

**DEPARTMENT OF HOMELAND SECURITY****Federal Emergency Management Agency****44 CFR Part 206**

[Docket ID FEMA-2009-0006]

RIN 1660-AA63

**Arbitration for Public Assistance Determinations Related to Hurricanes Katrina and Rita (Disasters DR-1603, DR-1604, DR-1605, DR-1606, and DR-1607)****AGENCY:** Federal Emergency Management Agency, DHS.**ACTION:** Final rule.

**SUMMARY:** Pursuant to the American Recovery and Reinvestment Act of 2009 (ARRA), this final rule establishes an option for arbitration under the Public Assistance program administered by the Federal Emergency Management Agency. Public Assistance grant award determinations related to Hurricanes Katrina and Rita under major disaster declarations DR-1603, DR-1604, DR-1605, DR-1606, and DR-1607 are eligible for arbitration, within the limits set by this rule.

**DATES:** *Effective Date:* August 31, 2009.

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**SUPPLEMENTARY INFORMATION:****I. Background***A. Public Assistance Process for Project Approval*

Under the Public Assistance program, authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act<sup>1</sup> (Stafford Act), the Federal Emergency Management Agency (FEMA) awards grants to State and local governments, Indian Tribal governments, and certain private nonprofit organizations (“eligible applicant”—44 CFR 206.222) to assist them to respond to and recover from Presidential-declared emergencies and major disasters as quickly as possible. Specifically, the program provides assistance for debris removal, emergency protective measures, and permanent restoration of infrastructure. When the President declares an

emergency or major disaster declaration for a State, authorizing the Public Assistance program, an eligible applicant may apply for Public Assistance. The applicant submits a Request for Public Assistance (FEMA Form 90-49) to FEMA through the Grantee, which is usually the State, but may be an Indian Tribal government. An eligible applicant may be a State agency, a local or Tribal government, or a private nonprofit organization. See 44 CFR 206.222. Upon award, the Grantee notifies the applicant of the award, and the applicant becomes a subgrantee.

The basis for the Public Assistance grant is a project worksheet. The project worksheet documents the details of the project, which is a logical grouping of work required as a result of a declared major disaster or emergency. A project may include eligible work at several sites, and may include more than one project worksheet. A project worksheet is the primary form used to document the location, damage description and dimensions, scope of work, and cost estimate for each project. The Office of Management and Budget has approved the project worksheet form (FEMA Form 90-91) under information collection number 1660-0017. When the scope of work or estimated costs of a project change, FEMA generates an additional version of the project worksheet. It is not uncommon to have several versions of a project worksheet for one project, as it may be difficult to predict costs and scope of work at the beginning of a project.

FEMA divides applications for Public Assistance into two groups—large projects and small projects—based on the dollar amount of the project. The threshold for large and small projects is adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the United States Department of Labor. The threshold for small projects in Fiscal Year 2005 (Hurricanes Katrina and Rita occurred in Fiscal Year 2005) was \$55,500. The project worksheet process is slightly different for these two types of projects. Since the arbitration process applies only to large projects totaling more than \$500,000, this rulemaking will address the process for reviewing project worksheets for large projects.

Project worksheets for large projects are developed by a FEMA Project Specialist, working with the applicant/subgrantee, and are submitted directly to a FEMA Public Assistance Coordinator (PAC) Crew Leader for review and processing. Although large projects are funded on documented actual costs, work typically is not complete at the time of project approval.

Therefore, FEMA obligates large project grants based on estimated costs. The obligation process is the process by which funds are made available to the Grantee. The funds reside in a Federal account until drawn down by the Grantee and paid to the applicant/subgrantee. When the applicant/subgrantee or Grantee disagree with FEMA's determination about whether a cost is eligible for reimbursement or reasonable, among other project worksheet determinations, FEMA provides an appeals process to adjudicate such disputes.

*B. Public Assistance Appeal Process Under 44 CFR 206.206*

Traditionally, under the appeals procedures in 44 CFR 206.206, an eligible applicant, subgrantee, or Grantee may appeal any determination made by FEMA related to an application for or the provision of Public Assistance. There are two levels of appeal. The first level appeal is to the FEMA Regional Administrator. The second level appeal is to the FEMA Assistant Administrator for the Disaster Assistance Directorate. Typical appeals involve disputes regarding whether an applicant, facility, item of work, or project is eligible for Public Assistance, whether approved costs are sufficient to complete the work, whether a requested time extension was properly denied, whether a portion of the cost claimed for the work is eligible, or whether the approved scope of work is correct.

An applicant/subgrantee appellant must file an appeal with the Grantee within 60 days of the appellant's receipt of a notice of the determination that is being appealed. The appellant must provide documented justification to support the position of the appellant. This documentation should specify the monetary amount in dispute and the provisions in Federal law, regulation, or policy with which the appellant believes the initial action was inconsistent. The Grantee reviews and evaluates the appeal documentation. The Grantee then prepares a written recommendation on the merits of the appeal and forwards that recommendation to the FEMA Regional Administrator within 60 days of its receipt of the appeal. The Grantee need not endorse the appeal position but must forward all appeals it receives.

The Regional Administrator reviews the appeal and takes one of two actions: (1) Renders a decision on the appeal and informs the Grantee of the decision; or (2) requests additional information. The appellant may be granted 60 days to provide any additional information, and the Regional Administrator provides a

<sup>1</sup> Disaster Relief Act of 1974, Public Law 93-288, 88 Stat. 143 (May 22, 1974), as amended, 42 U.S.C. 5121 *et seq.*

decision on the appeal within 90 days of receipt of that information. If the appeal is granted, the Regional Administrator takes appropriate action, such as approving additional funding, denying additional funding, or sending a Project Specialist to meet with the appellant to determine additional eligible funding.

If the Regional Administrator denies the appeal, the appellant may submit a second appeal. The appellant must submit the second appeal to the Grantee within 60 days of receiving notice of the Regional Administrator's decision. The Grantee must forward the second level appeal with a written recommendation to the Regional Administrator within 60 days of receiving the second appeal. The Regional Administrator reviews the information provided with the second appeal and requests additional information if necessary. The Regional Administrator forwards the second appeal with a recommendation for action to the FEMA Assistant Administrator as soon as practicable.

The FEMA Assistant Administrator for the Disaster Assistance Directorate reviews the second appeal and renders a decision or requests additional information from the appellant. In a case involving highly technical issues, FEMA may request an independent scientific or technical analysis by a group or person having expertise in the subject matter of the appeal. Upon receipt of requested information from the appellant and any other requested reports, FEMA renders a decision on the second appeal within 90 days. This decision constitutes the final administrative decision of FEMA. *See 44 CFR 206.206(e)(3).*

#### *C. The American Recovery and Reinvestment Act of 2009*

The President signed the American Recovery and Reinvestment Act of 2009 (ARRA or Act), Public Law 111-5, into law on February 17, 2009. Section 601 of the ARRA requires the President to establish an arbitration panel under FEMA's Public Assistance program to expedite recovery efforts from Hurricanes Katrina and Rita within the Gulf Coast region. The ARRA further requires the arbitration panel to have sufficient authority regarding the award or denial of disputed Public Assistance applications for covered hurricane damage under sections 403, 406, or 407 of the Stafford Act. The ARRA limits arbitration to projects that total more than \$500,000. By memorandum dated August 6, 2009, the President assigned to the Secretary of the U.S. Department of Homeland Security the function of

the President under section 601. *See 74 FR 40055 (Aug. 10, 2009).*

Three states in the Gulf Coast region have Public Assistance project worksheets from Hurricane Katrina that are awaiting an initial determination from FEMA: Louisiana, Mississippi, and Alabama. Two states in the Gulf Coast region have Public Assistance project worksheets from Hurricane Rita that are awaiting an initial determination from FEMA: Louisiana and Texas. Any funding of these project worksheets would be under the following major disaster declarations: DR-1603 (Louisiana—Hurricane Katrina), DR-1604 (Mississippi—Hurricane Katrina), DR-1605 (Alabama—Hurricane Katrina), DR-1606 (Texas—Hurricane Rita), and DR-1607 (Louisiana—Hurricane Rita). Approximately 44 appeals are pending from these declarations. Further, there are approximately 2,188 Public Assistance project worksheets from Louisiana and Mississippi awaiting an initial determination of eligibility under the Public Assistance program from FEMA, which, if disputed, may be appealed. These project worksheets are at various stages within the determination process. For example, some are incomplete and awaiting further information from the applicant, some are undergoing site visits, and some have additional versions requiring FEMA review.

## **II. Discussion of the Rule**

### *A. General*

This regulation is promulgated pursuant to section 601 of the ARRA and establishes arbitration procedures to resolve outstanding disputes regarding Public Assistance projects over \$500,000 from the states of Louisiana, Mississippi, Alabama, and Texas under the following declarations: DR-1603, DR-1604, DR-1605, DR-1606, and DR-1607. Public Assistance applicants/subgrantees under these declarations may request arbitration in lieu of filing an appeal under 44 CFR 206.206 for any determination made by FEMA that is eligible for appeal and meets the \$500,000 threshold. As discussed below, Public Assistance applicants/subgrantees under these declarations who were engaged in the FEMA appeals process as of February 17, 2009, and had not received a final agency decision prior to February 17, 2009, may request arbitration in lieu of the appeal, even if FEMA issued a final agency decision on the appeal on or after February 17, 2009.

### *B. Applicability and Limitations*

The purpose of the ARRA is to expedite recovery efforts from

Hurricanes Katrina and Rita within the Gulf Coast region. Therefore, the option for arbitration is limited to Public Assistance project worksheets filed under one of the five major disaster declarations declared for Hurricanes Katrina and Rita in the Gulf Coast region. In addition, the total amount of the Public Assistance project must be greater than \$500,000. This dollar limitation is set by section 601 of the ARRA and is not within FEMA's discretion.

Arbitration is not an option if an agency decision became final before February 17, 2009, the date when arbitration became a legal option for Public Assistance applicants under the ARRA. For those determinations made prior to February 17, 2009, FEMA has determined that a final decision will exist in three instances: (1) When the applicant/subgrantee did not file an appeal within the 60-day appeal period; (2) when the applicant/subgrantee failed to file for a second appeal within 60 days of denial of its first appeal; or (3) when FEMA issued an appeal decision on a second appeal of the applicant/subgrantee. *See 44 CFR 206.206.* If there was a final decision before February 17, 2009, the applicant/subgrantee has exhausted its administrative remedies and may not elect arbitration.

The ARRA created the right to arbitration as of its effective date. If the applicant/subgrantee is eligible to file an appeal under 44 CFR 206.206, or if a first or second level appeal was pending on or after February 17, 2009, arbitration remains an option. Applicants/subgrantees that had a first or second level appeal pending on or after February 17, 2009, may choose arbitration, regardless of whether FEMA has issued a decision on the appeal since the effective date of the ARRA. However, if the applicant/subgrantee was eligible to appeal after the effective date of the ARRA, but allowed the appeal period to expire without filing an appeal, the applicant/subgrantee is not eligible to file an appeal and, therefore, is not eligible for arbitration.

The stated purpose of the ARRA arbitration provision is to "expedite" recovery efforts. Accordingly, a request for arbitration is in lieu of filing or continuing an appeal under 44 CFR 206.206. The use of only one review procedure, arbitration or appeal, is more expeditious than two consecutive review procedures. The use of both arbitration and the standard appeal process would lengthen, not expedite, the recovery process. Arbitration and appeals each require significant time to complete, and FEMA has determined going forward that it would be contrary

to Congressional intent to allow applicants/subgrantees to pursue both an appeal and arbitration.

*C. Content of Request for Arbitration and Other Submissions*

A request for arbitration must contain a written statement and all documentation supporting the applicant's or subgrantee's position. The applicant/subgrantee may provide supporting documentation not previously included in the project worksheet or the application to FEMA. There is no limit on the amount of documentation that may be provided. The request should include all information necessary for the arbitration panel to make an informed decision. The request should clearly set out the applicant's/subgrantee's position. The parties are encouraged to describe their claims in sufficient detail to make the circumstances of the dispute clear to the arbitration panel.

Any party may be represented by counsel or another authorized representative. If represented, the party must provide the name and address of the representative to the other party, the Grantee, and the arbitration panel.

All papers, notices, or other documents submitted to the arbitration panel by the applicant or subgrantee, the Grantee, or FEMA must be simultaneously served on each party's authorized representative or counsel. The submitting party must 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.

*D. Submission of the Request for Arbitration*

An applicant/subgrantee must submit a request for arbitration simultaneously to the Grantee, the applicable FEMA Regional Administrator, and the arbitration administrator. FEMA will post an address, phone number, and fax number for the arbitration administrator on FEMA's Web site at <http://www.fema.gov>. Consistent with the Section B above, any application or project worksheet totaling more than \$500,000 that is eligible for appeal is eligible for arbitration.

If there is a first or second level appeal pending with FEMA, or if FEMA issued a decision on a first or second level appeal on or after February 17, 2009, the applicant/subgrantee must submit the request for arbitration, as well as a withdrawal of the pending appeal, if applicable, simultaneously to

the Grantee, the applicable FEMA Regional Administrator, and the arbitration administrator by October 30, 2009. Otherwise, if the applicant/subgrantee seeks arbitration, it must request arbitration in writing to the Grantee 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. Issues that may be arbitrated would be the same as those that are normally subject to appeal, provided the total amount of the project is greater than \$500,000. As an example, a subgrantee could appeal the amount of the FEMA-approved costs, where the subgrantee believes the eligible amount should be greater. Examples of second appeals can be found at <http://www.fema.gov/appeals/>.

*E. Submission by the Grantee*

Within 15 calendar days of receipt of the applicant's or subgrantee's request for arbitration, the Grantee may forward a written recommendation in support or opposition of the applicant's or subgrantee's request simultaneously to the FEMA Regional Administrator, the arbitration administrator, and the applicant. In addition, the Grantee must forward the name and address of the Grantee's authorized representative or counsel.

In selecting 15 calendar days, FEMA is implementing the intent of the ARRA. The Act specifically requires the arbitration process to "expedite" recovery efforts from Hurricanes Katrina and Rita. A 15-calendar-day time limit is intended to expedite the resolution of the applicant's or subgrantee's dispute. However, this 15-day time period will allow sufficient time for the Grantee to review the request and prepare a recommendation without delaying the arbitration process.

*F. Submission of FEMA's Response*

Within 30 calendar days of receipt of the applicant's or subgrantee's request, FEMA will simultaneously submit a response in support of its position, a copy of the project worksheet(s), and any supporting information to the arbitration administrator, the Grantee, and the applicant/subgrantee.

*G. Selection of Arbitrators*

The arbitration panels will be composed of three judges drawn from the Federal pool of current and senior administrative law judges and other similar officials serving in adjudicative capacities on boards, commissions and agencies. Each panel will be selected by the arbitration administrator. The individuals assigned to any one panel

may change from case to case, as assigned by the arbitration administrator. The arbitration administrator will notify all parties to the arbitration of the names and identities of the arbitrators selected for the panel.

*H. Preliminary Conference*

Within 10 business days of the panel's receipt of FEMA's response to the request for arbitration, a preliminary conference will be held by telephone with the arbitrators, the parties and/or their representatives. The preliminary conference may address such issues as the future conduct of the case, including clarification of the issues and claims, possible arbitrator disqualification, the scheduling of hearings and the hearing location, if applicable, and other administrative matters.

*I. Hearing*

The panel will provide the applicant/subgrantee and FEMA with an opportunity to make an oral presentation in person, by telephone conference, or other means during which all the parties may simultaneously hear all other participants. If the applicant/subgrantee or FEMA would like to request a hearing, it must be requested no later than the preliminary conference. The panel will determine the hearing location, and its decision will be final and binding. The panel will endeavor to hold the hearing within 60 calendar days of the preliminary conference, unless the panel postpones the hearing upon agreement of the parties, or at the request of a party for good cause shown. If the hearing is postponed, the panel will set a new date within 10 business days of the postponement.

The parties may not engage in discovery or provide additional paper submissions at the hearing. Each party may present its position through oral presentations by individuals designated in advance of 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, such as engineers and architects.

*J. Review by the Arbitration Panel*

In its review, the arbitration panel will consider all relevant written materials provided by the parties and the Grantee. If a hearing is held, the panel will also consider the oral presentations made at the hearing. In addition, the panel may, if it deems appropriate or necessary, seek the

advice or expertise of independent scientific or technical subject matter experts, such as engineers or architects.

#### *K. Decision: Time Limits*

The panel will make every effort to issue a written decision within 60 calendar days after the panel declares the hearing closed, or if an oral presentation was not requested, within 60 calendar days following the receipt of FEMA's response to the request for arbitration. In general, 60 days is a reasonable time for a panel to review the determination, discuss the issues involved, and issue a decision. It is shorter than the 90 days allotted for first and second level appeals under the appeals process, and in keeping with the purpose of the arbitration provision—to expedite the recovery process.

However, the issues involved in Public Assistance determinations can be technical and complex. In cases involving highly technical and complex matters, a decision of the panel may take longer than 60 days. The appeal regulation allows additional time for review of an appeal when highly technical issues are involved. *See* 44 CFR 206.206(d). Similarly, this regulation provides for the possibility that the arbitration panel will not be able to render a decision within 60 days on such issues.

#### *L. Finality of Decision*

A decision of the majority of the panel will 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.

#### *M. Ex Parte Communications*

No party, and no one acting on behalf of any party, will have ex parte communications with an arbitrator. This means that neither the applicant/subgrantee, the Grantee, nor FEMA may communicate with an arbitrator about a particular arbitration without the participation of the other parties or their representatives. If a party engages in an ex parte communication, the party engaged in such communication must provide a summary or a transcript of the entire communication to the other parties.

#### *N. Costs*

FEMA will pay the fees of the arbitrators, 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, and any other fees not specifically listed in the regulation must be paid by the party incurring the expense.

#### *O. Guidance*

FEMA will issue separate guidance as necessary to supplement this regulation.

### **III. Regulatory Analysis**

#### *A. Administrative Procedure Act*

The Administrative Procedure Act (APA) requires an agency to publish a rule for public comment prior to implementation. 5 U.S.C. 553. The APA, however, provides an exception to this requirement for rules of agency procedure or practice. 5 U.S.C. 553 (b)(3)(A).

This rule implements section 601 of the ARRA by detailing how a Public Assistance applicant or subgrantee may request arbitration. It is therefore, a procedural rule; it establishes procedures for making an arbitration request and the procedures FEMA will follow in issuing an arbitration decision. The rule does not affect eligibility under the Public Assistance program; rather, it adds an option for review of Public Assistance applications to expedite recovery efforts. FEMA already provides for review of these determinations through the appeal provisions of 44 CFR 206.206. This rule simply provides an alternate procedure for seeking such a review of FEMA determinations.

Further, because this rule is procedural in nature and does not confer any substantive rights, benefits or obligations, FEMA finds that this rule shall become effective immediately upon publication of this final rule in the **Federal Register**. 5 U.S.C. 553(d).

#### *B. Executive Order 12866, Regulatory Planning and Review*

Under Executive Order 12866, regulatory actions are subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

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

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

(3) Materially alter the budgetary impact of entitlements, grants, user fees,

or loan programs or the rights and obligations of recipients thereof; or

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

This rule is entirely voluntary.

Applicants are not required to seek arbitration under the authority and requirements of this rule. This rule provides an additional option to applicants/subgrantees in lieu of appeal. For those that choose to undergo arbitration, this rule will result in a total cost increase of \$389,363 to applicants/subgrantees, and a cost savings of \$4,242 to Grantees. This rule is not an economically significant regulatory action as defined in Executive Order 12866. This is not a significant rule under Executive Order 12866; therefore, OMB has not reviewed this rule.

Under FEMA's standard appeal procedures, an applicant/subgrantee must file an appeal with documentation supporting the appeal within 60 days of the decision that is being appealed. The Grantee then forwards the request to the Regional Administrator within 60 days of receipt, and in doing so may submit a written recommendation to FEMA. The Regional Administrator then reviews the appeal and either makes a determination or seeks additional information from the applicant within 90 days.

If the Regional Administrator denies the appeal, the applicant/subgrantee may submit a second appeal to the Grantee within 60 days of the Regional Administrator's denial. The Grantee must forward the second appeal to the Regional Administrator within 60 days of receipt. The Regional Administrator then forwards the second appeal to FEMA headquarters as soon as possible. Upon receipt, FEMA headquarters either requests additional information, requests independent scientific or technical analysis from experts, or makes a determination within 90 days.

Under the arbitration procedures contained in this rule, an applicant/subgrantee must submit a request for arbitration, with documentation supporting the request, simultaneously to the Grantee, applicable FEMA Regional Administrator, and the arbitration administrator. For those that do not have a pending appeal with FEMA, this request is due within 30 days of receipt of notice of the determination that is the subject of the arbitration request. If there is an appeal pending with FEMA, or if FEMA has issued a decision on a first or second level appeal on or after February 17, 2009, the request for arbitration with supporting documentation, and if

applicable, a statement that they withdraw the pending appeal, must be sent simultaneously to the Grantee, the applicable FEMA Regional Administrator, and the arbitration administrator by October 30, 2009. The Grantee may forward a recommendation to the Regional Administrator and the arbitration administrator, with a copy to the applicant, within 15 days of receipt from the applicant/subgrantee.

Once formed, the panel will conduct a preliminary conference by telephone, and if requested, the parties will be provided a hearing to make an oral presentation in person, by telephone conference or other means during which all the parties may simultaneously hear all other participants. The location will be chosen by the panel. The panel may, if it deems appropriate or necessary, seek the advice or expertise of independent scientific or technical subject matter experts, or request additional information from the parties. The panel will then endeavor to issue a written decision within 60 days after the hearing or, if there is no hearing, after receipt of FEMA's response to the request for arbitration.

As of July 17, 2009, FEMA had 2,188 project worksheets that had not yet received an initial determination from FEMA as well as 44 pending appeals for disasters DR-1603, DR-1604, DR-1605, DR-1606, and DR-1607 that are for projects over \$500,000. Adding the 44 existing appeals to the 2,188 projects which may result in appealable determinations creates a total of 2,232 potential projects that may be eligible for arbitration. Not all project worksheets will have contested determinations that will result in arbitration, and not all pending appeals will be withdrawn in favor of arbitration. To generate the cost estimates for this rulemaking, FEMA used existing data for first appeals. FEMA receives an average of 364 appeals per year. Conservatively estimating that 80 percent of those appeals involve large projects, FEMA estimates that 291 appeals are associated with the total 5,008 large projects obligated by FEMA per year. As a result, FEMA estimates that 5.81 percent of large projects are appealed ( $5.81\% = 291/5,008$ ). By applying this percentage, FEMA estimates that 127 appeals are expected from the 2,188 large projects over \$500,000 that have not yet received an initial determination from FEMA for disasters DR-1693, DR-1604, DR-1605, DR-1606, and DR-1607 ( $5.81\% \times 2,188 = 127$ ).

The arbitration process requires the applicant/subgrantee to submit a request for arbitration simultaneously to the

Grantee, the applicable FEMA Regional Administrator, and the arbitration administrator in the form of a written statement from the applicant/subgrantee, which FEMA conservatively estimates will take an applicant/subgrantee approximately one hour to complete.<sup>2</sup> Within 15 days of receipt of the request for arbitration, the Grantee may forward a recommendation to FEMA and the arbitration administrator (with a copy to the applicant/subgrantee), which FEMA estimates will take the Grantee approximately one hour to complete. FEMA therefore estimates that it will take 127 applicants/subgrantees a cumulative 127 hours to prepare requests for arbitration and the four potential Grantees (the States of LA, MS, TX, and AL) a cumulative 127 hours to prepare and forward their recommendation to FEMA and the arbitration administrator.

FEMA obtained the national average hourly wage for a managerial (\$36.50) position in State government from the Bureau of Labor Statistics (2009) "May 2007 National Industry-specific Occupational Employment and Wage Estimates", NAICS 999200—State Government (OES Designation). The managerial wage rate was for the "General and Operations Managers position (standard occupational classification (SOC) code #: 11-1021)." The Bureau of Labor Statistics' hourly wage reflects only the direct cost of employment. FEMA, therefore, multiplied the wage rates by 1.4 to derive the full employment costs for a managerial (\$51.10) position in State government. FEMA estimates that it will take applicants/subgrantees and Grantees the same amount of time to prepare requests for arbitration as it takes them to prepare requests for appeal. Therefore, FEMA estimates that this rulemaking will result in a cost savings of \$6,490 ( $= 127 \times 51.10$ ) for applicants/subgrantees and \$6,490 ( $= 127 \times 51.10$ ) for Grantees. These cost savings occur because there is no requirement for an applicant/subgrantee to resubmit documentation through a second round of review to exhaust its administrative remedies under arbitration, as there is in the appeals process. This method is intended to reduce the administrative burden on

applicants/subgrantees. Applicant/subgrantees may only seek one method for resolution of the dispute—appeal or arbitration—not both.

In addition to the 2,188 project worksheets which have not yet received an initial determination from FEMA, as noted above, as of July 17, 2009, FEMA currently has 44 pending appeals. Although it is not expected that all of these appeals will be withdrawn in favor of arbitration, as a conservative estimate for the purposes of this analysis, FEMA estimates that all 44 will withdraw in favor of arbitration. Therefore these applicants/subgrantees will also submit a request for arbitration containing a statement that they withdraw their appeal. FEMA estimates it will take the applicant/subgrantee approximately one hour to prepare its request and the Grantee one hour to prepare its recommendation and forward it to FEMA and the arbitration administrator. Using the \$51.10 wage rate established above, FEMA estimates that this change will have a total cost of \$2,248 ( $= 44 \times \$51.10$ ) to applicants/subgrantees and \$2,248 ( $= 44 \times \$51.10$ ) to Grantees.

The panel will conduct a preliminary conference by telephone, and if requested, the parties will make an oral presentation in person, by telephone conference or other means during which all the parties may simultaneously hear all other participants at a location designated by the panel. In person appearance at a hearing is entirely voluntary, at the applicant's/subgrantee's discretion. If they choose to appear, however, the costs to do so are incurred by the applicant/subgrantee. Because the hearings may be conducted via telephone or other means during which all the parties may simultaneously hear all other participants, most applicants are not expected to have any travel costs. For those who are granted an in-person hearing, the panel may choose to have the hearing in Washington, DC. It is also likely that more than one person will attend. This is based on FEMA's experience meeting with applicants on second appeals, which usually involves about six people. This includes representatives from the applicant, the State, and any consultants. Assuming round trip air travel for a team of six people and that 25 percent of the applicants/subgrantees will make an in-person appearance, ( $43 = 25\% \times (127 + 44)$ ), FEMA estimates that the travel cost to applicants/subgrantees will be

<sup>2</sup>This figure was generated using similar estimates from other Federal agencies requests for arbitration. For example, National Mediation Board receives about 80 "Requests for Arbitration Panel for Airline System Boards of Adjustment" annually with a burden estimate of 20 hours per year (74 FR 10098); or Federal Mediation and Conciliation Service's "Request for Arbitration Services" form, receiving approximately 10,000 per year and estimating about 10 minutes to complete (71 FR 69130).

\$89,526 ( $= 43 \times 6 \times \$347$ <sup>3</sup>)). In addition, should an applicant/subgrantee choose to appear in person, it will incur (1) lodging, meals, and incidental expenses, and (2) the regular-time cost of the employee who attends the hearing in lieu of performing that employee's regular duties. Assuming that attendance at a hearing will require two work days to travel to and attend the hearing, lodging, meals, and incidental expenses will be \$93,138 ( $= 43 \times 6$  people  $\times \$361$ <sup>4</sup>). The time cost to applicants/subgrantees will be \$210,941

( $= 43 \times 6$  people  $\times 16$  hours  $\times \$51.10$ ). Therefore, the total cost to applicants/subgrantees for in-person presentation at a hearing is estimated to be \$393,605 ( $= \$89,526 + \$93,138 + \$210,941$ ).

FEMA will pay the fees of the arbitrators, the costs of any expert retained by the panel, and the arbitration facility costs, if any. Even though FEMA cannot quantify this cost change, it is not likely to be economically significant given the number of arbitrations expected from disasters DR-1603, DR-1604, DR-1605, DR-1606, and DR-1607. Additionally, it

will save the Federal government the time and costs it would have incurred to process appeals. FEMA estimates that this rule will result in a cost increase of \$389,363 to applicants/subgrantees, and a cost saving of \$4,242 to Grantees. Table 1 details the impact of the final rule. FEMA did not annualize the impact because this rule applies only to disasters DR-1603, DR-1604, DR-1605, DR-1606, and DR-1607. FEMA has determined that this rule will not have a significant economic impact of \$100 million or more per year.

TABLE 1—QUANTIFIED IMPACT OF THE FINAL RULE

|  | Applicants/<br>Subgrantees | Grantees |
|--|----------------------------|----------|
| Requests for arbitration .....           | -\$6,490                   |          |
| Requests forwarded for arbitration ..... |                            | -\$6,490 |
| Withdraw in favor of arbitration .....   | 2,248                      | 2,248    |
| In-person presentation .....             | 393,605                    |          |
| Sub-total .....                          | 389,363                    | -4,242   |
| Grand Total .....                        |                            | 385,121  |

#### C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), and section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, 110 Stat. 847, 858–9 (Mar. 29, 1996) (5 U.S.C. 601 note) require that special consideration be given to the effects of proposed regulations on small entities. The RFA mandates that an agency conduct a RFA analysis when an agency is “required by section 553 \* \* \* to publish general notice of proposed rulemaking for any proposed rule.” 5 U.S.C. 603(a). Accordingly, an RFA is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). FEMA has determined that this rule is exempt from notice and comment rulemaking because it is a rule of agency procedure. See 5 U.S.C. 553(b)(3)(A). Therefore, an RFA analysis under 5 U.S.C. 603 is not required for this rule.

#### D. National Environmental Policy Act (NEPA)

This rulemaking is categorically excluded from further review under the National Environmental Policy Act (NEPA), Public Law 91–190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*), as amended. Action taken or

assistance provided under sections 403, 406, and 407 of the Stafford Act are statutorily excluded from NEPA and the preparation of environmental impact statements and environmental assessments by section 316 of the Stafford Act. 42 U.S.C. 5159; 44 CFR 10.8(c). NEPA implementing regulations governing FEMA activities at 44 CFR 10.8(d)(2)(ii) categorically exclude the preparation, revision, and adoption of regulations from the preparation of an environmental assessment or environmental impact statement, where the rule relates to actions that qualify for categorical exclusions. Action taken or assistance provided under sections 403 and 407 of the Stafford Act are categorically excluded under 44 CFR 10.8(d)(2)(ix). Because no other extraordinary circumstances have been identified, this rule does not require the preparation of either an environmental assessment or an environmental impact statement as defined by NEPA.

#### E. Executive Order 12898, Environmental Justice

Under Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994, FEMA incorporates environmental justice into its policies

and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in our programs, denying persons the benefits of our programs, or subjecting persons to discrimination because of their race, color, or national origin.

No action that FEMA can anticipate under this rule will have a disproportionately high or adverse human health and environmental effect on any segment of the population. Accordingly, the requirements of Executive Order 12898 do not apply to this rule.

#### F. Congressional Review of Agency Rulemaking

FEMA has sent this final rule to the Congress and to the Government Accountability Office under the Congressional Review of Agency Rulemaking Act, (“Congressional Review Act”), Public Law 104–121, 110 Stat. 873 (Mar. 29, 1996) (5 U.S.C. 804). This rule is not a “major rule” within the meaning of the Congressional Review Act.

<sup>3</sup> Average domestic airfare in the 4th quarter of 2008 from the U.S. Department of Transportation's Bureau of Transportation Statistics (BTS), May 6, 2009, [http://www.bts.gov/press\\_releases/2009/bts021\\_09/html/bts021\\_09.htm](http://www.bts.gov/press_releases/2009/bts021_09/html/bts021_09.htm).

<sup>4</sup> The amount of \$361 includes hotel expense for one night, and meals and incidental expenses for two days. The per diem rate for the District of Columbia is obtained from the U.S. General Services Administration, May 2009, [http://www.gsa.gov/Portal/gsa/ep/contentView.do?queryYear=2009&contentType=GSA\\_BASIC&contentId=17943&queryState=District+of+Columbia&noc=T](http://www.gsa.gov/Portal/gsa/ep/contentView.do?queryYear=2009&contentType=GSA_BASIC&contentId=17943&queryState=District+of+Columbia&noc=T).

### G. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, Public Law 104-4, 109 Stat. 48 (Mar. 22, 1995) (2 U.S.C. 1501 *et seq.*), applies to any notice of proposed rulemaking that would implement any rule which includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If the rulemaking includes a Federal mandate, the Act requires an agency to prepare an assessment of the anticipated costs and benefits of the Federal mandate. The Act also pertains to any regulatory requirements that might significantly or uniquely affect small governments. Before establishing any such requirements, an agency must develop a plan allowing for input from the affected governments regarding the requirements. FEMA has determined that this rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, nor by the private sector, of \$100 million or more in any one year as a result of a Federal mandate, and it will not significantly or uniquely affect small governments. In light of the foregoing, FEMA has determined that no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

### H. Executive Order 13132, Federalism

Executive Order 13132, Federalism, 64 FR 43255, August 4, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action. This final rule involves no policies that have federalism implications under Executive Order 13132.

### I. Paperwork Reduction Act of 1995

This rule contains a collection of information that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA), as amended, Public Law 104-13, 109 Stat. 163, (May 22, 1995) (44 U.S.C. 3501-3520). The

information collection included in this rule is approved by OMB under control number 1660-0017, Public Assistance Progress Report and Program Forms.

### J. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, 65 FR 67249, Nov. 9, 2000, applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Under this Executive Order, to the extent practicable and permitted by law, no agency may promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government, or the agency consults with Tribal officials.

There is no substantial direct compliance cost associated with this rule. This rule would not affect the distribution of power or responsibilities of Tribal governments.

### K. Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights

FEMA has reviewed this rule under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights" (53 FR 8859, Mar. 18, 1988) as supplemented by Executive Order 13406, "Protecting the Property Rights of the American People" (71 FR 36973, June 28, 2006). This rule will not affect the taking of private property or otherwise have taking implications under Executive Order 12630.

### L. Executive Order 12988, Civil Justice Reform

FEMA has reviewed this rule under Executive Order 12988, "Civil Justice Reform" (61 FR 4729, Feb. 7, 1996). This rule meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden.

### List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire

prevention, Grant programs-housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs—housing and community development, Natural resources, Penalties, Reporting and recordkeeping requirements.

- For the reasons discussed in the preamble, the Federal Emergency Management Agency amends 44 CFR part 206, subpart G, as follows:

## PART 206—FEDERAL DISASTER ASSISTANCE

- 1. The authority citation for part 206 continues to read as follows:

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

- 2. Add § 206.209 to read as follows:

### § 206.209 Arbitration for Public Assistance determinations related to Hurricanes Katrina and Rita (Major disaster declarations DR-1603, DR-1604, DR-1605, DR-1606, and DR-1607).

(a) **Scope.** Pursuant to section 601 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, this section establishes procedures for arbitration to resolve disputed Public Assistance applications under the following major disaster declarations: DR-1603, DR-1604, DR-1605, DR-1606, and DR-1607.

(b) **Applicability.** An applicant or subgrantee (hereinafter "applicant" for purposes of this section) may request arbitration of a determination made by FEMA on an application for Public Assistance, provided that the total amount of the project is greater than \$500,000, and provided that:

(1) the applicant is eligible to file an appeal under § 206.206; or

(2) the applicant had a first or second level appeal pending with FEMA pursuant to § 206.206 on or after February 17, 2009.

(c) **Governing rules.** An applicant that elects arbitration agrees to abide by this section and applicable guidance. The arbitration will be conducted pursuant to procedure established by the arbitration panel.

(d) **Limitations—(1) Election of remedies.** A request for arbitration under this section is in lieu of filing or continuing an appeal under § 206.206.

(2) **Final agency action under § 206.206.** Arbitration is not available for any matter that obtained final agency

action by FEMA pursuant to § 206.206 prior to February 17, 2009. Arbitration is not available for determinations for which the applicant failed to file a timely appeal under the provisions of § 206.206 prior to August 31, 2009, or for determinations which received a decision on a second appeal from FEMA prior to February 17, 2009.

(e) *Request for arbitration*—(1) *Content of request.* The request for arbitration must contain a written statement and all documentation supporting the position of the applicant, the disaster number, and the name and address of the applicant's authorized representative or counsel.

(2) *Submission by the applicant to the Grantee, the FEMA Regional Administrator, and the arbitration administrator.* An applicant under paragraph (b)(1) of this section must submit its request for arbitration in writing simultaneously to the Grantee, the FEMA Regional Administrator, and the arbitration administrator within 30 calendar days after receipt of notice of the determination that is the subject of the arbitration request or by September 30, 2009, whichever is later. An applicant under paragraph (b)(2) of this section must make a request for arbitration in writing and, if FEMA has not issued a decision on the appeal, submit a withdrawal of the pending appeal, simultaneously to the Grantee, the FEMA Regional Administrator, and the arbitration administrator by October 30, 2009.

(3) *Submission by the Grantee to the arbitration administrator and FEMA.* Within 15 calendar days of receipt of the applicant's request for arbitration, the Grantee must forward the name and address of the Grantee's authorized representative or counsel, and may forward a written recommendation in support or opposition to the applicant's request for arbitration, simultaneously to the FEMA Regional Administrator, the arbitration administrator, and the applicant.

(4) *Submission of FEMA's response.* FEMA will submit a memorandum in support of its position, a copy of the Project Worksheet(s), and any other supporting information, as well as the name and address of its authorized representative or counsel, simultaneously to the arbitration administrator, the Grantee, and the applicant, within 30 calendar days of receipt of the applicant's request for arbitration.

(5) *Process for submissions.* When submitting a request for arbitration, the applicant should describe its claim with sufficient detail so that the circumstances of the dispute are clear to

the arbitration panel. All papers, notices, or other documents submitted to the arbitration administrator under this section by the applicant, the Grantee, or FEMA will be served on each party's authorized representative or counsel. The submitting party will make such service by courier or overnight delivery service (such as Federal Express, DHL, United Parcel Service, or the United States Postal Service overnight delivery), addressed to the party, representative, or counsel, as applicable, at its last known address.

(f) *Selection of arbitration panel.* The arbitration administrator will select the arbitration panel for arbitration and notify the applicant, FEMA, and the Grantee of the names and identities of the arbitrators selected for the panel.

(g) *Preliminary conference.* The arbitration panel will hold a preliminary conference with the parties and/or representatives of the parties within 10 business days of the panel's receipt of FEMA's response to the request for arbitration. The panel and the parties will discuss the future conduct of the arbitration, including clarification of the disputed issues, request for disqualification of an arbitrator (if applicable), and any other preliminary matters. The date and place of any oral 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 Grantee, and FEMA, as well as oral presentations, if any. If the panel deems it appropriate or necessary, it may request additional written materials from either or both parties or seek the advice or expertise of independent scientific or technical subject matter experts.

(j) *Ex parte communications.* No party and no one acting on behalf of any party will engage in ex parte communications with a member of the arbitration panel. If a party or someone acting on behalf of any party engages in ex parte communications with a member of the arbitration panel, the party that engaged in such communication will provide a summary or a transcript of the entire communication to the other parties.

(k) *Decision*—(1) *Time limits*. The panel will make every effort to issue a written decision within 60 calendar days after the panel declares the hearing closed pursuant to paragraph (h)(4) of this section, or, if a hearing was not requested, within 60 calendar days following the receipt of FEMA's response to the request for arbitration. A decision of the panel may take longer than 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.

Dated: August 14, 2009.

**Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E9-19994 Filed 8-28-09; 8:45 am]

**BILLING CODE 9111-23-P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR 202, 209, 214, et al.

### Defense Federal Acquisition Regulations Supplement; Technical Amendments

#### Correction

In rule document E9-20416 beginning on page 42779 in the issue of Tuesday, August 25, 2009, make the following correction:

On page 42780 starting in the first column, the definition for *Contracting activity* in section 202.101 is corrected to read as follows:

#### 202.101 Definitions.

\* \* \* \* \*

*Contracting activity* for DoD also means elements designated by the director of a defense agency which has been delegated contracting authority through its agency charter. DoD contracting activities are—

#### Department of Defense

Counterintelligence Field Activity  
Department of Defense Education Activity  
TRICARE Management Activity  
Washington Headquarters Services,  
Acquisition and Procurement Office

#### Army

Headquarters, U.S. Army Contracting Command  
Joint Contracting Command—Iraq/  
Afghanistan  
National Guard Bureau  
Program Executive Office for Simulation,  
Training, and Instrumentation  
U.S. Army Aviation and Missile Life Cycle Management Command  
U.S. Army Communications-Electronics Life Cycle Management Command  
U.S. Army Corps of Engineers  
U.S. Army Expeditionary Contracting Command  
U.S. Army Intelligence and Security Command  
U.S. Army Joint Munitions and Lethality Life Cycle Management Command  
U.S. Army Medical Command  
U.S. Army Medical Research and Materiel Command  
U.S. Army Mission and Installation Contracting Command  
U.S. Army Research, Development, and Engineering Command  
U.S. Army Space and Missile Defense Command  
U.S. Army Sustainment Command  
U.S. Army Tank-Automotive and Armaments Life Cycle Management Command

#### Navy

Office of the Deputy Assistant Secretary of the Navy (Acquisition & Logistics Management)  
Naval Air Systems Command  
Space and Naval Warfare Systems Command  
Naval Facilities Engineering Command  
Naval Inventory Control Point  
Naval Sea Systems Command  
Naval Supply Systems Command  
Office of Naval Research  
Military Sealift Command  
Strategic Systems Programs  
Marine Corps Systems Command  
Installations and Logistics, Headquarters, U.S. Marine Corps

#### Air Force

Office of the Assistant Secretary of the Air Force (Acquisition)  
Office of the Deputy Assistant Secretary (Contracting)

Air Force Materiel Command  
Air Force Reserve Command  
Air Combat Command  
Air Mobility Command  
Air Education and Training Command  
Pacific Air Forces

United States Air Forces in Europe  
Air Force Space Command  
Air Force District of Washington  
Air Force Operational Test & Evaluation Center

Air Force Special Operations Command  
United States Air Force Academy  
Aeronautical Systems Center  
Air Armament Center  
Electronic Systems Center  
Space and Missile Systems Center

#### Defense Advanced Research Projects Agency

Office of the Deputy Director, Management

#### Defense Business Transformation Agency

Contracting Office

#### Defense Commissary Agency

Directorate of Contracting

#### Defense Contract Management Agency

Office of the Director, Defense Contract Management Agency

#### Defense Finance And Accounting Service

External Services, Defense Finance and Accounting Service

#### Defense Information Systems Agency

Defense Information Technology Contracting Organization

#### Defense Intelligence Agency

Office of Procurement

#### Defense Logistics Agency

Acquisition Management Directorate  
Defense Supply Centers  
Defense Energy Support Center

#### Defense Security Cooperation Agency

Contracting Division

#### Defense Security Service

Acquisition and Contracting Branch

#### Defense Threat Reduction Agency

Acquisition Management Office

#### Missile Defense Agency

Headquarters, Missile Defense Agency

#### National Geospatial-Intelligence Agency

Procurement and Contracting Office

#### National Security Agency

Headquarters, National Security Agency

#### United States Special Operations Command

Headquarters, United States Special Operations Command

#### United States Transportation Command

Directorate of Acquisition

\* \* \* \* \*

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