(2)(xviii)(C), which relates to planning and administrative activities in support of emergency and disaster response and recovery, including deployment of urban search and rescue teams. We have not prepared an environmental assessment or environmental impact statement for this proposed rule.

Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. Section 3(f) of the Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more, or may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This proposed rule could have an annual effect on the economy of \$100 million or more but is not an economically significant rule under Executive Order 12866. The rule would establish the relationship between Urban Search & Rescue (US&R) Task Forces and FEMA, funding for preparedness and response activities, including the acquisition of equipment and supplies and training, and the eligibility of Task Forces to receive and maintain federal excess property.

Average annual Federal cooperative agreements with US&R teams do not currently exceed \$100 million. However, we anticipate that the Congress may appropriate funds exceeding \$100 million to augment the equipment and human resources available for search and rescue operations. Although the funding to support US&R teams may exceed \$100 million, the rule would not impose conditions on the recipients or their sponsoring organizations that would exceed \$100 million annually, or would adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.

We know of no other conditions that would qualify the rule as a "significant regulatory action" within the definition of section 3(f) of the Executive Order. To the extent possible, this rule adheres to the principles of regulation as set forth in Executive Order 12866. The Office of Management and Budget has not reviewed this rule under the provisions of the Executive Order.

Paperwork Reduction Act of 1995

FEMA has determined that the implementation of this rule is subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. As the Paperwork Reduction Act of 1995 requires and concurrently with this proposed rule, we have submitted a request for Office of Management and Budget (OMB) review and approval of a new collection of information, which is contained in this proposed rule. OMB will process this request for collection of information and notice for comment under its clearance procedures in 5 CFR 1320.11. The collection of information complies with provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A). We invite the general public to comment on the collection of information.

Collection of Information

Title: Urban Search and Rescue Program.

US&R grant application forms approved by OMB under Control Number 3067–0206, which expires February 29, 2004, are:

Form Numbers: SF 424, Application for Federal Assistance; FEMA Form 20–10, Financial Status Report; FEMA Form 20–16, Summary Sheet for Assurances and Certifications; FEMA Form 20–16A, Assurances—Non-Construction Programs; FEMA Form 20–16C, Certifications Regarding Lobbying; Debarment, Suspension and Other

⁷ Certain Task Force members who are Activated will not report to a pre-deployment staging area but we will instruct them to travel to the incident location directly from their home or regular place of work. These individuals are Activated when they leave their home or regular place of business and we will adjust the "portal to portal" pay of these individuals accordingly.

Responsibility Matters; and Drug-Free Workplace Requirements; FEMA Form 20-20, Budget Information—Non-Construction Programs; and SF LLL, Disclosure of Lobbying Activities.

Abstract: This information collection is to implement the National Urban Search and Rescue System (US&R), by which FEMA provides specialized lifesaving assistance during major disaster or emergency. US&R

operational activities include locating, extracting and providing on-site medical treatment to victims trapped in collapsed structures, weapons of mass destruction events, and when assigned, incident command or coordination of other operational activities. In order to implement the US&R program FEMA must collect certain types of information, including grant applications, budget and budget

narrative, financial status reports, assurances and certifications, performance information, and requests for advances or reimbursement on forms previously approved by OMB under Control Number 3067-0206.

Affected Public: State, local and Indian tribal governments.

Estimated Total Annual Burden Hours: 803 hours. A breakdown of the burden follows:

FEMA forms	No. of respondents (A)	Frequency of response (B)	Hours per response and recordkeeping (C)	Annual burden hours (A × B × C)
The following forms were approved under 3067-0206:				
SF-424 Application for Federal Assistance	28	1	1 hour	28
FEMA Form 20-10 Financial Status Report	28	1	1 hour	28
FEMA Forms 20-16, 20-16A, 20-16C, Summary Sheet for Assurances and Certifications.	28	1	30 minutes	14
SF LLL, Disclosure of Lobbying Activities	28	1	10 minutes	5
FEMA Form 20-20, Budget Information Non-Construction Programs and Budget Narrative.	28	2	9 hours	504
SF 270, Request for Advance or Reimbursement	28	2	4 hours	224
Subtotal		224		803

OMB Number: New.

Abstract: In order to implement the US&R program FEMA must collect certain types of information not included in OMB Control Number

3067-0206, including memoranda of agreement, program narrative statements, grant awards, progress reports, extension or change requests, closeout information and audits.

Affected Public: State, local and Indian tribal governments.

Estimated Total Annual Burden Hours: 1181 hours. A breakdown of the burden follows:

FEMA forms	No. of respondents (A)	Frequency of response (B)	Hours Per response and recordkeeping. (C)	Annual burden hours (A × B × C)
The following are new collections:				
Narrative Statement	28	2	4	224
Progress Reports	28	2	2	112
Extension or Change Requests	5	1	1	5
Audits of States, Local Governments, and Non-Profit Organizations	28	1	30	840
Memoranda of Agreement	28	1	8	8
Subtotal		145		1181
Total		369		1984

⁸ After we publish the final US&R rule we will prepare a standardized, streamlined memorandum of agreement in consultation with the National US&R Advisory Committee, which represents the 28 US&R sponsoring organizations, and other interested parties. When completed we will make a second Paperwork Reduction Act submission to OMB.

Estimated times and costs: The approximate annual salary of State and local staff who will complete the forms is \$35,000. The approximate hourly rate of pay is \$18.90 (\$35,000 divided by 1850 hours). The total cost to grantees is estimated to be \$37,498.

The cost to FEMA is largely Headquarters grants personnel salary costs because reviewing and analyzing the information collected by these forms—for all FEMA grant programs, not just US&R grants—is a significant portion of their annual work. We estimate that for the US&R program Headquarters would expend

approximately 672 hours on analysis, or an average of 24 hours per program. We estimate the cost to FEMA to be \$14,112 (672 hours times \$21 per hour of staff work). Printing costs are minimal because the forms are available in electronic format.

The total annual estimated time and costs are 1984 hours and \$37,498 cost to applicants and \$14,112 cost to FEMA. This calculation is based on the number of burden hours for each type of information collection/form, as indicated above, and the estimated wage rates for those individuals responsible for collecting the information or

completing the forms. The new collection is required for sound grants management and compliance with OMB Circulars and FEMA regulations.

Comments: We solicit your written comments to: (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information will have practical utility; (b) evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be

collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., room 316, Washington, DC 20472, or (e-mail) informationcollections@fema.gov.

FOR FURTHER INFORMATION CONTACT: Contact Michael Tamillow, United States Fire Administration, Urban Search and Rescue Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, telephone (202) 646-3456, facsimile (202) 646-2549, or e-mail michael.tamillow@fema.gov for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at telephone number (202) 646-2625 or facsimile number (202) 646-3347 or e-mail informationcollections@fema.gov.

Executive Order 13132 Federalism—Federalism Summary Impact Statement

The proposed rule does not have federalism implications as defined in Executive Order 13132. The rule imposes no mandates on State or local governments; participation in the National US&R Response System is strictly voluntary. Moreover, one of the most significant objectives of this program is to build state and local US&R capability. The US&R program recognizes the primary role of state and local governments in responding to disasters and emergencies. Equipment and supplies purchased with federal funds may be used to respond to in-state disasters and emergencies. The teams may only be deployed across state lines when released by their home state. The assistance these teams provide, like other assistance under the Stafford Act, is only furnished when the combined state and local capabilities of the receiving state are exceeded and its Governor requests the assistance.

While this rule does not have federalism implications, we developed it through a collaborative process with state and local representatives. As noted

above, the Legal Issues Working Group, a subcommittee of the National US&R Advisory Committee, developed the original draft of these regulations. The National US&R Advisory Committee presented a draft to FEMA. The working group and the advisory committee both comprised federal, state and local officials, as well as representatives of labor organizations some of whose members serve on the Task Forces.

List of Subjects in 44 CFR Part 208

Disaster assistance, Grant programs. Accordingly, we propose to add part 208 to Title 44, Chapter 1 of the Code of Federal Regulations as follows:

PART 208—NATIONAL URBAN SEARCH AND RESCUE RESPONSE SYSTEM

Subpart A—General

- Sec.
- 208.1 Purpose and scope.
 - 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 United States Fire Administrator.
 - 208.6 System Resource reports.
 - 208.7 Sanctions for violations of regulations or System orders.
 - 208.8 Code of conduct.
 - 208.9 Agreements between Sponsoring Organizations and Participating Agencies.
 - 208.10 Other regulations.
 - 208.11 Federal status of System Members.
 - § 208.12–208.20 [Reserved].

Subpart B—Preparedness Cooperative Agreements

- 208.21 Purpose.
- 208.22 Definitions of terms used in this subpart.
- 208.23 Preparedness Cooperative Agreement process.
- 208.24 Allowable costs under Preparedness Cooperative Agreements.
- 208.25 Purchase and maintenance of items not listed on Equipment Cache List
- 208.26 Obsolete equipment.
- 208.27 Accountability.
- 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 Organizations 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.
- 208.44 Reimbursement for other costs.
- 208.45 Advance of funds.
- 208.46–208.50 [Reserved]

Subpart D—Reimbursement Claims and Appeals

- 208.51 General.
- 208.52 Definitions of terms used in this subpart.
- 208.53 Reimbursement procedures.
- 208.54–208.60 [Reserved]
- 208.60 Determination of claims.
- 208.61 Payment of claims.
- 208.62 Appeals.
- 208.63 Request by FEMA 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 to 5206; 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.

Subpart A—General

§ 208.1 Purpose and scope of this part.

(a) *Purpose.* The purpose of part 208 is to prescribe policies and procedures pertaining to FEMA's National Urban Search and Rescue Response System.

(b) *Scope.* This part applies to Sponsoring Organizations 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.

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 following 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 FEMA in response to, or in anticipation of, a presidential declaration of a major disaster or emergency under the Stafford Act.

Activation Order means the FEMA communication placing a System resource under the direction, control, and funding of FEMA.

Administrator means the Administrator of the United States Fire Administration, or such officer's functional or designated representative.

Advisory means a FEMA communication to System resources indicating that an event has occurred or FEMA anticipates will occur that may require Alert or Activation of System resources.

Alert means the status of a System resource's readiness that is begun by an Alert Order indicating that FEMA may Activate the System resource.

Alert Order means the FEMA communication that places a System resource on Alert status.

Assistance Officer means the FEMA employee who has legal authority to bind FEMA 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 FEMA and a Sponsoring Organization 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 Organization'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 Administrator means the Deputy Administrator of the United States Fire Administration.

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 FEMA 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 FEMA-issued list that identifies the maximum quantities and types of equipment and supplies that a Sponsoring Organization and Participating Agencies may purchase and maintain with FEMA 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.

FEMA means the Federal Emergency Management Agency.

IST or Incident Support Team means a multi-disciplinary System resource composed of individuals brought together to provide management control and logistical support for federal US&R resources and technical advice and assistance to 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 Understanding (MOU) means the document signed by FEMA, a Sponsoring Organization and its State that describes the relationship of the parties with respect to the National Urban Search & Rescue Response System.

Participating Agency means a Local Government or non-profit organization

that has executed an agreement with a Sponsoring Organization to participate in the National US&R Response System.

Personnel Rehabilitation Period means the period allowed by FEMA for a person's rehabilitation to normal conditions of living following an Activation.

Preparedness Cooperative Agreement means the agreement between FEMA and a Sponsoring Organization to develop and maintain System capabilities and operational readiness.

Program Manager means the individual within FEMA who is responsible for day-to-day administration of the National US&R Response System.

Program Office means the organizational entity within FEMA that is responsible for day-to-day administration of the National US&R Response System.

Response Cooperative Agreement means an agreement between FEMA and a Sponsoring Organization for reimbursement of allowable expenditures incurred as a result of an Alert or Activation.

Sponsoring Organization means a State or Local Government that has executed an MOU with FEMA 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 5260.

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 FEMA.

System Member means any Task Force Member, IST 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 Organization and meeting FEMA 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 an IST or a Task Force.

US&R means urban search and rescue, the process of searching for, extricating, and providing for the immediate medical stabilization of victims who are entrapped in collapsed structures.

We or our or us means the Federal Emergency Management Agency.

(b) *Additional Definitions.* Definitions that apply only to individual subparts of part 208 are in those subparts.

§ 208.3 Authority for the National US&R Response System.

(a) *Enabling legislation.* FEMA established and operates the System under authority of sections 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.

(b) *Implementing Plan.* The Federal Response Plan identifies FEMA as the primary federal agency with responsibility for Emergency Support Function 9, Urban Search and Rescue.

§ 208.4 Purpose for system.

It is our 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 Administrator.

(a) *Participation in activities of the System.* The 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 and can be Activated.

(b) *Standards for and measurement of System efficiency and effectiveness.* In addition to the authority provided in §206.13 of this chapter, the Administrator may establish performance standards and assess the efficiency and effectiveness of System resources.

§ 208.6 System resource reports.

(a) *Reports to Administrator.* The Administrator may request reports from any System resource relating to its activities as part of the System.

(b) *Reports to FEMA Regional Directors.* Any FEMA Regional Director may request through the Administrator reports from any System resource used within or based within the Regional Director's jurisdiction.

(c) *Audits, investigations, studies and evaluations.* FEMA and the General Accounting Office may conduct audits,

investigations, studies, and evaluations as necessary. Sponsoring Organizations, Participating Agencies and System Members are expected to cooperate fully in such audits, investigations, studies and evaluations.

§ 208.7 Sanctions for violations of regulations or System orders.

(a) *Sanctions for knowing violations.* The Administrator may impose a sanction on any State or Sponsoring Organization whose representative knowingly violates a regulation or System Order, including knowingly submitting a false or misleading request for reimbursement or knowingly submitting a request for reimbursement of a non-reimbursable expense.

(b) *Sanctions for other violations.* The Administrator may impose a sanction on any State or Sponsoring Organization for other violations of regulations or System Orders including significant or repeated failure of the State or Sponsoring Organization to conform to the standards and procedures of the System.

(c) *Other authority for sanctions.* Nothing in this section limits or precludes the application of other authority to impose sanctions.

(d) *Range of sanctions.* Sanctions may include but are not limited to censure, suspension, or removal from the System.

§ 208.8 Code of conduct.

The Administrator will develop and implement a code of conduct for System Members while acting under FEMA's direction and control. Nothing in this section or our code of conduct will limit the authority of a Sponsoring Organization, Participating Agency or Cooperating Agency to apply its own code of conduct to its System Members or employees. If our code is more restrictive, it controls.

§ 208.9 Agreements between Sponsoring Organizations and Participating Agencies.

Every agreement between a Sponsoring Organization and a Participating Agency regarding the System must include a provision making the rules in 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 1 also apply to the program in this part:

(a) Section 206.9, which deals with our non-liability 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 us.

§ 208.11 Federal Status of System Members.

The Administrator will appoint all Activated System Members as temporary excepted volunteer employees of the United States Government. The Administrator may appoint a System Member who participates in Alert activities as such an employee of the United States Government. The Administrator may also appoint each System Member who participates in FEMA sanctioned preparedness activities as such an employee of the United States Government. We intend these appointments to secure protection for such employees under the Federal Employees Compensation Act and the Federal Tort Claims Act and do not intend to interfere with any preexisting employment relationship between a System Member and a Sponsoring Organization, Cooperating Agency or Participating Agency. System Members whom we appoint as temporary excepted volunteer employees of the United States Government 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 organization.

§§ 208.12—208.20 Reserved

Subpart B—Preparedness Cooperative Agreements

§ 208.21 Purpose.

Subpart B provides guidance on the administration of Preparedness Cooperative Agreements.

§ 208.22 Definitions of terms used in this subpart.

Project Manager means the Sponsoring Organization's primary point of contact for matters related to the Preparedness Cooperative Agreement.

Program Manager means the FEMA official responsible for developing statements of work for Cooperative Agreements and initiating amendments or awards under such agreements by developing and funding requisitions.

§ 208.23 Preparedness Cooperative Agreement process.

(a) *Application.* To obtain FEMA funding for an award or amendment of

a Preparedness Cooperative Agreement, the Sponsoring Organization must submit an application. The application must be in a form that the Assistance Officer specifies.

(b) *Award.* We will award a Preparedness Cooperative Agreement with each Sponsoring Organization to provide Federal funding to develop and maintain System resource capabilities and operational readiness. For the purposes of the Preparedness Cooperative Agreement, the Sponsoring Organization will be considered the "recipient."

(c) *Amendment.* (1) *Procedure.* Absent special circumstances, we will fund and amend Preparedness Cooperative Agreements on an annual basis. Before amendment, the Assistance Officer will issue a call for Cooperative Agreement 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 Administrator.

(3) *Assistance Officer.* The Assistance Officer is the only individual authorized to award or modify a Preparedness Cooperative Agreement.

(d) *Award amounts.* The Administrator will determine award amounts on an annual basis. A Task Force is eligible for an annual award only if the Program Manager has received and approved the Task Force's current-year Daily Cost Estimate.

(e) *FEMA priorities.* The Administrator will establish overall priorities for the use of Preparedness Cooperative Agreement funds taking into consideration the results of readiness evaluations and actual Activations, our overall priorities, and other factors, as appropriate.

(f) *Cost sharing.* The 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 Organizations about any cost sharing obligations.

(g) *Sponsoring Organization priorities.* The Sponsoring Organization 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.

§ 208.24 Allowable costs under Preparedness Cooperative Agreements.

System Members may spend Federal funds that we provide 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 FEMA requires to meet our 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 we require System Members to possess at the time of entry into the System. For instance, we will not pay for a medical school degree, paramedic certification or recertification, civil engineering license, etc.

(c) Equipment:

(1) Procurement of equipment and supplies specifically identified on the then-current FEMA-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 our approval through the Federal Excess Property 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 Organization's US&R capability, provided that such costs do not exceed 7.5 percent of the award/amendment amount.

§ 208.25 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 Organization's US&R capability;

(2) The Program Manager approves the expenditure and gives written notice of his or her approval to the Sponsoring Organization before the Sponsoring Organization 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.

§ 208.26 Obsolete equipment.

(a) The Administrator will periodically identify obsolete items on the Equipment Cache List and provide such information to Sponsoring Organizations.

(b) Neither funds that we provide nor matching funds required under a Preparedness Cooperative Agreement may be used to maintain or repair items that FEMA has identified as obsolete.

§ 208.27 Accountability for use of funds.

The Sponsoring Organization is accountable for the use of funds as provided under the Preparedness Cooperative Agreement.

§§ 208.28—208.30 [Reserved]

SUBPART C—RESPONSE COOPERATIVE AGREEMENTS

§ 208.31 Purpose.

Subpart C 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 Organization or

Participating Agency and individuals normally affiliated with a Sponsoring Organization or Participating Agency as volunteers.

Demobilization Order means a FEMA communication that terminates an Alert or Activation and identifies cost and time allowances for rehabilitation.

Exempt means any System Member who is exempt from 29 U.S.C. 201 *et seq.* pertaining to overtime compensation and other labor standards.

Maximum Pay Rate Table means the FEMA-issued list that identifies the maximum pay rates for selected System positions, and whether that position is compensated on an hourly or daily basis, that may be used for reimbursement of Affiliated Personnel compensation. The Maximum Pay Rate Table does not apply to System members whom a Sponsoring Organization or Participating Agency employ.

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 we terminate an Activation.

§ 208.33 Allowable costs.

(a) *Cost neutrality.* Our policy is that an Alert or Activation should be cost neutral to Sponsoring Organizations and Participating Agencies. To make an Alert or Activation cost-neutral, we will reimburse under this subpart all reasonable, allowable, necessary and allocable costs that a Sponsoring Organization or Participating Agency incurs during the Alert or Activation.

(b) *Actual costs.* Notwithstanding any other provision of this chapter, we will not reimburse a Sponsoring Organization or Participating Agency for any costs greater than those that the Sponsoring Organization or Participating Agency actually incurred during an Alert, Activation or Rehabilitation.

(c) *Normal or predetermined practices.* Consistent with OMB Circulars A-87 and A-102, Sponsoring Organizations and Participating Agencies must adhere to their own normal and predetermined practices and policies of general application when requesting reimbursement from us except as we set out in this subpart.

(d) *Indirect costs not allowed.* Except for costs included in the administrative and management costs allowance

established by §208.41, indirect costs are not allowable.

§ 208.34 Agreements between Sponsoring Organizations and others.

Sponsoring Organizations are responsible for executing such agreements with Participating Agencies and Affiliated Personnel as may be necessary to implement the Sponsoring Organization's Response Cooperative Agreement with us. Those agreements must identify established hourly or daily rates of pay of 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.

We will not reimburse costs incurred during an Advisory.

§ 208.36 Reimbursement for Alert.

(a) *Allowable costs.* We 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.

(4) Food and beverages for Task Force Members and Support Specialists when we do not provide meals during the Alert. We 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.* We will not reimburse costs incurred or relating to the leasing, hiring or chartering of aircraft or the purchase of any equipment, aircraft, or vehicles.

§ 208.37 Reimbursement for equipment and supply costs incurred during Activation.

(a) *Allowable costs.* We 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 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.* We 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, we 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 Incident Support Team.

§ 208.39 Reimbursement for personnel costs incurred during Activation.

(a) *Compensation.* We will reimburse the Sponsoring Organization 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. The provisions of §208.40 of this part govern costs incurred for providing fringe benefits to System Members.

(b) *Public Safety Exemption not applicable.* We will reimburse Sponsoring Organizations 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, we will reimburse Sponsoring Organizations on an overtime basis for any hours worked by Non-Exempt System Members greater than 40 hours during a regular work week.

(c) *Tour of duty.* The tour of duty for all Activated System Members will be 24 hours. We will reimburse the Sponsoring Organization 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 Organization 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 work week;

(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 Organization's request for reimbursement; and

(5) Submit a request for reimbursement under § 208.52 of this part according to the following table:

If the sponsoring organization or participating agency—	And the sponsoring organization 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) 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 Organization 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) 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 compensate 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) 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 equivalent of 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) for the first 40 hours AND the overtime payment equivalent for each Activated Non-Exempt System Member calculated under §208.39(e)(1) for every hour over 40.
(vi) Activates Affiliated 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.* We will reimburse any identified additional salary and overtime cost incurred by a Sponsoring Organization 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.* We 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 Organization or Participating Agency during Activation. Employees exempt under the Fair Labor Standards Act (FLSA) not normally backfilled by the Sponsoring Organization or

Participating Agency are not eligible for backfill during Activation.

§ 208.40 Reimbursement of fringe benefit costs during Activation.

(a) Except as specified in paragraph (c) of this section, we will reimburse the

Sponsoring Organization for fringe benefit costs incurred during Activation according to the following table:

If the sponsoring organization or participating agency—	Then the sponsoring organization or participating agency must	Example
(1) Incurs a fringe benefit cost based on the number of base hours worked by a System Member,	Bill us 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 us an additional 3 percent of the firefighter's converted compensation for the first 40 hours during worked per week during Activation.
(2) Incurs a fringe benefit cost based on the number of hours each System Member actually worked (base hours and overtime),	Bill us 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 us 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 us 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 us 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.* We will reimburse the Sponsoring Organization 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 Organization seeks reimbursement must accompany any request for reimbursement under this section together with identification of every fringe benefit sought under paragraph (a) of this section and the method used to calculate each such payment and the reimbursement sought from us.

(c) We will not reimburse the Sponsoring Organization 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 Organizations 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 our administrative policy.

§ 208.43 Rehabilitation.

We will reimburse costs incurred to return System equipment and personnel to a state of readiness following Activation as provided in this section.

(a) *Costs for Equipment Cache List items.* (1) *Non-consumable items.* We 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 our direction to another entity, during

Activation. For each such item, the Sponsoring Organization must document, in writing, the circumstances of the loss, damage, destruction, or donation.

(2) *Consumable items.* We 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.* We 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 Organization or Participating Agency and without regard to the provisions of § 208.39(e)(1) of this subpart, up to the number of hours specified in the Demobilization Order. Fringe benefits are reimbursed under the provisions of § 208.40.

(b) *Costs for personnel rehabilitation.* We 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 Organization or Participating Agency and without regard to the provisions of § 208.39(e)(1) of this subpart.

(c) *Other allowable costs.* (1) *Local transportation.* We 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. We 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 we have ordered a Sponsoring Organization to move its Task Force Members and equipment cache by ground transportation, we 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 Administrator shall have authority to issue schedules of maximum hourly or per mile reimbursement rates for fleet and contract vehicles.

(3) *Food and beverages.* We will reimburse expenditures for food and beverages for Activated Task Force Members and Support Specialists when meals are not provided by the Federal government 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, we will not reimburse other costs incurred preceding, during or upon the conclusion of an Activation unless, before making the expenditure, the Sponsoring Organization has requested, in writing, permission for a specific expenditure and has received written permission from the Program Manager to make such expenditure.

(b) At the discretion of the Program Manager, 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

(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 Organization. Upon approval, we will submit the documentation to the Assistance Officer and will request an advance of funds equal 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.

§§ 208.46–208.50 [Reserved]

Subpart D—Reimbursement Claims and Appeals

§ 208.51 General.

(a) *Purpose.* This subpart identifies the procedures that Sponsoring Organizations must use to request reimbursement from us for costs incurred under Response Cooperative Agreements.

(b) *Policy.* It is our policy to reimburse Sponsoring Organizations as expeditiously as possible consistent with Federal laws and regulations.

§ 208.52 Reimbursement procedures.

(a) *General.* A Sponsoring Organization must present a claim for reimbursement to us in such manner as specified by the Administrator.

(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 Administrator may extend and specify the time limitation in paragraph (b)(1) of this section when the Sponsoring Organization justifies and requests the extension in writing.

§ 208.53–208.59 [Reserved]

§ 208.60 Determination of claims.

When we receive a reviewable claim for reimbursement, we will review the claim to determine whether and to what extent reimbursement is allowable. Except as provided in § 208.63, we will complete our review and give written notice to the Sponsoring Organization of our determination within 90 days after the date we receive the claim. If we determine that any item of cost is not

eligible for reimbursement, our notice of determination will specify the grounds on which we disallowed reimbursement.

§ 208.61 Payment of claims.

We will reimburse all allowable costs for which a Sponsoring Organization requests reimbursement within 30 days after we determine 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 Organization may appeal to the Program Manager any determination made under § 208.60 to disallow reimbursement of an item of cost:

(1) The appeal must be in writing and submitted within 60 days after receipt of our written notice of disallowance under § 208.60 of this part.

(2) The appeal must contain legal and factual justification for the Sponsoring Organization's contention that the cost is allowable.

(3) Within 90 days after we receive an appeal, the Program Manager will review the information submitted, make such additional investigations as necessary, make a determination on the appeal, and submit written notice of the determination of the appeal to the Sponsoring Organization.

(b) *Final appeal.* (1) If the Program Manager denies the initial appeal, in whole or in part, the Sponsoring Organization may submit a final appeal to the Deputy Administrator. The appeal must be made in writing and must be submitted not later than 60 days after receipt of written notice of our determination of the initial appeal.

(2) Within 90 days following the receipt of a final appeal, the Deputy Administrator will render a determination and notify the Sponsoring Organization, in writing, of the final disposition of the appeal.

(c) *Failure to file timely appeal.* If the Sponsoring Organization does not file an appeal within the time periods specified in this section, we will deem that the Sponsoring Organization has waived its right to appeal any decision that could have been the subject of an appeal.

§ 208.63 Request by us for supplemental information

(a) At any stage of the reimbursement and appeal processes identified in this subpart, we may request the Sponsoring Organization to provide supplemental information that we consider necessary to determine either a claim for reimbursement or an appeal. The

Sponsoring Organization must exercise its best efforts to provide the supplemental information and must submit to us a written response that includes such supplemental information as the Sponsoring Organization is able to provide within 30 days after receiving our request.

(b) If we make a request for supplemental information at any stage of the reimbursement and appeal processes, the applicable time within which our determination of the claim or appeal is to be made will be extended by 30 days. However, without the consent of the Sponsoring Organization, no more than one such time extension will be allowed for any stage of the reimbursement and appeal processes.

§ 208.64 Administrative and audit requirements.

(a) *Nonfederal audit.* For Sponsoring Organizations and states, requirements for nonfederal audit are contained in 44 CFR 13.26.

(b) *Federal audit.* FEMA or the General Accounting Office may elect to conduct a Federal audit of any payment made to a Sponsoring Organization 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 Organization we will reopen the time period for submission of a request for reimbursement after the Sponsoring Organization 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 Organization or any Participating Agency incurs an additional cost because of a legally-binding determination; or

(3) The Deputy Administrator determines that other extenuating circumstances existed that prevented the Sponsoring Organization from including the adjustment of costs in its original submission.

(b) The Sponsoring Organization must notify us as early as practicable that it anticipates such a request.

§§ 208.67–208.70 [Reserved]

Dated: December 11, 2002.

Joe M. Allbaugh,

Director.

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