

(4) Any Federal funds granted pursuant to 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 74.

(j) **Reporting Requirements.** (1) Grantees (States, public or private agencies). The grantees shall submit the following reports to the Secretary, the Regional Director, and the State Coordinating Officer:

(i) Quarterly progress reports, as required by the Regional Director or the Secretary;

(ii) A final program report, to be submitted within 45 days after the end of the program period;

(iii) An interim accounting of funds, to be submitted with the final program report;

(iv) A final accounting of funds, if required, upon completion of an audit; and

(v) Such additional reports as the FCO, SCO, or Secretary may require.

(2) The Secretary. As part of project monitoring responsibilities, the Secretary shall report to the Associate Director and to the Regional Director at least quarterly on the progress of crisis counseling programs, in a report format jointly agreed upon by the Secretary and the Regional Director. The Secretary may also be required to provide special reports, as requested by the FCO. The Secretary shall require progress reports and other reports from the grantee to facilitate his/her project monitoring responsibilities.

(k) **Financial Accountability.** All Federal funds made available to grantees under this section shall be properly accounted for as Federal funds in the accounts of the grantees. The Secretary is accountable to FEMA for funds made available to the Department under section 413. The Secretary shall, within 90 days of completion of a program, submit to the Associate Director a final accounting of all expenditures for the program and return to FEMA all excess Federal funds. Attention is called to the requirements of 44 CFR Subpart I, relating to the reimbursement of Federal agencies by FEMA.

(l) **Federal Audits.** The crisis counseling program is subject to Federal audit. The Associate Director, the Regional Director, the FEMA 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.

Samuel W. Speck,
Associate Director, State and Local Programs
and Support.

[FR Doc. 86-8475 Filed 4-17-86; 8:45 am]

BILLING CODE 6718-02-M

44 CFR Part 205

Temporary Housing Assistance

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: This proposed rule incorporates cost-sharing changes to the Federal Emergency Management Agency (FEMA) program regulations for the Temporary Housing Assistance Program under Section 404 of the Disaster Relief Act of 1974. This Act requires that Federal disaster assistance be supplemental to the efforts and resources of State and local governments.

DATE: Comments due on or before June 17, 1986.

ADDRESS: Send comments to the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Sarah L. Wise, Individual Assistance Division, Office of Disaster Assistance Programs, State and Local Programs and Support, Federal Emergency Management Agency, 500 'C' Street, SW., Washington, DC 20472, (202) 646-3657.

SUPPLEMENTARY INFORMATION: FEMA is proposing a change to the current Temporary Housing Assistance Program regulations that would establish cost-sharing with State governments when providing mobile homes as a form of temporary housing. At the time of publication of this proposed rule, FEMA is in the process of adopting a final rule concerning temporary housing. This rule was published in proposed form on December 8, 1985, at 50 FR 49959. For purposes of comments on this proposed cost-sharing rule, there will be no substantial changes between the proposed rule published in December and the final rule to be adopted. Specifically, States would be responsible for providing 25 percent for the (1) installation of or repairs to private mobile home sites, (2) upgrading of commercial sites which may also include installation of utilities, and (3) development of groups sites where a

State has been unable to obtain funding from other non-Federal sources to provide the sites. In addition, the change provides for States to be responsible for all site maintenance and customary public services costs on group sites. These costs would include, but are not limited to, police and fire services, snow removal, garbage collection, basic utility services, etc.

An environmental assessment resulting in a finding of no significant impact has been prepared for this specific rulemaking action in accordance with 44 CFR 10.9(e) and pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 and the implementing regulations of the Council on Environmental Quality (40 CFR Parts 1500-1508). Copies may be inspected or obtained at the Office of Disaster Assistance Programs, Individual Assistance Division, or at the Office of the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

This rule has been determined not to be a "major rule" within the meaning of Executive Order 12291, for the following reasons:

(1) It will not have an annual effect on the economy of \$100 million or more;

(2) It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic areas; and

(3) It will not have a significant adverse impact on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Over the last three years, FEMA has provided assistance to 43,443 applicants of which 2100 (4.8 percent) were placed in mobile homes. During this period FEMA incurred minimal costs to upgrade commercial sites. However, 43 percent of the mobile homes were placed on private sites at an average cost of \$1,487, and 26 percent were placed on group sites at an average cost of \$5,629 per unit. Based on an average of 123 mobile homes per operation, a projected average State share of providing private and group sites (assuming the State cannot obtain non-Federal funding for the group site need) would be \$84,735. Given the total amount of financial assistance that the State routinely contributes toward disaster relief, this cost sharing of mobile home sites for less than five percent of the displaced households

would not result in a major increase to a State government.

Further, the program applies to individuals and thus it is certified it will not have a significant economic impact on a substantial number of small entities.

Therefore, no further regulatory analyses have been prepared.

List of Subjects in 44 CFR Part 205

Disaster assistance grant programs, Housing and community development.

Accordingly, it is proposed to amend Part 205 as follows:

1. The authority citation for Part 205 is revised to read as follows:

Authority: 42 U.S.C. 5201; Reorganization Plan No. 3 of 1978; Executive Order 12148.

2. In § 205.52, revise paragraphs (g)(3)(i)-(iii) to read as follows:

§ 205.52 Temporary housing assistance.

(g) * * *

(3) * * *

(i) A commercial site is a site customarily leased for a fee because it is fully equipped to accommodate a housing unit. When the Regional Director determines that upgrading of commercial sites or installation of utilities on such sites will provide more cost-effective, timely, and suitable temporary housing than other types of resources, he/she may authorize such action. FEMA shall provide 75 percent of such costs of upgrading commercial sites and/or installation of utilities. The remaining portion of such costs shall be provided by the State.

(ii) A private site is a site provided or obtained by the applicant at no cost to the Federal Government. The Associate Director has determined that where necessary to properly set up a mobile home the cost of installation of or repairs to essential utilities on private sites is authorized when such actions will provide more cost-effective, timely, and suitable temporary housing than other types of resources. FEMA shall provide 75 percent of the cost of installation of or repairs to essential utilities on private sites. The remaining portion of such costs shall be provided by the States.

(iii) A group site is a site which accommodates two or more units and is provided or obtained by a State, local government, or other entity, completely developed with all essential utilities at no cost to the Federal Government. In addition, the State shall be responsible for all site maintenance and public services on group sites once initial construction is completed. For the purposes of these regulations, site

maintenance and public services include, but are not limited to, police and fire services, snow removal, garbage collection, basic utility services, etc., and does not include responsibility for the units placed on the group site. Based upon a recommendation from the Regional Director, the Associate Director may authorize FEMA's payment of 75 percent of the costs for the development of group sites, excluding site maintenance and public services, when all other efforts to obtain funding from non-Federal sources have been exhausted. The remaining portion of such costs shall be provided by the State.

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Dated: April 4, 1986.

Samuel W. Speck,
Associate Director, State and Local Programs
and Support.

[FR Doc. 86-8476 Filed 4-17-86; 8:45 am]

BILLING CODE 5716-02-M

44 CFR Part 205

Disaster Assistance; Subpart E—Public Assistance—Eligibility Criteria

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: This subpart of the disaster assistance regulations provides policy and guidance for determinations of eligibility of work, and eligibility of costs in the administration of the Disaster Relief Act of 1974, as amended, Pub. L. 93-288, (42 U.S.C. 5121 et. seq.). The existing rule is revised to reflect clarifications in policy since the previous publication of this subpart in August 1980. Portions of the material have also been revised to clarify procedures and organization of the regulation. Also, the proposed rule published February 3, 1984, (49 FR 4222-4224), is withdrawn and replaced by the applicable section of this proposed rule.

DATE: Comment due date: June 17, 1986.

ADDRESS: Send comments to Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Charles Stuart, Office of Disaster Assistance Programs, Federal Emergency Management Agency, Room 714, 500 C Street, SW., Washington, DC 20472, Telephone (202) 646-3691.

SUPPLEMENTARY INFORMATION: This proposed rule updates the public assistance section of the disaster assistance regulations (Subpart E).

Changes have been made to accommodate new legislation affecting disaster assistance. Policy changes previously published as separate regulation changes are incorporated in this general revision.

Other changes have been made to more clearly separate the three major sections of the regulations: Applicant eligibility, work eligibility, and cost eligibility. Some sections on procedural matters have been transferred to the administrative section of these regulations (Subpart H). Some sections have been revised to clarify existing policy where experience has shown that such clarification is necessary. The administrative changes and other minor revisions will be discussed first and then the more significant changes will be reviewed.

A definition of "consumable supplies" has been added to differentiate between those items incidental to the operation of a facility and those items which are a major part of the facility itself.

A definition of "improved property" has been added to more clearly define the conditions under which debris clearance and emergency protective measures can be justified. Property to be protected by such emergency work must be improved property, i.e., a facility, structure or equipment, rather than natural land or agricultural land.

A definition of "disaster proofing" has been added to codify the policy which was contained only in handbook format previously.

Under the definition of "private nonprofit facility" the definition of "medical facility" has been expanded to include the subdivisions of facilities under that general category. The criteria for these subdivisions were previously only available on a case by case basis.

Previously, all facilities belonging to eligible private nonprofit (PNP) organizations were identified as "Category H" with no breakout to differentiate between a building or a road or other facility. In the proposed rule each type of facility will be identified by the appropriate category letter (A, B, etc.) and its private nonprofit ownership will be identified by the special applicant code to be used for private nonprofit organization applicants.

Under the small project grant (section 419) and flexible funding [section 402(f)] provisions of the Act, an applicant has the option of building facilities different from those damaged or destroyed by the disaster. The proposed regulation more clearly spells out which projects may be included when calculating the amount of the FEMA grant. It also spells out the

types of projects on which these grants may be expended.

The conditions under which damages to private property may be repaired when that damage is the result of an applicant's actions, are defined. Such repairs must be necessary to protect lives, improved property or public health and safety pursuant to section 306 of the Act, because ordinary private individuals are not eligible to receive assistance under section 402 of the Act.

The provisions concerning relocations of facilities that are necessary to mitigate a flood or other hazard have been consolidated and clarified. If FEMA determines there is a practicable alternative to restoring the facility at the original hazardous location, the applicant has three options available: (1) A grant-in-lieu to restore a facility eligible for full replacement with another facility with the same function at a non-hazardous location in which case the total cost of building the facility is eligible after the applicant has provided the site and all road and utility service to the site; (2) a flexible funding grant; or (3) the flexible funding feature of a small project grant. Options 2 and 3 also require that no portion of the grant be used on the facility at the original hazardous location and the eligible costs are limited to the estimated costs of restoration at the original location. In addition, no similar facility built subsequently on the original site would be eligible for permanent restoration assistance unless the hazard has been mitigated. All of the above provisions are part of existing policy but they are now all covered in one place.

The criteria for the eligibility of emergency work such as debris removal or emergency protective measures have been separated for the two types of work. The old regulation contained one set of criteria for a determination of public interest which was then applied with exceptions or additions depending on the type of work. The proposed language does not change the basic criteria for eligibility but it presents them more clearly.

The proposed rule incorporates the policy concerning facilities damaged by earth movement that was clarified by memoranda issued in 1984. Under Pub. L. 93-288, FEMA may assist in the repair and reconstruction of facilities damaged by a major disaster or emergency. Natural ground by itself is not a facility and its restoration is not eligible for FEMA assistance. If the loss of natural ground by landslide or erosion threatens significant damage to improved property, then emergency measures may be taken to protect the improved property. In other situations a facility

may be damaged by subsidence of the supporting ground under the facility. Included in the eligible work of restoring the facility is restoration of the ground along with the means to retain that ground and the facility in place. As is often the case with landslides, there may be some question about the stability of general area under the facility. If determined necessary, FEMA will fund a geological investigation of the site. If the site is found to be unstable then the applicant will be required to stabilize the site before FEMA will approve funding for restoration of the facility. All of the above provisions and requirements are now more clearly spelled out in the proposed rule.

Additional criteria have imposed on the eligibility of local governments for disaster assistance. As a result of the recently enacted Federal deficit reduction legislation, funding for all Federal domestic programs is being reduced and some disaster assistance funding that has been provided in the past will not be available in the future. Thus, some cuts in disaster assistance must be made. In an effort to make those cuts as equitable as possible FEMA is proposing a number of actions which will result in a reduction in Federal disaster assistance dollars being provided. However, for those communities suffering catastrophic losses, Federal assistance will actually be increased. Those proposals include establishing objective State and local capability indicators which are expected to reduce the number of major disasters declared (Subpart C, being published concurrently with this proposed rule), and cost sharing formulas which will reduce the amount of Federal disaster funds expended but at the same time direct funds to the State and local governments with the greatest need (Subpart H, being published concurrently with this proposed rule).

In § 205.72(a), FEMA proposes to limit Federal disaster assistance to those local governments which provide governmental services to the general public and which are governed either by persons elected by the general public or by persons appointed by persons so elected. This may eliminate Federal disaster assistance to a number of special purpose local governments (including Levee Districts, Irrigation Districts, and Reclamation Districts) that have been formed to provide specific services to select groups of people. FEMA considers this restriction necessary in order to concentrate limited Federal disaster assistance funds on those local governments that serve the vast majority of the people. If

there is a need for emergency work to be done on the property of one of these ineligible local governments, an eligible applicant such as the State or County government may be approved to perform the work.

The provisions governing assistance to a rural community or unincorporated town or village have been clarified. It has been determined that permanent restoration work as well as emergency work should be eligible for these applicants. The requirements that ownership of a facility be vested in a nonprofit organization and that the application is made through the State or political subdivision thereof are maintained. The type of facility which would be eligible is restricted to roads, streets and bridges. The other types of essential facilities serving a rural community such as utilities, medical, emergency and education facilities will be eligible as private nonprofit facilities under section 402(b) of the Act.

Debris clearance from roads on the Federal Aid System will be eligible for FEMA assistance regardless of whether the Emergency Relief Program of Title 23, administered by the Federal Highway Administration (FHWA), is implemented. Previously, FEMA assisted this debris clearance only if the Title 23 assistance was not implemented for a particular county. If the FHWA program is implemented for a county, any debris removal which is incidental to the highway repairs being assisted by FHWA will also be assisted by FHWA. However, there may be Federal Aid roads in the same county which have debris on them but have suffered no damages. FEMA may only assist the removal of such debris when FEMA criteria are satisfied. By this change in the regulation, FEMA will now treat all roads uniformly for purposes of debris removal assistance eligibility.

FEMA has reexamined the justification for certain emergency work assistance and the extent of emergency protective measures when such work is justified. One justification for an emergency protective measure is that it will eliminate an *immediate* hazard which threatens significant damage to improved public or private property. If the protective measure provides protection from a hazard with an occurrence frequency of only once in five years, then that hazard should not be considered *immediate*. Therefore, in the proposed rule the extent of emergency work which will be eligible is only that necessary to provide protection against a storm which could reasonably be expected to occur within one year. The requirement is maintained

that such protective measures must be cost effective when compared to the value of the improved property protected. Work that would be affected by this provision could include construction of a levee to protect improved property because the disaster had rerouted a river or stream such that it threatened the property, placement of sand on a beach to prevent undermining of a facility or structure or to protect against wave action, or removal of debris in a natural stream that would cause flooding that could threaten improved property.

When emergency work is necessary on a disaster damaged flood control facility because improved property is threatened, such work is limited to restoring protection from a one-year event or the predisaster level, whichever level of protection is lesser. Permanent repair of flood control works is the primary responsibility of the U.S. Army Corps of Engineers (COE) but the COE authority does not cover reimbursement for applicant performed work. Therefore, FEMA may provide assistance for such emergency work performed by the applicant immediately after the disaster subject to the limitations noted above.

The eligibility criteria for cleanout of debris from debris catch basins have been modified. To perform its intended function of lessening the threat of downstream flooding, a basin should be maintained with some available capacity to retain debris. Under current regulations, FEMA has required this maintained capacity to be 75 percent of the design capacity of the basin. However, this has resulted in some basins having much more capacity than necessary and some having not enough, because factors other than expected debris production may influence the size of the basin. Therefore the proposed procedure will be to allow an applicant to determine the proper storage capacity at which its debris basins should be maintained. The applicant will be required to provide evidence that it has maintained a basin to its own criteria by regular cleanout or no assistance for cleanout will be eligible.

A similar requirement will apply to debris removal from water storage reservoirs and flood control channels. An applicant will be required to provide evidence that a regular program of cleanout was used to maintain a specified storage capacity of a reservoir or the flow capacity of a channel.

The requirements for codes, specifications and standards to be applicable to FEMA funded construction have been reviewed and modified in the proposed rule with the purpose of

promoting mitigation of natural hazards. Standards for new construction which an applicant has adopted in writing and has been employing in the construction of its facilities will continue to be applicable to FEMA funded work. When there is no local standard and FEMA believes that use of a new standard will mitigate the effects of a hazard on a facility being restored with FEMA assistance, the applicant will be encouraged to adopt that standard as applicable to all similar facilities within its jurisdiction. If the suggested standard is adopted by the applicant, FEMA may approve it as being applicable to the replacement of the facility destroyed by the current disaster. If the standard is not adopted, assistance may only be available to replace a facility to its predisaster configuration without the incorporation of new standards. With this policy the applicant will have more incentive to adopt standards for mitigation than under the existing regulation because the assistance will be tied to the adoption of a standard. Under current rules FEMA may prescribe a standard that is applicable only to the FEMA funded project even if the applicant does not agree to use the standard for other future projects. FEMA believes that the new procedure will achieve more mitigation than under the old system. However, if an exact replacement of the facility would result in a threat to public health or safety, FEMA may still incorporate mitigating features in the project to disasterproof it from the effects of future events.

This same principle for the use of standards has also been applied to the replacement of highway bridges. Under current regulations, FEMA may replace a destroyed bridge with one of a specified width based upon the amount of traffic that uses the bridge. The extra cost of the wider bridge is generally eligible, regardless of whether the applicant adopts the standard for its own facilities in the future. Under the proposed rule, the applicant will be required to adopt the bridge width standard in order for FEMA to fund the extra cost of incorporating the standard on the bridge destroyed by the current disaster. The foregoing policy is based on the principle that State and local governments should be willing to use the same standards for locally funded projects that FEMA is expected to use for Federally assisted projects.

In 1982 Pub. L. 97-92 was enacted which required that a school district's damages must exceed the lesser of \$10,000 or five percent of the district's prior year operating expenditures before it is eligible for Department of Education assistance in a major disaster. That

requirement has been continued by each subsequent year's appropriation for the Department of Education. The current FEMA regulations [§ 205.75(h)(5)] require that private nonprofit educational facilities must meet the same eligibility criteria that the Department of Education requires for public schools. Therefore, the threshold criteria for minimum damages is extended in the proposed rule to private nonprofit educational facilities. Also in keeping with Congressional intent in passing Pub. L. 97-92, the threshold is applied to institutions of higher education, both public and private nonprofit. Provision is also made that the FEMA threshold will change if the Department of Education threshold is changed by subsequent legislation.

The section of the regulations concerning the eligibility of facilities which were under construction at the time of the major disaster has been reviewed in the light of past experience. If the construction is being done by an applicant's own forces, then the facility is owned by the applicant during the entire construction period. Assistance would be available under the same criteria as any other applicant owned facility with a few minor exceptions. For a facility under construction by a contractor, the facility is still the responsibility of the contractor until it is accepted by the State or local government as the owner. That responsibility is considered in the contractor's bid on the facility and the contractor is paid to accept such responsibility. A prudent contractor will obtain Builder's All Risk insurance to cover damages caused by a major disaster or emergency. Therefore, the contractor should not expect assistance to be available from FEMA. The proposed rule states that an application may not be made by an applicant on behalf of a contractor for damages to facilities which were the responsibility of the contractor.

The eligibility of repairs to applicant owned equipment that is damaged while performing eligible work has been modified. Under existing rules, the FEMA equipment rate is intended to cover eligible costs of ownership and operation including all maintenance and repairs. Based on our experience of recent years we have concluded that some disaster related damages to equipment are significantly more costly than the repair element included in the FEMA equipment rate. Therefore, the proposed rule will allow as an eligible cost, repairs of damages to working equipment that could not have been reasonably avoided. Repair of damages

to applicant owned equipment parked at its normal storage location will continue to be eligible.

A number of provisions concerning insurance costs and recoveries have been clarified or modified in the proposed rule. The provision requiring deduction of actual insurance proceeds or potential proceeds from insurance required to be purchased as a condition of prior Federal assistance is reworded for clarity.

Another new provision concerns the costs of prosecuting claims against parties which may have caused or aggravated an applicant's damages or against parties obligated to make reimbursement for damages. This latter group would include insurance companies. Currently, eligible costs are reduced by any recoveries or portion of recoveries which duplicate eligible costs. As an incentive for an applicant to pursue such claims, reasonable costs of prosecuting claims may be deducted from the recovery before making reimbursement to FEMA. However, the costs of prosecuting claims against the Federal government will not be eligible.

The eligibility of costs applicable to major disaster or emergency work has been under review by FEMA for some time. Discussions were held with representatives of the National Emergency Management Association (NEMA) on this subject. Their recommendations were taken into account in formulating proposed changes which were published in the *Federal Register* on February 3, 1984 (49 FR 4222-4224). The proposed changes also took into account the sharing of costs between Federal and non-Federal interests and the statutory requirement that public assistance be supplementary. (The subject of cost sharing and State and local commitments is discussed in detail in proposed rules, 44 CFR Part 205, Subparts C and H, being published concurrently with these proposed regulations.) A number of comments were received on the first publication of the cost eligibility rule and were taken into consideration for the proposed changes contained in this publication of the complete eligibility section. Except for changes made in response to those comments and those required by the Single Audit Act of 1984, what follows is excerpted from the February 3, 1984, Supplementary Information section. The following changes in the cost eligibility subsection of the regulation (44 CFR 205.76) are proposed:

(a)(1) Definitions of total eligible costs and net eligible costs are given to reflect sharing of costs by Federal and non-Federal interests. Selected other criteria are clarified.

(a)(5) *Administrative Expenses*—This proposed change makes eligible an allowance for administrative expenses and provides a method for calculation of such an allowance. The percentage allowances for applicants' administrative costs were arrived at through FEMA's experience in dealing with disaster claims. While these costs have not been eligible in the past and therefore were not included in assistance claims, applicants have frequently advised us of the impact of these costs. In the regulation the list of items which are currently ineligible would be covered by the administrative allowance. In addition certain insurance costs which are now ineligible will also be included in the allowance. The basis for using a percentage of eligible disaster costs instead of actual expenses is one of relieving administrative burden on the applicant. There are a great many different types of indirect and administrative expenses, some of which are more directly related to disaster response and recovery work than others. Some are not related to the disaster at all. An applicant would be required to keep track of these expenses and determine what portion was related to the major disaster or emergency. In addition, FEMA would have to review the applicants' claims to verify the eligibility of these items. The use of a flat rate percentage will eliminate this burden on both parties. The actual rate was set to cover only the extraordinary expenses incurred as a direct result of the disaster. This is in accordance with the supplementary nature of FEMA assistance as intended by Pub. L. 93-288. The percentage is an average of a sample of a number of different communities. It will be the same for all applicants.

This practice has worked well for a number of years in the allowances for the use of applicant owned equipment to perform eligible disaster work.

(a)(7) The proposed change makes certain costs of State inspectors eligible for reimbursement.

(a)(18) *National Guard*—Most types of National Guard expenses would now be eligible, including security work.

(a)(21) *Prison Labor*—Certain costs of guards and food and lodging for prisoners and guards would be eligible.

(b)(1)(iii) *Fringe Benefits*. The current regulations provide that additives to the gross pay of employees of an applicant for employee benefits are not an eligible cost. The basis for this policy was that for regular employees who are only temporarily diverted from their regular job to disaster work, the cost of most employee benefits do not change and therefore there is little disaster related

extraordinary cost. The extra cost of those benefits that did increase was considered a part of the applicant's contribution to the disaster recovery effort. Extra employees hired specifically for the disaster normally only received those benefits mandated by Federal or State law and did not receive pension or leave benefits. Those costs which were incurred were also considered as part of the applicant's contribution. In 1984, in recognition of the sharing of public assistance costs between Federal and non-Federal interests which was then in practice, FEMA considered changes to the eligibility of disaster costs. Fringe benefits applicable to force account labor were among those items under consideration. FEMA proposed that an allowance of 10.5 percent of direct labor costs would be eligible for the applicant's regular employees to cover those fringe benefits which represented extraordinary disaster related costs. Similarly, it was proposed that all fringe benefits actually paid for extra hire labor would be eligible as extraordinary costs. A number of comments were received on this part of the proposed rule when it was published. It was noted that there would be a bookkeeping burden to keep track of those fringes which were actually reimbursed and those which were not. The proposed rule also provided that applicants receiving categorical grants (over \$25,000) could submit actual costs of the designated coverages and be reimbursed on that basis. This was perceived as being unfair to the applicants for small project grants (under \$25,000).

In the interest of simplifying paperwork for all applicants and of fairness to the small applicants, FEMA is now proposing that all fringe benefits for force account labor, regular employees and extra hires performing eligible work, will be allowed as eligible costs. This proposal will result in reimbursing applicants for some ordinary costs which would be incurred with or without the disaster but it will also simplify the administration of disaster assistance.

The proposed rule published February 3, 1984 (49 FR 4222-4224) is withdrawn and replaced by the applicable section of this proposed rule.

Environmental Considerations

A Finding of No Significant Impact for the publication of these regulations has been made in accordance with 44 CFR 10.9(e) of the FEMA Environmental Regulations which implement the Council on Environmental Quality regulations (National Environmental

Policy Act Regulations). Copies of the finding are available from the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, Room 835, 500 C St., SW, Washington, DC 20472. Executive Order 12291, "Federal Regulations". This rule is not a "major rule" within the context of Executive Order 12291. It will not have an annual effect on the economy of \$100 million or more.

This rule will not have a significant economic impact on a substantial number of small entities, within the meaning of 5 U.S.C. 605 (the Regulatory Flexibility Act). Therefore, no regulatory analysis will be prepared.

This rule does not call for the collection of any information.

List of Subjects in 44 CFR Part 205

Disaster assistance, Grant programs, Housing and community development.

PART 205—[AMENDED]

Accordingly, Title 44 Code of Federal Regulations Part 205 is proposed to be amended as follows:

Subpart E—Public Assistance

1. The authority Citation for Part 205 is revised to read as follows and all authority citations found within Subpart E are removed:

Authority: 42 U.S.C. 5201; Reorganization Plan No. 3 of 1978, E.O. 12148.

2. Subpart E, 205.70 to 205.76 is proposed to be revised to read as follows:

Subpart E—Public Assistance

- 205.70 General.
- 205.71 Definitions.
- 205.72 Applicant eligibility.
- 205.73 General work eligibility.
- 205.74 Emergency work.
- 205.75 Permanent work.
- 205.76 Eligibility of costs.

Subpart E—Public Assistance

§ 205.70 General.

This subpart provides policies and guidelines for determinations of eligibility of applicants for public assistance, eligibility of work, and eligibility of costs under Pub. L. 93-288, as amended. It includes criteria for determining eligibility of assistance under sections 305, 306, 402, 415, 416, 418(d), and 419 of Pub. L. 93-288, as amended. Assistance under this subpart must conform to requirements of 44 CFR Part 205 Subparts H, J, K, M, and N, and to 44 CFR Parts 9 and 10 of these regulations.

§ 205.71 Definitions.

(a) "Bridge" means a structure including supports erected over a depression or an obstruction, as water, highway or railway, and having a track or passageway for carrying traffic or other moving loads and having an opening measured along the center of the roadway of more than twenty feet between undercopings of abutments or spring lines of arches or extreme ends of openings for multiple boxes; may include multiple pipes where the clear distance between openings is less than half of the smaller contiguous opening.

(b) "Consumable Supplies" means those incidental items consumed in the operation of a facility such as office supplies, cleaning supplies, or treatment chemicals. It does not mean those items of stock available for sale or distribution such as liquor stocks or lottery tickets.

(c) "Culvert" means any structure under the roadway with a clear opening of twenty feet or less measured along the center of the roadway.

(d) "Disaster proofing" means any modification or improvement in design of a facility, or system of which the damaged facility is a part, or any protective measure or technique, whether or not it is an integral part of a damaged facility, which will reduce the potential for damages to the facility.

(e) "Educational institution" means:

(1) Any day or residential school which provides elementary education, as determined under State law.

(2) Any day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

(3) Any institution of higher education in any State which:

(i) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate,

(ii) Is legally authorized within such State to provide a program of education beyond secondary education,

(iii) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree.

(iv) Is a public or a nonprofit institution, and

(v) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited:

(A) Is an institution with respect to which there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation

standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time, or

(B) Is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited. Such term also includes, any school which provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provision of paragraphs (e)(3)(i), (ii), (iv) and (v) of this section.

(f) "Emergency work" means that work which must be done immediately to save lives and to protect property and public health and safety, or to avert or lessen the threat of a major disaster.

(g) "Force account" means an applicant's own labor forces consisting of its regular and extra employees.

(h) "Improved property" as used in a determination of a need for debris removal or emergency protective measures, means a structure, facility or item of equipment which was built, constructed or manufactured. Land used for agricultural purposes is not improved property.

(i) "Permanent work" means the restorative work that must be done through repairs or replacement, to restore an eligible facility on the basis of its predisaster design and in conformity with current applicable codes, specifications, and standards.

(j) "Predisaster condition" means the state of repair or serviceability of a facility immediately prior to the disaster, taking into consideration prior damages, age, deterioration, and any limitations upon its operation.

(k) "Predisaster design" means the size and capacity of a facility at the time the major disaster occurred.

(l) "Private nonprofit facility" means any private nonprofit educational, utility, emergency, medical, and custodial care facility, including those for the aged or disabled. Further definition is as follows:

(1) "Educational facilities" means classrooms plus related supplies, equipment, machinery, and utilities of an educational institution necessary or appropriate for instructional, administrative, and support purposes, but does not include:

(i) Buildings, structures and related items used primarily for athletic exhibitions, contests, games or other events for which admission is charged to the general public, such as athletic

stadiums, gymnasiums, and swimming pools.

(ii) Buildings, structures and related items used primarily for religious purposes or primarily in connection with any part of the program of a divinity school, or department of divinity, which means an institution or a department or a branch of an institution the program of instruction of which is designed for the education of students:

(A) To prepare them to become ministers of religion or to enter upon some other religious vocation (or to provide continuing training for any such vocation), or

(B) To prepare them to teach theological subjects.

(2) "Utility" means buildings, structures, or systems of any power, energy, telephone, water supply, sewage collection and treatment, or other similar public service. A private nonprofit irrigation system is not a "utility".

(3) "Emergency facility" means those buildings, structures, equipment, or systems used primarily to provide emergency services, such as fire protection, ambulance, or rescue, to the general public.

(4) "Medical facility" means any hospital, outpatient facility, rehabilitation facility, or facility for long term care, 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.

(i) "Hospitals" includes general, tuberculosis, and other types of hospitals, and related facilities, such as laboratories, outpatient departments, nurses' home facilities, extended care facilities related to programs for home health services, self-care units, and central service facilities, operated in connection with hospitals, and also includes education or training facilities for health professions personnel operated as an integral part of a hospital, but does not include any hospital furnishing primarily domiciliary care.

(ii) "Outpatient facility" means a facility (located in or apart from a hospital) for the diagnosis or diagnosis and treatment of ambulatory patients (including ambulatory inpatients):

(A) Which is operated in connection with a hospital, or

(B) In which patient care is under the professional supervision of persons licensed to practice medicine or surgery in the State, or in the case of dental diagnosis or treatment, under the professional supervision of persons

licensed to practice dentistry in the State; or

(C) Which offers to patients not requiring hospitalization the services of licensed physicians in various medical specialties, and which provides to its patients a reasonably full-range of diagnostic and treatment service.

(iii) "Rehabilitation facility" means a facility which is operated for the primary purpose of assistance in the rehabilitation of disabled persons through an integrated program of

(A) Medical evaluation and services, and

(B) Psychological, social or vocational evaluation and services, under competent professional supervision, and in the case of which

(C) The major portion of the required evaluation and services is furnished within the facility; and

(D) Either the facility is operated in connection with a hospital, or all medical and related health services are prescribed by, or are under the general direction of, persons licensed to practice medicine or surgery in the State.

(iv) "Facility for long-term care" means a facility (including an extended care facility) providing in-patient care for convalescent or chronic disease patients who require skilled nursing care and related medical services:

(A) Which is a hospital or is operated in connection with a hospital, or

(B) In which such nursing care and medical services are prescribed by, or are performed under the general direction of, persons licensed to practice medicine or surgery in the State.

(5) "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 do not require day-to-day care by doctors or by other professionals but do require close supervision and some physical constraints on their daily activities.

(m) "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 section 501(c), (d), or (e) of the Internal Revenue Code of 1954, or

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

(n) "Roads and Streets" are further defined for purposes of snow removal assistance as:

(1) "Local roads and streets" means county roads and city streets which do not serve thru traffic and are of only

local interest. Their main function is to provide access to abutting property. These normally will include alleys and cul-de-sacs and residential streets.

(2) "Collector roads and streets" means local roads and streets which serve thru traffic and provide access to higher type roads and facilitate community activities but are primarily of local interest.

(3) "Minor arterial roads and streets" means roads and streets which serve thru traffic and provide access to higher type roads, connecting communities in nearby areas in addition to serving adjacent property.

(4) "Principal arterials" means roads and streets which serve thru traffic and are of statewide interest. They carry high volumes of traffic between population centers and are designed to facilitate traffic movement with limited land access. It also means roads and streets which serve thru traffic only and provide no access to abutting property. (For further clarification, refer to the functional classifications for highways as determined pursuant to 23 CFR 470.107(b)(3).

(o) "School district" means the local governmental jurisdiction; or, in the case of private nonprofit institutions, the church diocese or other organizational unit from which the school receives its primary funding. In the case of public institutions of higher education it means all branches of an institution referred to by a common name.

(p) "Standards" as used in this subpart means codes, specifications or standards for the construction of facilities. It does not include requirements for additional amenities or features that were not part of the predisaster facility which would increase capacity or permit new services to be undertaken, even though such amenities or features would be called for if the facility were to be designed new following the disaster or emergency.

(q) "Under construction" means that period of time from the initiation of construction by applicant forces to final completion of all work or from the award of the prime contract to the applicant's final acceptance of the facility from the contractor. If provided for in the written contract, the applicant may take beneficial occupancy of a portion or portions of the facility from the contractor before the total facility is completed. If such portions of the facility become the responsibility of the applicant, then they would no longer be considered to be under construction.

§ 205.72 Applicant eligibility.

(a) State or local governments, as defined in 44 CFR Part 205, Subpart A, owning or responsible for facilities within the disaster area designated by the Associate Director, are eligible applicants.

(1) The governing body of the local government applying for assistance is either elected by all persons of legal voting age residing within its boundaries, whether such person is or is not a property owner; or, it is appointed by the governing body of another governmental entity which is so elected; and

(2) The local government applying for assistance, or the governmental entity which appoints the governing body thereof, has taxing or assessing authority over all persons residing within its boundaries or using its services; and

(3) The local government applying for assistance, or the governmental entity which appoints the governing body thereof, was chartered for the primary purpose of providing governmental service(s) to the general public within its service area.

(b) Private nonprofit organizations or institutions, owning and operating educational, utility, emergency, medical or custodial care facilities, are eligible applicants. [See § 205.71(1)].

(c) An Indian tribe (or authorized tribal organization or Alaska Native village or organization) is also an eligible applicant.

(d) A public entity is eligible for assistance when its application is submitted by a State or a political subdivision of the State. Organizations which are chartered for a public purpose and whose direction and funding are provided primarily by one or more political subdivisions of the State are normally considered to be public entities.

(e) Any rural community or unincorporated town or village may be eligible when an application for Federal assistance is made by a state or a political subdivision of the State on its behalf. [See § 205.73(e)].

(f) Eligibility of applicants for emergency snow removal assistance.

(1) To qualify as an eligible applicant, any State or local government (as defined in Subpart A of these regulations) must have adequately documented responsibility for emergency snow removal from thru public roads or thru public streets.

(2) Private nonprofit organizations are not eligible.

§ 205.73 General work eligibility.

(a) *General.* To be eligible for financial assistance, an item of work must:

(1) Be for a purpose set forth in the Act and these regulations,

(2) Be required as the result of the major disaster or emergency event,

(3) Be located within a disaster area designated by the Associate Director, and

(4) Be only that necessary to restore damaged facilities to predisaster design in accordance with current applicable standards.

(b) *Assistance under Other Federal Agency (OFA) programs.* Disaster assistance under the Act is not available for assistance which other Federal agencies may fund under their own statutory authorities. When another Federal agency has authority and the necessary funds available to restore facilities damaged or destroyed by a major disaster or emergency, that OFA funding authority shall be used instead of FEMA funding.

(c) *Maintenance.* Work of the same type as that normally performed as maintenance is eligible only if the work is:

(1) Of disaster scope and magnitude, and

(2) Essential to restore the predisaster condition and design of the damaged or destroyed facilities, and

(3) Performed on an expedited basis.

(d) *Restoration of leased facilities.* (1) Applicant-owned facilities, which are leased to organizations which are not eligible applicants, are eligible to the extent of the applicant's repair and maintenance responsibility under the lease. If the facility is owned by a private nonprofit organization, it must be used for one of the eligible uses listed in the definition of private nonprofit facility [see § 205.71(1)].

(2) Facilities owned by an organization which is not an eligible applicant, but under lease to an eligible applicant, are eligible to the extent of the applicant's repair and maintenance responsibility under the lease.

(e) *Roads, streets and bridges serving a rural community or unincorporated town or village.* To be eligible, a road, street, or bridge not owned by a State or local government must meet the following requirements:

(1) It is located in and/or serves an unincorporated community, town, or village; and

(2) It is owned by a private nonprofit organization.

(3) It is available for use by the general public.

(f) *Private nonprofit facilities.*

Eligibility criteria for restorative work

on eligible facilities owned by eligible private nonprofit organizations are the same as for like work on similar facilities owned by a State or local government. To be eligible, a facility or system not owned by a State or local government must meet the following requirements:

(1) The facilities shall meet the criteria of the definition of private nonprofit facilities [§ 205.71(1)]. They must also be owned and operated by an organization meeting the definition of a private nonprofit organization [§ 205.71(m)].

(2) The restored facility or portion thereof shall be operated and maintained by the grant recipient or successor eligible private nonprofit organization so as to carry out the purposes of the facility and of the owning organization.

(3) The eligible owning organization shall provide the permits and licenses necessary to restore the facility in accordance with the project application and shall agree to continue to operate and maintain the facility throughout its useful life so as to carry out the purposes of the facility and of the owning organization.

(4) Repair or replacement of any hospital or other medical care facility in any disaster-affected area is eligible, only if:

(i) The Regional Director after consulting with the State hospital planning agency, determines that there is not a significant surplus of such facilities, and

(ii) After consulting with the State hospital planning agency, he/she determines that a significant surplus of such facilities would not be created by the proposed work, and

(iii) The facility was in active use prior to the major disaster and was providing significant medical services to the general public.

(5) Repair or replacement of any educational facility in a disaster affected area is eligible only if it would be eligible as a public facility under Pub. L. 81-815, Pub. L. 81-874, or Pub. L. 89-329.

(g) *Facilities under construction.* (1) Except as noted in this section, facilities under construction are subject to the same eligibility criteria as other facilities owned or operated by a eligible applicant. A contractor building such facilities can not claim costs for repairing facilities still under its responsibility at the time of the disaster.

(2) Facilities which were under construction at the time of the disaster and which were the responsibility of the applicant may be eligible for restoration substantially to predisaster condition.

(3) In addition to other provisions of these regulations, the following are not eligible:

- (i) Repair or replacement of mobile construction equipment.
- (ii) Extra work which exceeds original scope when caused by changed site conditions.
- (iii) Increased scope of work for hazard mitigation purposes, although such work may be required as a condition of the grant.

(h) *Flexible Funding.* (1) The eligible cost basis for a flexible funding grant under section 402(f) of the Act shall conform to the following guidelines:

- (i) The eligible cost shall be 90 percent of the Federal estimate of permanently repairing, restoring, reconstructing, or replacing all eligible facilities.

(ii) It shall not include the estimate for performing emergency work pursuant to section 305 or 306 of the Act.

[Emergency work is covered by a separate categorical grant. See 44 CFR 205.113(b)(1)].

(iii) It shall not include estimates for restoring facilities found ineligible by the Regional Director.

(2) Projects for which a flexible funding grant may be expended shall conform to the following guidelines:

- (i) It shall be a capital improvement project of the type which would be eligible for disaster assistance under these regulations if it were damaged by a major disaster.

(ii) It is necessary to perform governmental services or functions in the disaster area designated by the Associate Director.

(iii) The grant shall not be used for operating or maintaining a facility.

(i) *Grants-in-lieu* [see § 205.113(b)(1)(iv)]. The work upon which a grant-in-lieu is based is that emergency work eligible under section 305 or 306 of the Act or that restoration work eligible under section 402 needed to restore a facility to its predisaster condition in accordance with current applicable standards.

(1) The work to which the grant-in-lieu is applied may be a larger and/or more elaborate facility or one of a different design.

(2) The new facility must, at a minimum, serve the same purpose or function and have at least the equivalent capacity of the damaged facility.

(3) If a facility of lesser capacity is built, the scope of eligible work and eligible cost will be reduced in the same proportion as the capacities of the two facilities.

(j) *Small project grant* [see § 205.113(b)(3)]. The work upon which a small project grant is based is all

eligible work, emergency and permanent, in the project application.

(1) The grant may be used to perform some or all of the emergency and permanent work in accordance with the project application; or

(2) It may be used to provide new facilities conforming to the following guidelines:

(i) It shall be a capital improvement project of the type which would be eligible for disaster assistance under these regulations if it were damaged by a major disaster.

(ii) It is necessary to perform governmental services or functions in the disaster area designated by the Associate Director.

(iii) It shall not be used for operating or maintaining a facility.

(k) *Time limitations.* Only that work started and completed or equipment delivered within time limits established by the Regional Director or Associate Director is eligible for FEMA assistance. Refer to § 205.116(b).

§ 205.74 Emergency work.

(a) *General.* (1) Emergency work is eligible under section 305 or 306 of the Act to provide emergency protective measures to save lives, to protect public health and safety, and to protect improved property as the result of a declared major disaster or emergency; under section 306 or 403 for debris removal; under section 415 for Emergency Communications; and under section 416 for Emergency Public Transportation.

(2) When immediately necessary to provide essential community services and emergency work of a lesser scope will not restore the necessary services, permanent restorative work on facilities damaged or destroyed by a major disaster or emergency may be expedited as emergency work under sections 305 or 306 of the Act. Eligibility of such emergency work shall be determined separately from any other permanent restorative work eligible under section 402 of the Act.

(3) In determining whether emergency work is required, the Regional Director may require certification by local, State, or Federal health officials that a threat exists, including identification and evaluation of the threat and recommendations of the emergency work necessary to cope with the threat.

(b) *Debris removal—(1) Justification.* In determining whether to approve reimbursement for debris removal the Regional Director shall determine whether the work will:

- (i) Eliminate immediate threats to life, public health, and safety; or

- (ii) Eliminate an immediate hazard which threatens significant damage to improved public or private property, or
- (iii) Ensure economic recovery of the affected community to the benefit of the community-at-large.

(2) *Types of work.* If it is determined that one of the above criteria is met, the following types of debris removal are eligible:

(i) Clearance and removal of debris and wreckage from publicly and privately owned land and waters, except where such clearance and removal is covered by adequate insurance.

(ii) Clearance and removal of debris from Federal Aid System roads unless such work is incidental to repair work being funded under the Emergency Relief Program administered by the Federal Highway Administration.

(iii) *Natural Streams.* Cleanout of debris deposited by the major disaster in a natural stream is eligible only if there is immediate threat of flooding which would damage or destroy improved property. An immediate threat of flooding is that which could reasonably be expected to occur within one year.

(iv) Emergency protective facilities installed under authority of other Federal agencies (OFA) immediately before the disaster or FEMA authority during the disaster will be eligible for removal under the Act when such facilities directly affect the operations of, or access to, public facilities required by the applicant in its normal day to day operation. Such protective facilities which are a threat to lives, public health or safety are also eligible for removal.

(v) *Private Property.* No Federal reimbursement will be made to an eligible applicant for its reimbursement of an individual or private organization for the cost of removing debris from their own property.

(c) *Emergency protective measures—(1) Justification.* In determining whether to approve reimbursement for emergency protective measures the Regional Director shall determine if the work will:

- (i) Eliminate an immediate threat to life, public health, or safety; or
- (ii) Eliminate an immediate hazard which threatens significant damage to improved public or private property at a favorable ratio of benefits to costs.

(2) *Types of work.* If it is determined that one of the above criteria is met the following types of work are eligible.

- (i) Search and rescue;
- (ii) Emergency medical care;
- (iii) Emergency mass care;
- (iv) Emergency shelter;

(v) Provision of food, water and other essential needs;

(vi) Construction of temporary facilities for essential community services;

(vii) Demolition and removal of unsafe structures that endanger the public; or

(viii) Reduction of any other immediate threats to life, improved property and public health and safety.

(3) *Other Emergency Work.* In addition to the criteria of paragraph (c)(1) of this section, certain criteria apply to specific types of work as follows:

(i) Emergency work on protective facilities to prevent additional damage to improved property is eligible only when the effects of a declared major disaster or emergency have severely damaged or destroyed the protective facility and further destruction to improved property is threatened by subsequent events. When approved, such emergency work is limited to the essential measures required to protect improved property against similar events which could reasonably be expected to occur within one year, or to restore protection as existed prior to the disaster, whichever level of protection is the lesser. Placement of sand on beaches is also eligible under the guidelines of this paragraph.

(ii) *Landslides.* Permanent stabilization of landslides is not eligible as emergency work. Refer to § 205.75(a)(15). Emergency work necessary as a result of a landslide shall be performed during the incidence period for the major disaster or emergency or immediately afterward. Eligible emergency work to protect lives or property from the effects of a landslide caused by the major disaster or emergency event may include:

(A) Removal of loose slide material where feasible, or

(B) Simple drainage measures or covering of the ground to reduce saturation.

(iii) *Emergency access.* An access facility that is not publicly owned or is not the direct responsibility of an eligible applicant or grantee for repair and maintenance may be eligible for emergency repairs or replacement provided:

(A) The Regional Director determines that emergency repair or replacement of the facility economically eliminates needs for temporary housing because there are no alternative access facilities immediately available within a reasonable distance, and

(B) The necessary emergency work can be provided on a one-time basis and will not obligate the Federal Government to fund further emergency

work or maintenance. The work will be limited to that necessary for the access to remain passable after an event which could reasonably be expected to occur within one year.

(iv) *Water control facilities.*

Emergency work on water control facilities may be eligible:

(A) During the incident period, whatever reasonable protective measures are necessary to protect against that height of water actually experienced or predicted to occur during that period, or

(B) After the incident period, to restore the protective function which the facility provides for improved property to the level of an event which could reasonably be expected to occur within one year, or the predisaster level, whichever level of protection is lesser, or

(C) The minimum work necessary to ensure the structural integrity of a damaged facility which is eligible for permanent restoration under Pub. L. 93-288 or other Federal authority. This work is also limited to that necessary to protect against an event which could reasonably be expected to occur in one year.

(v) *Ice jams.* The removal of ice jams is not eligible for FEMA assistance.

(vi) *Damage to Private Property.* Damages may occur to private property through the performance of disaster related work by the applicant or by another Federal agency. The repair of these damages is not eligible, whether or not the original work was eligible for FEMA assistance, unless the repairs are necessary to remove an immediate threat to lives, public health or safety or to improved property.

(d) *Emergency communications.* The Regional Director is authorized as the result of an emergency or major disaster to establish emergency communications and make them available to State and local government officials and other personnel as deemed appropriate. Such emergency communications are ordinarily intended for use as necessary to carry out the disaster relief functions. Communications provided under this section are intended to supplement but not replace normal communications that remain operable after a major disaster. These emergency communications will be discontinued immediately when the essential emergency communications needs of FEMA and the community have been met.

(e) *Emergency public transportation.* The Regional Director may provide emergency public transportation in a disaster-affected area 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. Any transportation provided under this section is intended to supplement but not replace predisaster transportation facilities that remain operable after a major disaster. FEMA funding of such emergency transportation will be discontinued by the Regional Director as soon as the emergency needs have been met.

(f) *Snow Removal Assistance—(1) Eligible work.* When approved by the Regional Director under a snow emergency declaration, snow removal from the following types of facilities is eligible:

(i) Thru traffic lanes of collector roads and streets; minor arterial roads and streets; and principal arterials.

(ii) Tracks and rights-of-way of urban mass transit systems when necessary for the resumption of urban high volume traffic.

(2) *Ineligible work.* Snow removal from the following types of facilities is not eligible:

(i) Local roads and streets.

(ii) Other facilities including:

(A) Parking lots (except where needed and used for emergency snow removal operations);

(B) Playgrounds;

(C) Recreational or park facilities;

(D) Airports (except for emergency road access);

(E) Cultural facilities; or

(F) Hospitals and other medical care facilities (except for emergency access).

§ 205.75 Permanent work.

(a) *General—(1) Applicability.* Permanent work is eligible under section 402 of the Act and these regulations and includes supplemental assistance to eligible applicants to repair, restore, reconstruct, or replace eligible facilities on the basis of the design of the facilities as they existed immediately prior to the disaster and in conformity with applicable standards. Criteria for determining eligibility of permanent work are the same for categorical, flexible funding, and small project grants.

(2) *Standards.* (i) To be applicable to Federal grant assistance under section 402 or 419 of the Act, standards for repairs or for new construction must have been in writing, formally adopted, enforced, and in general use when the major disaster occurred, except those standards authorized as deviations by the Regional Director or Associate Director. When the Regional Director determines that restoration without a standard or in conformity to existing applicable standards jeopardizes public

health and safety or that the facility could be made less vulnerable to future damage, the applicant will be encouraged to adopt the applicable standard endorsed by the State or by a nationally recognized standard setting body. These standards must be applicable for all similar new or replacement facilities within the applicant's jurisdiction. If a new standard is adopted, the Regional Director may approve it as a deviation and it will be applicable to the replacement of the facility destroyed by the current disaster. If there is no State or national standard applicable to the situation, the Regional Director may request the Associate Director to develop a standard. The Associate Director will then encourage the applicant to adopt the standard with applicability for all similar new or replacement facilities within the applicant's jurisdiction. If the standard is adopted, the Associate Director may approve it as a deviation and it will be applicable to the replacement of the facility destroyed by the current disaster. If the standard is not adopted in either situation, and therefore no standards are applicable, Federal grant assistance for permanent work under the Act shall be limited to restoring the facility to its predisaster condition and predisaster design to the extent practicable. When the application of the suggested standard is necessary to achieve minimization as required by the Floodplain Management Executive Order (E.O. 11988), the standard shall be incorporated into the facility at the applicant's expense as a condition of FEMA assistance.

(ii) When a facility is determined repairable by the Regional Director, standards for new construction are not applicable except in special cases determined by the Regional Director. Standards for repair, if any, would be applicable.

(iii) In approving grant assistance for permanent restoration of damaged or destroyed facilities under the Act, the Regional Director may authorize minor disaster proofing not required by applicable standards. If necessary, more extensive measures may be approved by the Associate Director. See § 205.407(b) for requirements for disaster proofing measures.

(3) *Materials.* For all eligible repairs, replacements, rebuilding or other restorative work, the most economical materials shall be used, taking into consideration the following: Predisaster design and condition of the facility; current applicable standards, if any; and

predisaster public services or usage of the facility.

(4) *Repairs.* (i) A facility is considered repairable when:

(A) It is feasible to repair the facility so that it can perform the function for which it was designed as well as it did immediately prior to the disaster; and

(B) Such repairs can be made at a cost less than the estimated cost of replacing the damaged structure on the basis of its design immediately prior to the disaster; and

(C) Such permanent repairs are a practicable alternative under 44 CFR Parts 205, Subpart M, 44 CFR Part 9, and 44 CFR Part 10, when applicable. If not, the Regional Director may authorize emergency repairs under section 306, Pub. L. 93-288, to restore essential public services and shall then decline to approve any permanent restorative work in accordance with the appropriate part(s) referenced in this paragraph.

(ii) If the facility was in a damaged or unsafe condition prior to the major disaster, the applicant shall agree to pay the cost of correcting any such conditions as a prerequisite to Federal assistance.

(5) *Replacement.* If a damage facility is not repairable to predisaster condition as determined by the Regional Director, approved restorative work shall include replacement of the facility on the basis of its predisaster design, in conformity with applicable standards for new construction.

(6) *Feasibility studies.* In those cases where the decision to repair or to replace the damaged facility depends upon the relationship between repair costs and replacement costs, the Regional Director will determine the need for a feasibility study. Landslide area investigations may also be eligible [see § 205.75(a)(15).]

(7) *Relocation/No Action.* The Regional Director may decline to approve funding for permanent restoration of a facility at the original location when:

(i) The facility is and will be subject to repetitive heavy damage.

(ii) The approval is barred by provisions of 44 CFR Part (Floodplain Management), 44 CFR Part 10 (Environmental Considerations), 44 CFR Part 205 Subpart M (Hazard Mitigation) or Subpart N (Coastal Barrier Resources Act).

(iii) If funding at the original location is denied, the applicant may choose among the following:

(A) A grant-in-lieu maybe requested to apply the eligible repair or replacement costs, as applicable, to the reconstruction of the facility at a non-

hazardous site. The purchase of the site and road and utility services to the site are the responsibility of the applicant.

(B) The estimated restoration costs may be included in a flexible funding grant provided that no part of the grant is used on the facility at the disapproved location.

(C) The estimated restoration costs may be included in a small project grant provided that no part of the grant is used on the facility at the disapproved location.

(iv) When FEMA funding is denied at a hazardous location, no future FEMA funding may be approved to repair a facility providing the same function as the originally denied facility at the location unless the hazard is mitigated.

(8) *Limited use facilities.* If a facility was not being used to its full capacity or was being used for other purposes than originally designed, assistance may be restricted. Restoration will only be eligible to the extent necessary to restore the immediate predisaster capacity for the limited use or the alternate purpose.

(9) *Inactive facilities.* Facilities that were not in active use at the time of occurrence of the major 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 and was scheduled prior to the major disaster to begin within a reasonable time.

(10) *Facilities scheduled to be replaced.* If a facility which is damaged by a major disaster or emergency was scheduled, prior to the disaster, for replacement within the fiscal year in which the disaster occurred or the next fiscal year, it is not eligible for permanent restoration assistance. Emergency work associated with the project may be eligible.

(11) *Nonessential features.* Although constructed and maintained by the applicant, non-functional features of a facility only of aesthetic value are not eligible.

(12) *Furnishings and equipment.* Comparable used or surplus furnishings and equipment will be approved as replacement items when available. Only those functional furnishings and equipment essential to the operation of the facility are eligible.

(13) *Consumable supplies.* Consumable supplies damaged or lost in a disaster are eligible for replacement but limited to a 30-day requirement of each item replaced. However, the Regional Director may approve additional requirements for certain

items for which he determines that minimum economical stockage levels exceed 30 days.

(14) *Grass Areas.* When such work is necessary in conjunction with eligible permanent restoration of a facility or structure or to retard erosion, grass areas may be restored by:

(i) *Seeding.* Application of seed, fertilizer and mulch in accordance with local practices;

(ii) *Sodding.* Placement of sod when such is the local standard of the applicant. Seeding shall be substituted whenever feasible.

(iii) The maintenance of seeded or sodded areas after initial installation shall be the complete responsibility of the applicant.

(15) *Landslides.* A facility damaged by earth movement shall be reviewed for eligibility in accordance with applicable sections of this regulation. For eligible facilities, additional work may be necessary:

(i) If the stability of the site is in question, the Regional Director may approve reimbursement for a feasibility study by the applicant in order to determine the stability of the site and the practicability of restoring the facility at the site. The study must be cost effective when the cost of the study is compared to eligible repair costs for the facility [see § 205.76(e)(2)].

(ii) If the site is found to be stable to the satisfaction of the Regional Director, he/she may approve the most cost effective method of restoring the facility to perform its predisaster function. Such facility restoration will include the replacement of lost fill (natural and manmade) and the construction of fill retaining devices such as gabions, rock toes, cribwalls, binwalls, posts and sheathing, etc. to the extent necessary.

(iii) If the site is found to be unstable, it must be stabilized before approval for the permanent restoration will be granted. The design and installation of the stabilization are not eligible for FEMA assistance unless the applicant has an applicable standard in accordance with § 205.75(a)(2)(i). The extent of eligible stabilization will be limited to that necessary to restore the eligible facility.

(iv) If there is no practicable method to stabilize the site, or if the applicant declines to perform the stabilization at its own expense, the Regional Director shall deny assistance for the permanent restoration of facilities. In such situations, emergency work to restore essential community services may be eligible.

(b) *Road and street facilities and systems.* Functional features within the public right of way which are damaged

by the major disaster or emergency are eligible. These features include, but are not limited to, pavement, base and subbase of the traveled way, shoulders, embankments, bridges, culverts, drainage structures and safety related items. Facilities that are part of the Federal-Aid System as administered by the Federal Highway Administration (FHWA) are not eligible for FEMA permanent restoration assistance.

(1) *Roads.* Surfaced or paved roads where surface material has been damaged or removed as a result of the disaster may be eligible for restoration but only to predisaster condition. The following are not eligible:

(i) Repair of damages resulting from a lack of maintenance, or which are maintenance in nature and scope.

(ii) Repair of damages resulting from freeze-thaw cycles in areas which normally experience freezing temperatures.

(iii) Repair of roads which have no added surface material (gravel, caliche, etc.) incorporated into their construction. Such roads may be eligible for emergency work to make them passable.

(2) *Detours.* Repair of damages to a road, street or bridge as a result of its use as a detour may be eligible provided:

(i) The detour was made necessary by a facility owned by this or another eligible applicant being out of service as a result of the major disaster.

(ii) Such detour is only operated as long as absolutely necessary and the primary facility is returned to service as soon as possible.

(3) *Bridges.* A structure which meets the definition of a bridge may be eligible for repair or replacement whichever is applicable. Repairability shall be determined by the Regional Director in accordance with § 205.75(a)(4).

(i) *Width standards.* Bridges which are eligible for replacement may be restored in accordance with current applicable local standards for bridge widths. If no such standards are adopted and in force; or if the local standard does not equal or exceed the FEMA bridge width standard, the Regional Director will encourage the applicant to adopt the FEMA standard for all new or replacement bridges within the applicant's jurisdiction. If the FEMA standard is adopted by the applicant, the Regional Director will approve the standard as a deviation and it will be applicable to the replacement of the bridge destroyed by the current disaster. If the standard is not adopted, only the cost of an in-kind replacement would be eligible for FEMA assistance. The FEMA standard appears in the

FEMA Eligibility Handbook (DR&R-2—July 1981) and may be superseded by changes approved by the Associate Director.

(ii) *Waterway opening standards.* If the applicant has an applicable standard relating to waterway openings, and the bridge is eligible for replacement, the cost of building to that standard may be included in eligible costs. In all cases the action will be reviewed for compliance with Floodplain Management regulations, 44 CFR Part 9. Based upon that review FEMA may specify a waterway opening for the bridge and encourage the applicant to adopt the standard of having waterway openings which will accommodate the 100 year frequency flood through, over and around the bridge without significant adverse effects for all new or replacement bridges within the applicant's jurisdiction.

(iii) When, in the replacement of a bridge, the roadway can be brought into a safer alignment by skewing the bridge, the work is eligible for FEMA reimbursement. Approval shall be conditioned on the applicant funding the necessary changes to existing undamaged approach roads. Such relocated approach roads shall conform at least to the minimum standards outlined in Chapter 5 of the American Association of State Highway and Transportation Officials (AASHTO) Policy on Geometric Design of Highways and Streets, 1984.

(iv) *Repairable bridges.* Only restoration of those features which existed on a repairable bridge prior to the disaster are eligible for FEMA reimbursement.

(v) *Traffic standards.* Determination of predisaster capacity for handling traffic on bridges and roads damaged or destroyed as a result of a major disaster shall be based on the average daily traffic which the bridge or road carried immediately prior to the disaster.

(4) *Culverts.* Standards for the replacement of bridges shall not be used in the repair or replacement of culverts. Applicable local standards for the repair or replacement of culverts may be eligible.

(i) If a culvert is merely plugged, there is no damage to the culvert or its installation and it may be cleaned in place without removal; such cleaning is routine maintenance and is not eligible. However, if the culvert pipe must be removed from its installation to be cleaned, such work is eligible.

(ii) Culverts which are washed out and cannot be reused may be replaced by larger culverts if required by applicable standards or if damage was

due to inadequate capacity and upgrading can be completed within disasterproofing guidelines. If all or part of the culvert pipe assembly is salvageable, it shall be reused.

(iii) The fill over the culvert and the roadway surface are eligible for restoration to predisaster design and condition.

(c) *Water Control Facilities.*

Restoration of water control facilities may be eligible for FEMA assistance including but not limited to: Dams, levees, dikes, open drainage channels, irrigation systems and debris dams.

(1) *U.S. Army Corps of Engineers (COE) Projects.* Restoration of flood control works originally constructed by the U.S. Army Corps of Engineers (COE) or incorporated into authorized projects is the responsibility of the COE and is not eligible for FEMA assistance. Denial of permanent restoration assistance by COE is not reason for FEMA eligibility. Emergency work, if done by the applicant on these facilities, is not eligible for COE reimbursement but may be eligible for FEMA assistance as Category B emergency work. A separate eligibility determination for such assistance shall be made in accordance with § 205.74(c)(3)(iv).

(2) *Other Projects.* Restoration of other flood control works may be eligible for FEMA assistance but only to predisaster condition, profile and cross section. Applicable local standards, if being used currently, may be incorporated into the eligible work. A review of the project for compliance with 44 CFR Part 9, Floodplain Management, will be required and any local standard will be reviewed for adequacy of the level of protection afforded by the project. This review may result in a recommendation by FEMA to adopt a new standard if the local standard is found inadequate [see § 205.75(a)(2)].

(3) *Debris dams, etc.* Restoration of the constructed dam portion of a debris catch basin may be eligible for assistance provided the conditions of (5) below are met. Cleanout of debris catch basins shall be limited to the removal of materials deposited by the disaster. The applicant will be required to show satisfactory evidence of the predisaster level of debris or no cleanout will be eligible. The applicant will also be required to show evidence of adherence to an established maintenance program of regular cleanouts. If no such program is being followed, no cleanout will be eligible. Debris basins which were constructed as an emergency protective measure in the past and for which there is no longer an emergency need are not eligible for cleanout or restoration

assistance. An exception may be made if it can be shown that the basin continued to provide significant protection after the initial emergency and the basin was maintained by regularly scheduled cleanouts.

(4) *Drainage Channels and Reservoirs.* Restoration of a reservoir dam or drainage channel walls or dikes may be eligible for assistance provided the conditions of paragraph (c)(5) of this section are met. Cleanout of debris deposited by the major disaster in a designed, constructed and regularly maintained channels, or water supply reservoirs, is eligible. It shall be the responsibility of the applicant to show the disaster related debris. The applicant will also be required to show evidence of adherence to an established maintenance program which is designed to maintain the flow or storage capacity of the facility.

(5) *Maintenance.* In those cases where inadequate maintenance by the applicant prior to a major disaster significantly diminished the predisaster design or hydraulic capacity of a facility or system, the Regional Director may require the applicant to correct the maintenance deficiencies of the entire facility or system as a condition for Federal grant approval for permanent facility work. The approval will be limited to restoration of the design and condition of the facility or system as it existed immediately prior to the major disaster. The applicant shall submit an acceptable plan and schedule for the required maintenance work acceptable to the Regional Director before project approval. If these conditions are not satisfied, the Regional Director may decline to approve Federal assistance.

(d) *Buildings and Equipment.* All publicly owned or operated buildings and equipment are generally eligible provided they meet the other eligibility criteria of these regulations. Eligible private nonprofit buildings and equipment are further limited to those which meet the special criteria in § 205.73(f).

(1) *Repairs.* When a building remains structurally sound such that repairs are feasible, then the eligible work is limited to performing those repairs in accordance with applicable standards for repairs.

(2) *Replacements.* When a publicly-owned building is destroyed or damaged to the extent that the Regional Director determines that it would not be feasible to perform repairs, a replacement structure may be authorized. The eligible capacity of the replacement facility may not exceed the designed capacity of the original structure.

(3) *Educational Facilities.* Assistance is not available for public or private nonprofit educational facilities unless the cost of the total of damages, including those covered by insurance, from the disaster within the school district exceeds the threshold in effect for assistance to elementary and secondary schools from the Department of Education at the time of the disaster. For purposes of determining if the dollar threshold is met, total eligible damages will be counted including those eligible for Department of Education and FEMA program assistance.

(4) *Office equipment.* When damage to office equipment is repairable, only repair is authorized. When damage is not repairable, comparable used office equipment when available from Federal and State surplus or commercially, shall be procured for replacement items. Only when used equipment is not available will new equipment be approved.

(5) *Service equipment.* Damages to police cars and motorcycles, fire trucks, public works construction and maintenance equipment, and such other equipment damaged as a direct result of the disaster are eligible. This includes damages that could not have been reasonably avoided and which are incurred while performing eligible work. Reimbursement for such equipment is covered at § 205.76(b)(3)(iii). To be eligible equipment must have been in active use or only temporarily out of service:

(i) *Repairs.* Only those repairs necessary to return service equipment to a safe operable condition are eligible. The allowable reimbursement will not exceed the actual cost of repairs less any insurance recoveries.

(ii) *Replacement.* If the equipment is not repairable to a safe operable condition or if repair costs will exceed "Blue Book" retail value, the equipment will normally be replaced with used equipment of approximately the same age and value to the extent such equipment is readily available within a reasonable time and distance. Salvage value, if any, and insurance recoveries shall be deducted from the allowable reimbursement.

(6) *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. When damage to books is repairable, only repair is authorized. Federal grant assistance shall be based on used replacements, when reasonably comparable and available. Discounts from list price normally are available and must be used when available. The

Regional Director may authorize equivalent replacement, such as substituting microfilm copies of newspapers and periodicals, if they can be provided at no greater Federal cost than replacement of the damaged items in kind. Cataloging and other work incidental to replacement of books and other materials are eligible.

(e) *Utilities.* Repair or replacement of utility generation, transmission and distribution facilities are eligible under the following guidelines:

(1) Repair or replacement of measuring devices such as meters is eligible only if the maintenance and repair responsibility is that of the applicant.

(2) Cleaning of storm and sanitary sewer lines of debris is eligible only to remove debris deposited by the disaster and only if the capacity of the sewer is affected. The level of predisaster debris shall be documented by the applicant and shall be subtracted from the total amount of debris to determine eligible work.

(3) A State or Federal requirement for a higher level of sewage or water treatment than existed before the disaster shall not be treated as an applicable standard to be used for restoration or replacement of a water or sewage treatment plant. That would be a requirement for a different facility to which a grant-in-lieu could be applied.

(f) *Parks and Recreational Facilities.* Publicly owned park and recreational facilities may be eligible for restoration under this category.

(1) Physical installations in the area such as playgrounds and equipment, swimming pools, boat docks, bath houses, tennis courts, picnic tables, etc. may be repaired or replaced in accordance with the general criteria for permanent work.

(2) Natural features of a publicly-owned park or recreational facility, such as trees and shrubs may be replaced to the extent necessary to restore public services or use that the Regional Director determines to be reasonable and practicable.

(3) Trees in areas other than parks such as around public buildings or along a public boulevard, may be considered a part of the public facility only if they serve in a functional relationship to the facility. These functions may include shade, screening, privacy control, noise abatement, traffic control, glare and reflection control, wind protection and erosion control. Trees for ornamental purposes only are not eligible.

(i) The above functions must relate to a specific eligible public facility. Wooded areas which are not

functionally related to a specific facility are not eligible for restoration.

(ii) For those trees which the Regional Director determines that restoration may be eligible, the applicant must have demonstrated by actual practice prior to the disaster that it is responsible for planting, maintaining and replacing these trees.

(4) Large mature trees which have been destroyed will be replaced with a tree no larger than "five gallon" size. Small trees will be replaced with seedlings on a one-for-one basis. If feasible, repairs such as straightening trees or trimming broken branches, shall be performed on damaged trees. The cost of repairs should not exceed the cost of removal and replacement of the tree.

(5) *Beaches.* Replacement of sand on a natural unimproved beach is not eligible except when necessary as emergency work to protect improved property. Work on an improved beach may be eligible under the following guidelines:

(i) The beach was constructed by the placement of sand to a designed elevation and width.

(ii) A maintenance program involving periodic renourishment of sand has been established and adhered to by the applicant. Any beach that has not been renourished within the five years prior to the disaster or the prescribed renourishment interval, whichever is less, will not longer be considered an improved beach.

(iii) The applicant will be responsible for the replacement of sand lost by normal erosion between the time of the last replacement and the disaster event at its own expense. Such replacement will be a condition of FEMA assistance for replacement of the sand lost because of the disaster.

(iv) Repair of damaged existing sand retention devices such as groins or breakwaters is eligible.

(v) FEMA assistance on improved beaches must be determined to be a practicable alternative in accordance with floodplain management regulations (44 CFR Part 9). Particular attention must be paid to the effect of the work on adjacent areas and vice-versa.

(g) *Removal of timber.* When in the public interest, the Regional Director may approve grants to a State or local government for the purpose of removing from privately owned lands timber damaged as a result of a major disaster. When approved by the Regional Director, bent, twisted, or downed timber of commercial value will be salvaged or cleared. This includes the construction of approved temporary access roads required for removal of the damaged timber. Disposal of slash

created by approved timber removal is eligible when reasonable methods are employed.

§ 205.76 Eligibility of costs.

(a) *General.* (1) This section provides policies and guidelines for determining eligibility of costs of work eligible under the Act that may be paid to any eligible applicant or other recipient of this grant assistance. As used in this section, eligible costs include total costs that are subject to cost sharing and are otherwise reimbursable under these regulations. The applicable cost sharing portions as set forth in Subpart H, § 205.113(b) shall be used to determine net eligible costs which may be approved and reimbursed by FEMA. The subparagraphs which follow are generally applicable to eligibility of costs. Only reasonable costs of eligible work are reimbursable.

(2) Factors affecting eligibility of costs. To be eligible under a FEMA grant, costs must meet the following general criteria:

(i) Be necessary and reasonable for proper and efficient administration of the grant program, be allocable to approved work under these regulations, and, except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of the applicant.

(ii) Be authorized or not prohibited under State or local laws or regulations.

(iii) Conform to any limitations or exclusions set forth in these regulations, Federal laws, or other governing limitations as to types or amounts of cost items.

(iv) Be consistent with policies, regulations, and procedures of the applicant that apply uniformly to both Federally assisted and other activities of the unit of government of which the grantee is a part.

(v) Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

(vi) Not be allocable to or included as a cost of any other Federally financed program.

(vii) Be net of all applicable credits which offset or reduce eligible disaster costs. Examples are purchase discounts, insurance recoveries and salvage.

(3) The amount of Federal reimbursement made to an applicant under categorical funding is limited to applicable portion [§ 205.113(b)] of the eligible cost of performing work approved by FEMA. This limitation is not intended to restrict the type and cost of work which the applicant may choose to undertake. If the applicant performs

work in excess of the approved amount, Federal financial assistance is limited to the applicable portion of eligible costs of work approved by the Regional Director. Flexible funding under section 402(f) of the Act, is limited to 90 percent of the applicable portion of the estimated costs of eligible permanent restorative work. (Emergency work would be covered by a categorical grant with the limits described above). Reimbursement under a small project grant is limited to the applicable portion of the estimated cost of all eligible work.

(4) The applicant may use assistance under the Act to supplement funds available from the grant programs of other Federal agencies, or from other sources, provided that:

(i) There is no duplication of benefits prohibited by section 315 of the Act, or
(ii) Such funding is not in violation of applicable laws and Federal regulations governing such other Federal programs.

(5) *Administrative Expenses.* An allowance to cover expenses attributable to requesting, obtaining, and administering FEMA grant assistance is an eligible cost.

(i) The allowance shall be calculated in accordance with the following:

(A) For those applicants whose total eligible costs are less than \$100,000, such allowance shall be three percent of total eligible costs (estimated costs for recipients of small project grants).

(B) For those applicants whose total eligible costs exceed \$100,000 but are less than \$1,000,000, such allowance shall be \$3,000 plus two percent of total eligible costs in excess of \$100,000.

(C) For those applicants whose total eligible costs exceed \$1,000,000 but are less than \$5,000,000, such allowance shall be \$21,000 plus one percent of total eligible costs in excess of \$1,000,000.

(D) For those applicants whose total eligible costs exceed \$5,000,000 such allowance shall be \$61,000 plus one-half percent of total eligible costs in excess of \$5,000,000.

(ii) Subject to the limitations stated in paragraph (a)(5)(i) of this section, the allowance for administrative expenses will cover, but is not limited to, the types of work listed below. These costs will be covered only by this allowance and will not be included as part of the cost of any eligible work project. The amount approved will be only the applicable percentage of total eligible costs and will not be based on the actual cost of the administrative items.

(A) Preparation of project applications, reports, appeals, inspection reports, materials for audits, and claims for payment.

(B) Operation of Emergency Operations Center.

(C) Salaries, wages, fees, and expenses of individuals or firms while engaged in the preparation and processing of damage assessments, damage survey reports, project applications, claims for payment and supporting documentation.

(D) Office supplies and equipment.

(E) Rent.

(F) Telephone and telegraph expenses.

(G) Insurance purchased by the applicant or grantee for its protection during the use of the grant or loan.

(H) Insurance required to be purchased as a condition of FEMA assistance.

(6) *Equipment rental.* Rental of privately-owned equipment to perform eligible disaster work is eligible. However, the rental rates must be comparable to going rates in the locality for similar types of equipment. If not, reasonable rates as determined by the Regional Director shall be substituted in approval of project applications and of claims.

(7) *State Inspectors.* Reasonable actual costs, as determined by FEMA, of State inspectors, representing the Governor's Authorized Representative (GAR), engaged in preparation of Damage Survey Reports (DSRs) and Final Inspection Reports and related field inspections, are eligible. This does not include persons acting as representatives of State agencies that are applicants. These costs are subject to the following limitation: reimbursement may be made for travel, per diem, and overtime, but not regular time salaries. The Regional Director, after consultation with the GAR, will determine the appropriate schedules for preparation of DSRs and Final Inspection Reports.

(8) *Handtools, materials, and supplies.* The following items are eligible:

(i) Reasonable costs for materials and supplies consumed in eligible disaster work, including those procured by direct purchase or taken from applicant's stock.

(ii) Costs of hand tools (shovels, handsaws, hammers, etc.), personal equipment (radios, weapons, etc.), and protective clothing reasonably lost, worn out or destroyed through disaster use in performing eligible work if determined not to be the result of negligence.

(9) *Salvage.* Salvage value of any damaged or destroyed property must be deducted in all determinations of eligibility of cost and from final reimbursement to any claimant.

(10) *Stockpiled items.* Costs of all stockpiled items purchased under the Contributions Program (Pub. L. 81-920)

for civil defense purposes which are lost, damaged, or destroyed by a major disaster while in storage are not eligible.

(11) *Insurance.* The Regional Director shall reduce the eligible costs by the actual amount of insurance proceeds received by the grantee or by the amount of insurance proceeds which would have been received from an insurance policy required to be purchased as a result of prior Federal disaster assistance received under this Act or any other applicable authority. The latter reduction shall be made whether or not insurance was actually purchased or maintained. (See § 205.76(a)(25) concerning costs of obtaining such recoveries.)

(12) *Acquisition of lands, easements, and rights-of-way* is normally the responsibility of the applicant or other grant recipient. The Associate Director may approve such an acquisition only if it will result in cost savings to the Federal Government.

(13) *Licenses.* The costs of Federal, State, or local licenses which are required for the grantee to operate and maintain completed facilities are not eligible. Meeting the requirements for licenses is the responsibility of the grantee.

(14) *Permits.* The costs of Federal, State, or local permits which are required to perform eligible work are eligible.

(15) *Loss of revenue.* Replacement of revenues lost as the result of major disaster or emergency is not eligible for grant assistance.

(16) *Excess utility costs.* Any added operating costs or charges for providing utility services are not eligible.

(17) *National Guard.* Actual costs paid by the State for eligible work performed by the National Guard including salaries and travel and living expenses of Guardsmen directly engaged in eligible work or in direct supervision of such work are eligible. Eligible work includes public safety or security measures as well as emergency or permanent restoration work eligible under these regulations.

(18) *Cooperative agreements.*—(i) *Eligible.* Costs for work performed under cooperative arrangements between State or local governments, but limited to those direct costs of the performing entity which the applicant is legally obligated to pay and which would be eligible if the applicant had performed the work.

(ii) *Not eligible.* Costs for work performed under arrangement between a State or political subdivision of a State and a Federal agency, except when

approved in advance by the Regional Director.

(19) Work performed by service, fraternal, and other similar organizations which do not normally contract their service for disaster relief.

(i) *Eligible.* Only out-of-pocket costs for equipment, materials, and supplies used or consumed in the performance of eligible work.

(ii) *Not eligible.* Wages or salaries of member personnel engaged in disaster relief activities.

(20) *Prison Labor.* The following costs are eligible:

(i) Jail and prison labor, limited to the amount paid in accordance with rates established prior to the disaster.

(ii) Transportation to work site.

(iii) To the extent which they exceed normally budgeted amounts:

(A) Food and lodging for prisoners and guards.

(B) Salaries of guards subject to limitations on Force Account work.

(21) *Negligence.* No Federal reimbursement shall be made to any applicant for damages caused by its own negligence. Reimbursement may be made to applicants whose damages were caused by other parties, but in such circumstances it will be incumbent upon such applicants to take whatever steps are necessary to recover from the other parties the costs of responding to damages which were caused by the other parties. Any recoveries from such other parties which duplicate assistance provided pursuant to the Act must be returned to FEMA. See also §§ 205.39(f)(3) and 205.76(a)(25).

(22) *Interest and other financial costs.* Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith are not eligible. Interest penalties paid to contractors or suppliers are not eligible costs.

(23) *Governor's expenses.* The salaries and expenses of the Office of the Governor of a State or the chief executive or a political subdivision are considered a cost of general State or local government and are not eligible.

(24) *Legislative expenses.* Salaries and other expenses of the State legislature or similar local governmental bodies, such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction, are not eligible.

(25) *Legal Expenses.* Legal fees required in the normal administration of the grant are eligible. However, legal services furnished by the Chief legal officer of a State or local government or of his/her staff solely for the purpose of discharging his/her general

responsibilities as a legal officer are not eligible. These regulations provide that eligible costs shall be determined after subtracting any recoveries from eligible damages (§§ 205.76(a)(2)(vii) and 205.76(a)(11)). Reasonable costs of prosecuting claims against persons or entities responsible for causing or aggravating an applicant's emergency or major disaster damages or against persons or entities which have an obligation to reimburse applicants for their emergency or major disaster damages are deductible from the recovery whenever any recovery from such person or entity duplicates all, or any part of, a grant made by FEMA pursuant to the Act. The calculation of applicable expenses, net recovery, and eligible costs will be made in the following manner.

(i) If the recovery is equal to or less than the total damages eligible for FEMA assistance, then all reasonable expenses may be deducted from the recovery to determine the net recovery.

(ii) If the recovery is greater than the total damages eligible for FEMA assistance, then the total reasonable expenses shall be multiplied by the fraction of eligible damages over total recovery to determine applicable expenses. The applicable expenses are then deducted from the portion of the recovery which duplicates the eligible damages. The result is the net recovery.

(iii) The cost of claims against the Federal Government shall not be included in the deduction.

(iv) The net recovery determined in paragraph (a)(25) (i) and (ii) of this section shall be subtracted from total eligible damages to determine cost eligible for FEMA assistance. Reimbursement will be calculated in accordance with § 205.76(a)(3) and 205.113(b).

(26) *Grant-in-lieu.* (i) The amount for which a grant-in-lieu will be approved is limited to the net eligible costs of repairing or replacing the damaged or destroyed facility in accordance with applicable standards.

(ii) The only permissible basis for increasing or reducing the Federal funding under a grant-in-lieu is a substantial error or omission in defining the approved scope of eligible work or in the approved estimated reasonable costs of such work.

(iii) If the actual eligible costs for completing the alternate project are less than the estimate for restoring the original project, the Federal contribution will be reduced, based on the actual eligible costs.

(27) *Direct Federal Assistance (Except technical assistance).* Any applicant which requests and receives direct

Federal assistance for eligible work shall reimburse FEMA for the applicable non-Federal portion of the eligible costs incurred for work performed including any overhead or administrative expenses paid by FEMA to the Federal agency performing the mission assignment.

(b) *Force Account (Work by the applicant's own forces).* In addition to the general criteria, the following criteria are applicable to force account work:

(1) *Regular employees.* Gross salaries or wages (including overtime) of regular employees of the applicant or grantee performing eligible work are eligible but not to exceed the going wage paid locally for such work. The following also applies to these personnel costs:

(i) Regular time salaries or wages of regularly employed policemen and firemen and of other regular employees whose duties do not change because of the disaster are not eligible. Examples are levee patrollers, pumping plant operators and building inspectors.

(ii) Regular salaries of supervisory personnel other than working foremen engaged primarily and continuously in field supervision of eligible work are not eligible.

(iii) Fringe benefits for each regular employee are eligible to the extent that such benefits were being paid prior to the disaster. Those benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave and the like, if they are provided pursuant to an approved leave system are eligible. Benefits in the form of employers' contribution or expenses for social security, employees' life and health insurance plans, unemployment insurance coverage, workmen's compensation insurance pension plans, severance pay, and the like, provided such benefits are granted under approved plans are also eligible.

(2) *Extra employees.* Gross salaries or wages (including overtime) of extra employees of the applicant or grantee performing eligible work are eligible when the employees are engaged in the performance of eligible work, but not to exceed the going wage paid locally for such work. All fringe benefits (as listed in paragraph (b)(1)(iii) of this section) actually paid or charged are eligible to the extent that such benefits are normally paid or charged for extra temporary employees of the applicant or grantee.

(3) *Equipment.* The FEMA Schedule of Equipment Rates, or an alternative Schedule of Equipment Rates approved

by the Associate Director, is applicable to all reimbursements for equipment that is publicly-owned or owned by other grantees except as noted here.

(i) The rates are applicable only while the equipment is in actual operation. Standby equipment costs are not eligible.

(ii) For vehicles or equipment utilized by police, firemen, and other employees whose duties do not change because of the major disaster or emergency; and for permanently installed fixed equipment, such as pumping stations, only disaster-related actual costs in excess of average costs are eligible. Average costs shall be calculated by using a like duration of time, or the closest duration for which auditable records are available, for the most recent three years in which a Presidentially declared major disaster did not occur.

(iii) *Damaged Equipment.* Equipment which is damaged while performing eligible work may be eligible for repair or replacement [§ 205.75(d)(5)].

If such damage is eligible, only actual out of pocket costs incurred (instead of the FEMA equipment rate) while that piece of equipment was in operation will be eligible in addition to the repair or replacement costs.

(c) *Contract work.* (1) Eligible; Reasonable costs for work performed by private contractors on eligible projects contracted for in accordance with State or local statutes.

(2) Not eligible; Costs incurred under the following types of contracts unless the Regional Director determines, on a case-by-case basis, that reimbursement of reasonable actual costs of eligible work is in the best interests of the government:

(i) Cost-plus-percentage-of-cost contracts.

(ii) Contracts containing a provision which makes payment for eligible work contingent upon reimbursement under the Act.

(iii) Contracts with any contractor included on the General Services Administration (GSA) List of Debarred, Suspended or Ineligible Contractors.

(d) *Emergency work.*—(1) *General.* In addition to provisions of 44 CFR 205.76, (a), (b) and (c), these specific criteria apply to emergency work under the Act.

(2) *Engineering and design.* For emergency work such services are usually not necessary and must be specifically approved by the Regional Director. The provisions of 44 CFR 205.76(e)(1) are also applicable to any engineering or design services related to emergency work.

(3) *Snow removal.* (i) The following types of costs may be eligible when approved by the Regional Director:

(A) Costs of equipment operations to perform eligible emergency snow removal.

(B) Costs to remove stalled or abandoned vehicles and other obstructions when necessary to accomplish eligible emergency snow removal by equipment operations.

(C) Costs of mobilization and demobilization of equipment actually used to perform eligible work, involving transportation less than 300 miles one way.

(ii) The following types of costs of emergency snow removal are not eligible:

(A) Costs of hand labor.

(B) Cost of salt, sand, and other such antislip measures.

(C) Cost of transportation in excess of 300 miles one way for mobilization or demobilization of equipment.

(4) *Emergency pumping.* Removal of trapped water posing an immediate threat to public health and safety is eligible. Reimbursement for emergency pumping from a flood storage area shall terminate promptly after the river or stream has crested and protection from the one-year storm has been provided.

(5) *Access to water control facilities.* Emergency repairs to roadways along the top of a water control facility shall not exceed that required to provide access for emergency work.

(6) *Vector control.* Only disaster-related actual costs in excess of the average cost for a like duration of time, or the closest duration for which auditable records are available, for the most recent three years in which a Presidentially declared major disaster did not occur.

(e) *Permanent work.* In addition to provisions of 44 CFR 205.76 (a), (b), and (c), these specific criteria apply to permanent work under section 402 of the Act.

(1) *Engineering and design.* Reimbursement for eligible engineering, planning, design, supervision, or inspection services shall be based upon reasonable actual direct costs. For estimating purposes only, FEMA will approve engineering fees on the basis of a percentage of project construction cost. However, applicants may not contract for architect/engineers' services on the basis of a percentage of project construction cost, nor make compensation on such basis. A contract on the basis of actual architect/engineer costs plus a fixed fee will be acceptable. The Regional Director may approve special services, such as engineering surveys, soil investigations, resident engineers, and additional construction inspection.

(2) *Feasibility studies.* Feasibility studies concerning repair vs replacement of a facility or stability of the project site may be reimbursable when approved in advance by the Regional Director. Costs for feasibility studies primarily concerning alternate facilities, betterments, or post-disaster programs or any project approved for flexible funding are not eligible for reimbursement.

(3) *Environmental review.* Costs of performing an environmental review or assessment or portions thereof when required by State statute or requested by FEMA are eligible. The scope of the review shall be approved in advance by the Regional Director.

(4) *Relocations.* When the Regional Director requires the relocation of a facility under § 205.75(a)(7) of these regulations, the costs of restoring the facility at the new location are eligible except for the costs of acquiring the site and costs of provision of road access, utilities and communication lines to the site. If the applicant elects to relocate a facility when not required to do so by FEMA, eligible costs are limited to eligible costs of restoring the facility at the original location.

(5) *Warranties.* Additional costs to provide warranty or guarantee of any repaired items or facilities are not eligible for Federal reimbursement.

(6) *Disaster proofing.* The eligible costs of disaster proofing are limited to minor measures to make the affected features of a facility or structure disaster-resistant. Eligible costs of disaster proofing shall not exceed a small percentage of otherwise eligible costs of restorative work being disaster proofed, unless approved by the Associate Director under unusual circumstances on a case-by-case basis.

(7) *Projects under construction.* Federal reimbursement shall not exceed the net eligible costs to an eligible applicant in restoring a facility to substantially the same condition as existed prior to the major disaster. In addition to other provisions of 44 CFR 205.76, the following are applicable:

(i) Losses to facilities or equipment which were the responsibility of a contractor involved in the construction of the facility are not eligible.

(ii) Losses to a facility which was under construction at the time of the disaster may be eligible only to the extent that a written contract between the applicant and the contractor(s) assigns such responsibility to the applicant.

(8) *Removal of Timber.* The eligible costs for timber removal shall include reasonable actual costs incurred for

removal or disposal of damaged timber, including cost of construction and repair of temporary access roads. These costs shall be reduced by the actual salvage value received for the timber removed or the estimated salvage value of timber that the claimant chooses to dispose of by one of the approved methods. Any insurance recoveries shall also be subtracted from calculated costs.

Dated: April 4, 1986.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

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44 CFR Part 205

Disaster Assistance; Subpart H— Public Assistance Project Administration

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: This subpart provides guidance for the administration of Federal disaster assistance for State and local governments and qualifying private nonprofit institutions under the Disaster Relief Act of 1974, Pub. L. 93-288, as amended. It describes new procedures to be used by grantees and recipients of assistance in obtaining Federal disaster relief for governmental entities and eligible private nonprofit facilities. The most significant aspects of the proposed rule change would be the establishment of new procedures to be followed in:

- (1) Implementing cost sharing requirements and;
- (2) processing project applications, claims for reimbursement, appeals, and requests for direct Federal assistance.

DATE: Comment due date: June 17, 1986.

ADDRESSES: Send comments to Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Bruce Baughman, Office of Disaster Assistance Programs, Federal Emergency Management Agency, Room 714, 500 C Street, SW, Washington, DC 20472, Telephone (202) 646-3689.

SUPPLEMENTARY INFORMATION: This proposed rule would include the interim rule changes published by FEMA at 50 FR 32062 on August 8, 1985. FEMA published that interim rule to implement the Single Audit Act of 1984, Pub. L. 98-502. When FEMA published the interim rule on August 8, 1985, it did not invite

public comment because it was contemplated that a more comprehensive revision of Subpart H, Project Administration, would be published in the near future. It is in the context of this publication that FEMA is proposing a comprehensive revision of Subpart H, one portion of which is the changes to implement the Single Audit Act of 1984. This portion of proposed Subpart H would remove the requirement for State audits on all categorical and flexible funding grants made under section 402 of Pub. L. 93-288, the Disaster Relief Act of 1974. The balance of the proposed comprehensive revision to Subpart H would establish procedures to be followed in implementing cost sharing requirements and in the processing of project applications, claims for reimbursement, appeals, and requests for direct Federal assistance. Highlights of the proposed changes are as follows:

Section 205.111 has been revised to delete the definitions of "Applicant", "Emergency work", "FEMA", "Force account", "Permanent work", "Public assistance", and "Standards." The definition of these terms are carried in other subparts of these regulations. Section 205.111 was further revised to incorporate the definition of five new terms to be used in the context of public assistance cost sharing and direct Federal assistance. These terms are "Direct Federal Assistance", "Level I Threshold", "Level II Threshold", "Per Capita Personal Income" and "Population". The Agency's rationale for cost sharing and how the thresholds used for funding were derived is provided in the supplemental information section of the proposed rule change for 44 CFR Part 205 Subpart C which has been published concurrently with this proposed rule change.

Section 205.112 is retitled "Implementation of OMB Circulars A-102 and A-128" and § 202.112(e) is revised to require compliance with OMB Circular A-128 entitled "Uniform Audit Requirements for State and Local Governments."

Section 205.113 entitled "Federal grant assistance" has been revised to incorporate the specific cost sharing provisions. A detailed explanation on the Agency's rationale for cost sharing and how cost sharing thresholds were derived is provided in the preamble to the proposed revision of 44 CFR Part 205 Subpart C. The proposed revision of Subpart C is being published concurrently with the proposed changes to this Subpart. Section 205.113(b) is retitled "Funding Limitations". This

paragraph contains the specific cost sharing levels and procedures to be used in funding project applications submitted by eligible program applicants. The information formerly contained in § 205.113(b) is now carried at § 205.113(c). New § 205.113(c)(2)(ii) has been revised to delegate the authority for changing the type of funding after project application approval to the Regional Director.

Section 205.114 entitled "Project applications" has been revised to reflect new procedures for the submission of project applications and supplements.

Section 205.115 entitled "Documentation" is revised to identify specific documents Public Assistance program applicants must maintain for accounting purposes and to support claims for reimbursement. Section 205.115 has also been revised to incorporate into § 205.115(c) the language formerly located at § 205.118(b)(2). Section 205.115(d) outlines procedures for the submission and distribution of audit reports required by OMB Circular A-128.

Section 205.116 entitled "Project performance" has been revised to allow the Regional Director to extend the deadlines under § 205.116(b)(2)(i)(c) for a period not to exceed 30 months, on a project-by-project basis.

Section 205.117, formerly entitled "Final inspections", has been retitled "Claims for reimbursement." This section has been revised to incorporate in part the procedures formerly delineated in § 205.118(a).

Inspections are now covered by § 205.118. This revised section, entitled "Interim and final inspections", requires that final inspections be conducted on all projects in excess of \$25,000 instead of \$10,000, as formerly required at § 205.117(b)(2). This section also transfers the responsibility for scheduling and conducting final inspections from the Governor's Authorized Representative to the Regional Director. The procedures formerly carried at § 205.117(b)(2) have been incorporated into the revised § 205.117 and § 205.119.

Section 205.119 is a new section entitled "Review and approval of claims." This section revises the claims review and approval procedures formerly contained in § 205.118(d) (1) and (2) by deleting the requirement for the Governor's Authorized Representative to submit an audit report with the final claim. This section is also revised to require the Governor's Authorized Representative to submit claims for reimbursement to the Regional Director within 60 days after