

**§ 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, 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 recipient and the subrecipients, under 2 CFR 200.500–200.520.

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

[66 FR 57347, Nov. 14, 2001, as amended at 79 FR 63546, Oct. 24, 2014; 79 FR 76085, Dec. 19, 2014; 82 FR 42, Jan. 3, 2017]

**PART 205 [RESERVED]**

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AUTHORITY: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.*; Department of Homeland Security Delegation 9001.1; sec. 1105, Pub. L. 113-2, 127 Stat. 43 (42 U.S.C. 5189a note).

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-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 Administrator, 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 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 nonprofit 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, winddriven 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 unlivable 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-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:

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(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 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 re-

sources 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 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,

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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 responsibilities 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.

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### **§ 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 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.

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(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 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 au-

thorized 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 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

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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 Administrator 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

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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 misapplies 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 misapplied amount of the proceeds or cash benefit.

(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.

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(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 2 CFR parts 200 and 3002, 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; 79 FR 76085, Dec. 19, 2014]

### § 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 ex-

tent 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 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

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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 pre-eminent 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.

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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

(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 Directorateshall assure that documentation of the declaration is later 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 Re-

gional 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 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

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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.

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**§ 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 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

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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:

(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 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.* The following factors are used to evaluate the need for supplemental Federal assistance to individuals under the Stafford Act, as Federal assistance may not supplant the combined capabilities of a State, Tribal, or local government. Federal Individual Assistance, if authorized, is intended to assist eligible individuals and families when State, Tribal, and local government resources and assistance programs are overwhelmed. State fiscal capacity (44 CFR 206.48(b)(1)(i)) and uninsured home and personal property losses (44 CFR 206.48(b)(2)) are the principal factors that FEMA will consider when evaluating the need for supplemental Federal assistance under the Individuals and Households Program but FEMA will always consider all relevant information submitted as part of a declaration request. If the need for supplemental Federal assistance under the Individuals and Households Program is not clear from the evaluation of the principal factors, FEMA will turn to the other factors to determine the level of need.

(1) *State fiscal capacity and resource availability.* FEMA will evaluate the availability of State resources, and where appropriate, any extraordinary circumstances that contributed to the absence of sufficient resources.

(i) *Fiscal capacity (principal factor for individuals and households program).* Fiscal capacity is a State's potential ability to raise revenue from its own sources to respond to and recover from a disaster. The following data points are indicators of fiscal capacity.

(A) *Total taxable resources (TTR) of the State.* TTR is the U.S. Department of Treasury's annual estimate of the relative fiscal capacity of a State. A low TTR may indicate a greater need for supplemental Federal assistance than a high TTR.

(B) *Gross domestic product (GDP) by State.* GDP by State is calculated by the Bureau of Economic Analysis. GDP by State may be used as an alternative or supplemental evaluation method to TTR.

(C) *Per capita personal income by local area.* Per capita personal income by local area is calculated by the Bureau of Economic Analysis. A low per capita personal income by local area may indicate a greater need for supplemental Federal assistance than a high per capita personal income by local area.

(D) *Other factors.* Other limits on a State's treasury or ability to collect funds may be considered.

(ii) *Resource availability.* Federal disaster assistance under the Stafford Act is intended to be supplemental in nature, and is not a replacement for State emergency relief programs, services, and funds. FEMA evaluates the availability of resources from State, Tribal, and local governments as well as non-governmental organizations and the private sector.

(A) *State, tribal, and local government; non-governmental organizations (NGO); and Private Sector Activity.* State, Tribal, and local government, Non-Governmental Organizations, and private sector resources may offset the need for or reveal an increased need for supplemental Federal assistance. The State may provide information regarding the resources that have been and will be committed to meet the needs of disaster survivors such as housing programs, resources provided through financial and in-kind donations, and the availability of affordable (as determined by the U.S. Department of Urban and Housing Development's fair market rent standards) rental housing within a reasonable commuting distance of the impacted area.

(B) *Cumulative effect of recent disasters.* The cumulative effect of recent disasters may affect the availability of State, Tribal, local government, NGO, and private sector disaster recovery resources. The State should provide information regarding the disaster history within the last 24-month period, particularly those occurring within the current fiscal cycle, including both Presidential (public and individual assistance) and gubernatorial disaster declarations.

(2) *Uninsured home and personal property losses (principal factor for individuals and households program).* Uninsured home and personal property losses may

suggest a need for supplemental Federal assistance. The State may provide the following preliminary damage assessment data:

- (i) The cause of damage.
- (ii) The jurisdictions impacted and concentration of damage.
- (iii) The number of homes impacted and degree of damage.
- (iv) The estimated cost of assistance.
- (v) The homeownership rate of impacted homes.
- (vi) The percentage of affected households with sufficient insurance coverage appropriate to the peril.
- (vii) Other relevant preliminary damage assessment data.

(3) *Disaster impacted population profile.* The demographics of a disaster impacted population may identify additional needs that require a more robust community response and delay a community's ability to recover from a disaster. FEMA will consider demographics of the impacted communities for the following data points as reported by the U.S. Census Bureau or other Federal agencies:

- (i) The percentage of the population for whom poverty status is determined.
- (ii) The percentage of the population already receiving government assistance such as Supplemental Security Income and Supplemental Nutrition Assistance Program benefits.
- (iii) The pre-disaster unemployment rate.
- (iv) The percentage of the population that is 65 years old and older.
- (v) The percentage of the population 18 years old and younger.
- (vi) The percentage of the population with a disability.
- (vii) The percentage of the population who speak a language other than English and speak English less than "very well."

(viii) Any unique considerations regarding American Indian and Alaskan Native Tribal populations raised in the State's request for a major disaster declaration that may not be reflected in the data points referenced in paragraphs (b)(3)(i) through (vii) of this section.

(4) *Impact to community infrastructure.* The following impacts to a community's infrastructure may adversely af-

fect a population's ability to safely and securely reside within the community.

(i) *Life saving and life sustaining services.* The effects of a disaster may cause disruptions to or increase the demand for life-saving and life-sustaining services, necessitate a more robust response, and may delay a community's ability to recover from a disaster. The State may provide information regarding the impact on life saving and life sustaining services for a period of greater than 72 hours. Such services include but are not limited to police, fire/EMS, hospital/medical, sewage, and water treatment services.

(ii) *Essential community services.* The effects of a disaster may cause disruptions to or increase the demand for essential community services and delay a community's ability to recover from a disaster. The State may provide information regarding the impact on essential community services for a period greater than 72 hours. Such services include but are not limited to schools, social services programs and providers, child care, and eldercare.

(iii) *Transportation infrastructure and utilities.* Transportation infrastructure or utility disruptions may render housing uninhabitable or inaccessible. Such conditions may also affect the delivery of life sustaining commodities, provision of emergency services, ability to shelter in place, and efforts to rebuild. The State may provide information regarding the impact on transportation infrastructure and utilities for a period of greater than 72 hours.

(5) *Casualties.* The number of individuals who are missing, injured, or deceased due to a disaster may indicate a heightened need for supplemental Federal disaster assistance. The State may report the number of missing, injured, or deceased individuals.

(6) *Disaster related unemployment.* The number of disaster survivors who lost work or became unemployed due to a disaster and who do not qualify for standard unemployment insurance may indicate a heightened need for supplemental Federal assistance. This usually includes the self-employed, service industry workers, and seasonal workers such as those employed in tourism, fishing, or agriculture industries. The State may provide an estimate of the

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number of disaster survivors impacted under this paragraph as well as information regarding major employers affected.

[64 FR 47698, Sept. 1, 1999, as amended at 84 FR 10663, Mar. 21, 2019; 85 FR 2039, Jan. 14, 2020]

**§§ 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 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**

§§ 206.101–206.109 [Reserved]

**§ 206.110 Federal assistance to individuals and households.**

(a) *Purpose.* This section implements the policy and procedures set forth in the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (Stafford Act), 42 U.S.C. 5174. 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 assistance 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 for the repair or replacement of their pre-disaster primary residence. No individual or household will receive financial assistance greater than \$25,000 under this subpart with respect to a single major disaster or emergency for Other Needs Assistance. FEMA will adjust the \$25,000 limits annually to reflect changes in the Consumer Price Index (CPI) for All Urban Consumers that the Department of Labor publishes.

(1) The maximum amount of financial assistance excludes rental assistance under § 206.117(b)(1)(i) and lodging expense reimbursement under § 206.117(b)(1)(i).

(2) The maximum amount of financial assistance excludes expenses to repair or replace eligible damaged accessibility-related real property improvements and personal property for individuals with disabilities.

(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 will 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 must be utilized to the fullest extent practicable before other types of housing assistance.

(d) *Date of eligibility.* Eligibility for Federal assistance under this subpart is limited to losses or expenses resulting from damage that occurred during the dates of the incident period established 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 Recovery Directorate may extend the period of assistance 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 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 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 insufficient to cover the housing or other needs; or

(3) Applicants cannot use their insurance because there is no housing 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 is 100 percent.

(2) Federal and State cost shares for "Other Needs" assistance under the Stafford Act, 42 U.S.C. 5174(e) and (f), are as follows:

(i) The Federal share is 75 percent; and

(ii) The non-Federal share is 25 percent and must 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 the Stafford Act, 42 U.S.C. 5174(e), 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 billing notice to the State on a monthly basis for the duration of the program. FEMA will charge interest, penalties, and administrative costs on delinquent billing notices in accordance with the Debt Collection Improvement Act. Cost shared funds, interest, penalties and administrative costs owed to FEMA through delinquent billing notices may be offset from other FEMA disaster assistance programs (*i.e.*, Public Assistance) from which the State is receiving assistance, 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 sub-

part. 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 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 must not further disclose the information to other entities, and must 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 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 the Stafford Act, 42 U.S.C. 5174, who receive assistance, due to flood damage, 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 there is a residential building (See 44 CFR 59.1) at the address. 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.

(1) *Environmental requirements.* Assistance provided under this subpart must comply with the National Environmental Policy Act (NEPA) and other environmental laws, regulations, Executive Orders, and applicable agency policy.

(m) *Historic preservation.* Assistance provided under this subpart generally does not have the potential to affect historic properties and thus FEMA has no further obligations under the National Historic Preservation Act, 54 U.S.C. 306108, with the exception of ground disturbing activities and construction related to §§ 206.117(b)(1)(ii) (direct housing), 206.117(b)(2)(ii)(F) (repair assistance for privately owned roads and bridges), 206.117(b)(3) (replacement assistance), and 206.117(b)(4) (permanent housing construction).

(n) *Severability.* Any provision of this subpart held to be invalid or unenforceable as applied to any person or circumstance should be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of this subpart is invalid and unenforceable in all circumstances, in which event the provision should be severable from the remainder of this subpart and should not affect the remainder thereof.

[67 FR 61452, Sept. 30, 2002; 67 FR 62896, Oct. 9, 2002, as amended at 81 FR 56533, Aug. 22, 2016; 89 FR 4118, Jan. 22, 2024]

#### § 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, manufactured housing units, and travel trailers.

*Applicant* means an individual or household who has applied for assistance under this subpart.

*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 claim them on the tax return.

*Destroyed* means the primary residence is a total loss or damaged to such an extent that repairs are infeasible.

*Displaced applicant* means one whose disaster-damaged primary residence is uninhabitable, inaccessible, or made unavailable by the landlord.

*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 damage to the primary residence, utilities, or infrastructure.

*Essential tools* means tools and equipment required for employment and items required for education.

*Fair market rent* means estimates of rent plus the cost of utilities, except telephone, identified by the Department of Housing and Urban Development as being adequate for existing rental housing in a particular geographic area.

*Financial ability* means the applicant's capability to pay 30 percent of gross post-disaster household income for housing. When computing financial ability, extreme or unusual financial circumstances may be considered by FEMA.

*Financial assistance* means cash that may be provided to eligible individuals and households, usually in the form of a check or electronic funds transfer.

*Functioning* 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, homeowners or condominium association fees, 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 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 or FEMA, if determined that such site would be more economical or accessible than one that the State or local government provides, 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 with verifiable documentation; or

(2) A person who does not hold formal title to the residence and pays no rent, but can produce verifiable documentation demonstrative of legal responsibility including tax payment receipts; receipts for major repairs, maintenance, or improvements of the residence; court documents, a letter from a public official, or, for mobile home or travel trailer owners residing in a commercial park, a letter from the mobile home park owner or manager; or

(3) A person who has verifiable documentation of lifetime occupancy rights with formal title vested in another.

*Permanent housing plan* means a realistic plan that, within a reasonable timeframe, puts the displaced applicant back into permanent housing that is similar to their pre-disaster housing situation. A reasonable timeframe includes sufficient time within the period of assistance for securing funds and services to repair the home, completing repairs or 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 road closures and the normal commuting patterns of the area.

*Recertification* means the process that FEMA uses to evaluate an applicant's eligibility for continued temporary housing assistance under § 206.114.

*Repairs* means repairs of a quality necessary for a safe and sanitary living or functioning condition.

*Safe* means secure from hazards or threats to occupants.

*Sanitary* means free of health hazards.

*Serious need* means the requirement for an item, or service, that is necessary 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.

*State* means, for the purposes of this subpart and where consistent with the requirements of the Stafford Act, any State as defined in § 206.2(a)(22) or Indian tribal government as defined in the Stafford Act (42 U.S.C. 5122(6)).

*Uninhabitable* means the dwelling is not safe or sanitary.

*We, our, and us* mean FEMA.

[67 FR 61452, Sept. 30, 2002; 67 FR 62896, Oct. 9, 2002, as amended at 89 FR 4119, Jan. 22, 2024]

**§ 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.* FEMA may extend the registration period when the State requests more time to collect registrations from the affected population. FEMA may also extend the standard registration period when necessary to establish the same registration deadline for contiguous counties or States.

(c) *Reopening of the registration period.* After the registration period for the major disaster or emergency has expired, FEMA may reopen the registration period for 60 days only when the President's declaration is amended to include additional counties and only for the additional counties.

(d) *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 explain the reason for the delay in their registration.

[67 FR 61452, Sept. 30, 2002; 67 FR 62896, Oct. 9, 2002, as amended at 89 FR 4120, Jan. 22, 2024]

**§ 206.113 Eligibility factors.**

(a) *Conditions of eligibility.* In general, FEMA may provide assistance to individuals and households who qualify for

such assistance under the Stafford Act, 42 U.S.C. 5174, and this subpart. FEMA may only provide assistance:

(1) When the individual or household has incurred a disaster-related necessary expense and 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, but the applicant cannot use their insurance because housing is not available on the private market;

(5) 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, and that assistance and insurance is insufficient to cover the necessary expense and serious need;

(6) 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;

(7) With respect to housing assistance, if the primary residence has been destroyed, is uninhabitable, or is inaccessible;

(8) With respect to housing assistance, if a renter's primary residence is no longer available as a result of the disaster; and

(9) With respect to home repair for accessibility-related items, if an applicant meets the following conditions:

(i) The applicant is either an individual with a disability as defined in 42 U.S.C. 5122 whose disability existed prior to the disaster and whose primary residence was damaged by the disaster, or an individual with a dis-

ability as defined in 42 U.S.C. 5122 whose disability was caused by the disaster and whose primary residence was damaged by the disaster;

(ii) The real property component is necessary to meet the accessibility-related need of the household; and

(iii) The real property component is not covered by insurance or any other source.

(b) *Conditions of ineligibility.* We may not provide assistance under this subpart:

(1) For housing or displacement assistance, to individuals or households who are displaced from other than their pre-disaster primary residence;

(2) For temporary housing or displacement assistance, to individuals or households who have adequate rent-free housing accommodations;

(3) For temporary housing or displacement 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 temporary housing or displacement assistance to individuals or households who evacuated the residence in response to official warnings solely as a precautionary measure and are able to return to and safely occupy the residence immediately after the incident;

(5) For housing assistance, for improvements or additions to the pre-disaster condition of property, except for the following:

(i) Improvements or additions required to make repairs that comply with local and State ordinances;

(ii) Eligible hazard mitigation measures; or

(iii) Accessibility-related items for individuals with disabilities, consistent with paragraph (a)(9) of this section;

(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; or

(10) For any items not otherwise authorized by §§ 206.117 and 206.119.

[67 FR 61452, Sept. 30, 2002; 67 FR 62896, Oct. 9, 2002, as amended at 89 FR 4120, Jan. 22, 2024]

**§ 206.114 Criteria for continued or additional assistance.**

(a) *General.* FEMA expects all recipients of assistance under this subpart to obtain and occupy permanent housing at the earliest possible time. FEMA may provide initial and continued temporary housing assistance, financial or direct, upon request during the period of assistance, 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) *Rental assistance.* FEMA may provide initial financial assistance for rent, also known as initial rental assistance, as described in § 206.117(b)(1)(i), to displaced eligible applicants to rent alternate housing accommodations for an initial time period established by FEMA.

(1) FEMA may periodically recertify all displaced applicants who received initial rental assistance and request continued rental assistance. All displaced applicants requesting continued rental assistance must take the following actions at certain points throughout the recertification process:

(i) Submit rent receipts to show that they have exhausted or will exhaust previously provided funds;

(ii) Provide documentation demonstrating they lack the financial ability to pay their post-disaster housing costs and have a continued need for rental assistance;

(iii) Establish a realistic permanent housing plan; and

(iv) Provide documentation showing that they are making efforts to obtain permanent housing.

(2) FEMA expects that pre-disaster renters will use their initial rental assistance to obtain permanent housing. However, FEMA may provide continued rental assistance to pre-disaster renters with a continuing disaster-related housing need.

(c) *Direct housing assistance.* FEMA may provide direct housing assistance as described in § 206.117(b)(1)(ii), to displaced eligible applicants who are unable to make use of financial assistance to rent adequate alternate housing. FEMA may periodically recertify all displaced applicants receiving direct housing assistance for continued direct housing assistance. All displaced applicants who need continued direct housing assistance must take the following actions at certain points throughout the recertification process:

(1) Establish a realistic permanent housing plan; and

(2) Provide documentation showing that they are making efforts to obtain permanent housing throughout the recertification process.

(d) *Other assistance.* FEMA may provide repairs or housing replacement assistance, as described in § 206.117(b)(2) and § 206.117(b)(3), lodging expense reimbursement, as described in § 206.117(b)(1)(i), or other needs assistance, as described in § 206.119, to eligible applicants.

(1) If FEMA requires more information to process an applicant's initial request for assistance, it may request additional information.

(2) After the initial award of assistance, applicants requesting additional assistance for repairs, housing replacement, lodging expense reimbursement, personal property, transportation, child care, medical, dental, funeral, moving and storage, or other necessary expenses and serious needs may submit an appeal as outlined in § 206.115 and will be required to submit information

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and/or verifiable documentation established via guidance identifying the additional need.

[89 FR 4120, Jan. 22, 2024]

### § 206.115 Appeals.

(a) Under the provisions of the Stafford Act, 42 U.S.C. 5189a, 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 include a written explanation or verifiable documentation for the appeal and meet the requirements of § 206.117, as applicable. See §§ 206.117(b)(2)(vi), 206.117(b)(3)(iv), and 206.117(b)(4)(iii). If someone other than the applicant files the appeal, then the applicant must also submit a signed statement giving that person authority to represent them. If a written explanation is submitted, it must be signed by the applicant or a person the applicant designates to represent them.

(c) Applicants must appeal to FEMA 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 as-

sistance; 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 them.

(e) FEMA or the 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 and a reason for the determination within 90 days of receiving the appeal. The decision of the FEMA or State appellate authority is final.

[67 FR 61452, Sept. 30, 2002; 67 FR 62896, Oct. 9, 2002, as amended at 89 FR 4121, Jan. 22, 2024]

### § 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) *Definitions.* The definitions in this paragraph apply to this section only.

“*Multifamily Rental Housing*” means a rental property that contains three or more dwelling units contained within one building, each such unit providing complete and independent living facilities for one or more persons, including

permanent provisions for living, sleeping, cooking, and sanitation.

“*Real Property Component*” or “*Component*” means each individual part of a dwelling as enumerated in paragraph (b)(2)(i) of this section.

“*Semi-Permanent Housing*” means housing designed and constructed with finishes, material, and systems selected for moderate (or better) energy efficiency, maintenance, and life cycle cost, and with a life expectancy of more than 5 years but less than 25 years.

(b) *Types of housing assistance*—(1) *Temporary housing assistance*—(i) *Rental assistance*. Eligible displaced applicants may receive rental assistance to rent alternate housing resources. 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 may include lodging expense reimbursement for reasonable short-term lodging expenses for individuals or households who have not received displacement assistance (See § 206.119(b)(2)) 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 FEMA determines that the size or nature of the household requires that we provide assistance for more than one residence.

(B) FEMA will base the amount of assistance on the current fair market rent for existing rental units. FEMA will further base the applicable rate on the location of the rental unit and the number of bedrooms the household requires, as determined by FEMA.

(C) Rental assistance may include the payment of the cost of utilities, excluding telephone, cable, television, and internet service.

(D) Rental assistance may include the payment of the cost of security deposits, not to exceed an amount equal to the fair market rent for one month, as determined under paragraph (b)(1)(i)(B) of this section.

(E) Applicants that receive displacement assistance under § 206.119(b)(2) must request rental assistance if their

disaster-caused temporary housing needs continue once displacement assistance is exhausted.

(ii) *Direct assistance*. (A) FEMA may provide direct assistance in the form of purchased or leased temporary housing units directly to displaced applicants who lack available housing resources and are 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 unit, unless FEMA determines that the size or nature of the household requires that we provide assistance for more than one temporary housing unit.

(C) Any site upon which a FEMA-provided temporary 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 all other applicable environmental and historic preservation laws, regulations, Executive orders, and agency policy.

(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 temporary housing units may be placed in the following locations:

(1) A commercial site that is complete with utilities, when FEMA 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.

(2) A private site that an applicant provides, complete with utilities, when FEMA 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.

(3) A group site that accommodates two or more temporary housing units and is complete with utilities, provided by the State or local government, when FEMA 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.

(4) A group site provided by FEMA, if determined that such a site would be more economical or accessible than one that the State or local government provides.

(F) If FEMA determines it would be a cost-effective alternative to other temporary housing options, FEMA may enter into lease agreements with owners of multifamily rental housing properties to house displaced applicants eligible for assistance under this subpart.

(1) FEMA may only enter into lease agreements with owners of multifamily rental housing properties impacted by a major disaster or located in areas covered by a major disaster declaration.

(2) FEMA may make repairs or improvements to properties under such lease agreements, to the extent necessary to serve as temporary housing, provided, however, that the value of the improvements or repairs must be deducted from the value of the lease agreement.

(G) After the end of the 18-month period of assistance, FEMA may begin to charge up to the fair market rent 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.

(H) 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 temporary housing unit is located; or

(5) The occupant(s) does not provide evidence documenting that they are

working towards a permanent housing plan.

(I) 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 FEMA deems appropriate after the termination date, including fair market rent for the unit.

(J) 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 repair of an owner-occupied primary residence if:

(A) The eligibility criteria in §206.113 are met;

(B) FEMA determines the dwelling was damaged by the disaster; and,

(C) The damage is not covered by insurance.

(ii) FEMA may provide financial assistance for the repair of the disaster damaged dwelling to a safe and sanitary living or functioning condition including:

(A) Structural components of the residence. This includes real property components, such as the foundation, exterior walls, and roof.

(B) Windows and doors.

(C) The Heating, Ventilation and Air Conditioning system.

(D) Utility systems. This includes electrical, gas, water and sewage systems.

(E) Interior components. This includes, but is not limited to, the structure's floors, walls, ceilings, and cabinetry.

(F) The structure's access and egress, including privately owned access roads and privately owned bridges.

(G) Blocking, leveling, and anchoring of a mobile home, and reconnecting or

resetting mobile home sewer, water, electrical and fuel lines and tanks.

(H) Eligible hazard mitigation measures.

(iii) FEMA financial assistance for the repair of disaster damage will be limited to repairs of a quality necessary for a safe and sanitary living or functioning condition. In some instances, when the extent of the damage is unclear, FEMA may provide assistance for the average cost of a licensed technician's professional assessment. FEMA may provide for the replacement of a component if repair is not feasible.

(iv) Eligible individuals or households may receive up to the maximum amount of assistance (See §206.110(b)) to repair damage to their primary residence irrespective of other financial resources, 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.

(vi) If the applicant disputes a determination made by FEMA regarding eligibility for repair assistance, the applicant may appeal that determination pursuant to the procedures in §206.115. In addition to the requirements in §206.115, the applicant must provide proof that the component meets the requirements of paragraph (b)(2)(i) of this section. If the applicant disputes the amount of repair assistance awarded, the applicant must also provide justification for the amount sought.

(3) *Housing replacement.* (i) FEMA may provide financial assistance for the replacement of an owner-occupied primary residence if:

(A) The eligibility criteria in §206.113 are met;

(B) The residence was destroyed by the disaster; and

(C) The damage to the residence is not covered by insurance.

(ii) If replacement assistance is granted, the applicant may either use the maximum amount of assistance (See §206.110(b)) to replace the dwelling in its entirety, or may use the assistance toward the cost of acquiring a new permanent residence.

(iii) Housing replacement assistance will be based on the average replace-

ment cost established by FEMA for the type of residence destroyed, or the statutory maximum (See §206.110(b)), whichever is less.

(iv) If the applicant disputes a determination made by FEMA regarding eligibility for replacement assistance, the applicant may appeal that determination pursuant to the procedures in §206.115. In addition to the requirements in §206.115, the applicant must provide proof that repair is not feasible, or will not ensure the safety or health of the occupant. If the applicant disputes the amount of replacement assistance awarded, the applicant must also provide justification for the amount sought.

(4) *Permanent and semi-permanent housing construction.* (i) FEMA may provide financial or direct assistance to applicants for the purpose of constructing permanent and semi-permanent housing if:

(A) The eligibility criteria in §206.113 are met;

(B) The residence was damaged by the event;

(C) The damage to the residence is not covered by insurance;

(D) The residence was an owner-occupied primary residence; and

(E) The residence is in a location where alternative housing resources are not available and the types of financial or direct temporary housing assistance described in paragraphs (b)(1), (2), and (3) of this section are unavailable, infeasible, or not cost-effective.

(ii) Permanent and semi-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.

(iii) If the applicant disputes a determination made by FEMA regarding eligibility for construction assistance, the applicant may appeal that determination pursuant to the procedures in §206.115. In addition to the requirements in §206.115, the applicant must

provide proof that the property is in a location where alternative housing resources are not available. The applicant must also provide proof that the types of financial or direct temporary housing assistance described in paragraph (b)(1) of this section are unavailable, infeasible, or not cost effective. If the applicant disputes the amount of construction assistance awarded, the applicant must also provide justification for the amount sought.

[67 FR 61452, Sept. 30, 2002; 67 FR 62896, Oct. 9, 2002, as amended at 78 FR 66856, Nov. 7, 2013; 81 FR 56533, Aug. 22, 2016; 89 FR 4121, Jan. 22, 2024]

**§ 206.118 Disposal of housing units.**

(a) FEMA may sell temporary housing units purchased under § 206.117(b)(1)(ii). Temporary housing, direct assistance, as follows:

(1) *Sale to an occupant.* (i) FEMA may sell a temporary housing unit to the occupant, if they lack permanent housing and have a site that complies with local codes and ordinances and part 9 of this Title.

(ii) FEMA may approve adjustments to the sales price when selling a temporary housing unit to the occupant if the occupant is unable to pay the fair market value of the temporary housing unit and when doing so is in the best interest of the occupant and FEMA.

(iii) FEMA may sell a temporary 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 temporary housing 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 temporary housing unit available directly to a State or other governmental entity, or to a voluntary organization, for the sole purpose of providing temporary housing to eligible displaced applicants 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 temporary housing 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 temporary housing units at a fair market value to any other person.

(b) A temporary housing 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 they may have to bring the installation of the temporary housing unit up to codes and standards that are applicable at the proposed site.

[89 FR 4123, Jan. 22, 2024]

**§ 206.119 Financial assistance to address other needs.**

(a) *Purpose.* FEMA and the State may provide financial assistance to individuals and households who are adversely affected by a major disaster and have other verifiable, documented disaster-related necessary expenses or serious needs.

(b) *Types of assistance.* (1) *Serious needs.* Necessary expenses to assist applicants who report they are displaced as a result of the disaster, who report a need for shelter as a result of the disaster, or who have other emergency disaster expenses. These needs will vary according to each applicant and FEMA will not require receipts documenting the use of this assistance. FEMA will adjust the amount of this assistance to reflect changes in the CPI for all Urban Consumers that the Department of Labor publishes.

(2) *Displacement.* Necessary expenses to assist displaced applicants with short-term living arrangements immediately following a disaster. Applicants must have registered within the 60-day or extended registration period. The award amount is based on a time period established by FEMA and approved in the State Administrative Option, as required by § 206.120(b). FEMA will not require receipts documenting the use of this assistance.

(3) *Medical and dental.* Necessary expenses to assist applicants with medical and dental costs, which may include the following:

- (i) Medical service costs;
- (ii) Dental service costs;
- (iii) Repair or replacement of medical or dental equipment;
- (iv) Loss or injury of a service animal; and
- (v) Costs for prescription medicines related to eligible medical or dental services, or which need to be replaced due to the disaster.

(4) *Child care.* Necessary expenses to assist applicants with child care costs, which may include the following:

- (i) Standard child care service fees, including personal assistance services that support activities of daily living for children with disabilities; and
- (ii) Registration and health inventory fees for applicants who require a new child care provider.

(5) *Funeral.* Necessary expenses to assist applicants with funeral costs, which may include the following:

- (i) Funeral services;
- (ii) Burial or cremation; and
- (iii) Other related funeral expenses.

(6) *Personal property.* Necessary expenses to assist applicants whose primary residences were damaged by the disaster with personal property costs, which may include the following:

- (i) Clothing;
- (ii) Household items, furnishings or appliances;
- (iii) Computing devices;
- (iv) Essential tools, specialized or protective clothing, computing devices, and equipment required for employment;
- (v) Computing devices, uniforms, schoolbooks and supplies required for educational purposes; and
- (vi) Cleaning or sanitizing any eligible personal property item.

(7) *Transportation.* Necessary expenses to assist applicants with transportation costs, which may include the following:

- (i) Repairing or replacing vehicles;
- (ii) Public transportation; and
- (iii) Other transportation related costs or services.

(8) *Moving and storage.* Necessary expenses to assist applicants whose primary residences were damaged by the

disaster with costs related to moving and storing personal property, which may include the following:

- (i) Moving and storing personal property to avoid additional disaster damage;
- (ii) Storage of personal property while disaster-related repairs are being made to the primary residence; and
- (iii) Return of the personal property to the individual or household's primary residence.

(9) *Group Flood Insurance purchase.* Individuals identified by FEMA as eligible for assistance for flood insurable damage under the Stafford Act, 42 U.S.C. 5174, 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.

(i) The premium for the GFIP is a necessary expense within the meaning of this section. FEMA or the State must 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 must be equivalent to the maximum assistance amount established under the Stafford Act, 42 U.S.C. 5174.

(ii) FEMA or the State IHP staff must provide the NFIP with records of individuals who received assistance for flood-insurable losses within a SFHA and are to be insured through the GFIP. Records of applicants to be insured must 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.

(iii) 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/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 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.

(10) *Miscellaneous.* Other miscellaneous items or services that FEMA, in consultation with the State, determines are necessary expenses and serious needs.

[89 FR 4123, Jan. 22, 2024]

**§ 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 amendments 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

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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 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 2 CFR 200.327.

(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.

(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 2 CFR 200.327.

(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 interest, 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 2 CFR 200.500-200.520, uniform audit requirements apply to all grants provided under this subpart.

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(7) *Document retention.* Pursuant to 2 CFR 200.333–200.337, 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 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; 79 FR 76085, Dec. 19, 2014; 82 FR 42, Jan. 3, 2017]

**§§ 206.121–206.130 [Reserved]**

**Subpart E [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 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)

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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 regulations. 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 Administrator 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, 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 resulting 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, winddriven 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 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 ini-

tiate 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.

(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 2 CFR parts 200 and 3002.

(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;

(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 2 CFR 200.328, 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 2 CFR 200.328, Monitoring and Reporting Program Performance;

(iii) An accounting of funds, in accordance with 2 CFR 200.327, Financial Reporting, to be submitted with the final program report; and

(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 pur-

pose, 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;

(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; 79 FR 76085, Dec. 19, 2014]

§§ 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 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 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 the Stafford Act, 42 U.S.C. 5155, 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, must cooperate to prevent and rectify duplication of benefits, according to the general policy guidance of the Federal Emergency Management Agency. The agencies must 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 duplication. 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 the Stafford Act, 42 U.S.C. 5174;

(iii) Other Needs assistance, pursuant to the Stafford Act, 42 U.S.C. 5174;

(iv) Small Business Administration and Department of Agriculture disaster loans;

(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 an individual or household, 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:

(i) Assist Agency B in preventing the duplication of benefits, or

(ii) In the case where the individual or household has refused assistance from Agency A, Agency A must 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, FEMA, in the case of federally operated programs, or the State, in the case of State operated programs, must 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, FEMA or the State must:

(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, FEMA must 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 general authority of the Stafford Act, 42 U.S.C. 5155. To determine whether duplication has occurred and established procedures have been followed, FEMA must, within 90 days after the close of the disaster assistance program's 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, FEMA must 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, FEMA will take no further action. If the agency was not successful in correcting the duplication, and FEMA 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 FEMA is not satisfied that

the procedures were followed in an acceptable manner, then FEMA must provide an opportunity for the agency to take the required corrective action. If the agency cannot fulfill its responsibilities for remedial action, FEMA must notify the recipient of the excess assistance, and after examining the debt, then as appropriate, take those recovery actions in conjunction with agency representatives for each identified case in the random sample (or larger universe, at FEMA'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, FEMA must urge the duplicating agency to follow its own procedures to take corrective action, and must work with the agency toward that end. Under its authority in the Stafford Act, 42 U.S.C. 5155, FEMA must require the duplicating agency to report to FEMA on the agency's 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) and the Federal Claims Collection Standards (Department of the Treasury—Department of Justice) (31 CFR chapter IX). Section 1216 of the Disaster Recovery Reform Act of 2018, 42 U.S.C. 5174a, also provides FEMA the authority to waive debts owed by individuals and households who received assistance under subpart D of this part.

(g) *Severability.* Any provision of this section held to be invalid or unenforceable as applied to any person or circumstance should be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of this section is invalid and unenforceable in all circumstances, in which event the provision should be severable from the remainder of this section and should not affect the remainder thereof.

[54 FR 11615, Mar. 21, 1989, as amended at 67 FR 61460, Sept. 30, 2002; 74 FR 15350, Apr. 3, 2009; 89 FR 4124, Jan. 22, 2024]

§§ 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 recipient and the subrecipient to adhere to Stafford Act requirements and to these regulations when administering our public assistance grants.

(2) The regulations entitled “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” published at 2 CFR parts 200 and 3002, place requirements on the State in its role as recipient and gives the recipient discretion to administer federal programs under their own procedures. We expect the recipient to:

(i) Inform subrecipients 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 subrecipients 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; 79 FR 76086, Dec. 19, 2014; 82 FR 42, Jan. 3, 2017]

#### § 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 recipient 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) *Hazard mitigation* means any cost effective measure which will reduce the potential for damage to a facility from a disaster event.

(f) *Host-State*. A State or Indian Tribal government that by agreement with 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.”

(g) *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.

(h) *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.

(i) *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.

(j) *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 dis-

aster occurred if different from the most recent designed capacity.

(k) 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.

(l) *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 recipient.

(m) *Recipient*. Recipient means the government to which a grant is awarded, and which is accountable for the use of the funds provided. The recipient 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 recipient. However, an Indian Tribal government may choose to be a recipient, or it may act as a subrecipient under the State. If an Indian Tribal government is the recipient, it will assume the responsibilities of the “recipient” or “State” as described in this part with respect to administration of the Public Assistance program.

(n) *Subgrant* means an award of financial assistance under a grant by a recipient to an eligible subrecipient.

(o) *Subrecipient* means the government or other legal entity to which a subgrant is awarded and which is accountable to the recipient 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; 82 FR 43, Jan. 3, 2017]

**§ 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 recipient. As recipient you are responsible for processing subgrants to

applicants under 2 CFR parts 200 and 3002, and 44 CFR part 206, and your own policies and procedures.

(b) *Recipient.* 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 subrecipients;
- (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 recipient 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) 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 \$3,000, that work is not eligible and we will not approve a Project Worksheet for the project. Such \$3,000 amount shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(e) *Grant approval.* (1) Before we obligate any funds to the State, the recipient must complete and send to the Re-

gional 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 recipient based on the approved Project Worksheets. The recipient 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 recipient.

(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 "recipient" 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 recipient justifies and makes a request in writing. The justification must be based on extenuating circumstances beyond the recipient's or subrecipient's control.

[64 FR 55160, Oct. 12, 1999, as amended at 74 FR 15350, Apr. 3, 2009; 74 FR 60213, Nov. 20, 2009; 79 FR 10686, Feb. 26, 2014; 79 FR 76086, Dec. 19, 2014; 82 FR 43, Jan. 3, 2017]

**§ 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 \$1,000,000 or greater, Federal funding shall equal the Federal share of the actual eligible costs documented by a recipient. Such \$1,000,000 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 \$1,000,000, Federal funding shall equal the Federal share of the approved estimate of eligible costs. Such \$1,000,000 amount shall be adjusted annually as indicated in paragraph (c)(1) of this section.

(3) *Applicability date.* The dollar threshold provided in this paragraph (c) applies to project worksheets that have not been obligated as of August 3, 2022 for major disasters and emergencies declared on or after March 13, 2020.

(d) *Funding options—(1) Improved projects.* If a subrecipient desires to make improvements, but still restore the predisaster function of a damaged facility, the recipient’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.

(2) *Alternate projects.* In any case where a subrecipient determines that the public welfare would not be best served by restoring a damaged public facility or the function of that facility, the recipient 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 non-Federal share of any project, nor for any operating expense.

(v) Prior to the start of construction of any alternate project the recipient 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 recipient 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; 79 FR 10686, Feb. 26, 2014; 82 FR 43, Jan. 3, 2017; 87 FR 47379, Aug. 3, 2022]

**§ 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 2 CFR 200.305.

(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

COMPLETION DEADLINES—Continued

Type of work	Months
Permanent work .....	18

(2) *Exceptions.* (i) The recipient 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 subrecipient, the recipient 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 recipient's authority shall be submitted by the recipient 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 recipient 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 recipient 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 subrecipient 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 subrecipient must evaluate each cost overrun and, when justified, submit a request for additional funding through the recipient 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 recipient must include a written recommendation when forwarding the request. The Regional Administrator will notify the recipient 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 subrecipient discovers a significant overrun related to the total final cost for all small projects, the subrecipient 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 recipient to the Regional Administrator quarterly. The Regional Administrator and recipient 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 recipient and outline any problems or circumstances expected to result in noncompliance 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; 79 FR 76086, Dec. 19, 2014; 82 FR 43, Jan. 3, 2017]

**§ 206.205 Payment of claims.**

(a) *Small Projects.* Final payment of the Federal share of these projects will be made to the recipient upon approval of the Project Worksheet. The recipient will make payment of the Federal share to the subrecipient as soon as practicable after Federal approval of

funding. Before the closeout of the disaster contract, the recipient 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 subrecipient. Such certification is not required to specify the amount spent by a subrecipient 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 refunded.

(b) *Large projects.* (1) The recipient shall make an accounting to the Regional Administrator of eligible costs for each approved large project. In submitting the accounting the recipient 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 2 CFR 200.305. Each large project shall be submitted as soon as practicable after the subrecipient 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; 79 FR 76086, Dec. 19, 2014; 82 FR 43, Jan. 3, 2017]

**§ 206.206 Appeals and arbitrations.**

(a) *Definitions.* The following definitions apply to this section:

*Administrator* means the Administrator of the Federal Emergency Management Agency.

*Amount in dispute* means the difference between the amount of financial assistance sought for a Public Assistance project and the amount of financial assistance for which FEMA has determined such Public Assistance project is eligible.

*Applicant* has the same meaning as the definition at § 206.201(a).

*Final agency determination means:* (1) The decision of FEMA, if the applicant or recipient does not submit a first appeal within the time limits provided for in paragraph (b)(1)(ii)(A) of this section; or

(2) The decision of FEMA, if the applicant or recipient withdraws the pending appeal and does not file a request for arbitration within 30 calendar days of the withdrawal of the pending appeal; or

(3) The decision of the FEMA Regional Administrator, if the applicant or recipient does not submit a second appeal within the time limits provided for in paragraph (b)(2)(ii)(A) of this section.

*Recipient* has the same meaning as the definition at § 206.201(m).

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

*Rural area* means an area with a population of less than 200,000 outside an urbanized area.

*Urbanized area* means an area that consists of densely settled territory that contains 50,000 or more people.

(b) *Appeals and arbitrations.* An eligible applicant or recipient may appeal any determination previously made related to an application for or the provision of Public Assistance according to the procedures of this section. An eligible applicant may request arbitration to dispute the eligibility for assistance or repayment of assistance.

(1) *First appeal.* The applicant must make a first appeal in writing and submit it electronically through the recipient to the Regional Administrator. The recipient must include a written recommendation on the applicant's appeal with the electronic submission of the applicant's first appeal to the Regional Administrator. The recipient may make recipient-related appeals to the Regional Administrator.

(i) *Content.* A first appeal must:

(A) Contain all documented justification supporting the applicant or recipient's position;

(B) Specify the amount in dispute, as applicable; and

(C) Specify the provisions in Federal law, regulation, or policy with which the applicant or recipient believes the FEMA determination was inconsistent.

(ii) *Time limits.* (A) The applicant may make a first appeal through the recipient within 60 calendar days from the date of the FEMA determination that is the subject of the appeal and the recipient must electronically forward to the Regional Administrator the applicant's first appeal with a recommendation within 120 calendar days from the date of the FEMA determination that is the subject of the appeal. If the applicant or the recipient do not meet their respective 60-calendar day and 120-calendar day deadlines, FEMA will deny the appeal. A recipient may make a recipient-related first appeal within 60 calendar days from the date of the FEMA determination that is the subject of the appeal and must electronically submit their first appeal to the Regional Administrator.

(B) Within 90 calendar days following receipt of a first appeal, if there is a need for additional information, the Regional Administrator will provide electronic notice to the recipient and applicant. If there is no need for additional information, then FEMA will not provide notification. The Regional Administrator will generally allow the recipient 30 calendar days to provide any additional information.

(C) The Regional Administrator will provide electronic notice of the disposition of the appeal to the applicant and recipient within 90 calendar days of receipt of the appeal or within 90 calendar days following the receipt of additional information or following expiration of the period for providing the information.

(iii) *Technical advice.* In appeals involving highly technical issues, the Regional Administrator 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 calendar days of receipt of the report, the Regional Administrator will provide electronic notice of the disposition of the appeal to the recipient and applicant.

(iv) *Effect of an appeal.* (A) FEMA will take no action to implement any determination pending an appeal decision from the Regional Administrator, subject to the exceptions in paragraph (b)(1)(iv)(B) of this section.

(B) Notwithstanding paragraph (b)(1)(iv)(A) of this section, FEMA may:

(1) Suspend funding (see 2 CFR 200.339);

(2) Defer or disallow other claims questioned for reasons also disputed in the pending appeal; or

(3) Take other action to recover, withhold, or offset funds if specifically authorized by statute or regulation.

(v) *Implementation.* If the Regional Administrator grants an appeal, the Regional Administrator will take appropriate implementing action(s).

(vi) *Guidance.* FEMA may issue separate guidance as necessary to supplement paragraph (b)(1) of this section.

(2) *Second appeal.* If the Regional Administrator denies a first appeal in whole or in part, the applicant may make a second appeal in writing and submit it electronically through the recipient to the Assistant Administrator for the Recovery Directorate. The recipient must include a written recommendation on the applicant's appeal with the electronic submission of the applicant's second appeal to the Assistant Administrator for the Recovery Directorate. The recipient may make recipient-related second appeals to the Assistant Administrator for the Recovery Directorate.

(i) *Content.* A second appeal must:

(A) Contain all documented justification supporting the applicant or recipient's position;

(B) Specify the amount in dispute, as applicable; and

(C) Specify the provisions in Federal law, regulation, or policy with which the applicant or recipient believes the FEMA determination was inconsistent.

(ii) *Time limits.* (A) If the Regional Administrator denies a first appeal in

whole or in part, the applicant may make a second appeal through the recipient within 60 calendar days from the date of the Regional Administrator's first appeal decision and the recipient must electronically forward to the Assistant Administrator for the Recovery Directorate the applicant's second appeal with a recommendation within 120 calendar days from the date of the Regional Administrator's first appeal decision. If the applicant or the recipient do not meet their respective 60-calendar day and 120-calendar day deadlines, FEMA will deny the appeal. If the Regional Administrator denies a recipient-related first appeal in whole or in part, the recipient may make a recipient-related second appeal within 60 calendar days from the date of the Regional Administrator's first appeal decision and the recipient must electronically submit their second appeal to the Assistant Administrator for the Recovery Directorate.

(B) Within 90 calendar days following receipt of a second appeal, if there is a need for additional information, the Assistant Administrator for the Recovery Directorate will provide electronic notice to the recipient and applicant. If there is no need for additional information, then FEMA will not provide notification. The Assistant Administrator for the Recovery Directorate will generally allow the recipient 30 calendar days to provide any additional information.

(C) The Assistant Administrator for the Recovery Directorate will provide electronic notice of the disposition of the appeal to the recipient and applicant within 90 calendar days of receipt of the appeal or within 90 calendar days following the receipt of additional information or following expiration of the period for providing the information.

(iii) *Technical advice.* In appeals involving highly technical issues, the Assistant Administrator for the Recovery 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

calendar days of receipt of the report, the Assistant Administrator for the Recovery Directorate will provide electronic notice of the disposition of the appeal to the recipient and applicant.

(iv) *Effect of an appeal.* (A) FEMA will take no action to implement any determination pending an appeal decision from the Assistant Administrator for the Recovery Directorate, subject to the exceptions in paragraph (b)(2)(iv)(B) of this section.

(B) Notwithstanding paragraph (b)(2)(iv)(A) of this section, FEMA may:

(1) Suspend funding (see 2 CFR 200.339);

(2) Defer or disallow other claims questioned for reasons also disputed in the pending appeal; or

(3) Take other action to recover, withhold, or offset funds if specifically authorized by statute or regulation.

(v) *Implementation.* If the Assistant Administrator for the Recovery Directorate grants an appeal, the Assistant Administrator for the Recovery Directorate will direct the Regional Administrator to take appropriate implementing action(s).

(vi) *Guidance.* FEMA may issue separate guidance as necessary to supplement paragraph (b)(2) of this section.

(3) *Arbitration—(i) Applicability.* An applicant may request arbitration from the Civilian Board of Contract Appeals (CBCA) if:

(A) There is a dispute of the eligibility for assistance or of the repayment of assistance arising from a major disaster declared on or after January 1, 2016; and

(B) The amount in dispute is greater than \$500,000, or greater than \$100,000 for an applicant for assistance in a rural area; and

(C) The Regional Administrator has denied a first appeal decision or received a first appeal but not rendered a decision within 180 calendar days of receipt.

(ii) *Limitations.* A request for arbitration is in lieu of a second appeal.

(iii) *Request for arbitration.* (A) An applicant may initiate arbitration by submitting an electronic request simultaneously to the recipient, the CBCA, and FEMA. See 48 CFR part 6106.

(B) *Time limits.* (1) An applicant must submit a request for arbitration within 60 calendar days from the date of the Regional Administrator's first appeal decision; or

(2) If the first appeal was timely submitted, and the Regional Administrator has not rendered a decision within 180 calendar days of receiving the appeal, an applicant may arbitrate the decision of FEMA. To request arbitration, the applicant must first electronically submit a withdrawal of the pending appeal simultaneously to the recipient and the FEMA Regional Administrator. The applicant must then submit a request for arbitration to the recipient, the CBCA, and FEMA within 30 calendar days from the date of the withdrawal of the pending appeal.

(C) *Content of request.* The request for arbitration must contain a written statement that specifies the amount in dispute, all documentation supporting the position of the applicant, the disaster number, and the name and address of the applicant's authorized representative or counsel.

(iv) *Expenses.* Expenses for each party will be paid by the party who incurred the expense.

(v) *Guidance.* FEMA may issue separate guidance as necessary to supplement paragraph (b)(3) of this section.

(c) *Finality of decision.* (1) A FEMA final agency determination or a decision of the Assistant Administrator for the Recovery Directorate on a second appeal constitutes a final decision of FEMA. Final decisions are not subject to further administrative review.

(2) In the alternative, a decision of the majority of the CBCA panel constitutes a final decision, binding on all parties. See 48 CFR 6106.613. Final decisions are not subject to further administrative review.

[86 FR 45683, Aug. 16, 2021]

**§ 206.207 Administrative and audit requirements.**

(a) *General.* Uniform administrative requirements which are set forth in 2 CFR parts 200 and 3002 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 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 subrecipients;

(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 recipient decisions;

(G) Compliance with the administrative requirements of 2 CFR parts 200 and 3002 and 44 CFR part 206;

(H) Compliance with the audit requirements of 2 CFR parts 200 and 3002;

(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 recipient will make available to subrecipients, and the basis, criteria, or formula for determining the subrecipient percentage or amount.

(2) The recipient 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 recipient 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 recipient 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 recipient to prepare any amendments required to meet current policy guidance.

(4) The recipient shall ensure that the approved administrative plan is incorporated into the State emergency plan.

(c) *Audit*—(1) *Nonfederal audit*. For recipients or subrecipients, requirements for nonfederal audit are contained in 2 CFR parts 200 and 3002.

(2) *Federal audit*. In accordance with 2 CFR part 200 and 3002, 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; 79 FR 76086, Dec. 19, 2014; 82 FR 43, Jan. 3, 2017]

**§ 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 recipient 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 recipient 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 non-Federal 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.

(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 Federal agency shall also keep the Regional Administrator and recipient 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 recipient 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; 82 FR 43, Jan. 3, 2017]

**§ 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 sub-recipient (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

(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 recipient, 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 recipient, 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 recipient, the FEMA Regional Administrator, and the arbitration administrator by October 30, 2009.

(3) *Submission by the recipient to the arbitration administrator and FEMA.* Within 15 calendar days of receipt of the applicant's request for arbitration, the recipient must forward the name and address of the recipient'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 recipient, 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 recipient, 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 recipient 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 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.

(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 recipient, 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 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.

[74 FR 44767, Aug. 31, 2009, as amended at 82 FR 43, Jan. 3, 2017]

§§ 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, 44 CFR part 206, subparts G—Public Assistance Project Administration, I—Public Assistance Insurance Requirements, J—Coastal Barrier Resources Act, and M—Minimum Standards, 44 CFR part 9—Floodplain Management, and other applicable environmental and historic preservation laws, regulations, Executive Orders, and agency policy.

[81 FR 56533, Aug. 22, 2016]

**§ 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, administra-

tive, 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 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 § 206.221(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.

[55 FR 2307, Jan. 23, 1990, as amended at 82 FR 44, Jan. 3, 2017]

**§ 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 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 live, 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 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 recipients shall accept applications 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 recipient 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 (f)(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

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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) 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; 82 FR 44, Jan. 3, 2017]

**§ 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 2 CFR 200, subpart E. Exceptions to those policies as allowed in 2 CFR 200, subpart E and 2 CFR 200.102 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 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 recipient's or subrecipient's permanently employed personnel are:

(i) Eligible in calculating the cost of eligible permanent repair, restoration, and replacement of facilities under section 406 of the Stafford Act;

(ii) Eligible, at the Administrator's discretion, in calculating the cost of eligible debris removal work under sections 403(a)(3)(A), 502(a)(5), and 407 of the Stafford Act for a period not to exceed 30 consecutive calendar days, provided the recipient's or subrecipient's permanently employed personnel are dedicated solely to eligible debris removal work for any major disaster or

emergency declared by the President on or after October 27, 2012, in response to Hurricane Sandy; and

(iii) Not eligible in calculating the cost of other eligible emergency protective measures under sections 403 and 502 of the Stafford Act, except for those costs associated with host state evacuation and sheltering, as established in § 206.202.

(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; 77 FR 67290, Nov. 9, 2012; 82 FR 44, Jan. 3, 2017]

§§ 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 recipient.

(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

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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.

[56 FR 64560, Dec. 11, 1991, as amended at 82 FR 44, Jan. 3, 2017]

**§ 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 permanent 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.

(c) Prior to approval of a Federal grant for the restoration of a facility and its contents which were damaged by a flood, the recipient 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 recipient receives.

(d) The recipient or subrecipient 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.

[56 FR 64560, Dec. 11, 1991, as amended at 82 FR 44, Jan. 3, 2017]

**§ 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 recipient 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 recipient 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 recipient of the type and amount of insurance required. The recipient 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 recipient 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.

[56 FR 64560, Dec. 11, 1991, as amended at 82 FR 44, Jan. 3, 2017]

**§§ 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 action. 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 build-

ing, 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.

(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 alternation 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.

(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);

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(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);

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(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;

(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.

(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

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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.

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(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 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
- (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 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

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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 non-Federal 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 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.

(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 assist-

ance 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;

(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 Position, 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 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 finan-

cial 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.

(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.

(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 uncanceled 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 uncanceled 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

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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 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 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.

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(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 uncanceled 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 Directorate 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 1/8 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

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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 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 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.

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(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.

(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:

(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 munic-

ipal 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 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.

(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 re-

sponsible 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-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 following 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 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 finan-

cial 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);

(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 uncanceled 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 uncanceled 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, 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 uncanceled 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 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 [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 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

## § 206.431

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 the non-Federal entity consisting of a State or Indian Tribal government, applying to FEMA for a Federal award under the Hazard Mitigation Grant Program. Upon award, the applicant becomes the recipient and may also be a pass-through entity.

*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 recipient.

*Grant award* means total of Federal and non-Federal contributions to complete the approved scope of work.

*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. 5131. This does not include Alaska Native corporations, the ownership of which is vested in private individuals. Indian Tribal governments have the option to apply as an applicant or sub-applicant.

*Local Mitigation Plan* is the hazard mitigation plan required of a local government acting as a subrecipient as a condition of receiving a project subaward under the HMGP as outlined in 44 CFR 201.6.

*Pass-through entity* means a recipient that provides a subaward to a subrecipient.

*Recipient* means the State or Indian Tribal government that receives a Federal award directly from FEMA. A recipient may also be a pass-through entity. The term recipient does not include subrecipients. The recipient is

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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 recipient. However, an Indian Tribal government may choose to be a recipient, or may act as a subrecipient under the State. An Indian Tribal government acting as recipient will assume the responsibilities of a “State”, as described in this part, for the purposes of administering the grant.

*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 of this chapter.

*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.

*Subapplicant* means the State agency, local government, eligible private non-profit organization, or Indian Tribal government submitting a subapplication to the applicant for financial assistance under HMGP. Upon award, the subapplicant becomes the subrecipient.

*Subaward* means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award.

*Subaward application* means the request to the recipient for HMGP funding by the eligible subrecipient, as outlined in §206.436.

*Subrecipient* means the government or other legal entity to which a subaward is awarded and which is accountable to the recipient for the use of the funds provided. Subrecipients can be a State agency, local government, private non-profit organization, or Indian Tribal government as outlined in §206.433. Indian Tribal governments acting as a subrecipient are accountable to the State recipient.

*Tribal Mitigation Plan* is the hazard mitigation plan required of an Indian Tribal government acting as a recipient or subrecipient as a condition of receiving a project award or subaward under the HMGP as outlined in 44 CFR 201.7.

[86 FR 50676, Sept. 10, 2021]

**§ 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 the Stafford Act for the major disaster (less associated administrative costs), and must 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 will 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) will be based on the Regional Administrator's estimate of all eligible costs, actual grants, and appropriate mission assignments.

(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. The non-Federal 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; 86 FR 50677, Sept. 10, 2021]

**§ 206.433 State responsibilities.**

(a) *Recipient.* The State will be the recipient to which funds are awarded and will be accountable for the use of those funds. There may be subrecipients 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; 86 FR 50677, Sept. 10, 2021]

**§ 206.434 Eligibility.**

(a) *Eligible entities.* The following are eligible to apply for the Hazard Mitigation Program Grant:

(1) Applicants—States and Indian Tribal governments;

(2) Subapplicants—(i) State agencies and local governments;

(ii) 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 eligible to apply for acquisition or relocation for open space projects;

(iii) Indian Tribal governments.

(b) *Plan requirement.* (1) Local and Indian Tribal government applicants for project subawards must have an approved local or Tribal Mitigation Plan in accordance with 44 CFR part 201 before receipt of HMGP subaward 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 subaward. If a plan is not provided within this timeframe, the project subaward will be terminated, and any costs incurred after notice of

subaward'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 recipients, 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 other applicable environmental and historic preservation laws, regulations, Executive Orders, and agency policy;

(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 recipient 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 award 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.

(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 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; 81 FR 56534, Aug. 22, 2016; 86 FR 50677, Sept. 10, 2021]

**§ 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 will 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; 86 FR 50678, Sept. 10, 2021]

**§ 206.436 Application procedures.**

(a) *General.* This section describes the procedures to be used by the recipient in submitting an application for HMGP funding. Under the HMGP, the State or Indian Tribal government is the recipient and is responsible for processing subawards to applicants in accordance with 2 CFR parts 200 and 3002. Subrecipients are accountable to the recipient.

(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 subrecipients, 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 must include the following:

- (1) Name of the subrecipient, 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;
- (9) Alternatives considered;
- (10) Environmental information consistent with 44 CFR part 9, Floodplain Management and Protection of Wetlands, and other applicable environmental and historic preservation laws, regulations, Executive Orders, and agency policy.

(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 HMGP applications and funding requests for the purpose of identifying new projects to the Regional Administrator within 15 months of the date of disaster declaration.

(e) *Extensions.* Upon written request from the applicant, FEMA may extend the application submission timeline as follows:

(1) The State may request the Regional Administrator to extend the application time limit by 30 to 120 day increments, not to exceed a total of 240 days. The applicant must include a justification in its request.

(2) FEMA will only consider requests for extensions beyond 240 days for extenuating circumstances outside of the applicant's control. Such requests must be submitted to the Regional Administrator and must include justification. The Regional Administrator, in coordination with FEMA's Assistant Administrator for the Mitigation Directorate, may extend the application time limit for a reasonable amount of time based upon the extenuating circumstances.

(f) *Reopening of application period.* FEMA's Assistant Administrator for the Mitigation Directorate may reopen a closed application period for up to 180 days in the following circumstances:

(1) *Recalculation of assistance.* If FEMA approves a recalculation of assistance under § 206.432 and an applicant requests to reopen the application period within 60 days of FEMA's recalculation approval.

(2) *Appeal.* If FEMA grants an appeal under § 206.440 for an application extension denial after an application period is closed.

(g) *FEMA approval.* The applicant must submit its application and supplement(s) to the FEMA Regional Administrator for approval. FEMA has final approval authority for funding of all projects.

(h) *Indian Tribal recipients.* Indian Tribal governments may submit a SF 424 directly to the Regional Administrator.

[67 FR 8853, Feb. 26, 2002, as amended at 79 FR 76086, Dec. 19, 2014; 81 FR 56534, Aug. 22, 2016; 86 FR 50678, Sept. 10, 2021; 89 FR 66253, Aug. 15, 2024]

#### § 206.437 State administrative plan.

(a) *General.* The State must 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 (subrecipients) 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 subrecipient(s);

(xi) Comply with the administrative and audit requirements of 2 CFR parts 200 and 3002 and 44 CFR part 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 recipient will make available to subrecipients, and the basis, criteria, or formula for determining the subrecipient 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 must 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 will 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; 79 FR 76086, Dec. 19, 2014; 86 FR 50678, Sept. 10, 2021]

**§ 206.438 Project management.**

(a) *General.* The State serving as recipient has primary responsibility for project management and accountability of funds as indicated in 2 CFR parts 200 and 3002 and 44 CFR part 206. The State is responsible for ensuring that subrecipients 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 will evaluate each cost overrun and submit a request with a recommendation to the Regional Administrator for a determination. The applicant's justification for additional costs and other pertinent material must accompany the request. The Regional Administrator will notify the Governor's Authorized Representative in writing of the determination and process a supplement, if necessary. All requests that are not justified must be denied by the Governor's Authorized Representative. In no case will the total amount obligated to the State ex-

ceed the funding limits set forth in § 206.432(b). Any such problems or circumstances affecting project costs must be identified through the quarterly progress reports required in paragraph (c) of this section.

(c) *Progress reports.* The recipient must 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 must be described in the report.

(d) *Payment of claims.* The Governor's Authorized Representative will 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 must certify that reported costs were incurred in the performance of eligible work, that the approved work was completed and that the mitigation measure is in compliance with the provisions of the FEMA-State Agreement. The Regional Administrator will 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 2 CFR parts 200 and 3002 and 44 CFR part 206 apply to all grant assistance provided under this subpart. FEMA may elect to conduct a Federal audit on the disaster assistance award or on any of the sub-awards.

[86 FR 50678, Sept. 10, 2021]

**§ 206.439 Allowable costs.**

(a) General requirements for determining allowable costs are established in 2 CFR part 200, Cost Principles. Exceptions to those requirements as allowed in 2 CFR 200.101 and 2 CFR 200.102 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

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costs at its discretion and as funds are available. Recipients and subrecipients 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; 79 FR 76086, Dec. 19, 2014; 86 FR 50679, Sept. 10, 2021]

### § 206.440 Appeals.

An eligible applicant, subrecipient, or recipient may appeal any determination previously made related to an application for or the provision of Federal assistance according to the procedures in this section.

(a) *Format and content.* The applicant or recipient will make the appeal in writing through the recipient to the Regional Administrator. The recipient will review and evaluate all subrecipient appeals before submission to the Regional Administrator. The recipient may make recipient-related appeals to the Regional Administrator. The appeal must 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 recipient will review and forward appeals from an applicant or subrecipient, with a written recommenda-

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tion, 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 recipient 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 recipient 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 recipient 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 will be

the final administrative decision of FEMA.

[63 FR 17111, Apr. 8, 1998, as amended at 86 FR 50679, Sept. 10, 2021]

**PART 207—MANAGEMENT COSTS**

Sec.

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- 207.5 Determination of management cost funding.
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- 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 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 pur-

pose, by the Federal Government to an eligible grantee.

*Grantee(alternatively, Recipient)* 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.