Sunshine Act Meetings

Federal Register

Vol. 54, No. 53

Tuesday, March 21, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 15, 1989.

TIME AND DATE: 10:00 a.m., Thursday, March 23, 1989.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Local Union 1810, District 6, UMWA v. Ohio Valley Coal Co., as successor to NACCO Mining Co.*, Docket No. LAKE 87–19–C. (Issues include whether miners are entitled to compensation under Section 111 of the Mine Act.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(d).

FOR FURTHER INFORMATION CONTACT: Jean Ellen, (202) 653–5629/(202) 566–2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 89–6667 Filed 3–17–89; 11:35 am]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 9:30 a.m., Friday, March 24, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 17, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–6636 Filed 3–17–89; 9:55 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 12:00 noon, Monday, March 27, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 17, 1989.

Jennifer J. Johnson

Associate Secretary of the Board.

[FR Doc. 89–6337 Filed 3–17–89; 9:55 am]

BILLING CODE 6210-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Tuesday, March 21, 1989 at 3:30 p.m.

PLACE: Room 101, 500 E Street, SW., Washington DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints.
5. Inv. No 731–TA–411 (F) (Calcined Proppants from Australia)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252–1000.

Kenneth R. Mason,

Secretary.

March 8, 1989.

[FR Doc. 89-6767 Filed 3–17–89; 3:38 pm]

BILLING CODE 7020-02-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 20, 27, April 3, and 10, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of March 20

Wednesday, March 22

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of March 27—Tentative

Tuesday, March 28

2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for South Texas, Unit 2 (Public Meeting).

Wednesday March 29

10:00 a.m.
Briefing on Staff Proposal on Continuity of Government Program (Closed—Ex. 1).

2:00 p.m.
Briefing on Status of West Valley Project (Public Meeting).

Thursday, March 30

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6).

2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for Vogtle, Unit 2 (Public Meeting).

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting).

Week of April 3—Tentative

Wednesday, April 5

2:00 p.m.
Briefing on Certification of Radiographers (Public Meeting).

Thursday, April 6

10:00 a.m.
Breifing on Status of Activities with the Center for Nuclear Waste Regulatory analysis (Public Meeting).

1130 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of April 10—Tentative

Thursday, April 13

9:30 a.m.
Briefing on Status of Implementation of Severe Accident Master Integration Plan (Public Meeting).
2:00 p.m.
Breifing on Implementation of Safety Goal Policy Statement (Public Meeting).
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

March 16, 1989.

William M. Hill, Jr.,
Office of the Secretary.

[FR Doc. 89–6718 Filed 3–17–89; 3:35 p.m.]
BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of March 20, 1989.

A closed meeting will be held on Tuesday, March 21, 1989, at 2:30 p.m. An open meeting will be held on Thursday, March 23, 1989, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, March 21, 1989, at 2:30 p.m., will be:

Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Formal order of investigation.
Institution of injunctive actions.
Subpoena enforcement action.
Regulatory matter regarding financial institution.

The subject matter of the open meeting scheduled for Thursday, March 23, 1989, at 10:00 a.m., will be:

Consideration of an application filed by Thomas J. Herzfeld Advisors (Canada), Inc. on behalf of T.J. Herzfeld Discount Asset Fund ("Fund") for an order of the Commission under section 6(c) of the Investment Company Act of 1940 conditionally exempting it from the provisions of section 12(d)(1)(A) to permit the Fund, an unregistered Canadian closed-end fund holding company, to invest in the securities of United States registered closed-end investment companies. For further information, please contact Victor R. Siclari at (202) 272–3026.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Alden Adkins at (202) 272–2000.

Jonathan G. Katz,
Secretary.

March 16, 1989.

[FR Doc. 89–6766 Filed 3–17–89; 3:36 pm]
BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 54, No. 54
Tuesday, March 21, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 87-092]

Sharwil Avocados From Hawaii

Correction

In proposed rule document 89-5192 beginning on page 9453 in the issue of Tuesday, March 7, 1989, make the following corrections:

On page 9455, in the first column, in amendatory instruction 9c, the first line should read: "c. Paragraph (e) would be amended by".

On the same page, in the same column, in amendatory instruction 9e, the first line should read: "e. Paragraph (g) would be amended by".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0447]

CIBA Vision Corp.; Premarket Approval of CIBA Vision Sterile Saline Solution and CIBA Vision Sterile Buffered Saline Solution

Correction

In notice document 89-4957 beginning on page 9086 in the issue of Friday, March 3, 1989, make the following correction:

On page 9086, in the third column, under **SUMMARY**, in the sixth line, after "Vision" insert "Sterile".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1, 2, 5, 7, 10, 12, 13, 14, 16, 20, 21, 25, 50, 56, and 58

[Docket No. 88N-0002]

Certain Regulations; Editorial Amendments

Correction

In rule document 89-4959 beginning on page 9033 in the issue of Friday, March 3, 1989, make the following corrections:

1. On page 9033, in the second column, in the first complete paragraph, in the second line, after "nonsubstantive" insert a comma; and in the third line, "pocedures" should read "procedure".

§ 10.1 [Corrected]

2. On page 9034, in the second column, in amendatory instruction 16, in the second line, "(ar" should read "(a)".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26619; File Nos. SR-NYSE-88-39 Amendments Nos. 1 and 2 and SR NYSE-88-40 Amendment No. 1]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Listing Standards for Constituent Securities of Common Stock and Meaning, Administration or Enforcement of Rule 19c-4 with Respect to Constituent Securities of Common Stock such as Unbundled Stock Units

Correction

In notice document 89-5890 beginning on page 10602 in the issue of Tuesday, March 14, 1989, make the following correction:

On page 10605, in the 1st column, in the 14th line, the comment date that reads "April 14, 1989" should read "April 4, 1989".

BILLING CODE 1505-01-D

federal register

Tuesday
March 21, 1989

Part II

Federal Emergency Management Agency

44 CFR Parts 206 and 207

Disaster Assistance; Interim Rule With Request for Comments

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 206 and 207

Disaster Assistance

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule with request for comments.

SUMMARY: FEMA is publishing this rule for two reasons: To implement the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act, or the Act), and to implement the Office of Management and Budget's (OMB) "common rule," Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (effective on October 1, 1988). The "common rule" was recently adopted by FEMA at 44 CFR Part 13. The President signed the Disaster Relief and Emergency Assistance Amendments of 1988 (Pub. L. 100-707) on November 23, 1988. This law amends the Disaster Relief Act of 1974, Pub. L. 93-288, and retitles it the Stafford Act. As a result, FEMA is adding new Parts 206 and 207 to 44 CFR. The interim regulations which are being published at this time will govern disasters or emergencies declared by the President on or after November 23, 1988. Existing regulations at 44 CFR Part 205 will remain in effect to govern those major disasters and emergencies declared prior to enactment of the amendments.

DATES: These interim rules will be effective on March 21, 1989, except paragraph (b)(2) of § 206.253 which is effective May 22, 1989. Comments from the public are encouraged; they will be accepted until May 22, 1989.

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

FOR FURTHER INFORMATION CONTACT: Robert G. Chappell, Assistant Associate Director, Disaster Assistance Programs, State and Local Programs and Support, 500 C Street SW., Washington, DC 20472, (202) 646-3615, or contact the program officer for the particular section in question.

SUPPLEMENTARY INFORMATION:

General Information

FEMA is publishing interim (effective) rather than proposed rules because the amendments to the Disaster Relief Act were effective immediately upon enactment (November 23, 1988). However, public comments are welcome and will be considered in adoption of the final rule.

These interim rules will be published in three phases. The subparts appearing here include individual assistance, public assistance, and certain unchanged provisions of hazard mitigation requirements. Subparts A, B, and C of this part, relating to general agency policy, the declaration process, and FEMA's new emergency assistance authorities, will be published as interim rules in a few weeks, along with Subpart N, covering the new hazard mitigation grant program. New 44 CFR Part 207, covering the Great Lakes planning grant, will be published separately. A related document containing a proposed rule to modify 44 CFR Part 206, Subpart M, relating to hazard mitigation planning requirements, will also be published separately.

Many sections of the Disaster Relief Act of 1974 have been amended, but some have not. In the supplementary information below, each section for which FEMA is today establishing interim rules (Subparts D, E, F, G, H, I, J, K, L, and M) will be discussed, whether changed or not, and a contact person will be named to provide further information on each subject. In all sections, including those which have not been changed, a new numbering system has been established, and conforming changes have been made. When published later, the document dealing with Subparts A, B, C, N, and Part 207, will complete interim rules to implement the new legislation. The Stafford Act is also published in this document, for the reader's reference, in the appendix.

General Information [Subpart A, Reserved]

The Stafford Act makes several changes to the section on generally applicable information (e.g., definitions and policy). Since many parts of the new program are affected, FEMA will include a new subpart covering general information in its later submission. This subpart is therefore reserved.

The Declaration Process [Subpart B, Reserved]

This subpart is also reserved for future publication. The Stafford Act makes technical changes to the declaration process, and FEMA will include them in the second phase of interim rulemaking.

Emergency Assistance [Subpart C, Reserved]

The Stafford Act authorizes emergency assistance only for essential work and services to save lives, to protect property and public health and safety, or to lessen or avert the threat of a catastrophe, including debris removal and temporary housing. In addition, section 501(b) of the Stafford Act authorizes the President to make an emergency declaration without a request from a Governor when the primary responsibility for response to a particular situation rests with the Federal Government. Interim regulations for emergency declarations will be issued in the second phase of publication.

Temporary Housing Assistance (Subpart D)

The Stafford Act made several major changes to the Temporary Housing Assistance program, which have been incorporated in the regulations. They include:

1. The definition of adequate alternate housing has been changed to include the categories of the population identified in the new law.

2. The term "minimal repairs" which previously appeared in the Disaster Relief Act of 1974 has been changed to "home repairs." However, the dollar limitations established by the Associate Director, State and Local Programs and Support, for the purposes of authorizing such home repairs in lieu of other forms of housing assistance, have not been changed. They continue to be a minimum of $100 and a maximum of $5,000.

3. The paragraphs of the regulations which relate to the use of mobile homes have been modified to include the 75 percent Federal/25 percent State cost sharing on the construction of group sites, as required in section 408 of the Act. Temporary housing expenses which are not cost-shared, i.e., which are fully Federally funded, are also clarified.

4. The sections of the regulations on reconsiderations and termination of assistance have been combined and titled "Appeals." The only changes are to provide for a 60-day appeal period for applicants, as required by section 423 of the Stafford Act, and two paragraphs in the regulations which govern the prior disaster law, 44 CFR 205.52 (m) and (p), have been combined to form one appeal paragraph. FEMA's response time remains at 15 days from receipt of the appeal.

5. The period of temporary housing assistance has been increased from up to 12 months to up to 18 months.

6. With respect to the Stafford Act's requirements that applicants be notified of the assistance which can be provided, the regulations now specify that each applicant be provided with information regarding all forms of assistance,

specific criteria which must be met to qualify for each form, the applicable limitations, and how to request changes and file appeals.

7. The regulations now specify, in accordance with the law, that in providing temporary housing, consideration will be given to the location of schools, employment, and the location of any crops or livestock the applicant must tend.

8. Throughout the regulations the word "livability" has been substituted for "habitability." The meaning is the same in each case; the change was made only to make the regulations more understandable.

For further information on the temporary housing assistance program, contact F. Scott Martin at 202–646–3650.

Individual and Family Grant Programs (Subpart E)

The Stafford Act makes several changes to the IFG program, which have been incorporated in the regulations.

1. The maximum grant amount has been changed to $10,000. This amount will be adjusted at the beginning of each fiscal year to reflect changes in the Consumer Price Index for All Urban Consumers, published by the Department of Labor. This change creates the need for a corresponding change in the dollar value of the required flood insurance policy for housing and personal property grants where the applicant resides in a flood zone. The requirement will be for a policy to cover the grant amount. Currently, FEMA will require $7,000 building and $3,000 contents for a homeowner, and $10,000 contents for a renter. FEMA will continue to award a grant for the first year of the required 3-year policy. Public comments are welcome on whether FEMA should continue to require flood insurance coverage on the entire maximum grant amount.

2. The section on advance of the State's 25 percent share of the IFG program has been eliminated from the IFG regulations. The Stafford Act provides, in section 319, that the President may lend or advance the non-Federal share of any cost-shared assistance provided under the Act to an eligible applicant or State in certain defined circumstances. FEMA will publish the regulations implementing this new feature in Subpart A, General Information, in the next two months. It is worth noting here that the loan will now bear interest from the date of disbursement. In the past, interest was not assessed on IFG advances to States.

3. The Stafford Act changed the allowable administrative expenses from 3 percent to 5 percent. FEMA will provide the State the option of receiving 3 percent automatically, with no documentation requirement, or 5 percent if appropriate justification is submitted for the full amount. Public comments on this approach are welcome.

5. Changes to the duplication of benefits provisions (section 312 of the Stafford Act) have been incorporated into the IFG regulations. The State may make grants in advance of receipt of other assistance if the applicant has not received the other assistance to which they may be entitled by the time of application for IFG assistance.

For further information on IFG, contact Donna M. Dannels at 202–646–3660.

Other Individual Assistance (Subpart F)

Several other programs and provisions have been changed as a result of the Stafford Act.

1. Disaster unemployment assistance (DUA) has been substantially changed, as follows:

—The maximum assistance period has been reduced from 52 to 26 weeks from the disaster declaration date, to reflect current unemployment insurance practices.

—The feature which formerly allowed regular unemployment insurance recipients to get a DUA supplement for the same week to bring them up to the DUA maximum weekly benefit amount has been eliminated.

—Persons entitled to unemployment insurance benefits are not entitled to any DUA until their insurance benefits have expired, and then they may receive DUA only for the remainder of the 26-weeks-from-declaration time period.

—FEMA will no longer fund the "waiting week."

The Secretary of Labor has the delegated authority to implement the DUA program and to publish rules in accordance with general policy guidance from FEMA. FEMA has provided the above policy guidance to the Department, and the Secretary has agreed to publish amendments to 20 CFR Part 625 to effectuate the new Act. To replace a similar section published in old 44 CFR 205, a brief text is published at 206.141 for convenience of the reader.

For further information, contact Karen Keefer at 202–646–3658.

2. The Crisis Counseling Assistance and Training program has been changed in the following respects:

—Although the Stafford Act eliminates the explicit requirement that grants under this section should be made through the National Institute of Mental Health (NIMH), FEMA is making no changes with respect to NIMH involvement in the administration of this program.

—A 60-day period for the State to appeal FEMA's decision for both the "immediate services" and "regular program" portions of the crisis counseling program has been established, in accordance with the Stafford Act. To make the separate appeals processes distinct, FEMA is establishing an immediate services application submission period of 14 days after the declaration date.

—Documented eligible expenses are now reimbursable from the incident date, rather than the declaration date, as specified in section 424 of the Stafford Act. These expenses will be allowed under the immediate services portion of the program. In accordance with the grant criteria of the NIMH, under which the regular program funding is provided, expenses are allowable only from the date of the regular program grant award. To obtain reimbursement from the incident date, the State may apply for an immediate services grant.

—The regulations have been reorganized for the reader's convenience, to separate the "immediate services" and "regular program" provisions and to allow clearer explanations of the changes to each portion of the crisis counseling program.

For further information contact Donna M. Dannels at 202–646–3662.

3. Section 312 of the Stafford Act makes important changes to duplication of benefits policies. The regulations now state that FEMA will ensure uniformity in procedures established to prevent assistance duplication. They also provide that assistance given to individuals and families under the Act, and comparable assistance provided by States, local governments, and disaster assistance organizations (such as the American Red Cross), will not be considered as income for the recipients in any eligibility determinations made for Federally funded income assistance or resource-tested benefit programs (such as welfare or food stamp programs). Each of the assistance program regulations which are affected by section 312 have adopted language complying with this general provision; specifically, that Federal assistance may be provided by an agency prior to when it would normally be provided if the person has not received the other benefits to which he/she is entitled by time of application of the Federal assistance.

For more information contact Sharon A. Hordesky at 202–646–2778 or the program officer for the particular program.

No changes have been made to the regulations dealing with food commodities and disaster legal services.

Public Assistance Project Administration (Subpart G)

The Stafford Act and the "common rule," adopted by FEMA at 44 CFR Part 13, require a number of changes in the administration of public assistance grants. The most significant changes result from requirements of the "common rule" and are discussed first.

1. In accordance with the "common rule," FEMA has determined that States should be given as much flexibility and authority as possible in the management of the public assistance program. For many years FEMA has considered all funds approved for public assistance to be a grant to the State. Funds going to individual applicants have been considered subgrants. However, the method used by FEMA to process public assistance funds has not truly recognized the State as the grantee in that separate applications and supplements have been processed for subgrantees by FEMA. The issuance of 44 CFR Part 13 has required that changes be made in the method used to process public assistance grants. Although Part 13 was published in March 1988, FEMA did not publish proposed regulations covering the changes it required due to the fact that new legislation which would impact on FEMA's administration of the public assistance program was pending in Congress. Since FEMA believed that there would be new legislation, it would have been premature to publish a proposed "project administration" regulation before the legislation was enacted. By the time FEMA learned that Congress had passed the legislation and that the President had signed it, the effective date of Part 13 had already passed. Therefore, since Part 13 was effective on October 1, 1988, FEMA feels obligated to publish the changes that regulation required on an interim basis.

Part 13 establishes uniform administrative rules for Federal grants, one of which is that the grantee (the State) is the organization which is required to sign the grant application (Standard Form 424, Application for Federal Assistance) and administer all subgrants. In the past, FEMA has used a modified SF 424 as an application from eligible subgrantees. The grantee did not sign the individual grant applications and was not responsible for administering subgrants. Thus, a change is required in FEMA's procedures for processing public assistance grants to comply with Part 13. The change required is not extensive as far as procedures for the initial processing of grants is concerned, but significant changes are required in the area of State administration of public assistance grants. The changes are discussed below:

—FEMA will continue to prepare, review, and process Damage Survey Reports (DSR's) in the same manner that they have been in the past, up to the time that DSR's are combined into a grant or supplement. At that time FEMA will combine all DSR's that are ready for approval and approve one basic grant or one supplement instead of separate grants or supplements for each subgrantee. The State will be the grantee, and DSR's covering all eligible work related to the disaster will be approved for the State. The State will approve subgrants to individual applicants using FEMA approved DSR's as the basis for approval and will be responsible for overall management of the grant funds.

—The State will be responsible for managing the day-to-day operations of the grant and subgrant supported activities. This will include monitoring the activities of subgrantees to assure compliance with FEMA requirements and that performance goals are being met, as well as reporting to FEMA on performance and financial aspects on a quarterly basis. The State will be required to develop procedures through which it will manage the program and which will form the basis for FEMA approval of funds to cover State management costs.

—The State has been given new authority to approve extensions of time for public assistance projects. Since most time extension requests in the past have been justified and FEMA has ultimately approved them, sending them to FEMA for approval merely adds administrative cost.

—The State will be required to review all claims (partial claims covering more than one subgrantee will be accepted), recommend to FEMA an amount for approval, and certify that all funds have been expended in accordance with the FEMA-State Agreement.

—The State must ensure that all audits required by the Single Audit Act of 1984 are performed. The State will be required to review such audits completed for each subgrantee and, if adverse findings are reported in any audit, the State must ensure that appropriate action is taken and report that action to FEMA. The State will also be required to have a single audit performed on State operations and submit a copy of such an audit to the FEMA Inspector General.

2. The Stafford Act authorizes Federal funding for projects costing less than $35,000 (adjusted annually in accordance with the Consumer Price Index) based on the Federal estimate of cost of such small projects. Therefore, the criteria for payment of claims has been changed. FEMA estimates that more than 90 percent of all public assistance projects will meet the criteria for small projects and final payment may be made upon approval of the project, thereby getting funds to disaster affected communities much sooner.

3. Funding options under the Stafford Act are very similar to the options available previously. The "Grant-in-lieu" option remains the same but has been renamed "Improved Project." "Flexible funding" has also been renamed and is now called "Alternate Project." Previously, when flexible funding was selected, all permanent restorative projects approved for an applicant had to be included. Therefore, very few applicants took that option. The Stafford Act authorizes applicants to select the alternate project option on a project by project basis, thereby giving the applicant much greater flexibility. There is still a 10 percent reduction in eligible costs when this option is selected, but it is only for those individual projects which are selected, not for all permanent work.

4. A change in the appeals procedures has been made in accordance with the Stafford Act. The grantee (the State) is given 60 days to submit an appeal of any FEMA decision. FEMA then has a maximum of 90 days in which to make a decision on that appeal. Since a proper determination cannot be made without all related information, the regulations provide that the 90 day period will start upon receipt of an appeal and all related information. Also, the regulations allow the FEMA Associate Director, upon agreement of the State, to refer appeals of a highly technical nature to an independent scientific or technical group for review. In such a case FEMA and the State must mutually agree to a longer decision period and to share the cost of review by the independent group with FEMA. This approach will provide FEMA and the State with the advantage of an independent review without FEMA giving up its ultimate responsibility to make final determinations relative to the public assistance program.

For further information contact John Lundberg at 202-646-3688.

Public Assistance Eligibility (Subpart H)

The enactment of the Stafford Act brought about a number of changes to eligibility requirements for assistance to State and local governments and eligible private nonprofit organizations. In addition, the implementation of the new "common rule" for grant administration changed eligibility requirements as well.

Changes to individual provisions are discussed in the following paragraphs in generally the same sequence as they appear in the existing 44 CFR Part 205 Subpart E regulations.

1. The term "immediate threat," which is used to define the extent of emergency protective measures, now has a specific definition although the term was previously used without definition. Previously, emergency protective measures to protect against an event which could be expected to occur not less than every 5 years were eligible. Something which might happen in 5 years cannot really be considered to be in the "immediate" future or of an emergency nature. Therefore, "immediate threat" is redefined as a threat from an event which can be reasonably expected to occur within 1 year. In practical application there is very little difference between a protective facility to guard against 1-year storm and one to guard against a 5-year storm.

2. The definition of "predisaster condition" is deleted because its use is covered by the requirement that eligible work must be disaster related. The previous usage of the term was redundant and is no longer used in the regulation.

3. The definition of "educational facilities" under "private nonprofit facility" is changed so that the only exclusion is for facilities used primarily for religious purposes or instruction.

4. Private nonprofit irrigation districts would be eligible the same as other private nonprofit utilities. Support facilities for private nonprofit emergency organizations would also be eligible.

5. A sixth category of private nonprofit facility has been added in the Stafford Act. The new category is defined as "other private nonprofit facilities which provide essential services of a governmental nature to the general public." This will include facilities such as: community centers, libraries, homeless shelters, senior citizen centers, shelter workshops and similar facilities which are open to the general public. This new category of private nonprofit facility will include most facilities which previously qualified under the criteria for "public entities." Other public entities will continue to be eligible for assistance when their applications are submitted by an eligible applicant. Many facilities serving a rural community or unincorporated town or village may also qualify for assistance under this new category.

6. The definition of those standards which may be included in eligible work now includes the upgrading of a facility when required by a State or Federal agency regulation.

7. The criteria to be used when considering assistance which may be available from another Federal agency is changed. Previously, if an agency had the authority to perform an item of work or grant assistance but did not have funds available at the time, FEMA would step in to grant the assistance. FEMA would grant assistance regardless of the reason the funds were unavailable. The new policy is that when an agency has the specific authority to restore facilities or grant assistance, FEMA will *not* grant assistance regardless of the availability of funds. FEMA believes it should not override the decisions made by the Congress or the Administration not to fund another agency's program from money appropriated to the President's Disaster Fund.

8. Previous regulations covering facilities leased to or from an eligible applicant provided that repairs were eligible for assistance if they were the responsibility of the applicant under the lease (§ 205.73(c)). This policy is not being changed. However, this section was redundant in view of the general requirement that eligible work must be the responsibility of the applicant. Therefore, the section has been deleted from the revised regulation.

9. The paragraph discussing assurances (§ 205.73(d)), has been deleted because the assurances referred to are primarily procedural in nature and are dealt with in Subpart G, Project Administration, which is being published concurrently with this subpart.

10. Under the law, two types of applicants, public entities and rural or unincorporated communities, are required to apply through a State or political subdivision of a State. Under new procedures in Subpart G, Public Assistance Project Administration, the State will be making a single application to FEMA on behalf of all subgrantees. Therefore, the requirement in the law is met and the separate requirement in the regulations is removed.

11. The eligibility criteria for facilities serving an unincorporated rural community are changed slightly. The facility must be open for the use of the general public. For example, a road system or any other facility owned and maintained by a private nonprofit neighborhood association which could be open to the public would not be eligible if its use was restricted to residents in that neighborhood. On the other hand, facilities such as a water or sewer system which must be connected to a residence and therefore cannot be open to the public, would not be ineligible because of this restriction.

12. The discussion of grants-in-lieu, which is a funding mechanism, and time limitations, which is a grant administration matter, are moved to Subpart G. A "grant-in-lieu" is now referred to as an "improved project" in that subpart.

13. Work which is of the same type as maintenance is no longer discussed separately, as had been the case in 44 CFR 205.73(h). The determination of what was "of disaster scope and magnitude" was difficult to make and often resulted in delays in approving eligible work. The use of the threshold of a $250 dollar minimum DSR will still screen out the truly insignificant damages.

14. Debris removal is now covered as a separate section rather than a subheading under Emergency Work. The general emergency work section is removed because debris removal and emergency protective measures which are the two subdivisions of emergency work have slightly different eligibility criteria. These criteria for debris removal and emergency protective measures are discussed in their respective subsections. Debris removal which is necessary to eliminate a threat to lives, public health or safety, or of significant damage to improved property, is eligible. In addition, if disaster related debris is widespread on public or private property, and its removal is necessary to ensure the economic recovery of the community as a whole, it may be eligible.

15. The removal of debris from drainage facilities is no longer covered separately in this subsection. Under the general criteria for restoration of facilities, debris in drainage channels, reservoirs or debris basins will be eligible if the facility is actively used and maintained.

16. When emergency protective measures are being performed to eliminate or lessen an immediate threat of additional damage, such work is limited to that necessary to protect against an immediate threat. The change in the definition of "immediate threat" is

discussed earlier. Such work must also be cost effective when public or private property is to be protected.

17. In the permanent restoration of facilities, much of the specific guidance of previous regulations has been eliminated in favor of more general requirements. The individual categories of facility are no longer discussed separately. The general guidance applies equally to all types of facilities almost without exception. The few exceptions are noted in the regulation.

—The first change is in the area of standards. If an applicant is willing to adopt a standard, either of its own development or based upon a national standard, FEMA will apply that standard to the restoration of the damaged facility. The cost of that standard is an eligible cost. This practice is basically the same as the old procedure of having the Associate Director prescribe a standard to be adopted by the applicant. The new procedure, however, places emphasis on the applicant's initiative in keeping with Executive Order 12612 on Federalism.

—In the restoration of bridges, FEMA will no longer require construction to FEMA's bridge width standards. Reconstruction will be to the standard which the applicant was using at the time of the disaster or one adopted prior to FEMA's approval of assistance. In the absence of a standard, reconstruction will be to predisaster condition.

—The discussion of specific hazard mitigation measures is replaced with the general statement that the costs of mitigation measures required by FEMA are an eligible cost. Measures required after review of floodplain management, environmental, or Coastal Barrier Resources Act requirements are examples of these. The new legislation specifies that these costs are eligible. FEMA will review projects for mitigation opportunities and may require that cost effective mitigation measures be incorporated into the restoration of the facility.

18. In the area of cost eligibility, most of the discussion of specific types of costs is now covered in 44 CFR Part 13 (the "common rule") and the associated OMB Circular A-87, Revised. Therefore, those items are removed from this subpart. Significant changes in eligible costs as a result of the new legislation are the inclusion of fringe benefits for an applicant's own employees, and allowances for administrative expenses for individual applicants and for the State to manage the public assistance program in accordance with the "common rule." In the Stafford Act, at section 406(f), there is an administrative allowance to be calculated as a percentage of certain assistance. However, the base to which the percentage is applied is different for subgrantees and grantees. In section 406(f)(1)(A) through (D) the percentage for subgrantees is applied to the net eligible costs. Net eligible costs are defined in section 406(e) as the total cost of restoration. In section 406(f)(2)(A) through (D), the percentage for grantees is applied to "such total amount," referring back to "total amount of assistance provided" in 406(f)(2). The term "assistance provided" means the Federal share provided to the grantee or subgrantee. Secondly, in these same two subparagraphs, 406(f)(1) and (2), the designation of what is covered by these indirect cost allowances is different for subgrantees and for the grantee. For subgrantees, the administrative allowance covers all costs of requesting, obtaining, and administering the grant. For the grantee, the administrative allowance covers only extraordinary costs of certain activities. Therefore, there is an additional eligible direct cost item to cover costs for the State to manage the program.

For further information contact Charles Stuart at 202-646-3691.

Public Assistance Insurance Requirements (Subpart I)

The new Subpart I, Public Assistance Insurance Requirements, reflects an important limitation of Federal assistance described in the Stafford Act. It also condenses what were two subparts—General Insurance Requirements and Flood Insurance Requirements—into one subpart. Other changes have been made to achieve consistency with the "common rule," to more accurately interpret existing statutory language, and to clarify regulatory intent.

1. The regulations now provide a strong incentive for government and private nonprofit entities to purchase flood insurance for their insurable facilities. In accordance with section 406(d) of the Stafford Act, all buildings and their contents in an identified flood plain will be treated as if they were fully covered by the standard flood insurance policy available through the NFIP. As such, the Federal estimate of eligible damages will be reduced by the maximum amount of the insurance proceeds which would have been received had the building and contents been fully covered. This provision becomes effective on May 22, 1989. In the meantime, FEMA will highlight its importance in a separate **Federal Register** notice, provide written notice to each community participating in the National Flood Insurance Program, contact government associations, and take other reasonable measures to disseminate this information.

It should be noted that, in accordance with section 406(d)(3) of the Act, private nonprofit facilities in special flood hazard areas which are not covered by flood insurance solely because of the local government's failure to participate in the National Flood Insurance Program (NFIP) are exempted from this reduction. However, even though this exemption is reflected in § 206.253(b)(2), it is misleading. This is because the Flood Disaster Protection Act of 1973 prohibits Federal assistance in special flood hazard areas of nonparticipating communities. Therefore, where local governments have opted not to participate in the NFIP, private nonprofit organizations can not acquire NFIP-issued flood insurance for their flood prone facilities. Consequently, they will be unable to certify that they will obtain and maintain flood insurance for their flood-damaged facilities. An inability to make such a certification precludes such private nonprofit organizations from receiving assistance under the Stafford Act. However, the host community has the option of qualifying for and joining the NFIP within 6 months of the disaster declaration. The operator of the private nonprofit facility could then purchase the required flood insurance and become eligible for assistance.

2. Consistent with revised OMB policy, as expressed on the SF 424, Application for Federal Assistance, insurance will not be required for grants associated with DSR estimates of less than $10,000. This minimum does not in any way affect the reduction of Federal assistance described above.

3. Section 311 (b) of the Stafford Act, which is unchanged from section 314 of the Disaster Relief Act of 1974, stipulates that no further assistance may be provided for a facility for which the insurance required as a condition of previous Federal disaster assistance was not purchased or properly maintained. We had previously interpreted this stipulation as allowing for reduced assistance; that is, assistance could be provided, but had to be reduced by the amount of insurance which should have been carried by the facility. On review of this section, we found that, contrary to our past interpretation, there is no basis for providing even reduced assistance where the insurance has not been purchased or properly maintained. Section 206.253(a) incorporates this finding. Because this is a provision of the Disaster Relief Act of 1974 (before the current amendments) which was

carried forward unchanged in the Stafford Act, FEMA believes it is necessary to make the change effective immediately. Therefore, this change is being published in this interim rule.

For further information contact Alex Burns at 202-646-3670.

Coastal Barrier Resources Act

(Subpart J)

This subpart required only conforming changes as a result of the Stafford Act or implementation of the "common rule." Its sections have been renumbered. For more information contact Charles Stuart at 202-646-3691.

Community Disaster Loans (Subpart K)

This subpart was recently revised under 44 CFR Part 205, Subpart F. It was issued as a proposed rule on April 28, 1987 (52 FR 15348) and as a final rule on April 18, 1988 (53 FR 12681). For this publication, this subpart required only conforming changes as a result of the Stafford Act or the "common rule." Its sections have been renumbered. For more information contact Eugene Morath at 202-646-3683.

Fire Suppression Assistance (Subpart L)

This subpart required conforming changes as a result of the Stafford Act. The paragraphs were renumbered in accordance with the new numbering system for Part 206. Section 206.394, Cost Eligibility, was revised to delete cost principles covered in the "common rule." However, program specific cost eligibility items considered necessary for developing fire suppression assistance grants were retained. Section 206.395, Grant Administration, was revised to delete uniform grant administration procedures in the "common rule." However, since Subpart L is activated without a major disaster declaration, the grant administration section was retained to incorporate other CFR subparts which normally are effective upon a major disaster declaration.

For further information contact Eugene Morath at 202-646-3683.

Hazard Mitigation Planning

(Subpart M)

This subpart required no substantive changes as a result of the Stafford Act or the "common rule." However, to distinguish this subpart from the new hazard mitigation grant program, as provided in section 404 of the Stafford Act, the name has been changed from "Hazard Mitigation" (as it appears in Subpart M of 44 CFR Part 205) to the above name. It has also been renumbered, and conforming changes have been made. A proposal to amend this subpart will be made soon, to be based on refinements and experience over the past few years. For more information contact Bruce Baughman at 202-646-3681.

Hazard Mitigation Grant Program [Subpart N, Reserved]

Environmental Considerations

The majority of the provisions of the interim rule have either been assessed by prior environmental assessments or represent actions which are categorical exclusions pursuant to FEMA's regulation at 44 CFR Part 10, Environmental Considerations. An environmental assessment covering the remaining items led to the determination that there will be no significant impact caused by implementation of this interim rule and that the preparation of an Environmental Impact Statement is not required. Environmental assessments are on file and may be inspected or obtained at the Office of Disaster Assistance Programs for each program area, or at the Office of the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Regulatory Flexibility

FEMA has determined that this rule is not a major rule under Executive Order 12291, and will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Hence, no regulatory impact analyses have been prepared.

Federalism Assessment

In promulgating this rule, FEMA has considered the President's Executive Order on Federalism issued on October 26, 1987 (E.O.12612, 52 FR 41685). The purpose of the Executive Order is to assure the appropriate division of governmental responsibilities between national government and the States. Among other provisions, this rule implements the requirement in 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, that agency administrative provisions in regulations be consistent with Part 13. There are significant changes in grant administration procedures which have Federalism impacts and therefore, a Federalism Assessment has been prepared. Interested parties may inspect or obtain copies of this assessment at the Office of the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

Reporting Requirements

The Office of Management and Budget has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et. seq.*, and has assigned the following OMB Control Numbers:

—For the IFG program: 3067-0146 and 3067-0163
—For the crisis counseling program: 3067-0166
—For the temporary housing assistance program:
3067-0009
3067-0043
3067-0124
—For the public assistance program:
3067-0026
3067-0033
3067-0034
3067-0048
3067-0066
0348-0006

List of Subjects in 44 CFR Part 206

Disaster Assistance: general, the declaration process, emergency assistance, individual assistance, public assistance, the Coastal Barrier Resources Act, community disaster loans, fire suppression, hazard mitigation, and Great Lakes planning assistance.

Accordingly, FEMA is amending Chapter I, Subchapter D, of Title 44 as follows:

1. A new Part 206 is added to read as follows:

PART 206—FEDERAL DISASTER ASSISTANCE FOR DISASTERS DECLARED ON OR AFTER NOVEMBER 23, 1988

Authority: 42 U.S.C. 5121; Reorganization Plan No. 3 of 1978 (3 CFR, 1979, p. 329); Executive Order 12148 (3 CFR, 1980, p. 412); the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93-288, as amended by Pub. L. 100-707.

Subpart A—General [Reserved]

Subpart B—The Declaration Process [Reserved]

Subpart C—Emergency Assistance [Reserved]

Subpart D—Temporary Housing Assistance

§ 206.101 Temporary housing assistance.

(a) *Purpose.* This section prescribes the policy to be followed by the Federal Government or any other organization when implementing section 408 of the Stafford Act.

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

(c) *Definitions.*

(1) "Adequate alternate housing" means housing that:

(i) Accommodates the needs of the occupants.

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

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

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

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

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

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

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

(7) "Housing costs" means shelter rent and mortgage payments including principal, interest, real estate taxes, real property insurance, and utility costs, where appropriate.

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

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

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

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

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

(ii) Applicable benefits have been exhausted;

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

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

(2) *Recovery of funds.* Prior to provision of assistance, the applicant must agree to repay to FEMA from insurance proceeds or recoveries from any other source an amount equivalent to the value of the temporary housing assistance provided. In no event shall the amount repaid to FEMA exceed the amount recovered by the applicant. All claims shall be collected in accordance with agency procedures for debt collection.

(e) *Applications*—(1) *Application period.* Applications for temporary housing assistance shall be accepted for a 60-day period following the date of a declaration of a major disaster or emergency, unless additional time for submission of applications is authorized by the Regional Director in order to achieve uniformity of application periods in contiguous States. After the established period, applications shall be accepted; however, processing shall not be completed unless authorized by the Regional Director on a case-by-case basis.

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

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

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

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

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

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

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

(D) Financial hardship resulting from the disaster has led to eviction or dispossession; or

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

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

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

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

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

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

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

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

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

(vii) To an applicant who evacuated the residence in response to official warnings solely as a precautionary measure, and who is able to return to the residence immediately after the incident (i.e., the applicant is not otherwise eligible for temporary housing assistance).

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

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

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

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

(i) A commercial site is a site customarily leased for a fee because it is fully equipped to accommodate a housing unit. In accordance with section 408(a)(2)(B), the Associate Director has determined that leasing commercial sites at Federal expense is in the public interest. 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, they may authorize such action at Federal expense.

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

(iii) A group site is a site which accommodates two or more units. In accordance with section 408(a)(2)(A), locations for group sites shall be provided by State or local government complete with utilities. However, the Associate Director may authorize development of group sites, including installation of essential utilities, by the Federal Government, based on a recommendation from the Regional Director; provided, however, that the Federal expense is limited to 75 percent of the cost of construction and development (including installation of utilities). In accordance with section 408(a)(4) of the Stafford Act, the State or local government shall pay any cost which is not paid for from the Federal share, including long-term site maintenance such as snow removal, street repairs and other services of a governmental nature.

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

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

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

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

(B) Provision of materials and replacement items.

(C) Government awarded repair contracts when authorized by the Associate Director.

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

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

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

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

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

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

(B) Repairs to the electrical system providing service to essential living areas, including repairs to or replacement of essential fixtures;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) *Utility costs and security deposits.* All utility costs shall be the responsibility of the occupant except where utility services are not metered separately and are therefore a part of the rental charge. Utility use charges and deposits shall always be the occupants responsibility. When authorized by the Regional Director, the Federal Government may pay security deposits; however, the owner or occupant shall reimburse the full amount of the security deposit to the Federal Government before or at the time that the temporary housing assistance is terminated.

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

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

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

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

(i) Adequate alternate housing is not available;

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

(iii) In the case of FEMA-owner leases, the occupant is in compliance with the terms of the lease/rental agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Adjustment to the sales price.

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

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

(*i*) Existing housing;

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

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

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

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

(B) To determine the adjusted sales price, the current available financial resources of the purchaser shall be calculated. If the financial resources are equal to or greater than the basic sales price, then no adjustment shall be approved. If the purchaser's financial resources are less than the basic sales price, the sales price shall be adjusted to take into consideration the financial resources available but shall include some consideration. Deviations from this rule may be reviewed on a case-by-case basis by the Associate Director.

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

(iv) Other conditions of sale.

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

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

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

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

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

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

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

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

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

(i) All forms of housing assistance available;

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

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

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

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

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

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

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

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

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

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

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

(C) Procedures for:

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

(*2*) Determining eligibility utilizing FEMA's habitability contract and notifying applicants of the determination;

(*3*) Preventing duplication of benefits between temporary housing assistance and assistance from other means, as well as a recoupment procedure when duplication occurs;

(*4*) Providing the various types of assistance (home repairs, existing rental resources, transient accommodations, and mobile homes);

(*5*) Providing furniture assistance;

(*6*) Recertifying occupants for continued assistance;

(*7*) Terminating assistance;

(*8*) Contracting for services and/or supplies;

(*9*) Quality control;

(*10*) Maintaining a management information system;

(*11*) Financial management;

(*12*) Public information;

(*13*) Processing appeals; and

(*14*) Arranging for a program review.

(ii) The Governor or his/her designee may request the Regional Director to provide technical assistance in the preparation of an administrative plan.

(iii) The Governor or designee shall submit the plan to the Regional Director for approval. Plans shall be revised, as necessary, and shall be reviewed at least annually by the Regional Director.

(2) *Operational annex.* Prior to the State administering the program, the state must submit an operational annex which tailors the approved State plan to the particular disaster or emergency. The annex must be reviewed and approved by the Regional Director within 3 days of the declaration or the State shall not be permitted to administer the program. The operational annex shall include but not be limited to:

(i) Organization and staffing specific to the major disaster or emergency;

(ii) Pertinent goals and management objectives;

(iii) A proposed budget; and

(iv) A narrative which describes methods for orderly tracking and processing of applications; assuring timely delivery of assistance; identification of potential problem areas; and any deviations from the approved plan. The Regional Director may require additional annexes as necessary for subsequent phases of the operation.

(3) *Evaluation of capability.* State and local government assumption of the temporary housing assistance program for a particular disaster shall be approved by the Associate Director based on an evaluation of the capabilities and commitment of the entity by the Regional Director. At a minimum, the evaluation shall include a review of the following:

(i) The State temporary housing assistance plan which has been approved by the Regional Director prior to the incident, and the specific operational annex which has been approved in accordance with paragraph (s)(2) of this section.

(ii) Past performance in administration of temporary housing assistance or other similar operations;

(iii) Management and staff capabilities; and

(iv) Demonstrated understanding of the tasks to be performed.

(4) *Grant application.* Approval of funding shall be obtained through submission of a project application by the State or local government through the Governor's Authorized Representative. The State shall maintain adequate documentation according to the requirements of 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, to enable analysis of the program. Final reimbursement to the State, or final debt collection, shall be based on an examination of the voucher filed by the State.

(5) *Authorized costs.* All expenditures associated with administering the program are authorized if in compliance with 44 CFR 13.22, Allowable Costs, and the associated OMB Circular A–87, Cost Principles for State and Local Governments. Examples of program costs allowable under the Temporary Housing Assistance program include home repairs, costs associated with rental payments, reimbursements for temporary housing including transient accommodations and commercial site rental, mobile home installation and maintenance, mobile home private site development, cost of supplemental assistance, mortgage and rental payments, other necessary costs, when approved by the Associate Director. All contracts require the review and approval of the Regional Director prior to award, in order to be considered as an authorized expenditure.

(6) *Federal monitoring and oversight.* The Regional Director shall monitor State-administered activities since he/she remains responsible for the overall delivery of temporary housing assistance. In addition, policy guidance and interpretations to meet specific needs of a disaster shall be provided through the oversight function.

(7) *Technical assistance.* The Regional Director shall provide technical assistance as necessary to support State-administered operations through training, procedural issuances, and by providing experienced personnel to assist the State and local staff.

(8) *Operational resources.* The Regional Director shall make available for use in State or locally administered temporary housing programs Federal stand-by contracts, memoranda of understanding with Government and voluntary agencies, and Federal property, such as government-owned mobile homes and travel trailers.

(9) *Program reviews and audits.* The State shall conduct program review of each operation. All operations are subject to Federal audit.

(Approved by the Office of Management and Budget under OMB Control Numbers 3067–0009 and 3067–0043)

§§ 206.102 through 206.130 [Reserved]

Subpart E—Individual and Family Grant Programs

§ 206.131 Individual and Family Grant Programs.

(a) *General.* The Governor may request that a Federal grant be made to a State for the purpose of such State making grants to individuals or families who, as a result of a major disaster, are unable to meet disaster-related necessary expenses or serious needs. The total Federal grant under this section will be equal to 75 percent of the actual cost of meeting necessary expenses or serious needs of individuals and families, plus State administrative expenses not to exceed 5 percent of the Federal grant (see paragraph (g) of this section). The total Federal grant is made only on condition that the remaining 25 percent of the actual cost of meeting individuals' or families' necessary expenses or serious needs is paid from funds made available by the State. With respect to any one major disaster, an individual or family may not receive a grant or grants under this section totaling more than $10,000 including both the Federal and State shares. The $10,000 limit will be adjusted annually, at the beginning of each fiscal year, to reflect changes in the Consumer Price Index for all Urban Consumers. The Governor or his/her designee is responsible for the administration of the grant program. The provisions of this regulation are in accordance with 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(b) *Purpose.* The grant program is intended to provide funds to individuals or families to permit them to meet those disaster-related necessary expenses or serious needs for which assistance from other means is either unavailable or inadequate. Meeting those expenses and needs as expeditiously as possible will require States to make an early commitment of personnel and resources. States may make grants in instances where the applicant has not received other benefits to which he/she may be entitled by the time of application to the IFG program, and if the applicant agrees to repay all duplicated assistance to the State. The grant program is not intended to indemnify disaster losses or to permit purchase of items or services which may generally be characterized as nonessential, luxury, or decorative. Assistance under this program is not to be counted as income or a resource in the determination of eligibility for welfare or other income-tested programs supported by the Federal Government, in that IFG assistance is intended to address only disaster-related needs.

(c) *Definitions used in this section.* (1) "Necessary expense" means the cost of a serious need.

(2) "Serious need" means the requirement for an item or service essential to an individual or family to prevent, mitigate, or overcome a disaster-related hardship, injury, or adverse condition.

(3) "Family" means a social unit living together and composed of:

(i) Legally married individuals or those couples living together as if they were married and their dependents; or

(ii) A single person and his/her dependents; or

(iii) Persons who jointly own the residence and their dependents.

(4) "Individual" means anyone who is not a member of a family as described above.

(5) "Dependent" means someone who is normally claimed as such on the Federal tax return of another, according to the Internal Revenue Code. It may also mean the minor children of a couple not living together where the children live in the affected residence with the parent who does not actually claim them on the tax return.

(6) "Expendable items" means consumables, as follows: linens, clothes, and basic kitchenware (pots, pans, utensils, dinnerware, flatware, small kitchen appliances).

(7) "Assistance from other means" means assistance including monetary or in-kind contributions, from other governmental programs, insurance, voluntary or charitable organizations, or from any sources other than those of the individual or family. It does not include expendable items.

(8) "Owner-occupied" means that the residence is occupied by: The legal owner; a person who does not hold formal title to the residence but is responsible for payment of taxes, maintenance of the residence, and pays no rent; or a person who has lifetime occupancy rights in the residence with formal title vested in another. In States where documentation proving ownership is not recorded or does not exist, the State is required to include in its administrative plan a State Attorney General approved set of conditions describing adequate proof of ownership.

(9) "Flowage easement" means an area where the landowner has given the right to overflow, flood, or submerge the land to the government or other entity for a public purpose.

(d) *National eligibility criteria.* In administering the IFG program, a State shall determine the eligibility of an individual or family in accordance with the following criteria:

(1) *General.* (i) To qualify for a grant under this section, an individual or family representative must:

(A) Make application to all applicable available governmental disaster assistance programs for assistance to meet a necessary expense or serious need, and be determined not qualified for such assistance, or demonstrate that the assistance received does not satisfy the total necessary expense or serious need;

(B) Not have previously received or refused assistance from other means for the specific necessary expense or serious need, or portion thereof, for which application is made; and

(C) Certify to refund to the State that part of the grant for which assistance from other means is received, or which is not spent as identified in the grant award document.

(ii) Individuals and families who incur a necessary expense or serious need in the major disaster area may be eligible for assistance under this section without regard to their alienage, their residency in the major disaster area, or their residency within the State in which the major disaster has been declared except that for assistance in the "housing" category, ownership and residency in the declared disaster area are required (see paragraph (d)(2)(i) of this section).

(iii) The Flood Disaster Protection Act of 1973, Pub. L. 93-234, as amended, imposes certain restriction on approval of Federal financial assistance for acquisition and construction purposes. This paragraph states those requirements for the IFG program.

(A) For the purpose of this paragraph, "financial assistance for acquisition or construction purposes" means a grant to an individual or family to repair, replace, or rebuild the insurable portions of a home, and/or to purchase or repair insurable contents. For a discussion of what elements of a home and contents are insurable, see 44 CFR Part 61, Insurance Coverage and Rates.

(B) A State may not make a grant for acquisition or construction purposes where the structure to which the grant assistance relates is located in a designated special flood hazard area which has been identified by the Director for at least 1 year as floodprone, unless the community in which the structure is located is participating in the National Flood Insurance Program (NFIP). However, if a community qualifies for and enters the NFIP during the 6-month period following the major disaster declaration, the Governor's Authorized Representative (GAR) may request a time extension (see paragraph (j)(1)(ii) of this section) from the Regional Director for the purpose of accepting and processing grant applications in that community. The Regional Director or Associate Director, as appropriate, may approve the State's request if those applicable governmental disaster assistance programs which were available during the original application period are available to the grant applicants during the extended application period.

(C) (*1*) The State may not make a grant for acquisition or construction purposes in a designated special flood hazard area in which the sale of flood insurance is available under the NFIP unless the individual or family agrees to purchase adequate flood insurance and to maintain such insurance for 3 years, or as long as they live in the residence to which the grant assistance relates, whichever is less. Any previous grant recipient who may have been required to maintain a policy for a longer period of time (under previous regulations) but who kept it for at least 3 years, is deemed to have satisfied this requirement. This provision need be applied only during the 3-year period prior to a new disaster declaration. Adequate flood insurance, for IFG purposes, means a policy which will cover at least the amount of the grant award. If the grant recipient fails to obtain the required flood insurance, he/she must return to the State the amount of the grant received for acquisition and construction on insurable real estate and personal property, and the flood insurance premium. If a grant recipient cancels a required policy within the 3-year period, he/she is ineligible for subsequent IFG assistance for the remainder of the 3-year period, up to the amount which should have been insured by flood insurance. The cost of the first year's policy is a necessary expense for those required under this section to buy flood insurance.

(*2*) After a determination that flood insurance is required and after disbursement of a grant, States shall require the grant recipient to provide proof of purchase of the required flood insurance.

(D) A State may not make a grant for acquisition or construction purposes where an applicant who is required to apply to the SBA or Farmers Home Administration in accordance with paragraph (d)(1)(i)(A) of this section is denied loan assistance because of failure to have obtained and/or maintained a flood insurance policy required as a condition of previous loan assistance.

(E) A State may not make a grant for acquisition or construction purposes when the applicant is deemed to have assumed the risk knowingly, that is, when property is located within a flowage easement, or in an area between a river and a levee (where the family built the home after the levee was built, or was compensated for future flood damage at the time the levee was built), or when a residence is located on land leased to an individual where that lease holds the government harmless from the risk of damages. This restriction does not apply if an applicant is going to use the funds to move out of the risk area.

(iv) In order to comply with the President's Executive Orders on Floodplain Management (E.O. 11988) and Protection of Wetlands (E.O. 11990), the State must implement the IFG program in accordance with FEMA regulations 44 CFR Part 9. That part specifies which IFG program actions require a floodplain management decisionmaking process before a grant may be made, and also specifies the steps to follow in the decisionmaking process. Should the State determine that an individual or family is otherwise eligible for grant assistance, the State shall accomplish the necessary steps in accordance with that section, and request the Regional Director to make a final floodplain management determination.

(2) *Eligible categories.* Assistance under this section shall be made available to meet necessary expenses or serious needs by providing essential items or services in the following categories:

(i) Housing. With respect to primary residences (including mobile homes) which are owner-occupied at the time of the disaster, grants may be authorized to:

(A) Repair, replace, or rebuild;

(B) Provide access. When an access serves more than one individual or family, an owner-occupant whose primary residence is served by the access may be eligible for a proportionate share of the cost of jointly repairing or providing such access. The owner-occupant may combine his/her grant funds with funds made available by the other individuals or families if a joint use agreement is executed (with no cost or charge involved) or if joint ownership of the access is agreed to;

(C) Clean or make sanitary;

(D) Remove debris from such residences. Debris removal is limited to the minimum required to remove health or safety hazards from, or protect against additional damage to the residence;

(E) Provide or take minimum protective measures required to protect such residences against the immediate threat of damage, which means that the disaster damage is causing a potential safety hazard and, if not repaired, will cause actual safety hazards from common weather or environmental events (example: additional rain, flooding, erosion, wind); and

(F) Minimization measures required by owner-occupants to comply with the provision of 44 CFR Part 9 (Floodplain Management and Protection of Wetlands), to enable them to receive assistance from other means, and/or to enable them to comply with a community's floodplain management regulations.

(ii) Personal property. Proof of ownership of personal property is not required. This category includes:

(A) Clothing;

(B) Household items, furnishings, or appliances. If a predisaster renter receives a grant for household items, furnishings, or appliances and these items are an integral part of mobile home or other furnished unit, the predisaster renter may apply the funds awarded for these specific items toward the purchase of the furnished unit, and toward mobile home site development, towing, set-up, connecting and/or reconnecting;

(C) Tools, specialized or protective clothing, and equipment which are required by an employer as a condition of employment;

(D) Repairing, cleaning or sanitizing any eligible personal property item; and

(E) Moving and storing to prevent or reduce damage.

(iii) Transportation. Grants may be authorized to repair, replace, or provide privately owned vehicles or to provide public transportation.

(iv) Medical or dental expenses.

(v) Funeral expenses. Grants may include funeral and burial (and/or cremation) and related expenses.

(vi) Cost of the first year's flood insurance premium to meet the requirement of this section.

(vii) Costs for estimates required for eligibility determinations under the IFG program. Housing and personal property estimates will be provided by the government. However, an applicant may appeal to the State if he/she feels the government estimate is inaccurate. The cost of an applicant-obtained estimate to support the appeal is not an eligible cost.

(viii) Other. A State may determine that other necessary expenses and serious needs are eligible for grant assistance. If such a determination is made, the State must summarize the facts of the case and thoroughly document its findings of eligibility. Should the State require technical assistance in making a determination of eligibility, it may provide a factual summary to the Regional Director and request guidance. The Associate Director also may determine that other necessary expenses and serious needs are eligible for grant assistance. Following such a determination, the Associate Director shall advise the State, through the Regional Director, and provide the necessary program guidance.

(3) *Ineligible categories.* Assistance under this section shall not be made available for any item or service in the following categories:

(i) Business losses, including farm businesses and self-employment;

(ii) Improvements or additions to real or personal property, except those required to comply with paragraph (d)(2)(i)(F) of this section;

(iii) Landscaping;

(iv) Real or personal property used exclusively for recreation; and

(v) Financial obligations incurred prior to the disaster.

(4) *Verification.* The State will be provided most verification data on IFG applicants who were not required to first apply to the SBA. The FEMA Regional Director shall be responsible for performing most of the required verifications in the categories of housing (to include documentation of home ownership and primary residency); personal property; and transportation (to include notation of the plate or title number of the vehicle; the State may wish to follow up on this). Certain verifications may still be required to be performed by the State, such as on late applicants or reverifications, when FEMA or its contractors are no longer available, and on medical/dental, funeral and "other" categories. Eligibility determination functions shall be performed by the State. The SBA will provide copies of verification performed by SBA staff on housing and personal

property (including vehicles) for those applicants who were first required to apply to SBA. This will enable the State to make an eligibility determination on those applicants. When an applicant disagrees with the grant award, he/she may appeal to the State. The cost of any estimate provided by the applicant in support of his/her appeal is not eligible under the program.

(e) *State administrative plan.* (1) The State shall develop a plan for the administration of the IFG program that includes, as a minimum, the items listed below.

(i) Assignment of grant program responsibilities to State officials or agencies.

(ii) Procedures for:

(A) Notifying potential grant applicants of the availability of the program, to include the publication of application deadlines, pertinent program descriptions, and further program information on the requirements which must be met by the applicant in order to receive assistance;

(B) Participating with FEMA in the registration and acceptance of applications, including late applications, up to the prescribed time limitations;

(C) Reviewing verification data provided by FEMA and performing verifications for medical, dental, funeral, and "other" expenses, and also for all grant categories in the instance of late applications and appeals. FEMA will perform any necessary reverifications while its contract personnel are in the disaster area, and the State will perform any others;

(D) Determining applicant eligibility and grant amounts, and notifying applicants of the State's decision;

(E) Determining the requirement for flood insurance;

(F) Preventing duplication of benefits between grant assistance and assistance from other means;

(G) At the applicant's request, and at the State's option, reconsidering the State's determinations;

(H) Processing applicant appeals, recognizing that the State has final authority. Such procedures must provide for:

(*1*) The receipt of oral or written evidence from the appellate or representative;

(*2*) A determination on the record; and

(*3*) A decision by an impartial person or board;

(I) Disbursing grants in a timely manner;

(J) Verifying by random sample that grant funds are meeting applicants' needs, are not duplicating assistance from other means, and are meeting floodplain management and flood insurance requirements. Guidance on the sample size will be provided by the Regional Director;

(K) Recovering grant funds obtained fraudulently, expended for unauthorized items or services, expended for items for which assistance is received from other means, or authorized for acquisition or construction purposes where proof of purchase of flood insurance is not provided to the State. Except for those mentioned in the previous sentence, grants made properly by the State on the basis of federally sponsored verification information are not subject to recovery by the State, i.e., FEMA will not hold the State responsible for repaying to FEMA the Federal share of those grants. The State is responsible for its 25 percent share of those grants. As an attachment to its voucher, the State must identify each case where recovery actions have been taken or are to be taken, and the steps taken or to be taken to accomplish recovery;

(L) Conducting any State audits that might be performed in compliance with the Single Audit Act of 1984; and ensuring that appropriate corrective action is taken within 6 months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

(M) Reporting to the Regional Director, and to the Federal Coordinating Officer as required; and

(N) Reviewing and updating the plan each January.

(iii) National eligibility criteria as defined in paragraph (d) of this section.

(iv) Provisions for compliance with 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; 44 CFR Part 11, Claims; the State's own debt collection procedures; and all applicable Federal laws and regulations.

(v) Pertinent time limitations for accepting applications, grant award activities, and administrative activities, to comply with Federal time limitations.

(vi) Provisions for specifically identifying, in the accounts of the State, all Federal and State funds committed to each grant program; for repaying the loaned State share as of the date agreed upon in the FEMA-State Agreement; and for immediately returning, upon discovery, all Federal funds that are excess to program needs.

(vii) Provisions for safeguarding the privacy of applicants and the confidentiality of information, except that the information may be provided to agencies or organizations who require it to make eligibility decisions for assistance programs, or to prevent duplication of benefits, to State agencies responsible for audit or program review, and to FEMA or the General Accounting Office for the purpose of making audits or conducting program reviews.

(viii) A section identifying the management and staffing functions in the IFG program, the sources of staff to fill these functions, and the management and oversight responsibilities of:

(A) The GAR;

(B) The department head responsible for the IFG program;

(C) The Grant Coordinating Officer, i.e., the State official assigned management responsibility for the IFG program; and

(D) The IFG program manager, where management responsibilities are assigned to such a person on a day-to-day basis.

(2) The Governor or his/her designee may request the Regional Director to provide technical assistance in the preparation of an administrative plan to implement this program.

(3) The Governor shall submit a revised State administrative plan each January to the Regional Director. The Regional Director shall review and approve the plan annually. In each disaster for which assistance under this section is requested, the Regional Director shall request the State to prepare any amendments required to meet current policy guidance. The Regional Director must then work with the State until the plan and amendment(s) are approved.

(4) The State shall make its approved administrative plan part of the State emergency plan, as described in Subpart A of these regulations.

(f) *State initiation of the IFG program.* To make assistance under this section available to disaster victims, the Governor must, either in the request of the President for a major disaster declaration or by separate letter to the Regional Director, express his/her intention to implement the program. This expression of intent must include an estimate of the size and cost of the program. In addition, this expression of intent represents the Governor's agreement to the following:

(1) That the program is needed to satisfy necessary expenses and serious needs of disaster victims which cannot otherwise be met;

(2) That the State will pay its 25 percent share of all grants to individuals and families;

(3) That the State will return immediately upon discovery advanced Federal funds that exceed actual requirements;

(4) To implement an administrative plan as identified in paragraph (e) of this section;

(5) To implement the grant program throughout the area designated as eligible for assistance by the Associate Director; and

(6) To maintain close coordination with and provide reports to the Regional Director.

(g) *Funding.* (1) The Regional Director may obligate the Federal share of the IFG program based upon the determination that:

(i) The Governor has indicated the intention to implement the program, in accordance with paragraph (f) of this section;

(ii) The State's administrative plan meets the requirements of this section and current policy guidance; and

(iii) There is no excess advance of the Federal share due FEMA from a prior IFG program. The State may eliminate any such debt by paying it immediately, or by accepting an offset of the owed funds against other funds payable by FEMA to the State. When the excess Federal share has been repaid, the Regional Director may then obligate funds for the Federal share for the current disaster.

(2) The Regional Director may increase the State's letter of credit to meet the Federal share of program needs if the above conditions are met. The State may withdraw funds for the Federal share in the amount made available to it by the Regional Director. Advances to the State are governed by 44 CFR 13.21, Payment.

(3) The Regional Director may lend to the State its share in accordance with Subpart A of these regulations.

(4) Payable costs are governed by 44 CFR 13.22, Allowable Costs, and the associated OMB Circular A–87, Cost Principles for State and Local Governments. Also, the costs must be in accordance with the national eligibility criteria stated in paragraph (d) of this section, and the State's administrative plan, as stated in paragraph (e) of this section. The Federal contribution to this program shall be 75 percent of program costs and shall be made in accordance with 44 CFR 13.25, Matching or Cost-Sharing.

(h) *Final payment.* Final payment to the State for the Federal share of the IFG program plus administrative costs, is governed by 44 CFR 13.21, Payment, and 44 CFR 13.50, Closeout. The voucher is Standard Form 270, Request for Advance or Reimbursement). A separate voucher for the State share will be prepared, to include all disaster programs for which the State is requesting a loan of the nonfederal share. The FEMA Regional Director will analyze the voucher and approve, disapprove, or suspend approval until deficiencies are corrected.

(i) *Audits.* The State should perform the audits required by the Single Audit Act of 1984. Refer to 44 CFR Part 14, Administration of Grants; Audits of State and Local Governments, which implements OMB Circular A–128 regarding audits. All programs are subject to Federal audit.

(j) *Time limitations.* (1) In the administration of the IFG program:

(i) The Governor shall indicate his/her intention to implement the IFG program no later than 7 days following the day on which the major disaster was declared and in the manner set forth in paragraph (f) of this section;

(ii) Applications shall be accepted from individuals or families for a period of 60 days following the declaration, and for no longer than 30 days thereafter when the State determines that extenuating circumstances beyond the applicants' control (such as, but not limited to, hospitalization, illness, or inaccessibility to application centers) prevented them from applying in a timely manner. *Exception:* If applicants exercising their responsibility to first apply to the Small Business Administration do so after SBA's deadline, and SBA accepts their case for processing because of "substantial causes essentially beyond the control of the applicant," and provides a formal decline or insufficient loan based on lack of repayment ability, unsatisfactory credit, or unsatisfactory experience with prior loans (i.e., the reasons a loan denial client would normally be eligible for IFG assistance), then such an application referred to the State by the SBA is considered as meeting the IFG filing deadline. The State may then apply its own criteria in determining whether to process the case for grant assistance. The State automatically has an extension of time to complete the processing, eligibility, and disbursement functions. However, the State must still complete all administrative activity within the 270-day period described in this section.

(iii) The State shall complete all grant award activity, including eligibility determinations, disbursement, and disposition of State level appeals, within 180 days following the declaration date. The Regional Director shall suspend all grant awards disbursed after the specified completion date; and

(iv) The State shall complete all administrative activities and submit final reports and vouchers to the Regional Director within 90 days of the completion of all grant award activity.

(2) The GAR may submit a request with appropriate justification for the extension of any time limitation. The Regional Director may approve the request for a period not to exceed 90 days. The Associate Director may approve any request for a further extension of the time limitations.

(k) *Appeals*—(1) *Bills for collection (BFC's).* The State may appeal the issuance of a BFC by the Regional Director. Such an appeal shall be made in writing within 60 days of the issuance of the bill. The appeal must include information justifying why the bill is incorrect. The Regional Director shall review the material submitted and notify the State, in writing, within 15 days of receipt of the appeal, of his/her decision. Interest on BFC's starts accruing on the date of issuance of the BFC, but is not charged if the State pays within 30 days of issuance. If the State is successful in its appeal, interest will not be charged; if unsuccessful, interest is due and payable, as above.

(2) *Other appeals.* The State may appeal any other decision of the regional Director. Such appeals shall be made in writing within 60 days of the Regional Director's decision. The appeal must include information justifying a reversal of the decision. The Regional Director shall review the material submitted and notify the State, in writing, within 15 days of receipt of the appeal, of his/her decision.

(3) *Appeals to the Associate Director.* The State may further appeal the Regional Director's decisions to the Associate Director. This appeal shall be made in writing within 60 days of the Regional Director's decision. The appeal must include information justifying a reversal of the decision. The Associate Director shall review the material submitted and notify the State, in writing, within 15 days of receipt of the appeal, of his/her decision.

(l) *Exemption from garnishment.* All proceeds received or receivable under the IFG program shall be exempt from garnishment, seizure, encumbrance, levy, execution, pledge, attachment, release, or waiver. No rights under this provision are assignable or transferable. The above exemptions will not apply to the requirement imposed by paragraph (e)(1)(ii)(K) of this section.

(m) *Debt collection.* If the State has been unable to recover funds as stated in paragraph (e)(1)(k) of this section, the Regional Director shall institute debt collection activities against the individual according to the procedures outlined in 44 CFR Part 11, Claims, and 44 CFR 13.52, Collection of Amounts Due.

§§ 206.132 through 206.140 [Reserved]

Subpart F—Other Individual Assistance

§ 206.141 Disaster unemployment assistance.

The authority to implement the disaster unemployment assistance (DUA) program authorized by section 410 of the Stafford Act, and the authority to issue regulations, are currently delegated to the Secretary of Labor.

§§ 206.142 through 206.150 [Reserved]

§ 206.151 Food commodities.

(a) The Associate Director will assure that adequate stocks of food will be ready and conveniently available for emergency mass feeding or distribution in any area of the United States which suffers a major disaster or emergency.

(b) In carrying out the responsibilities in paragraph (a) of this section, the Associate Director may direct the Secretary of Agriculture to purchase food commodities in accordance with authorities prescribed in section 413(b) of the Stafford Act.

§§ 206.152 through 206.160 [Reserved]

§ 206.161 Relocation assistance.

Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.

§§ 206.162 through 206.163 [Reserved]

§ 206.164 Disaster legal services.

(a) Legal services, including legal advice, counseling, and representation in non fee-generating cases, except as provided in paragraph (b) of this section, may be provided to low-income individuals who require them as a result of a major disaster. For the purpose of this section, "low-income individuals" means those disaster victims who have insufficient resources to secure adequate legal services, whether the insufficiency existed prior to or results from the major disaster. In cases where questions arise about the eligibility of an individual for legal services, the Regional Director or his/her representative shall make a determination.

(b) Disaster legal services shall be provided free to such individuals. Fee-generating cases shall not be accepted by lawyers operating under these regulations. For purposes of this section, a fee-generating case is one which would not ordinarily be rejected by local lawyers as a result of its lack of potential remunerative value. Where any question arises as to whether a case is fee-generating as defined in this section, the Regional Director or his/her representative, after any necessary consultation with local or State bar associations, shall make the determination. Any fee-generating cases shall be referred by the Regional Director or his/her representative to private lawyers, through existing lawyer referral services, or, where that is impractical or impossible, the Regional Director may provide a list of lawyers from which the disaster victim may choose. Lawyers who have rendered voluntary legal assistance under these regulations are not precluded from taking fee-generating cases referred to them in this manner while in their capacity as private lawyers.

(c) When the Regional Director determines after any necessary consultation with the State Coordinating Officer, that implementation of this section is necessary, provision of disaster legal services may be accomplished by:

(1) Use of volunteer lawyers under the terms of appropriate agreements;

(2) Use of Federal lawyers, provided that these lawyers do not represent an eligible disaster victim before a court or Federal agency in a matter directly involving the United States, and further provided that these lawyers do not act in a way which will violate the standards of conduct of their respective agencies or departments;

(3) Use of private lawyers who may be paid by the Federal Emergency Management Agency when the Regional Director has determined that there is no other means of obtaining adequate legal assistance for qualified disaster victims; or

(4) Any other arrangement the Regional Director deems appropriate.

The Associate Director shall coordinate with appropriate Federal agencies and the appropriate national, state and local bar associations, as necessary, in the implementation of the disaster legal services programs.

(d) In the event it is necessary for FEMA to pay lawyers for the provision of legal services under these regulations, the Regional Director, in consultation with State and local bar associations, shall determine the amount of reimbursement due to the lawyers who have provided disaster legal services at the request of the Regional Director. At the Regional Director's discretion, administrative costs of lawyers providing legal services requested by him or her may also be paid.

(e) Provision of disaster legal services is confined to the securing of benefits under the Act and claims arising out of a major disaster.

(f) Any disaster legal services shall be provided in accordance with Subpart A of these regulations, Non-discrimination in disaster assistance.

§§ 206.165 through 206.170 [Reserved]

§ 206.171 Crisis counseling assistance and training.

(a) *Purpose.* This section establishes the policy, standards, and procedures for implementing section 416 of the Act, Crisis Counseling Assistance and Training. FEMA will look to the Director, National Institute of Mental Health (NIMH), as the delegate of the Secretary of the Department of Health and Human Services (DHHS).

(b) *Definitions.* (1) "Assistant Associate Director" means the head of the Office of Disaster Assistance Programs, FEMA; the official who approves or disapproves a request for assistance under section 416 of the Act, and is the final appeal authority.

(2) "Crisis" means any life situation resulting from a major disaster or its aftermath which so affects the emotional and mental equilibrium of a disaster victim that professional mental health counseling services should be provided to help preclude possible damaging physical or psychological effects.

(3) "Crisis counseling" means the application of individual and group treatment procedures which are designed to ameliorate the mental and emotional crises and their subsequent psychological and behavioral conditions resulting from a major disaster or its aftermath.

(4) "Federal Coordinating Officer (FCO)" means the person appointed by the Associate Director to coordinate Federal assistance in an emergency or a major disaster.

(5) "Grantee" means the State mental health agency or other local or private mental health organization which is designated by the Governor to receive funds under section 416 of the Act.

(6) "Immediate services" means those screening or diagnostic techniques which can be applied to meet mental health needs immediately after a major disaster. Funds for immediate services may be provided directly by the Regional Director to the State or local mental health agency designated by the Governor, prior to and separate from the

regular program application process of crisis counseling assistance.

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

(8) "Project Officer" means the person assigned by the Secretary, DHHS, to monitor a crisis counseling program, provide consultation, technical assistance, and guidance, and be the contact point within the DHHS for program matters.

(9) "Regional Director" means the director of a regional office of FEMA, or the Disaster Recovery Manager, as the delegate of the Regional Director.

(10) "Secretary" means the Secretary of DHHS or his/her delegate.

(11) "State Coordinating Officer (SCO)" means the person appointed by the Governor to act in cooperation with the FCO.

(c) *Agency policy.* (1) It is agency policy to provide crisis counseling services, when required, to victims of a major disaster for the purpose of relieving mental health problems caused or aggravated by a major disaster or its aftermath. Assistance provided under this section is short-term in nature and is provided at no cost to eligible disaster victims.

(2) The Regional Director and Assistant Associate Director, in fulfilling their responsibilities under this section, shall coordinate with the Secretary.

(3) In meeting the responsibilities under this section, the Secretary or his/her delegate will coordinate with the Assistant Associate Director.

(d) *State initiation of the crisis counseling program.* To obtain assistance under this section, the Governor or his/her authorized representative must initiate an assessment of the need for crisis counseling services within 10 days of the date of the major disaster declaration. The purpose of the assessment is to provide an estimate of the size and cost of the program needed and to determine if supplemental Federal assistance is required. The factors of the assessment must include those described in paragraphs (f)(2) (ii) and (iii) and (g)(2) (iii) and (iv) of this section.

(e) *Public or private mental health agency programs.* If the Governor determines during the assessment that because of unusual circumstances or serious conditions within the State or local mental health network, the State cannot carry out the crisis counseling program, he/she may identify a public or private mental health agency or organization to carry out the program or request the Regional Director to identify, with the assistance of the Secretary, such an agency or organization. Preference should be given to the extent feasible and practicable to those public and private agencies or organizations which are located in or do business primarily in the major disaster area.

(f) *Immediate services.* If, during the course of the assessment, the State determines that immediate mental health services are required because of the severity and magnitude of the disaster, and if State or local resources are insufficient to provide these services, the State may request and the Regional Director, upon determining that State resources are insufficient, may provide funds to the State, separate from the application process for regular program funds (described at paragraph (g) of this section).

(1) The application must be submitted to the Regional Director no later than 14 days following the declaration of the major disaster. This application represents the Governor's agreement and/or certification:

(i) That the requirements are beyond the State and local governments' capabilities;

(ii) That the program, if approved, will be implemented according to the plan contained in the application approved by the Regional Director;

(iii) To maintain close coordination with and provide reports to the Regional Director; and

(iv) To include mental health disaster planning in the State's emergency plan prepared under Title II of the Stafford Act.

(2) The application must include:

(i) The geographical areas within the designated disaster area for which services will be provided;

(ii) An estimate of the number of disaster victims requiring assistance;

(iii) A description of the State and local resources and capabilities, and an explanation of why these resources cannot meet the need;

(iv) A description of response activities from the date of the disaster incident to the date of application;

(v) A plan of services to be provided to meet the identified needs; and

(vi) A detailed budget, showing the cost of proposed services separately from the cost of reimbursement for any eligible services provided prior to application.

(3) Reporting requirements. The State shall submit to the Regional Director:

(i) A mid-program report only when a regular program grant application is being prepared and submitted. This report will be included as part of the regular program grant application;

(ii) A final program report, a financial status report, and a final voucher 90 days after the last day of immediate services funding.

(4) Immediate services program funding:

(i) Shall not exceed 60 days following the declaration of the major disaster, except when a regular program grant application has been submitted;

(ii) May continue for up to 30 additional days when a regular program grant application has been submitted;

(iii) May be extended by the Regional Director, upon written request from the State, documenting extenuating circumstances; and

(iv) May reimburse the State for documented, eligible expenses from the date of the occurrence of the event or incurred in anticipation of and immediately preceding the disaster event which results in a declaration.

(v) Any funds granted pursuant to an immediate services program, paragraph (f) of this section, shall be expended solely for the purposes specified in the approved application and budget, these regulations, the terms and conditions of the award, and the applicable principles prescribed in 44 CFR Part 13.

(5) Appeals. There are two levels of appeals. If a State submits appeals at both levels, the first appeal must be submitted early enough to allow the latter appeal to be submitted within 60 days following the date of the funding determination on the immediate services program application.

(i) The State may appeal the Regional Director's decision. This appeal must be submitted in writing within 60 days of the date of notification of the application decision, but early enough to allow for further appeal if desired. The appeal must include information justifying a reversal of the decision. The Regional Director shall review the material submitted, and after consultation with the Secretary, notify the State, in writing within 15 days of receipt of the appeal, of his/her decision;

(ii) The State may further appeal the Regional Director's decision to the Assistant Associate Director. This appeal shall be made in writing within 60 days of the date of the Regional Director's notification of the decision on the immediate services application. The appeal must include information justifying a reversal of the decision. The Assistant Associate Director, or other impartial person, shall review the material submitted, and after consultation with the Secretary and Regional Director, notify the State, in writing, within 15 days of receipt of the appeal, of his/her decision.

(g) *Regular program.* (1) The application must be submitted by the Governor or his/her authorized representative to the Assistant Associate Director through the Regional Director, and simultaneously to the Secretary no later than 60 days following the declaration of the major disaster. This application represents the Governor's agreement and/or certification:

(i) That the requirements are beyond the State and local governments' capabilities;

(ii) That the program, if approved, will be implemented according to the plan contained in the application approved by the Assistant Associate Director;

(iii) To maintain close coordination with and provide reports to the Regional Director, the Assistant Associate Director, and the Secretary; and

(iv) To include mental health disaster planning in the State's emergency plan prepared under Title II of the Stafford Act.

(2) The application must include:

(i) Standard Form 424, Application for Federal Assistance;

(ii) The geographical areas within the designated disaster area for which services will be supplied;

(iii) An estimate of the number of disaster victims requiring assistance. This documentation of need should include the extent of physical, psychological, and social problems observed, the types of mental health problems encountered by victims, and a description of how the estimate was made;

(iv) A description of the State and local resources and capabilities, and an explanation of why these resources cannot meet the need;

(v) A plan of services which must include at a minimum:

(A) The manner in which the program will address the needs of the affected population, including the types of services to be offered, an estimate of the length of time for which mental health services will be required, and the manner in which long-term cases will be handled;

(B) A description of the organizational structure of the program, including designation by the Governor of an individual to serve as administrator of the program. If more than one agency will be delivering services, the plan to coordinate services must also be described;

(C) A description of the training program for project staff, indicating the number of workers needing such training;

(D) A description of the facilities to be utilized, including plans for securing office space if necessary to the project; and

(E) A detailed budget, including identification of the resources the State and local governments will commit to the project, proposed funding levels for the different agencies if more than one is involved, and an estimate of the required Federal contribution.

(3) Reporting requirements. The State shall submit the following reports to the Regional Director, the Secretary, and the State Coordinating Officer

(i) Quarterly progress reports, as required by the Regional Director or the Secretary, due 30 days after the end of the reporting period. This is consistent with 44 CFR 13.40, Monitoring and Reporting Program Performance;

(ii) A final program report, to be submitted within 90 days after the end of the program period. This is also consistent with 44 CFR 13.40, Monitoring and Reporting Program Performance;

(iii) An accounting of funds, in accordance with 44 CFR 13.41, Financial Reporting, to be submitted with the final program report; and

(iv) Such additional reports as the Regional Director, Secretary, or SCO may require.

(4) Regular program funding:

(i) Shall not exceed 9 months from the date of the DHHS notice of grant award, except that upon the request of the State to the Regional Director and the Secretary, the Assistant Associate Director may authorize up to 90 days of additional program period because of documented extenuating circumstances;

(ii) The amount of the regular program grant award will take into consideration the Secretary's estimate of the sum necessary to carry out the grant purpose.

(iii) Any funds granted pursuant to a regular program, paragraph (g) of this section, shall be expended solely for the purposes specified in the approved application and budget, these regulations, the terms and conditions of the award, and the applicable cost principles prescribed in Subpart Q of 45 CFR Part 92.

(5) Appeals. The State may appeal the Assistant Associate Director's decision, in writing, within 60 days of the date of notification of the decision. The appeal must include information justifying a reversal of the decision. The Assistant Associate Director, or other impartial person, in consultation with the Secretary and Regional Director, shall review the material submitted and notify the State, in writing within 15 days of receipt of the appeal, of his/her decision.

(h) *Eligibility guidelines.* (1) For services. An individual may be eligible for crisis counseling services if he/she was a resident of the designated major disaster areas or was located in the area at the time of the disaster event and if:

(i) He/she has a mental health problem which was caused or aggravated by the major disaster or its aftermath; or

(ii) He/she may benefit from preventive care techniques.

(2) For training. (i) The crisis counseling project staff or consultants to the project are eligible for the specific instruction that may be required to enable them to provide professional mental health crisis counseling to eligible individuals;

(ii) All Federal, State, and local disaster workers responsible for assisting disaster victims are eligible for general instruction designed to enable them to deal effectively and humanely with disaster victims.

(i) *Assignment of responsibilities.* (1) The Regional Director shall:

(i) In the case of an immediate services program application, acknowledge receipt of the request, verify (with assistance from the Secretary) that State resources are insufficient, approve or disapprove the State's application, obligate and advance funds for this purpose, review appeals, make a determination (with assistance from the Secretary), and notify the State;

(ii) In the case of a regular program grant application:

(A) Acknowledge receipt of the request;

(B) Request the Secretary to conduct a review to determine the extent to which assistance requested by the Governor or his/her authorized representative is warranted;

(C) Considering the Secretary's recommendation, recommend approval or disapproval of the application for assistance under this section; and forward the Regional Director's and Secretary's recommendations and documentation to the Assistant Associate Director;

(D) Assist the State in preliminary surveys and provide guidance and technical assistance if requested to do so; and

(E) Maintain liaison with the Secretary and look to the Secretary for program oversight and monitoring.

(2) The Secretary shall:

(i) Provide technical assistance, consultation, and guidance to the Regional Director in reviewing a State's application, to a State during program implementation and development, and to mental health agencies, as appropriate;

(ii) At the request of the Regional Director, conduct a review to verify the extent to which the requested assistance is needed and provide a recommendation on the need for supplementary Federal assistance. The review must include:

(A) A verification of the need for services with an indication of how the verification was conducted;

(B) Identification of the Federal mental health programs in the area, and the extent to which such existing programs can help alleviate the need;

(C) An identification of State, local, and private mental health resources, and the extent to which these resources can assume the workload without assistance under this section and the extent to which supplemental assistance is warranted;

(D) A description of the needs; and

(E) A determination of whether the plan adequately addresses the mental health needs;

(iii) If the application is approved, provide grant assistance to States or the designated public or private entities;

(iv) If the application is approved, monitor the progress of the program and perform program oversight;

(v) Coordinate with, and provide program reports to, the Regional Director, and the Assistant Associate Director;

(vi) Make the appeal determination, for regular program grants, involving allowable costs and termination for cause as described in paragraph (j)(2) of this section;

(vii) As part of the project monitoring responsibilities, report to the Regional Director and Assistant Associate Director at least quarterly on the progress of crisis counseling programs, in a report format jointly agreed upon by the Secretary and FEMA; provide special reports, as requested by the Regional Director, FCO, or Assistant Associate Director;

(viii) Require progress reports and other reports from the grantee to facilitate his/her project monitoring responsibilities;

(ix) Properly account for all Federal funds made available to grantees under this section. Submit to the Assistant Associate Director, within 120 days of completion of a program, a final accounting of all expenditures for the program and return to FEMA all excess funds. Attention is called to the reimbursement requirements of this part.

(3) The Assistant Associate Director shall:

(i) Approve or disapprove a State's request for assistance based on recommendations of the Regional Director and the Secretary;

(ii) Obligate funds and authorize advances of funds to the DHHS;

(iii) Request that the Secretary designate a Project Officer;

(iv) Maintain liaison with the Secretary and Regional Director; and

(v) Review and make determinations on appeals, except for regular program appeals involving allowable costs and termination for cause as described in paragraph (j)(2) of this section, and notify the State of the decision.

(j) *Grant awards.* (1) Neither the approval of any application nor the award of any grant commits or obligates the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of any approved application.

(2) Several other regulations of the DHHS apply to grants under this section. These include, but are not limited to:

45 CFR Part 16—DHHS grant appeals procedures
42 CFR Part 50, Subpart D—PHS grant appeals procedures
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures (indirect cost rates and other cost allocations)
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the DHHS (effectuation of Title VI of the Civil Rights Act of 1964)
45 CFR Part 81—Practice and procedure for hearings under Part 80
45 CFR Part 84—Nondiscrimination on the basis of handicap in federally assisted programs
45 CFR Part 86—Nondiscrimination on the basis of sex in federally assisted programs
45 CFR Part 91—Nondiscrimination on the basis of age in federally assisted programs
45 CFR Part 92—Uniform administrative requirements for grants and cooperative agreements to State and local governments.

(k) *Federal audits.* The crisis counseling program is subject to Federal audit. The 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.

§§ 206.172 through 206.180 [Reserved]

§ 206.181 Use of gifts and bequests for disaster assistance purposes.

(a) *General.* FEMA sets forth procedures for the use of funds made possible by a bequest of funds from the late Cora C. Brown of Kansas City, Missouri, who left a portion of her estate to the United States for helping victims of natural disasters and other disasters not caused by or attributable to war. FEMA intends to use the funds, and any others that may be bequeathed under this authority, in the manner and under the conditions described below.

(b) *Purposes for awarding funds.* Money from the Cora Brown Fund may only be used to provided for disaster-related needs that have not been or will not be met by governmental agencies or any other organizations which have programs to address such needs; however, the fund is not intended to replace or supersede these programs. For example, if assistance is available from another source, including the Individual and Family Grant program and government-sponsored disaster loan assistance, then money from the Cora Brown Fund will not be available to the applicant for the same purpose. Listed below are the general categories of assistance which can be provided by the Cora Brown Fund:

(1) Disaster-related home repair and rebuilding assistance to families for permanent housing purposes, including site acquisition and development, relocation of residences out of hazardous areas, assistance with costs associated with temporary housing or permanent rehousing (e.g., utility deposits, access, transportation, connection of utilities, etc.);

(2) Disaster-related unmet needs of families who are unable to obtain adequate assistance under the Act or from other sources. Such assistance may include but is not limited to: health and safety measures; evacuation costs; assistance delineated in the Act or other Federal, State, local, or volunteer programs; hazard mitigation or floodplain management purposes; and assistance to self-employed persons (with no employees) to reestablish their businesses; and

(3) Other services which alleviate human suffering and promote the well being of disaster victims. For example,

services to the elderly, to children, or to handicapped persons, such as transportation, recreational programs, provision of special ramps, or hospital or home visiting services. The funds may be provided to individual disaster victims, or to benefit a group of disaster victims.

(c) *Conditions for use of the Cora Brown Fund.* (1) The Cora Brown Fund is available only when the President declares that a major disaster or emergency exists under the Act, only in areas designated as eligible for Federal disaster assistance through notice in the Federal Register, and only at the discretion of the Assistant Associate Director, Office of Disaster Assistance Programs, FEMA. The fund is limited to the initial endowment plus accrued interest, and this assistance program will cease when the fund is used up.

(2) A disaster victim normally will receive no more than $2,000 from this fund in any one declared disaster unless the Assistant Associate Director determines that a larger amount is in the best interest of the disaster victim and the Federal Government. Funds to provide service which benefit a group may be awarded in an amount determined by the Assistant Associate Director, based on the Regional Director's recommendation.

(3) The fund may not be used in a way that is inconsistent with other federally mandated disaster assistance or insurance programs, or to modify other generally applicable requirements.

(4) Funds awarded to a disaster victim may be provided by FEMA jointly to the disaster victim and to a State or local agency, or volunteer organization, to enable such an agent to assist in providing the approved assistance to an applicant. Example: Repair funds may be provided jointly to an applicant and the Mennonite Disaster Service, who will coordinate the purchase of supplies and provide the labor.

(5) Money from this fund will not duplicate assistance for which a person is eligible from other sources.

(6) In order to comply with the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended, any award for acquisition or construction purposes shall carry a requirement that any adequate flood insurance policy be purchased and maintained. The Assistant Associate Director shall determine what is adequate based on the purpose of the award.

(7) The fund shall be administered in an equitable and impartial manner without discrimination on the grounds of race, color religion, national origin, sex, age or economic status

(8) Funds awarded to a disaster victim from this fund may be combined with funds from other sources.

(d) *Administrative procedures.* (1) The Assistant Associate Director, Office of Disaster Assistance Programs, shall be responsible for awarding funds and authorizing disbursement.

(2) The Comptroller of FEMA shall be responsible for fund accountability and, in coordination with the Assistant Associate Director, for liaison with the Department of the Treasury concerning the investment of excess money in the fund pursuant to the provisions contained in section 601 of the Act.

(3) Each FEMA Regional Director may submit requests to the Assistant Associate Director on a disaster victim's behalf by providing documentation describing the needs of the disaster victim, a verification of the disaster victim's claim, a record of other assistance which has been or will be available for the same purpose, and his/her recommendation as to the items and the amount. The Assistant Associate Director shall review the facts and make a determination. If the award amount is below $2,000, the Assistant Associate Director may appoint a designee to have approval authority; approval authority of $2,000 or above shall be retained by the Assistant Associate Director. The Assistant Associate Director shall notify the Comptroller of a decision for approval, and the Comptroller shall order a check to be sent to the disaster victim (or jointly to the disaster victim and an assistance organization), through the Regional Director. The Assistant Associate Director shall also notify the Regional Director of the decision, whether for approval or disapproval. The Regional Director shall notify the disaster victim in writing, identify any award as assistance from the Cora Brown Fund, and advise the recipient of appeal procedures.

(4) If the award is to be for a service to a group of disaster victims, the Regional Director shall submit his/her recommendation and supporting documentation to the Assistant Associate Director (or his/her designee if the award is below $2,000), who shall review the information and make a determination. In cases of approval, the Assistant Associate Director shall request the Comptroller to send a check to the intended recipient or provider, as appropriate. The Assistant Associate Director shall notify the Regional Director of the decision. The Regional Director shall notify a representative of the group in writing

(5) The Comptroller shall process requests for checks, shall keep records of disbursements and balances in the account, and shall provide the Assistant Associate Director with quarterly reports.

(e) *Audits.* The Inspector General of FEMA shall audit the use of money in this account to determine whether the funds are being administered according to these regulations and whether the financial management of the account is adequate. The Inspector General shall provide his/her findings to the Associate Director, State and Local Programs and Support, for information, comments and appropriate action. A copy shall be provided to the Comptroller for the same purpose.

§§ 206.182 through 206.190 [Reserved]

§ 206.191 Duplication of benefits.

(a) *Purpose.* This section establishes the policies for implementing section 312 of the Stafford Act, entitled Duplication of Benefits. This section relates to assistance for individuals and families.

(b) *Government policy.* (1) Federal agencies providing disaster assistance under the Act or under their own authorities triggered by the Act, shall cooperate to prevent and rectify duplication of benefits, according to the general policy guidance of the Federal Emergency Management Agency. The agencies shall establish appropriate agency policies and procedures to prevent duplication of benefits.

(2) Major disaster and emergency assistance provided to individuals and families under the Act, and comparable disaster assistance provided by States, local governments, and disaster assistance organizations, is not considered as income or a resource when determining eligibility for or benefit levels under federally funded income assistance or resource-tested programs. Examples of federally funded income assistance or resource-tested programs are the food stamp program and welfare assistance programs.

(c) *FEMA policy.* It is FEMA policy:

(1) To prevent duplication of benefits between its own programs and insurance benefits, and between its own programs and other disaster assistance. Assistance under the Act may be provided in instances where the applicant has not received other benefits to which he/she may be entitled by the time of application and if the applicant agrees to repay all duplicated assistance to the agency providing the Federal assistance;

(2) To examine a debt resulting from duplication to determine that the likelihood of collecting the debt and the best interests of the Federal Government justify taking the necessary

recovery actions to remedy duplication which has occurred when other assistance has become available;

(3) To assure uniformity in preventing duplication of benefits, by consulting with other Federal agencies and by performing selected quality control reviews, that the other disaster relief agencies establish and follow policies and procedures to prevent and remedy duplication among their programs, other programs, and insurance benefits; and

(4) To coordinate the effort of agencies providing assistance so that each agency understands the prevention and remedial policies of the others and is able to fulfill its own responsibilities regarding duplication of benefits.

(d) *Guidance to prevent duplication of benefits.* (1) Delivery sequence. FEMA provides the following policy and procedural guidance to ensure uniformity in preventing duplication of benefits.

(i) Duplication occurs when an agency has provided assistance which was the primary responsibility of another agency, and the agency with primary responsibility later provides assistance. A delivery sequence establishes the order in which disaster relief agencies and organizations provide assistance. The specific sequence, in accordance with the mandates of the assistance programs, is to be generally followed in the delivery of assistance.

(ii) When the delivery sequence has been disrupted, the disrupting agency is responsible for rectifying the duplication. The delivery sequence pertains to that period of time in the recovery phase when most of the traditional disaster assistance programs are available.

(2) The delivery sequence is, in order of delivery:

(i) Volunteer agencies' emergency assistance (except expendable items such as clothes, linens, and basic kitchenware); insurance (including flood insurance);

(ii) Temporary housing assistance (to include provision of a housing unit and minimal repairs);

(iii) Small Business Administration and Farmers Home Administration disaster loans;

(iv) Individuals and Family Grant program assistance;

(v) Volunteer agencies' "additional assistance" programs, and

(vi) The "Cora Brown Fund."

(3) Two significant points about the delivery sequence are that.

(i) Each assistance agency should, in turn, offer and be responsible for delivering assistance without regard to duplication with a program later in the sequence, and

(ii) The sequence itself determines what types of assistance can duplicate other assistance (i.e., a Federal program can duplicate insurance benefits, however, insurance benefits cannot duplicate the Federal assistance). An agency's position in the sequence determines the order in which it should provide assistance and what other resources it must consider before it does so.

(4) If following the delivery sequence concept would adversely affect the timely receipt of essential assistance by a disaster victim, an agency may offer assistance which is the primary responsibility of another agency. There also may be cases when an agency (Agency B) delivers assistance which is normally the primary responsibility of another agency (Agency A) because Agency A has, for good cause, denied assistance. After the assistance is delivered, Agency A reopens the case. If the primary response Agency A then provides assistance, that Agency A is responsible for coordinating with Agency B to either:

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

(ii) In the case where the disaster victim has refused assistance from Agency A, notify Agency B that it must recover assistance previously provided.

(e) *Program guidance.* (1) Programs under the Act vs. other agency assistance.

(i) In making an eligibility determination, the FEMA Regional Director, in the case of federally operated programs, or the State, in the case of State operated programs, shall determine whether assistance is the primary responsibility of another agency to provide, according to the delivery sequence; and determine whether that primary response agency can provide assistance in a timely way.

(ii) If it is determined that timely assistance can be provided by the agency with primary responsibility, refrain from providing assistance under the Act. If it is determined that assistance from the agency with primary responsibility will be delayed, assistance under the Act may be provided, but then must be recovered from the applicant when the other assistance becomes available

(2) Programs under the Act vs insurance. In making an eligibility determination, the FEMA Regional Director or State shall

(i) Remind the applicant about his/her responsibility to pursue an adequate settlement The applicant must provide information concerning insurance recoveries

(ii) Determine whether the applicant's insurance settlement will be sufficient to cover the loss or need without disaster assistance; and

(iii) Determine whether insurance benefits (including flood insurance) will be provided in a timely way. Where flood insurance is involved, the Regional Director shall coordinate with the Federal Insurance Administration. The purpose of this coordination is to obtain information about flood insurance coverage and settlements.

(3) Random sample. Each disaster assistance agency is responsible for preventing and rectifying duplication of benefits under the coordination of the Federal Coordinating Officer (FCO) and the general authority of section 312. To determine whether duplication has occurred and established procedures have been followed, the Regional Director shall, within 90 days after the close of the disaster assistance programs application period, for selected disaster declarations, examine on a random sample basis, FEMA's and other government and voluntary agencies' case files and document the findings in writing.

(4) Duplication when assistance under the Act is involved. If duplication is discovered, the Regional Director shall determine whether the duplicating agency followed its own remedial procedures.

(i) If the duplicating agency followed its procedures and was successful in correcting the duplication, the Regional Director will take no further action. If the agency was not successful in correcting the duplication, and the Regional Director is satisfied that the duplicating agency followed its remedial procedures, no further action will be taken.

(ii) If the duplicating agency did not follow its duplication of benefits procedures, or the Regional Director is not satisfied that the procedures were followed in an acceptable manner, then the Regional Director shall provide an opportunity for the agency to take the required corrective action. If the agency cannot fulfill its responsibilities for remedial action, the Regional Director shall notify the recipient of the excess assistance, and after examining the debt, if it is determined that the likelihood of collecting the debt and the best interests of the Federal Government justify taking the necessary recovery actions, then take those recovery actions in conjunction with agency representatives for each identified case in the random sample (or larger universe, at the Regional Director's discretion)

(5) Duplication when assistance under other authorities is involved. When the random sample shows evidence that duplication has occurred and corrective action is required, the Regional Director and the FCO shall urge the duplicating agency to follow its own procedures to take corrective action, and shall work with the agency toward that end. Under his/her authority in section 312, the Regional Director shall require the duplicating agency to report to him/her on its attempt to correct the duplications identified in the sample.

(f) *Recovering FEMA funds: debt collection.* Funds due to FEMA are recovered in accordance with FEMA's Debt Collection Regulations (44 CFR Part 11, Subpart C).

§§ 206.192 through 206.199 [Reserved]

Subpart G—Public Assistance Project Administration

§ 206.200 General.

(a) *Purpose.* This subpart establishes procedures for the administration of Public Assistance grants approved under the provisions of the Stafford Act.

(b) *Policy.* It is a requirement of the Stafford Act that, in the administration of the Public Assistance Program, eligible assistance be delivered as expeditiously as possible consistent with Federal laws and regulations. The regulation entitled "Uniform Requirements for Grants and Cooperative Agreements to State and Local Governments," published at 44 CFR Part 13, places certain requirements on the State in its role as grantee for the public assistance program. The intent of this "common rule" is to allow States more discretion in administering Federal programs in accordance with their own procedures and thereby simplify the program and reduce delays. FEMA expects States to make subgrants with the Act's requirement in mind. Subgrantees should receive the full payment approved by FEMA and the State contribution as provided in the FEMA-State Agreement as soon as practicable after payment is approved. Payment of the State contribution must, of course, be consistent with State laws.

§ 206.201 Definitions.

(a) "Applicant" means a State agency, local government, or eligible private nonprofit organization, as identified in Subpart H of this regulation, submitting an application to the GAR for assistance under the State's grant.

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

(c) "Facility" means any publicly or privately owned building, works, system, or equipment, built or manufactured, or an improved and maintained natural feature. Land used for agricultural purposes is not a facility.

(d) "Grant" means an award of financial assistance. The grant award shall be based on the total eligible Federal share of all approved projects.

(e) "Grantee" means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. For purposes of this regulation, except as noted in § 206.202, the State is the grantee.

(f) "Hazard mitigation" means any cost effective measure which will reduce the potential for damage to a facility from a disaster event.

(g) "Permanent work" means that restorative work that must be performed through repairs or replacement, to restore an eligible facility on the basis of its predisaster design and current applicable standards.

(h) "Predisaster design" means the size or capacity of a facility as originally designed and constructed or subsequently modified by changes or additions to the original design. It does not mean the capacity at which the facility was being used at the time the major disaster occurred if different from the designed capacity.

(i) "Project" (also referred to as "individual project") means all work performed at a single site whether or not described on a single Damage Survey Report (DSR).

(j) "Subgrant" means an award of financial assistance under a grant by a grantee to an eligible subgrantee.

(k) "Subgrantee" means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

§ 206.202 Application procedures.

(a) *General.* This section describes the policies and procedures for processing grants for Federal disaster assistance to States. For purposes of this regulation the State is the grantee. The State is responsible for processing subgrants to applicants in accordance with 44 CFR Parts 13, 14, and 206, and its own policies and procedures.

(b) *Governor's Authorized Representative (GAR).* The GAR serves as the grant administrator for all funds provided under the Public Assistance grant program. The GAR's responsibilities as they pertain to procedures outlined in this section include providing technical advice and assistance to eligible subgrantees, providing State support for damage survey activities, ensuring that all potential applicants are aware of assistance available, and submission of those documents necessary for grant award.

(c) *Notice of interest (NOI).* The GAR must submit to the RD a completed NOI (FEMA Form 90-49) for each applicant requesting assistance. NOI's must be submitted to the RD within 30 days following designation of the area in which the damage is located.

(d) *Damage Survey Reports (DSR's).* Damage surveys are conducted by an inspection team. An authorized local representative accompanies the inspection team and is responsible for representing the applicant and ensuring that all eligible work and costs are identified. The inspectors prepare a Damage Survey Report-Data Sheet (FEMA Form 90-91), for each site. On the Damage Survey Report-Data Sheet the inspectors will identify the eligible scope of work and prepare a quantitative estimate for the eligible work. All damage that is not shown to the inspection team shall be reported in writing to the RD by the GAR within 60 days following completion of the initial inspection.

(e) *Grant approval.* Upon completion of the field surveys the Damage Survey Report-Data Sheets are reviewed and approved by the Regional Director (RD). Prior to the obligation of any funds the GAR shall submit a Standard Form (SF) 424, Application for Assistance, and SF 424D, Assurances for Construction Programs, to the RD. Following receipt of the SF 424 and 424D, the RD will then obligate funds to the State based upon the approved DSR's. The DSR's approved for an applicant under the State's grant provide the basis for a subgrant by the State to the applying entity.

(f) *Exceptions.* The following are exceptions to the above outlined procedures and time limitations.

(1) *Grant applications.* An Indian tribe or authorized tribal organization may submit an SF 424 directly to the RD when assistance is authorized under the Act and a State is unable to assume the responsibilities prescribed in these regulations.

(2) *Time limitations.* The time limitations shown in paragraphs (c) and (d) of this section may be extended by the RD when justified and requested in writing by the GAR. Such justification shall be based on extenuating

circumstances beyond the subgrantee's control.

(Approved by the Office of Management and Budget under Control Numbers 3067-0033 and 0348-0043)

§ 206.203 Federal grant assistance.

(a) *General.* This section describes the types and extent of Federal funding available under State disaster assistance grants, as well as limitations and special procedures applicable to each.

(b) *Cost sharing.* All projects approved under State disaster assistance grants will be subject to the cost sharing provisions established in the FEMA-State Agreement and the Stafford Act.

(c) *Project funding*— (1) *Large projects.* When the approved estimate of eligible costs for an individual project is $35,000 or greater, Federal funding shall equal the Federal share of the actual eligible costs documented by a grantee. Such $35,000 amount shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor. Final payment of the Federal share of each project will be made following project completion and submission of a final claim by the grantee.

(2) *Small projects.* When the approved estimate of costs for an individual project is less than $35,000, Federal funding shall equal the Federal share of the approved estimate of eligible costs. Such $35,000 amount shall be adjusted annually as indicated in paragraph (c)(1) of this section. Final payment of the Federal share of these projects shall be made upon approval of the project.

(d) *Funding options*— (1) *Improved projects.* If a subgrantee desires to make improvements, but still restore the predisaster function of a damaged facility, the GAR's approval must be obtained. Federal funding for such improved projects shall be limited to the Federal share of the approved estimate of eligible costs.

(2) *Alternate projects.* In any case where a subgrantee determines that the public welfare would not be best served by restoring a damaged public facility or the function of that facility, the GAR may request that the RD approve an alternate project.

(i) The alternate project option may be taken only on permanent restorative work.

(ii) Federal funding for such alternate projects shall equal 90 percent of the Federal share of the approved estimate of eligible costs.

(iii) Funds contributed for alternate projects may be used to repair or expand other selected public facilities, to construct new facilities, or to fund hazard mitigation measures. These funds may not be used to pay the nonfederal share of any project, nor for any operating expense.

(iv) Prior to the start of construction of any alternate project the GAR shall submit for approval by the RD the following: a description of the proposed alternate project(s); a schedule of work; and the projected cost of the project(s). The GAR shall also provide the necessary assurances to document compliance with special requirements, including, but not limited to floodplain management, environmental assessment, hazard mitigation, protection of wetlands, and insurance.

§ 206.204 Project performance.

(a) *General.* This section describes the policies and procedures applicable during the performance of eligible work.

(b) *Advances of funds.* Advances of funds will be made in accordance with 44 CFR 13.21, Payment.

(c) *Time limitations for completion of work*— (1) *Deadlines.* The project completion deadlines shown below are set from the date that a major disaster or emergency is declared and apply to all projects approved under State disaster assistance grants.

COMPLETION DEADLINES

Type of work	Months
Debris clearance	6
Emergency work	6
Permanent work	18

(2) *Exceptions.* (i) The GAR may impose lesser deadlines for the completion of work under paragraph (c)(1) of this section if considered appropriate.

(ii) Based on extenuating circumstances or unusual project requirements beyond the control of the subgrantee, the GAR may extend the deadlines under paragraph (c)(1) of this section for an additional 6 months for debris clearance and emergency work and an additional 30 months, on a project by project basis for permanent work.

(d) *Requests for time extensions.* Requests for time extensions beyond the GAR's authority shall be submitted by the GAR to the RD and shall include the following:

(1) The dates and provisions of all previous time extensions on the project; and

(2) A detailed justification for the delay and a projected completion date. The RD shall review the request and make a determination. The GAR shall be notified of the RD's determination in writing. If the RD approves the request, the letter shall reflect the approved completion date and any other requirements the RD may determine necessary to ensure that the new completion date is met. If the RD denies the time extension request, the grantee may, upon completion of the project, be reimbursed for eligible project costs incurred only up to the latest approved completion date. If the project is not completed, no Federal funding will be provided for that project.

(e) *Cost overruns.* During the execution of approved work the GAR may find that actual project costs are exceeding the approved DSR estimates. Such cost overruns normally fall into the following three categories:

(1) Variations in unit prices;

(2) Change in the scope of eligible work; or

(3) Delays in timely starts or completion of eligible work.

The GAR shall evaluate each cost overrun and, when justified, submit a request and a recommendation to the RD for a final determination. All requests for the RD's approval shall contain sufficient documentation to support the eligibility of all claimed work and costs. The RD shall notify the GAR in writing of the final determination.

(f) *Progress reports.* Progress reports will be submitted by the GAR to the RD quarterly. The RD and GAR shall negotiate the date for submission of the first report. Such reports will describe the status of those projects on which a final payment has not been made and outline any problems or circumstances expected to result in noncompliance with the approved grant conditions.

§ 206.205 Payment of claims.

(a) *Small projects.* Payment of the Federal share of a small project shall be made to a subgrantee as soon as practicable after project approval by FEMA. Prior to the closeout of the disaster contract, the GAR shall certify that all such projects were completed in accordance with FEMA approvals and that the State contribution to the non-Federal share, as specified in the FEMA-State Agreement, has been paid to each subgrantee.

(b) *Large projects.* (1) The GAR shall make a claim to the RD for reimbursement of eligible costs for each approved large project. In submitting such claims the GAR shall certify that reported costs were incurred in the performance of eligible work, that the approved work was completed and that the project is in compliance with the provisions of the FEMA-State Agreement.

(2) The RD shall determine the eligible amount of reimbursement for each large project and approve payment. If a discrepancy exists, the RD may conduct field reviews to gather additional information. If discrepancies in the claim cannot be resolved through a field review, a Federal audit may be conducted.

§ 206.206 Appeals.

(a) *Governor's Authorized Representative.* The GAR may appeal any determination previously made related to Federal assistance for a subgrantee. The GAR's appeal shall be made in writing and submitted within 60 days after receipt of notice of the action which is being appealed. In a case where a subgrantee finds that when it has completed all of its small projects a significant overrun has occurred related to the total cost for all small projects, the GAR may submit an appeal within 60 days following the latest completion date for any of the small projects.

(b) *Regional Director.* Upon receipt of an appeal, the RD shall review the material submitted and make such additional investigations as deemed appropriate. Within 90 days following receipt of all related information, the RD shall notify the GAR, in writing, as to disposition of the appeal. If the decision is to grant the appeal, the RD will take appropriate implementing action.

(c) *Associate Director.* (1) If the RD denies the appeal, the GAR may submit a second appeal to the Associate Director. Such appeals shall be made in writing, through the RD, and shall be submitted not later than 60 days after receipt of notice of the RD's denial of the first appeal. The Associate Director shall render a determination on the GAR's appeal within 90 days following receipt of all related information. Action by the Associate Director is final.

(2) In rendering such determinations the Associate Director may, in those cases involving appeals of a highly technical nature, refer the appeal to an independent scientific or technical group for review. The GAR must first agree to such a process, including establishment of a new time limitation for appeal resolution, as well as sharing in the cost of such reviews.

(3) The Associate Director will periodically review determinations rendered by the RD to ensure that appeals are being given fair and impartial consideration.

§ 206.207 Administrative and audit requirements.

(a) *General.* Uniform administrative requirements which are set forth in 44 CFR Part 13 apply to all disaster assistance grants and subgrants. Uniform audit requirements set forth in 44 CFR Part l4 apply to all grant assistance provided under this subpart.

(b) *State administrative plan.* (1) The State shall develop a plan for the administration of the Public Assistance program that includes at a minimum, the items listed below:

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

(ii) The identification of staffing functions in the Public Assistance program, the sources of staff to fill these functions, and the management and oversight responsibilities of each.

(iii) Procedures for:

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

(B) Conducting briefings for potential applicants on application procedures, program eligibility guidance and program deadlines;

(C) Assisting FEMA in determining applicant eligibility;

(D) Participating with FEMA in conducting damage surveys to serve as a basis for obligations of funds to subgrantees;

(E) Participating with FEMA in the establishment of hazard mitigation and insurance requirements;

(F) Processing appeal requests, requests for time extensions and requests for approval of overruns, and for processing appeals of grantee decisions;

(G) Compliance with the administrative requirements of 44 CFR Parts 13 and 206;

(H) Compliance with the audit requirements of 44 CFR Part 14;

(I) Processing requests for advances of funds and reimbursement; and

(J) Determining staffing and budgeting requirements necessary for proper program management.

(2) The GAR may request the RD to provide technical assistance in the preparation of such administrative plan.

(3) The GAR shall submit such administrative plan to the RD for approval within 180 days following publication of these regulations. Thereafter, the GAR shall submit a revised plan to the RD annually. In each disaster for which Public Assistance is included, the RD shall request the GAR to prepare any amendments required to meet current policy guidance.

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

(c) *Audit*—(1) *Nonfederal audit.* The grantee and each subgrantee, which receives $25,000 or more in Federal financial assistance, shall have audits made in accordance with 44 CFR Part 14. The GAR is responsible for ensuring that subgrantees perform such audits on a timely basis.

(2) *Federal audit.* FEMA may elect to conduct a Federal audit on the disaster assistance grant or on any of the subgrants.

§ 206.208 Direct Federal assistance.

(a) *General.* When the State and local government lack the capability to perform or to contract for eligible debris removal and/or emergency work, the GAR may request that the work be accomplished by a Federal agency. Such assistance is subject to the cost sharing provisions outlined in § 206.203(b) of this subpart. Direct Federal assistance is also subject to the eligibility criteria contained in Subpart H of these regulations. FEMA will reimburse other Federal agencies in accordance with these regulations.

(b) *Requests for assistance.* All requests for direct Federal assistance shall be submitted by the GAR to the RD and shall include:

(1) A written agreement that the State will:

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

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

(iii) Provide reimbursement to FEMA for the nonfederal share of the cost of such work in accordance with the provisions of the FEMA-State Agreement; and

(iv) Assist the performing Federal agency in all support and local jurisdictional matters.

(2) A statement as to the reasons the State and the local government cannot perform or contract for performance of the requested work.

(3) A written agreement from an eligible applicant that such applicant will be responsible for the items in paragraph (b)(I) (i) and (ii) of this section, in the event that a State is legally unable to provide the written agreement.

(c) *Implementation.* (1) If the RD approves the request, a mission assignment will be issued to the appropriate Federal agency. The mission assignment letter to the agency shall define the scope of eligible work. Prior to execution of work on any project, the RD shall prepare a DSR establishing the scope and estimated cost of eligible work. The Federal agency shall not exceed the approved funding limit without the authorization of the RD

(2) If all or any part of the requested work falls within the statutory authority of another Federal agency, the RD shall not approve that portion of the work. In such case, the unapproved portion of the request will be referred to the appropriate agency for action.

(d) *Time limitation.* The time limitation for completion of work by a Federal agency under a mission assignment is 60 days after the President's declaration. Based on extenuating circumstances or unusual project requirements, the RD may extend this time limitation.

(e) *Project management.* (1) The performing Federal agency shall ensure that the work is completed in accordance with the RD's approved scope of work, costs and time limitations. The performing Federal agency shall also keep the RD and GAR advised of work progress and other project developments. It is the responsibility of the performing Federal agency to ensure compliance with applicable federal, State and local legal requirements. A final inspection report will be completed upon termination of all direct Federal assistance work. Final inspection reports shall be signed by a representative of the performing Federal agency and the State. Once the final eligible cost is determined (including Federal agency overhead), the State will be billed for the nonfederal share of the mission assignment in accordance with the cost sharing provisions of the FEMA-State Agreement.

(2) Pursuant to the agreements provided in the request for assistance GAR shall assist the performing Federal agency in all State and local jurisdictional matters. These matters include securing local building permits and rights of entry, control of traffic and pedestrians, and compliance with local building ordinances.

§§ 206.209 through 206.219 [Reserved]

Subpart H—Public Assistance Eligibility

§ 206.220 General.

This subpart provides policies and procedures for determinations of eligibility of applicants for public assistance, eligibility of work, and eligibility of costs for assistance under sections 402, 403, 406, 407, 418, 419, 421(d), 502 and 503 of the Stafford Act. Assistance under this subpart must also conform to requirements of 44 CFR Part 206, Subparts G—Public Assistance Project Administration, I—Public Assistance Insurance Requirements, J—Coastal Barrier Resources Act, and M—Hazard Mitigation. Regulations under 44 CFR Part 9—Floodplain Management and 44 CFR Part 10—Environmental Considerations, also apply to this assistance.

§ 206.221 Definitions.

(a) "Educational institution" means:

(1) Any elementary school as defined by section 801(c) of the Elementary and Secondary Education Act of 1965; or

(2) Any secondary school as defined by section 801(h) of the Elementary and Secondary Education Act of 1965; or

(3) Any institution of higher education as defined by section 1201 of the Higher Education Act of 1965.

(b) "Force account" means an applicant's own labor forces and equipment.

(c) "Immediate threat" means the threat of additional damage or destruction from an event which can reasonably be expected to occur within 1 year.

(d) "Improved property" means a structure, facility or item of equipment which was built, constructed or manufactured. Land used for agricultural purposes is not improved property.

(e) "Private nonprofit facility" means any private nonprofit educational, utility, emergency, medical, or custodial care facility, including a facility for the aged or disabled, and other facilities providing essential governmental type services to the general public, and such facilities on Indian reservations. Further definition is as follows:

(1) "Educational facilities" means classrooms plus related supplies, equipment, machinery, and utilities of an educational institution necessary or appropriate for instructional, administrative, and support purposes, but does not include buildings, structures and related items used primarily for religious purposes or instruction.

(2) "Utility" means buildings, structures, or systems of energy, communication, water supply, sewage collection and treatment, or other similar public service facilities.

(3) "Emergency facility" means those buildings, structures, equipment, or systems used to provide emergency services, such as fire protection, ambulance, or rescue, to the general public, including the administrative and support facilities essential to the operation of such emergency facilities even if not contiguous

(4) "Medical facility" means any hospital, outpatient facility, rehabilitation facility, or facility for long term care as such terms are defined in section 645 of the Public Health Service Act (42 U.S C. 2910) and any similar facility offering diagnosis or treatment of mental or physical injury or disease, including the administrative and support facilities essential to the operation of such medical facilities even if not contiguous.

(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 require close supervision and some physical constraints on their daily activities for their self-protection, but do not require day-to-day medical care.

(6) "Other essential governmental services facilities" means facilities such as community centers, libraries, homeless shelters, senior citizen centers, shelter workshops and similar facilities which are open to the general public.

(f) "Public entity" means an organization formed for a public purpose whose direction and funding are provided by one or more political subdivisions of the State.

(g) "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 nonrevenue producing organization or entity is a nonprofit one organized or doing business under State law.

(h) "Public facility" means the following facilities owned by a State or local government: any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; any non-Federal aid street, road, or highway; and any other public building, structure, or system, including those used for educational, recreational, or cultural purposes; or any park.

(i) "Standards" means codes, specifications or standards for the construction of facilities to include legal requirements for additional features. Such standards may be different for new construction and repair work.

§ 206.222 Applicant Eligibility.

The following entities are eligible to apply for assistance under the State public assistance grant:

(a) *State and local governments.*

(b) *Private non-profit organizations or institutions* which own or operate a private nonprofit facility as defined in § 205.221(e).

(c) *Indian tribes or authorized tribal organizations* and Alaska Native villages or organizations, but not Alaska Native Corporations, the ownership of which is vested in private individuals.

§ 206.223 General work eligibility.

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

(1) Be required as the result of the major disaster event,

(2) Be located within a designated disaster area, and

(3) Be the legal responsibility of an eligible applicant.

(b) *Assistance under other Federal agency (OFA) programs.* Disaster assistance will not be made available under the Stafford Act when another Federal agency has specific authority to restore facilities damaged or destroyed by an event which is declared a major disaster.

(c) *Private nonprofit facilities.* To be eligible, all private nonprofit facilities must be owned and operated by an organization meeting the definition of a private nonprofit organization (see § 206.221(f)).

(d) *Public entities.* Facilities belonging to a public entity may be eligible for assistance when the application is submitted through the State or a political subdivision of the State.

(e) *Facilities serving a rural community or unincorporated town or village.* To be eligible for assistance, a facility not owned by an eligible applicant, as defined in § 206.222, must be owned by a private nonprofit organization; and provide an essential governmental service to the general public. Applications for these facilities must be submitted through a State or political subdivision of the State.

(f) *Negligence.* No assistance will be provided to an applicant for damages caused by its own negligence. If negligence by another party results in damages, assistance may be provided, but will be conditioned on agreement by the applicant to cooperate with FEMA in all efforts necessary to recover the cost of such assistance from the negligent party.

§ 206.224 Debris removal.

(a) *Public interest.* Upon determination that debris removal is in the public interest, the Regional Director may provide assistance for the removal of debris and wreckage from publicly and privately owned lands and waters. Such removal is in the public interest when it is necessary to:

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

(2) Eliminate immediate threats of significant damage to improved public or private property; or

(3) Ensure economic recovery of the affected community to the benefit of the community-at-large.

(b) *Debris removal from private property.* When it is in the public interest for an eligible applicant to remove debris from private property in urban, suburban, and rural areas, including large lots, clearance of the living, recreational, and working area is eligible except those areas used for crops and livestock or unused areas.

(c) *Assistance to individuals and private organizations.* No assistance will be provided directly to an individual or private organization, or to an eligible applicant for reimbursement of an individual or private organization, for the cost of removing debris from their own property. Exceptions to this are those private nonprofit organizations operating eligible facilities.

§ 206.225 Emergency work.

(a) *General.* (1) Emergency protective measures to save lives, to protect public health and safety, and to protect improved property are eligible.

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

(3) In order to be eligible, emergency protective measures must:

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

(ii) Eliminate or lessen immediate threats of significant additional damage to improved public or private property through measures which are cost effective.

(b) *Emergency access.* An access facility that is not publicly owned or is not the direct responsibility of an eligible applicant for repair or maintenance may be eligible for emergency repairs or replacement provided that emergency repair or replacement of the facility economically eliminates the need for temporary housing. The work will be limited to that necessary for the access to remain passable through events which can be considered an immediate threat. The work must be performed by an eligible applicant and will be subject to cost sharing requirements.

(c) *Emergency communications.* Emergency communications necessary for the purpose of carrying out disaster relief functions may be established and may be made available to State and local government officials as deemed appropriate. Such communications are intended to supplement but not replace normal communications that remain operable after a major disaster. FEMA funding for such communications will be discontinued as soon as the needs have been met.

(d) *Emergency public transportation.* Emergency public transportation to meet emergency needs and to provide transportation to public places and such other places as necessary for the community to resume its normal pattern of life as soon as possible is eligible. Such transportation is intended to supplement but not replace predisaster transportation facilities that remain operable after a major disaster. FEMA funding for such transportation will be discontinued as soon as the needs have been met.

§ 206.226 Restoration of damaged facilities.

Work to restore eligible facilities on the basis of the design of such facilities as they existed immediately prior to the disaster and in conformity with the following is eligible:

(a) *Standards.* For the costs of federal, State, and local repair or replacement standards which change the predisaster construction of a facility to be eligible, the standards must:

(1) Apply to the type of repair or restoration required;

(2) Be appropriate to the predisaster use of the facility;

(3) Be in writing and formally adopted prior to project approval; and

(4) Apply uniformly to all similar types of facilities within the jurisdiction of owner of the facility.

(b) *Hazard mitigation.* In approving grant assistance for restoration of facilities, the Regional Director may authorize or require cost effective hazard mitigation measures not required by applicable standards. The cost of any requirements for hazard mitigation placed on restoration projects by FEMA will be an eligible cost for FEMA assistance.

(c) *Repair vs. replacement.* (1) A facility is considered repairable when disaster damages do not exceed 50 percent of the cost of replacing a facility to its predisaster condition, and it is feasible to repair the facility so that it can perform the function for which it was being used as well as it did immediately prior to the disaster.

(2) If a damaged facility is not repairable in accordance with paragraph (c)(1) of this section, approved restorative work may include replacement of the facility. The applicant may elect to perform repairs to the facility, in lieu of replacement, if such work is in conformity with applicable standards. However, eligible costs shall be limited to the less expensive of repairs or replacement.

(d) *Relocation.* (1) The Regional Director may approve funding for and require restoration of a destroyed facility at a new location when:

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

(ii) The approval is not barred by other provisions of Title 44 CFR; and

(iii) The overall project, including all costs, is cost effective.

(2) When relocation is required by the Regional Director, eligible work includes land acquisition and ancillary facilities such as roads and utilities. Demolition and removal of the old facility is also an eligible cost.

(3) When relocation is required by the Regional Director, no future funding for repair or replacement of a facility at the original site will be approved, except those facilities which facilitate an open space use in accordance with 44 CFR Part 9.

(4) When relocation is required by the Regional Director, and the applicant requests approval of an alternate project (see § 206.203(d)(2)), eligible costs will be limited to 90 percent of the estimate of restoration at the original location excluding hazard mitigation measures.

(5) If relocation of a facility is not feasible or cost effective, the Regional Director shall disapprove Federal funding when he/she determines in accordance with 44 CFR Part 9, 44 CFR Part 10, or 44 CFR Part 206, Subpart M, that restoration in the original location is not allowed.

(e) *Equipment and furnishings.* If equipment and furnishings are damaged beyond repair, comparable items are eligible as replacement items.

(f) *Library books and publications.* Replacement of library books and publications is based on an inventory of the quantities of various categories of books or publications damaged or destroyed. Cataloging and other work incidental to replacement are eligible

(g) *Beaches* (l) Replacement of sand on an unimproved natural beach is not eligible

(2) *Improved beaches.* Work on an improved beach may be eligible under the following conditions:

(i) The beach was constructed by the placement of sand (of proper grain size) to a designed elevation, width, and slope; and

(ii) A maintenance program involving periodic renourishment of sand must have been established and adhered to by the applicant.

(h) *Restrictions*—(1) *Alternative use facilities.* If a facility was being used for purposes other than those for which it was designed, restoration will only be eligible to the extent necessary to restore the immediate predisaster alternate purpose.

(2) *Inactive facilities.* Facilities that were not in active use at the time of the disaster are not eligible except in those instances where the facilities were only temporarily inoperative for repairs or remodeling, or where active use by the applicant was firmly established in an approved budget and was scheduled prior to the major disaster to begin within a reasonable time.

§ 206.227 Snow removal assistance.

Snow removal is eligible for the following types of facilities only:

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

(b) Tracks and rights of way of urban mass transit systems as necessary for the continuation or resumption of services.

(c) Roads and Streets are defined for purposes of snow removal assistance as:

(1) "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.

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

(3) "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))

§ 206.228 Allowable costs.

General policies for determining allowable costs are established in 44 CFR 13.22. More specific requirements are set forth below.

(a) *Eligible direct costs.* There are exceptions to the policies of 44 CFR 13.22, as follows:

(1) Ownership and operation costs for applicant-owned equipment. Applicants shall be reimbursed their reasonable actual costs for equipment ownership and operation. FEMA has developed a Schedule of Equipment Rates which represents maximum reasonable equipment costs in almost all cases. This Schedule will be the basis for reimbursement in all cases where an applicant does not have established equipment rates. Where an applicant does have established equipment rates, FEMA will base its reimbursement on either the applicant's established rates or the FEMA Schedule, whichever is lower, unless that applicant certifies that its rates do not reflect actual costs. In that event, the applicant will be reimbursed based on the FEMA Schedule, but will be expected to provide documentation if requested. If an applicant wishes to claim an equipment rate which exceeds the FEMA Schedule, it must document the basis for that rate and obtain FEMA approval of an alternate rate.

(2) State management costs. (i) Costs of State personnel (regular time salaries only) assigned to administer the Public Assistance program in the Disaster Field Office (DFO) may be eligible when approved by the Regional Director. The State shall submit a plan for the staffing of the DFO within 5 days of the opening of the office. This plan and the plans required in paragraph (a)(8)(ii) of this section shall be in accordance with the administrative plan requirements of § 206.207, Administrative and Audit Requirements, in Subpart G.

(ii) After the close of the DFO, costs of State personnel (regular time salaries only) for continuing management of the Public Assistance grants may be eligible when approved in advance by the Regional Director. The State shall submit a plan for such staffing in advance of the requirement.

(b) *Eligible indirect costs.* Expenses associated with administration of the disaster assistance program are eligible Except for certain costs of the audit of the State grant, and certain State management costs, an allowance as outlined in paragraphs (b)(1) and (2) of this section will cover all other indirect costs which may be incurred by an applicant or the State The Federal share of the indirect cost allowance shall be 100 percent.

(1) *Subgrantee administrative expenses.* Pursuant to section 406(f)(1) of the Stafford Act, necessary costs of requesting, obtaining, and administering Federal disaster assistance subgrants will be covered by an allowance which is based on the following percentages of net eligible costs under sections 403, 404, 406, 407, 502, and 503 of the Act, for an individual applicant (applicants in this context include State agencies):

(i) For the first $100,000 of net eligible costs, three percent of such costs;

(ii) For the next $900,000, two percent of such costs;

(iii) For the next $4,000,000, one percent of such costs;

(iv) For those costs over $5,000,000, one half percent of such costs.

(2) *Grantee administrative expenses.* Pursuant to section 406(f)(2) of the Stafford Act, an allowance will be provided to the State to cover the extraordinary costs incurred by the State for preparation of damage survey reports final inspection reports, project applications, final audits, and related field inspections by State employees, including overtime pay and per diem and travel expenses, but not including regular time for such employees. The allowance will be based on the following percentages of total assistance provided for all subgrantees in the State under sections 403, 404, 406, 407, 502, and 503 of the Act:

(i) For the first $100,000 of total assistance provided, three percent of such costs.

(ii) For the next $900,000, two percent of such costs.

(iii) For the next $4,000,000, one percent of such costs.

(iv) For those costs over $5,000,000, one half percent of such costs.

§§ 206.229 through 206.249 [Reserved]

Subpart I—Public Assistance Insurance Requirements

§206.250 General.

(a) Sections 311 and 406(d) of the Act, and the Flood Disaster Protection Act of 1973, Pub. L. 93-234, establish insurance requirements as a condition for approving certain disaster assistance under the Act. This subpart pertains to assistance under section 406 of the Act.

(b) The Flood Disaster Protection Act of 1973, Pub. L. 93-234, as amended, imposes certain restrictions on approval of Federal financial assistance for acquisition or construction in special flood hazard areas. This subpart implements Pub. L. 93-234, as it pertains to Public Assistance authorized by the Act.

(c) Actual or anticipated insurance recoveries shall be deducted from otherwise eligible costs, in accordance with § 206.253(b).

(d) The maximum amount of flood insurance recovery which could have been obtained for a building and its contents within the special flood hazard area shall be subtracted from otherwise eligible costs, in accordance with § 206.253(h).

(e) The insurance requirements of this subpart should not be interpreted as a substitute for the various hazard mitigation techniques which may be available to reduce the incidence and severity of future damage.

§ 206.251 Definitions.

(a) "Assistance" means any form of Federal grant under section 406 of the Act to replace, restore, repair, reconstruct, or construct any facility and/or its contents as the result of a major disaster.

(b) "Base flood" means the flood having a one percent chance of being equalled or exceeded in any given year.

(c) "Building" means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation.

(d) "Community" means any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native Village or authorized native organization which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

(e) "National Flood Insurance Program" (NFIP) means the program authorized by 42 U.S.C. 4001-4128.

(f) "Special flood hazard area" means an area having special flood, mudslide, and/or flood-related erosion hazards, as shown on the hazard identification maps published by the NFIP. "Special flood hazard area" is synonymous with "special hazard area," as defined in Subchapter B—Insurance and Hazard Mitigation.

(g) "Standard Flood Insurance Policy" means the flood insurance policy issued by the Federal Insurance Administrator, or an insurer pursuant to an arrangement with the Administrator pursuant to Federal statutes and regulations, known as a Write Your Own company.

§ 206.252 Exclusions.

The following categories of Federal disaster assistance are excluded from the requirements to obtain and maintain such insurance as is required by section 311 of the Act and by this subpart:

(a) Assistance otherwise eligible under section 406 of the Act for any State-owned facility that is covered by an adequate State plan of self-insurance approved by the Associate Director, or in the case of such a plan for flooding, by the Director.

(b) Assistance under section 406 of the Act for any facility for which insurance is not reasonably available, adequate, and necessary. This may include facilities which, by virtue of approved hazard mitigation measures, have been, or will be removed from the base flood plain.

(c) Any grant for which the approved DSR estimate is less than $10,000.

§ 206.253 Applicability.

(a) *General insurance requirements.* (1) The requirements of this subpart shall apply to all assistance pursuant to section 406 of the Act with respect to any major disaster declared by the President after November 23, 1988, unless excluded under § 206.252.

(2) Prior to approval of a Federal grant for the restoration of a facility and its contents, the GAR shall notify the Regional Director of any entitlement to insurance settlement or recovery for such facility and its contents. The Regional Director shall reduce the eligible costs by the actual amount of insurance proceeds, with the exception of flood insurance, the reduction for which is described in § 206.253(b)(2). In the event that insurance recovery is contingent upon the amount of reimbursement under the Act, reimbursement shall be limited to eligible costs as determined by the Regional Director after deducting the maximum amount otherwise recoverable under and to the limit of the insurance policy.

(3) The Regional Director may not approve any assistance unless the GAR has provided acceptable assurances to the effect that the applicant will, at a minimum, obtain and maintain insurance for the approved DSR estimate of damages to the facility and its contents.

(4) No assistance under section 406 of the Act shall be provided for any facility for which assistance was previously received unless the insurance was obtained and maintained as required under section 311 of the Act and these regulations.

(5) Insurance requirements prescribed in this subpart shall apply equally to private nonprofit facilities which receive assistance under section 406 of the Act. Private nonprofit organizations shall

submit the necessary documentation and assurances required by this subpart through the GAR.

(6) When a State has been approved by the Director as a self-insurer prior to the declaration of a major disaster, the Regional Director shall determine the amount of self-insurance applicable to any damaged facility and shall deduct it from the grant. In the case of an approved self-insurance plan for flooding, the deduction shall be based on the proceeds which would have been payable had the facility been fully covered by a standard flood insurance policy.

(b) *Additional flood insurance requirements.* (1) The Regional Director shall require flood insurance for flooding major disasters, when it is reasonably available, adequate, and necessary under section 311 of the Act, even though the flood damaged building may be located outside the base floodplain.

(2) Where a building damaged by flooding is located in a special flood hazard area identified for more than 1 year by the Director, assistance pursuant to section 406 of the Act shall be reduced. The amount of the reduction shall be the value of the building immediately prior to the damage, or the maximum amount of the insurance proceeds which would have been received had the building and its contents been fully covered by a standard flood insurance policy, whichever is less. The reduction shall not apply to a private nonprofit facility which could not be insured because it was located in a community not participating in the NFIP. However, the provisions of paragraph (b)(3) of this section will prevent approval of any assistance for the private nonprofit facility unless the community joins the NFIP, and the required flood insurance is purchased. The effective date of this paragraph is May 22, 1989.

(3) FEMA shall not approve any financial assistance for acquisition or construction in a special flood hazard area unless the community is participating in the NFIP at the time of the approval. This prohibition applies only to communities which have been formally identified for at least one year as communities containing one or more areas having special flood hazards. A facility may become eligible for financial assistance, subject to the reduction provision of § 206.253(b)(2), if the community qualifies for and enters the NFIP within 6 months of the Presidential declaration.

§ 206.254 Type, extent, and duration of insurance.

(a) Assurances under this subpart to obtain reasonably available, adequate, and necessary insurance shall be required only for the type or types of hazard for which the major disaster was declared. The Regional Director shall not require greater types and extent of insurance than are certified as reasonable by the State Insurance Commissioner.

(b) The Regional Director shall make a determination as to the type and extent of insurance that is reasonable when he/she is unable to obtain a certification by the State Insurance Commissioner in response to a written request.

(c) The GAR shall provide assurances that the required insurance coverage will be maintained for the anticipated life of the restorative work or of the insured facility, whichever is the lesser.

§ 206.255 Self-insurance.

(a) A State may elect to act as a self-insurer for general hazards with respect to any or all of the facilities belonging to it. Such an election, if declared in writing at the time of accepting assistance under section 406 of the Act or subsequently, and if accompanied by a plan for self-insurance which is satisfactory to the Associate Director, shall be considered as complying with section 311 of the Act. After approval as self-insurer by the Associate Director, no State shall receive assistance under such sections for any facility or part thereof for which it has previously received assistance under the Act, to the extent that insurance for such facility or part thereof would have been reasonably available.

(b) The procedures and requirements for a state to qualify as a self-insurer for flooding are different from those for general hazards self-insurance. The requirements for flood hazards self-insurance are described in Subchapter B, Insurance and Hazard Mitigation. Financial assistance for a state with an approved self-insurance plan for flooding shall be reduced in accordance with § 206.253(b)(2).

§§ 206.256 through 206.339 [Reserved]

Subpart J—Coastal Barrier Resources Act

§ 206.340 Purpose of subpart.

This subpart implements the Coastal Barrier Resources Act (CBRA) (Pub. L. 97-348) as that statute applies to disaster relief granted to individuals and State and local governments under the Stafford Act. CBRA prohibits new expenditures and new financial assistance within the Coastal Barrier Resources System (CBRS) for all but a few types of activities identified in CBRA. This subpart specifies what actions may and may not be carried out within the CBRS. It establishes procedures for compliance with CBRA in the administration of disaster assistance by FEMA.

§ 206.341 Policy.

It shall be the policy of FEMA to achieve the goals of CBRA in carrying out disaster relief on units of the Coastal Barrier Resources System. It is FEMA's intent that such actions be consistent with the purpose of CBRA to minimize the loss of human life, the wasteful expenditure of Federal revenues, and the damage to fish, wildlife and other natural resources associated with coastal barriers along the Atlantic and Gulf coasts and to consider the means and measures by which the long-term conservation of these fish, wildlife, and other natural resources may be achieved under the Stafford Act.

§ 206.342 Definitions.

Except as otherwise provided in this subpart, the definitions set forth in Part 206 of Subchapter D are applicable to this subject.

(a) "Consultation" means that process by which FEMA informs the Secretary of the Interior through his/her designated agent of FEMA proposed disaster assistance actions on a designated unit of the Coastal Barrier Resources System and by which the Secretary makes comments to FEMA about the appropriateness of that action. Approval by the Secretary is not required in order that an action be carried out.

(b) "Essential link" means that portion of a road, utility, or other facility originating outside of the system unit but providing access or service through the unit and for which no alterative route is reasonably available.

(c) "Existing facility" on a unit of CBRS established by Pub. L. 97-348 means a publicly owned or operated facility on which the start of construction took place prior to October 18, 1982, and for which this fact can be adequately documented. In addition, a legally valid building permit or equivalent documentation, if required, must have been obtained for the construction prior to October 18, 1982. If a facility has been substantially improved or expanded since October 18, 1982, it is not an existing facility. For any other unit added to the CBRS by amendment to Pub. L. 97-348, the enactment date of such amendment is substituted for October 18, 1982, in this definition.

(d) "Expansion" means changing a facility to increase its capacity or size.

(e) "Facility" means "public facility" as defined in 206.201. This includes any publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; and nonfederal-aid street, road, or highway; and any other public building, structure, or system, including those used for educational, recreational, or cultural purposes, or any park.

(f) "Financial assistance" means any form of Federal loan, grant guaranty, insurance, payment rebate, subsidy or any other form of direct or indirect Federal assistance.

(g) "New financial assistance" on a unit of the CBRS established by Pub. L. 97-348 means an approval by FEMA of a project application or other disaster assistance after October 18, 1982. For any other unit added to the CBRS by amendment to Pub. L. 97-348, the enactment date such amendment is substituted for October 18, 1982, in this definition.

(h) "Start of construction" for a structure means the first placement of permanent construction, such as the placement of footings or slabs or any work beyond the stage of excavation. Permanent construction for a structure does not include land preparation such as clearing, grading, and placement of fill, nor does it include excavation for a basement, footings, or piers. For a facility which is not a structure, start of construction means the first activity for permanent construction of a substantial part of the facility. Permanent construction for a facility does not include land preparation such as clearing and grubbing but would include excavation and placement of fill such as for a road.

(i) "Structure" means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a mobile home.

(j) "Substantial improvement" means any repair, reconstruction or other improvement of a structure or facility, that has been damaged in excess of, or the cost of which equals or exceeds, 50 percent of the market value of the structure or placement cost of the facility (including all "public facilities" as defined in the Stafford Act) either:

(1) Before the repair or improvement is started; or

(2) If the structure or facility has been damaged and is proposed to be restored, before the damage occurred. If a facility is a link in a larger system, the percentage of damage will be based on the relative cost of repairing the damaged facility to the replacement cost of that portion of the system which is operationally dependent on the facility. The term "substantial improvement" does not include any alteration of a structure or facility listed on the National Register of Historic Places or a State Inventory of Historic Places.

(k) "System unit" means any undeveloped coastal barrier, or combination of closely related undeveloped coastal barriers included within the Coastal Barrier Resources System as established by the section 4 of the CBRA, or as modified by the Secretary in accordance with that statute.

§ 206.343 Scope.

(a) The limitations on disaster assistance as set forth in this subpart apply only to FEMA actions taken on a unit of the Coastal Barrier Resources System or any conduit to such unit, including, but not limited to, a bridge, causeway, utility, or similar facility.

(b) FEMA assistance having a social program orientation which is unrelated to development is not subject to the requirements of. these regulations. This assistance includes:

(1) Individual and Family Grants that are not for acquisition or construction purposes;

(2) Crisis counseling;

(3) Disaster Legal services; and

(4) Disaster unemployment assistance.

§ 206.344 Limitations on Federal expenditures.

Except as provided in §§ 206.345 and 206.346, no new expenditures or financial assistance may be made available under authority of the Stafford Act for any purpose within the Coastal Barrier Resources System, including but not limited to:

(a) Construction, reconstruction, replacement, repair or purchase of any structure, appurtenance, facility or related infrastructure;

(b) Construction, reconstruction, replacement, repair or purchase of any road, airport, boat landing facility, or other facility on, or bridge or causeway to, any System unit; and

(c) Carrying out of any project to prevent the erosion of, or to otherwise stabilize, any inlet, shoreline, or inshore area, except that such assistance and expenditures may be made available on units designated pursuant to Section 4 on maps numbered S01 through S08 for purposes other than encouraging development and, in all units, in cases where an emergency threatens life, land, and property immediately adjacent to that unit.

§ 206.345 Exceptions.

The following types of disaster assistance actions are exceptions to the prohibitions of § 206.344.

(a) After consultation with the Secretary of the Interior, the FEMA Regional Director may make disaster assistance available within the CBRS for:

(1) Replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system;

(2) Repair of any facility necessary for the exploration, extraction, or transportation of energy resources which activity can be carried out only on, in, or adjacent to coastal water areas because the use or facility requires access to the coastal water body; and

(3) Restoration of existing channel improvements and related structures, such as jetties, and including the disposal of dredge materials related to such improvements.

(b) After consultation with the Secretary of the Interior, the FEMA Regional Director may make disaster assistance available within the CBRS for the following types of actions, provided such assistance is consistent with the purposes of CBRA:

(1) Emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 402, 403, 502 and 503 of the Stafford Act and are limited to actions that are necessary to alleviate the impacts of the event;

(2) Replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities, except as provided in § 206.347(c)(5);

(3) Repair of air and water navigation aids and devices, and of the access thereto;

(4) Repair of facilities for scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications;

(5) Repair of facilities for the study, management, protection and enhancement of fish and wildlife resources and habitats, including but not limited to, acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects; and

(6) Repair of nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.

§ 206.346 Applicability to disaster assistance.

(a) *Emergency assistance.* The Regional Director may approve assistance pursuant to sections 402, 403, or 502 of the Stafford Act, for emergency actions which are essential to the saving of lives and the protection of property and the public health and safety, are necessary to alleviate the emergency, and are in the public interest. Such actions include but are not limited to:

(1) Removal of debris from public property;

(2) Emergency protective measures to prevent loss of life, prevent damage to improved property and protect public health and safety;

(3) Emergency restoration of essential community services such as electricity, water or sewer;

(4) Provision of access to a private residence;

(5) Provision of emergency shelter by means of providing emergency repair of utilities, provision of heat in the season requiring heat, or provision of minimal cooking facilities;

(6) Relocation of individuals or property out of danger, such as moving a mobile home to an area outside of the CBRS (but disaster assistance funds may not be used to relocate facilities back into the CBRS);

(7) Home repairs to private owner-occupied primary residences to make them habitable;

(8) Housing eligible families in existing resources in the CBRS; and

(9) Mortgage and rental payment assistance.

(b) *Permanent restoration assistance.* Subject to the limitations set out below, the Regional Director may approve assistance for the repair, reconstruction, or replacement but not the expansion of the following publicly owned or operated facilities and certain private nonprofit facilities.

(1) Roads and bridges;

(2) Drainage structures, dams, levees;

(3) Buildings and equipment;

(4) Utilities (gas, electricity, water, etc.); and

(5) Park and recreational facilities.

§ 206.347 Requirements.

(a) *Location determination.* For each disaster assistance action which is proposed on the Atlantic or Gulf Coasts, the Regional Director shall:

(1) Review a proposed action's location to determine if the action is on or connected to the CBRS unit and thereby subject to these regulations. The appropriate Department of the Interior map identifying units of the CBRS will be the basis of such determination. The CBRS units are also identified on FEMA Flood Insurance Rate Maps (FIRM's) for the convenience of field personnel.

(2) If an action is determined not to be on or connected to a unit of the CBRS, no further requirements of these regulations need to be met, and the action may be processed under other applicable disaster assistance regulations.

(3) If an action is determined to be on or connected to a unit of the CBRS, it is subject to the consultation and consistency requirements of CBRA as prescribed in §§ 206.348 and § 206.349.

(b) *Emergency disaster assistance.* For each emergency disaster assistance action listed in § 206.346(a), the Regional Director shall perform the required consultation. CBRA requires that FEMA consult with the Secretary of the Interior before taking any action on a System unit. The purpose of such consultation is to solicit advice on whether the action is or is not one which is permitted by section 6 of CBRA and whether the action is or is not consistent with the purposes of CBRA as defined in section 1 of that statute.

(1) FEMA has conducted advance consultation with the Department of the Interior concerning such emergency actions. The result of the consultation is that the Secretary of the Interior through the Assistant Secretary for Fish and Wildlife and Parks has concurred that the emergency work listed in § 206.346(a) is consistent with the purposes of CBRA and may be approved by FEMA without additional consultation.

(2) Notification. As soon as practicable, the Regional Director will notify the designated Department of the Interior representative at the regional level of emergency projects that have been approved. Upon request from the Secretary of the Interior, the Associate Director, SLPS, or his or her designee will supply reports of all current emergency actions approved on CBRS units. Notification will contain the following information:

(i) Identification of the unit in the CBRS;

(ii) Description of work approved;

(iii) Amount of Federal funding; and

(iv) Additional measures required.

(c) *Permanent restoration assistance.* For each permanent restoration assistance action including but not limited to those listed in § 206.346(b), the Regional Director shall meet the requirements set out below.

(1) *Essential links.* For the repair or replacement of publicly owned or operated roads, structures or facilities which are essential links in a larger network or system:

(i) No facility may be expanded beyond its predisaster design.

(ii) Consultation in accordance with § 206.348 shall be accomplished.

(2) *Channel improvements.* For the repair of existing channels, related structures and the disposal of dredged materials:

(i) No channel or related structure may be repaired, reconstructed, or replaced unless funds were appropriated for the construction of such channel or structure before October 18, 1982;

(ii) Expansion of the facility beyond its predisaster design is not permitted;

(iii) Consultation in accordance with § 206.348 shall be accomplished;

(3) *Energy facilities.* For the repair of facilities necessary for the exploration, extraction or transportation of energy resources:

(i) No such facility may be repaired, reconstructed or replaced unless such function can be carried out only in, on, or adjacent to a coastal water area because the use or facility requires access to the coastal water body;

(ii) Consultation in accordance with § 206.348 shall be accomplished;

(4) *Special-purpose facilities.* For the repair of facilities used for the study, management, protection or enhancement of fish and wildlife resources and habitats and related recreational projects; air and water navigation aids and devices and access thereto; and facilities used for scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications; and nonstructural facilities that are designed to mimic, enhance or restore natural shoreline stabilization systems;

(i) Consultation in accordance with § 206.348 shall be accomplished;

(ii) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with § 206.349.

(5) *Other public facilities.* For the repair, reconstruction, or replacement of publicly owned or operated roads, structures, or facilities that do not fall with the categories identified in paragraphs (c) (1), (2), (3), and (4) of this section:

(i) No such facility may be repaired, reconstructed, or replaced unless it is an "existing facility";

(ii) Expansion of the facility beyond its predisaster design is not permitted;

(iii) Consultation in accordance with § 206.348 shall be accomplished;

(iv) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with § 206.349.

(6) *Private nonprofit facilities.* For eligible private nonprofit facilities as defined in these regulations and of the type described in paragraphs (c) (1), (2), (3), and (4) of this section:

(i) Consultation in accordance with § 206.348 shall be accomplished.

(ii) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with § 206.349.

(7) *Improved project.* An improved project may not be approved for a facility in the CBRS if such grant is to be combined with other funding, resulting in an expansion of the facility beyond the predisaster design. If a facility is exempt from the expansion prohibitions of CBRA by virtue of falling into one of the categories identified in paragraph (c) (1), (2), (3), or (4) of this section, then an improved project for such facilities is not precluded.

(8) *Alternate project.* A new or enlarged facility may not be constructed on a unit of the CBRS under the provisions of the Stafford Act unless the facility is exempt from the expansion prohibition of CBRA by virtue of falling into one of the categories identified in paragraph (c) (1), (2), (3), or (4) of this section.

§ 206.348 Consultation.

As required by section 6 of the CBRA, the FEMA Regional Director will consult with the designated representative of the Department of the Interior (DOI) at the regional level before approving any action involving permanent restoration of a facility or structure on or attached to a unit of the CBRS.

(a) The consultation shall be by written memorandum to the DOI representative and shall contain the following:

(1) Identification of the unit within the CBRS;

(2) Description of the facility and the proposed repair or replacement work; including identification of the facility as an exception under section 6 of CBRA; and full justification of its status as an exception;

(3) Amount of proposed Federal funding;

(4) Additional mitigation measures required; and

(5) A determination of the action's consistency with the purposes of CBRA, if required by these regulations, in accordance with § 206.349.

(b) Pursuant to FEMA understanding with DOI, the DOI representative will provide technical information and an opinion whether or not the proposed action meets and the criteria for a CBRA exception, and on the consistency of the action with the purposes of CBRA (when such consistency is required). DOI is expected to respond within 12 working days from the date of the FEMA request for consultation. If a response is not received within the time limit, the FEMA Regional Director shall contact the DOI representative to determine if the request for consultation was received in a timely manner. If it was not, an appropriate extension for response will be given. Otherwise, he or she may assume DOI concurrence and proceed with approval of the proposed action.

(c) For those cases in which the regional DOI representative believes that the proposed action should not be taken and the matter cannot be resolved at the regional level, the FEMA Regional Director will submit the issue to the FEMA Assistant Associate Director for Disaster Assistance Programs (DAP). In coordination with the Office of General Counsel (OGC), consultation will be accomplished at the FEMA National Office with the DOI consultation officer. After this consultation, the Associate Director, DAP, determines whether or not to approve the proposed action.

§ 206.349 Consistency determinations.

Section 6(a)(6) of CBRA requires that certain actions be consistent with the purposes of that statute if the actions are to be carried out on a unit of the CBRS. The purpose of CBRA, as stated in section 2(b) of that statute, is to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with the coastal barriers along the Atlantic and Gulf coasts. For those actions where a consistency determination is required the FEMA Regional Director shall evaluate the action according to the following procedures, and the evaluation shall be included in the written request for consultation with DOI.

(a) *Impact identification.* FEMA shall identify impacts of the following types that would result from the proposed action:

(1) Risks to human life;

(2) Risk of damage to the facility being repaired or replaced;

(3) Risk of damage to other facilities;

(4) Risk of damage to fish, wildlife, and other natural resources;

(5) Condition of existing development served by the facility and the degree to which its redevelopment would be encouraged; and

(6) Encouragement of new development.

(b) *Mitigation.* FEMA shall modify actions by means of practicable mitigation measures to minimize adverse effects of the types listed in paragraph (a) of this section.

(c) *Conservation.* FEMA shall identify practicable measures that can be incorporated into the proposed action and will conserve natural and wildlife resources.

(d) *Finding.* For those actions required to be consistent with the purposes of CBRA, the above evaluation must result in a finding of consistency with CBRA by the Regional Director before funding may be approved for that action.

§§ 206.350 through 206.359 [Reserved]

Subpart K—Community Disaster Loans

§ 206.360 Purpose.

This subpart provides policies and procedures for local governments and State and Federal officials concerning the Community Disaster Loan program under section 417 of the Act.

§ 206.361 Loan program.

(a) *General.* The Associate Director, State and Local Programs and Support (the Associate Director) may make a Community Disaster Loan to any local government which has suffered a substantial loss of tax and other revenues as a result of a major disaster and which demonstrates a need for Federal financial assistance in order to perform its governmental functions.

(b) *Amount of loan.* The amount of the loan is based on need, not to exceed 25 percent of the operating budget of the local government for the fiscal year in which the disaster occurs. The term "fiscal year" as used in this subpart means the local government's fiscal year.

(c) *Interest rate.* The interest rate is the rate determined by the Secretary of the Treasury in effect on the date that the Promissory Note is executed. This Treasury rate takes into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity adjusted to the nearest ⅛ percent. The interest rate used shall be the Treasury rate for 5 year maturities in effect for the month the Promissory Note is executed by the Associate Director.

(d) *Time limitation.* The Associate Director may approve a loan in either the fiscal year in which the disaster occurred or the fiscal year immediately following that year. Only one loan may be approved under section 417(a) for any local government as the result of a single disaster.

(e) *Term of loan.* The term of the loan is 5 years, unless otherwise extended by the Associate Director. The Associate Director may consider requests for an extension of loans based on the local government's financial condition. The total term of any loan under section 417(a) normally may not exceed 10 years from the date the Promissory Note was executed. However, when extenuating circumstances exist and the Community Disaster Loan recipient demonstrates an inability to repay the loan within the initial 10 years, but agrees to repay such loan over an extended period of time, additional time may be provided for loan repayment. (See § 206.367(c).)

(f) *Use of loan funds.* The local government shall use the loaned funds to carry on existing local government functions of a municipal operation character or to expand such functions to meet disaster-related needs. The funds shall not be used to finance capital improvements nor the repair or restoration of damaged public facilities. Neither the loan nor any cancelled portion of the loans may be used as the nonfederal share of any Federal program, including those under the Act.

(g) *Cancellation.* The Associate Director shall cancel repayment of all or part of a Community Disaster Loan to the extent that he/she determines that revenues of the local government during the 3 fiscal years following the disaster are insufficient to meet the operating budget of that local government because of disaster-related revenue losses and additional unreimbursed disaster-related municipal operating expenses.

(h) *Relation to other assistance.* Any community disaster loans including cancellations made under this subpart shall not reduce or otherwise affect any commitments, grants, or other assistance under the Act or these regulations.

§ 206.362 Responsibilities.

(a) The local government shall submit the financial information required by FEMA in the application for a Community Disaster Loan and in the application for loan cancellation, if submitted, comply with the assurances on the application, the terms and conditions of the Promissory Note, and these regulations. The local government shall send all loan application, loan administration, loan cancellation, and loan settlement correspondence through the GAR and the FEMA Regional Office to the FEMA Associate Director.

(b) The GAR shall certify on the loan application that the local government can legally assume the proposed indebtedness and that any proceeds will be used and accounted for in compliance with the FEMA-State Agreement for the major disaster. States are encouraged to take appropriate pre-disaster action to resolve any existing State impediments which would preclude a local government from incurring the increased indebtedness associated with a loan in order to avoid protracted delays in processing loan application requests in major disasters or emergencies.

(c) The Regional Director or designee shall review each loan application or loan cancellation request received from a local government to ensure that it contains the required documents and transmit the application to the Associate Director. He/she may submit appropriate recommendations to the Associate Director.

(d) The Associate Director, or a designee, shall execute a Promissory Note with the local government, and the Office of Disaster Assistance Programs in Headquarters, FEMA, shall administer the loan until repayment or cancellation is completed and the Promissory Note is discharged.

(e) The Associate Director or designee shall approve or disapprove each loan request, taking into consideration the information provided in the local government's request and the recommendations of the GAR and the Regional Director. The Associate Director or designee shall approve or disapprove a request for loan cancellation in accordance with the criteria for cancellation in these regulations.

(f) The Comptroller shall establish and maintain a financial account for each outstanding loan and disburse funds against the Promissory Note.

§ 206.363 Eligibility criteria.

(a) *Local government.* (1) The local government must be located within the area designated by the Associate Director as eligible for assistance under a major disaster declaration. In addition, State law must not prohibit the local government from incurring the indebtedness resulting from a Federal loan.

(2) Criteria considered by FEMA in determining the eligibility of a local government for a Community Disaster Loan include the loss of tax and other revenues as a result of a major disaster, a demonstrated need for financial assistance in order to perform its governmental functions, the maintenance of an annual operating budget, and the responsibility to provide essential municipal operating services to the community. Eligibility for other assistance under the Act does not, by itself, establish entitlement to such a loan.

(b) *Loan eligibility*—(1) *General.* To be eligible, the local government must show that it may suffer or has suffered a substantial loss of tax and other revenues as a result of a major disaster or emergency and must demonstrate a need for financial assistance in order to perform its governmental functions. Loan eligibility is based on the financial condition of the local government and a review of financial information and supporting justification accompanying the application.

(2) *Substantial loss of tax and other revenues.* The fiscal year of the disaster or the succeeding fiscal year is the base period for determining whether a local government may suffer or has suffered a substantial loss of revenue. Criteria used in determining whether a local government has or may suffer a substantial loss of tax and other revenue include the following disaster-related factors:

(i) Whether the disaster caused a large enough reduction in cash receipts from normal revenue sources, excluding borrowing, which affects significantly and adversely the level and/or categories of essential municipal services provided prior to the disaster;

(ii) Whether the disaster caused a revenue loss of over 5 percent of total revenue estimated for the fiscal year in which the disaster occurred or for the succeeding fiscal year;

(3) *Demonstrated need for financial assistance.* The local government must demonstrate a need for financial assistance in order to perform its governmental functions. The criteria used in making this determination include the following:

(i) Whether there is sufficient funds to meet current fiscal year operating requirement;

(ii) Whether there is availability of cash or other liquid assets from the prior fiscal year;

(iii) Current financial condition considering projected expenditures for governmental services and availability of other financial resources;

(iv) Ability to obtain financial assistance or needed revenue from State and other Federal agencies for direct program expenditures;

(v) Debt ratio (relationship of annual receipts to debt service);

(vi) Ability to obtain financial assistance or needed revenue from State and other Federal agencies for direct program expenditures;

(vii) Displacement of revenue-producing business due to property destruction;

(viii) Necessity to reduce or eliminate essential municipal services; and

(ix) Danger of municipal insolvency.

§ 206.364 Loan application.

(a) *Application.* (1) The local government shall submit an application for a Community Disaster Loan through the GAR. The loan must be justified on the basis of need and shall be based on the actual and projected expenses, as a result of the disaster, for the fiscal year in which the disaster occurred and for the 3 succeeding fiscal years. The loan application shall be prepared by the affected local government and be approved by the GAR. FEMA has determined that a local government, in applying for a loan as a result of having suffered a substantial loss of tax and other revenue as a result of a major disaster, is not required to first seek credit elsewhere (see § 206.367(c)).

(2) The State exercises administrative authority over the local government's application. The State's review should include a determination that the applicant is legally qualified, under State law, to assume the proposed debt, and may include an overall review for accuracy for the submission. The Governor's Authorized Representative may request the Regional Director to waive the requirement for a State review if an otherwise eligible applicant is not subject to State administration authority and the State cannot legally participate in the loan application process.

(b) *Financial requirements.* (1) The loan application shall be developed from financial information contained in the local government's annual operating budget (see § 206.364(b)(2)) and shall include a Summary of Revenue Loss and Unreimbursed Disaster-Related Expenses, a Statement of the Applicant's Operating Results—Cash Position, a Debt History, Tax Assessment Data, Financial Projections, Other Information, a Certification, and the Assurances listed on the application.

(i) Copies of the local government's financial reports (Revenue and Expense and Balance Sheet) for the 3 fiscal years immediately prior to the fiscal year of the disaster and the applicant's most recent financial statement must accompany the application. The local government's financial reports to be submitted are those annual (or interim) consolidated and/or individual official annual financial presentations for the General Fund and all other funds maintained by the local government.

(ii) Each application for a Community Disaster Loan must also include:

(A) A statement by the local government identifying each fund (i.e. General Fund, etc.) which is included as its Annual Operating Budget, and

(B) A copy of the pertinent State statutes, ordinance, or regulations which prescribe the local government's system of budgeting, accounting and financial reporting, including a description of each fund account.

(2) Operating Budget. For loan application purposes, the operating budget is that document or documents approved by an appropriating body, which contains an estimate of proposed expenditures, other than capital outlays for fixed assets for a stated period of time, and the proposed means of financing the expenditures. For loan cancellation purposes, FEMA interprets the term "operating budget" to mean actual revenues and expenditures of the local government as published in the official financial statements of the local government.

(3) Operating budget increases. Budget increases due to increases in the level of, or additions to, municipal services not rendered at the of the disaster or not directly related to the disaster shall be identified.

(4) Revenue and assessment information. The applicant shall provide information concerning its method of tax assessment including assessment dates and the dates payments are due. Tax revenues assessed but not collected, or other revenues which the local government chooses to forgive, stay, or otherwise not exercise the right to collect, are not a legitimate revenue loss for purposes of evaluating the loan application.

(5) Estimated disaster-related expense. Unreimbursed disaster-related expenses of a municipal operation character should be estimated. These are discussed in § 206.366(b).

(c) *Federal review.* (1) The Associate Director or designee shall approve a community disaster loan to the extent it is determined that the local government has suffered a substantial loss of tax and other revenues and demonstrates a need for financial assistance to perform its governmental function as the result of the disaster.

(2) Resubmission of application. If a loan application is disapproved, in whole or in part, by the Associate Director because of inadequacy of information, a revised application may be resubmitted by the local government within sixty days of the date of the disapproval. Decision by the Associate Director on the resubmission is final.

(d) *Community disaster loan.* (1) The loan shall not exceed the lesser of:

(i) The amount of projected revenue loss plus the projected unreimbursed disaster-related expenses of a municipal operating character for the fiscal year of the major disaster and the subsequent 3 fiscal years, or

(ii) 25 percent of the local government's annual operating budget for the fiscal year in which the disaster occurred.

(2) Promissory note. (i) Upon approval of the loan by the Associate Director or designee, he or she, or a designated Loan Officer will execute a Promissory Note with the applicant. The Note must be cosigned by the State (see § 206.364(d)(2)(ii)). The applicant should indicate its funding requirements on the Schedule of Loan Increments on the note.

(ii) If the State cannot legally cosign the promissory note, the local government must pledge collateral security, acceptable to the Associate Director, to cover the principal amount of the note. The pledge should be in the form of a resolution by the local governing body identifying the collateral security.

(Approved by Office of Management and Budget under Control Number 3067-0034)

§ 206.365 Loan Administration.

(a) *Funding.* (1) FEMA will disburse funds to the local government when requested, generally in accordance with the Schedule of Loan Increments in the Promissory Note. As funds are disbursed, interest will accrue against each disbursement.

(2) When each incremental disbursement is requested, the local government shall submit a copy of its most recent financial report (if not submitted previously) for consideration by FEMA in determining whether the level and frequency of periodic payments continue to be justified. The local government shall also provide the latest available data on anticipated and actual tax and other revenue collections. Desired adjustments in the disbursement schedule shall be submitted in writing at least 10 days prior to the proposed disbursement date in order to ensure timely receipt of the funds. A sinking fund should be established to amortize the debt.

(b) *Financial management.* (1) Each local government with an approved Community Disaster Loan shall establish necessary accounting records, consistent with local government's financial management system, to account for loan funds received and disbursed and to provide an audit trail.

(2) FEMA auditors, State auditors, the GAR, the Regional Director, the Associate Director, and the Comptroller General of the United States or their duly authorized representatives shall for the purpose of audits and examination have access to any books, documents, papers, and records that pertain to Federal funds, equipments, and supplies received under these regulations.

(c) *Loan servicing*. (1) The applicant annually shall submit to FEMA copies of its annual financial reports (operating statements, balance sheets, etc.) for the fiscal year of the major disaster, and for each of the 3 subsequent fiscal years.

(2) The Headquarters, FEMA Office of Disaster Assistance Programs, will review the loan periodically. The purpose of the reevaluation is to determine whether projected revenue losses, disaster-related expenses, operating budgets, and other factors have changed sufficiently to warrant adjustment of the scheduled disbursement of the loan proceeds.

(3) The Headquarters, FEMA Office of Disaster Assistance Programs, shall provide each loan recipient with a loan status report on a quarterly basis. The recipient will notify FEMA of any changes of the responsible municipal official who executed the Promissory Note.

(d) *Inactive loans*. If no funds have been disbursed from the Treasury, and if the local government does not anticipate a need for such funds, the note may be cancelled at any time upon a written request through the State and Regional Office to FEMA. However, since only one loan may be approved, cancellation precludes submission of a second loan application request by the same local government for the same disaster.

§ 206.366 Loan cancellation.

(a) *Policies*. (1) FEMA shall cancel repayment of all or any part of a Community Disaster Loan to the extent that the Associate Director determines that revenues of the local government during the full three fiscal year period following the disaster are insufficient, as a result of the disaster, to meet the operating budget of the local government, including additional unreimbursed disaster-related expenses for a municipal operating character. For loan cancellation purposes, FEMA interprets that term "operating budget" to mean actual revenues and expenditures of the local government as published in the official financial statements of the local government.

(2) If the tax and other revenues rates or the tax assessment valuation of property which was not damaged or destroyed by the disaster is reduced during the 3 fiscal years subsequent to the major disaster, the tax and other revenue rates and tax assessment valuation factors applicable to such property in effect at the time of the major disaster shall be used without reduction for purposes of computing revenues received. This may result in decreasing the potential for loan cancellations.

(3) If the local government's fiscal year is changed during the "full 3 year period following the disaster" the actual period will be modified so that the required financial data submitted covers an inclusive 36-month period.

(4) If the local government transfers funds from its operating funds accounts to its capital funds account, utilizes operating funds for other than routine maintenance purposes, or significantly increases expenditures not disaster related, except increase due to inflation, the annual operating budget or operating statement expenditures will be reduced accordingly for purposes of evaluating any request for loan cancellation.

(5) It is not the purpose of this loan program to underwrite predisaster budget or actual deficits of the local government. Consequently, such deficits carried forward will reduce any amounts otherwise eligible for loan cancellation.

(b) *Disaster-related expenses of a municipal operation character*. (1) For purpose of this loan, unreimbursed expenses of a municipal operating character are those incurred for general government purposes, such as police and fire protection, trash collection, collection of revenues, maintenance of public facilities, flood and other hazard insurance, and other expenses normally budgeted for the general fund, as defined by the Municipal Finance Officers Association.

(2) Disaster-related expenses do not include expenditures associated with debt service, any major repairs, rebuilding, replacement or reconstruction of public facilities or other capital projects, intragovernmental services, special assessments, and trust and agency fund operations. Disaster expenses which are eligible for reimbursement under project applications or other Federal programs are not eligible for loan cancellation.

(3) Each applicant shall maintain records including documentation necessary to identify expenditures for unreimbursed disaster related expenses. Examples of such expenses include but are not limited to:

(i) Interest paid on money borrowed to pay amounts FEMA does not advance toward completion of approved Project Applications.

(ii) Unreimbursed costs to local governments for providing usable sites with utilities for mobile homes used to meet disaster temporary housing requirements.

(iii) Unreimbursed costs required for police and fire protection and other community services for mobile home parks established as the result of or for use following a disaster.

(iv) The cost to the applicant of flood insurance required under Pub. L. 93-234, as amended, and other hazard insurance required under section 311, Pub L. 93-288, as amended, as a condition of Federal disaster assistance for the disaster under which the loan is authorized.

(4) The following expenses are not considered to be disaster-related for Community Disaster Loan purposes.

(i) The local government's share for assistance provided under the Act including flexible funding under section 406(c)(1) of the Act.

(ii) Improvements related to the repair or restoration of disaster public facilities approved on Project Applications.

(iii) Otherwise eligible costs for which no Federal reimbursement is requested as a part of the applicant's disaster response commitment, or cost sharing as specified in the FEMA-State Agreement for the disaster.

(iv) Expenses incurred by the local government which are reimbursed on the applicant's project application.

(c) *Cancellation application*. A local government which has drawn loan funds from the Treasury may request cancellation of the principal and related interest by submitting an Application for Loan Cancellation through the Governor's Authorized Representative to the Regional Director prior to the expiration date of the loan.

(1) Financial information submitted with the application shall include the following:

(i) Annual Operating Budgets for the fiscal year of the disaster and the 3 subsequent fiscal years;

(ii) Annual Financial Reports (Revenue and Expense and Balance Sheet) for each of the above fiscal years. Such financial records must include copies of the local government's annual financial reports, including operating statements balance sheets and related consolidated and individual presentations for each fund account. In addition, the local government must include an explanatory statement when figures in the Application for Loan Cancellation form differ from those in the supporting financial reports.

(iii) The following additional information concerning annual real estate property taxes pertaining to the community for each of the above fiscal years:

(A) The market value of the tax base (dollars),

(B) The assessment ratio (percent),

(C) The assessed valuation (dollars),

(D) The tax levy rate (mils),

(E) Taxes levied and collected (dollars).

(iv) Audit reports for each of the above fiscal years certifying to the validity of the Operating Statements. The financial statements of the local government shall be examined in accordance with generally accepted auditing standards by independent certified public accountants. The report should not include recommendations concerning loan cancellation or repayment.

(v) Other financial information specified in the Application for Loan Cancellation.

(2) Narrative justification. The application may include a narrative presentation to amplify the financial material accompanying the application and to present any extenuating circumstances which the local government wants the Associate Director to consider in rendering a decision on the cancellation request.

(d) *Determination.* (1) If, based on a review of the Application for Loan Cancellation and FEMA audit, when determined necessary, the Associate Director determines that all or part of the Community Disaster Loan funds should be cancelled, the principal amount which is cancelled will become a grant, and the related interest will be forgiven. The Associate Director's determination concerning loan cancellation will specify that any uncancelled principal and related interest must be repaid immediately and that, if immediate repayment will constitute a financial hardship, the local government must submit for FEMA review and approval, a repayment schedule for settling the indebtedness on timely basis. Such repayments must be made to the Treasurer of the United States and be sent to FEMA, Attention: Office of the Comptroller.

(2) A loan or cancellation of a loan does not reduce or affect other disaster-related grants or other disaster assistance. However, no cancellation may be made that would result in a duplication of benefits to the applicant.

(3) The uncancelled portion of the loan must be repaid in accordance with § 206.367.

(4) Appeals. If an Application for Loan Cancellation is disapproved, in whole or in part, by the Associate Director or designee, the local government may submit any additional information in support of the application within 60 days of the date of disapproval. The decision by the Associate Director or designee on the submission is final.

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§ 206.367 Loan repayment.

(a) *Prepayments.* The local government may make prepayments against loan at any time without any prepayment penalty.

(b) *Repayment.* To the extent not otherwise cancelled, Community Disaster Loan funds become due and payable in accordance with the terms and conditions of the Promissory Note. The note shall include the following provisions:

(1) The term of a loan made under this program is 5 years, unless extended by the Associate Director. Interest will accrue on outstanding cash from the actual date of its disbursement by the Treasury.

(2) The interest amount due will be computed separately for each Treasury disbursement as follows: $I = P \times R \times T$, where I = the amount of simple interest, P = the principal amount disbursed; R = the interest rate of the loan; and, T = the outstanding term in years from the date of disbursement to date of repayment, with periods less than 1 year computed on the basis of 365 days/year. If any portion of the loan is cancelled, the interest amount due will be computed on the remaining principal with the shortest outstanding term.

(3) Each payment made against the loan will be applied first to the interest computed to the date of the payment, and then to the principal. Prepayments of scheduled installments, or any portion thereof, may be made at any time and shall be applied to the installments last to become due under the loan and shall not affect the obligation of the borrower to pay the remaining installments.

(4) The Associate Director may defer payments of principal and interest until FEMA makes its final determination with respect to any Application for Loan Cancellation which the borrower may submit. However, interest will continue to accrue.

(5) Any costs incurred by the Federal Government in collecting the note shall be added to the unpaid balance of the loan, bear interest at the same rate as the loan, and be immediately due without demand.

(6) In the event of default on this note by the borrower, the FEMA claims collection officer will take action to recover the outstanding principal plus related interest under Federal debt collection authorities, including administrative offset against other Federal funds due the borrower and/or referral to the Department of Justice for judicial enforcement and collection.

(c) *Additional time.* In unusual circumstances involving financial hardship, the local government may request an additional period of time to repay the indebtedness. Such request may be approved by the Associate Director subject to the following conditions:

(1) The local government must submit documented evidence that it has applied for the same credit elsewhere and that such credit is not available at a rate equivalent to the current Treasury rate.

(2) The principal amount shall be the original uncancelled principal plus related interest.

(3) The interest rate shall be the Treasury rate in effect at the time the new Promissory Note is executed but in no case less than the original interest rate.

(4) The term of the new Promissory Note shall be for the settlement period requested by the local government but not greater than 10 years from the date the new note is executed.

§§ 206.368 through 206.389 [Reserved]

Subpart L—Fire Suppression Assistance

§ 206.390 General.

When the Associate Director determines that a fire or fires threaten such destruction as would constitute a major disaster, assistance may be authorized, including grants, equipment, supplies, and personnel, to any State for the suppression of any fire on publicly or privately owned forest or grassland.

§ 206.391 FEMA-State agreements.

Federal assistance under section 420 of the Act is provided in accordance with a continuing FEMA-State Agreement for Fire Suppression Assistance (the Agreement) signed by the Governor and the Regional Director. The Agreement contains the necessary terms and conditions, consistent with the provisions of applicable laws, Executive orders, and regulations, as the Associate Director may require and specifies the type and extent of Federal assistance. The Governor may designate authorized representatives to execute requests and certifications and otherwise act for the State during fire emergencies. Supplemental agreements shall be executed as required to update the continuing Agreement.

§ 206.392 Request for assistance.

When a Governor determines that fire suppression assistance is warranted, a request for assistance may be initiated. Such request shall specify in detail the factors supporting the request for assistance. In order that all actions in processing a State request are executed as rapidly as possible, the State may submit a telephone request to the Regional Director, promptly followed by a confirming telegram or letter.

(Approved by the Office of Management and Budget under the Control Numbers 3067-0066)

§ 206.393 Providing assistance.

Following the Associate Director's decision on the State request, the Regional Director will notify the Governor and the Federal firefighting agency involved. The Regional Director may request assistance from Federal agencies if requested by the State. For each fire or fire situation, the State shall prepare a separate Fire Project Application based on Federal Damage Survey Reports and submit it to the Regional Director for approval.

§ 206.394 Cost eligibility.

(a) *Cost principles.* See 44 CFR 13.22, Allowable Costs, and the associated OMB Circular A-87, Cost Principles for State and Local Governments.

(b) *Program specific eligible costs.* (1) Expenses to provide field camps and meals when made available to the eligible employees in lieu of per diem costs.

(2) Costs for use of publicly owned equipment used on eligible fire suppression work based on reasonable State equipment rates.

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

(4) Cost of firefighting tools, materials, and supplies expended or lost, to the extent not covered by reasonable insurance.

(5) Replacement value of equipment lost in fire suppression, to the extent not covered by reasonable insurance.

(6) Costs for personal comfort and safety items normally provided by the State under field conditions for firefighter health and safety.

(7) Mobilization and demobilization costs directly relating to the Federal fire suppression assistance approved by the Associate Director.

(8) Eligible costs of local governmental firefighting organizations which are reimbursed by the State pursuant to an existing cooperative mutual aid agreement, in suppressing an approved incident fire.

(9) State costs for suppressing fires on Federal land in cases in which the State has a responsibility under a cooperative agreement to perform such action on a nonreimbursable basis. This provision is an exception to normal FEMA policy under the Act and is intended to accommodate only those rare instances that involve State fire suppression of section 420 incident fires involving co-mingled federal/State and privately owned forest or grassland.

(10) In those instances in which assistance under section 420 of the Act is provided in conjunction with existing Interstate Forest Fire Protection Compacts, eligible costs are reimbursed in accordance with eligibility criteria established in this section.

(c) *Program specific ineligible costs.* (1) Any costs for presuppression, salvaging timber, restoring facilities, seeding and planting operations.

(2) Any costs not incurred during the incident period as determined by the Regional Director other than reasonable and directly related mobilization and demobilization costs.

(3) State costs for suppressing a fire on co-mingled Federal land where such costs are reimbursable to the State by a Federal agency under another statute (see 44 CFR Part 151).

§ 206.395 Grant administration.

(a) Project administration shall be in accordance with 44 CFR Part 13, and applicable portions of Subpart G, 44 CFR Part 206.

(b) In those instances in which reimbursement includes State fire suppression assistance on co-mingled State and Federal lands (§ 206.394(b)(9)), the Regional Director shall coordinate with other Federal programs to preclude any duplication of payments. (See 44 CFR Part 151.)

(c) Audits shall be in accordance with the Single Audit Act of 1984, Pub. L. 98-502. (See Subpart G of this part.)

(d) A State may appeal a determination by the Regional Director on any action related to Federal assistance for fire suppression. Appeal procedures are contained in 44 CFR 206.206.

§§ 206.396 through 206.399 [Reserved]

Subpart M—Hazard Mitigation Planning

§ 206.400 General.

(a) *Purpose.* The purpose of this subpart is to prescribe the actions and procedures for implementing section 409 of the Stafford Act. Any conflicting provisions elsewhere in 44 CFR Part 206 are superseded by this subpart. It is also the purpose of this subpart to clarify the responsibilities for hazard mitigation of the various Federal agencies and State and local governments as the result of a major disaster or emergency declared by the President.

(b) *Applicability.* This subpart covers actions, procedures, standards, and criteria for accomplishing optimum results in reduction, avoidance and mitigation of all types of future disasters. These regulations are intended for the use of federal, State and local governments, as well as organizations and individuals administering or receiving Federal grant or local assistance as the result of a major disaster or emergency. They are also intended to complement and reinforce implementation in other subparts of these regulations:

(1) The President's executive Order 11988 on Floodplain Management and Executive Order 11990 on Protection of Wetlands; and

(2) The National Environmental Policy Act of 1969 Pub. L. 91-190. When a major disaster or emergency occurs, the hazard mitigation actions to cope with those hazards identified as the result of the major disaster or emergency shall receive priority.

§ 206.401 Definitions.

In this subpart reference is frequently made to such words as hazard reduction, avoidance, and mitigation; land use and construction regulations; and disaster proofing. As used in this subpart:

(a) "Avoidance" means to eliminate a hazard through measures such as relocation or prohibition of construction within an area susceptible to risk or danger, or by other means.

(b) "Construction practices" means codes, standards, and specifications applicable to repairs, or to alterations or new construction of a facility or structure.

(c) "Disaster proofing" means those minimum alterations or modifications to damaged facilities that could be expected to prevent or substantially reduce future damages to the repaired or reconstructed facility, or to make it disaster resistant.

(d) "Hazard" means any natural source of danger or element of risk identified following a major disaster or emergency.

(e) "Land use regulations" include zoning for purposes compatible with prudent floodplain management and both preventive and corrective restrictions on construction, repairs, or alterations of facilities within specified areas. Preventive restrictions provide regulation of new land use, i.e., nonstructural disaster control measures such as use of high hazard areas for parks, farms, and recreational areas. Corrective restrictions include:

(1) Floodproofing;

(2) Acquisition;

(3) Insurance;

(4) Removal of non-conforming uses.

(f) "Mitigation" means to alleviate by softening and making less severe the effects of a major disaster or emergency and of future disasters in the affected areas, including reduction or avoidance.

(g) "Reduction" means to diminish in strength and intensity or to restrict or lessen the size, amount and extent of damage resulting from the major disaster or emergency or to be expected as the result of future disasters.

§ 206.402 Policy.

(a) The FEMA role under section 409 of the Act is one of providing leadership, not through mandates, but through governments and assistance to them in their initiatives to develop and maintain effective mitigation standards. FEMA must provide realistic and attainable mitigation options for their consideration and adoption. Ultimately, improved programs can only be developed when each party understands the benefits to be gained through hazard mitigation and is willing to work in a shared environment of cooperation and commitment.

(b) While the need to respond quickly to disaster and life-threatening condition must remain paramount, FEMA shall assure that the ultimate benefits to be gained through effective hazard mitigation programs are not diminished and remain a primary objective.

(c) FEMA shall provide technical advice and assistance for hazard mitigation to local or State governments and to certain private nonprofit organizations eligible for grant assistance under section 406 of the Stafford Act. Such technical advice and assistance shall be supplementary to that available from any other State or Federal agencies under their existing programs. Technical advice may also be provided for water conservation measures in affected areas short of water as the result of the major disaster or emergency.

(d) FEMA shall encourage local or State governments to adopt safe land-use regulations and construction practices or standards. When such action is taken, after the declaration of a major disaster or emergency, the Associate Director may approve such regulations, practices or standards as applicable deviations as a condition for any Federal grants under section 406 of the Stafford Act. When such action is not taken, the Associate Director may still prescribe appropriate standards as applicable to federally-assisted projects resulting from the major disaster or emergency being restored under section 406 of the Act. The Associate Director may also prescribe such standards for prospective applicability to all similar repairs or new construction of facilities within the applicant's jurisdiction. In such instances, the applicant shall be notified in writing by the Regional Director through the State of these prescribed standards and that any future damages or destruction of facilities due to failure to comply with such prescribed standards would not be eligible for FEMA grant assistance under section 406, except under unusual circumstances when approved in the public interest by the Associate Director.

(e) Local governments usually have the decision-making responsibility within their jurisdictions for hazard mitigation measures, including sound land-use regulations and safe construction practices. The State has the central role in resource management and in hazard mitigation throughout the State. Federal technical advice and assistance is supplementary in nature.

(f) FEMA recognizes the heavy administrative workloads of local and State governments in coping with major disasters or emergencies and, in initiating any hazard mitigation programs, it will be sensitive to these existing workloads. In developing any proposed implementation plan and procedures, FEMA emphasis is to focus the efforts of all participants on achieving positive results in hazard mitigation. It encourages initiative by State and local governments within the context of their laws, regulations, and customs.

(g) For all major disasters and emergencies involving actions or affecting in floodplains or wetlands appropriate hazard mitigation measures shall be taken as required by FEMA's Floodplain Management regulations (44 CFR Part 9).

(h) Nonstructural disaster protection methods or measures shall be fully considered and emphasized where consistent with primary program purposes of the Act.

(i) As a condition for any grant for federally assisted projects under section 406 of the Act, the Associate Director has prescribed as a standard, floodproofing measures which the Regional Director determines are appropriate and practicable as disaster-proofing under E.O. 11988 for facilities within the 100-year floodplain or for critical facilities within the 500-year floodplain.

(j) During hazard mitigation actions involving water resources under the subpart, the State shall be the focal point for water resource management.

(k) As a condition for any grant or loan under the Act for municipal water supply or waste water treatment facilities or systems, appropriate water conservation requirements shall be included and any disincentives to water conservation shall be removed.

§ 206.403 Responsibilities.

(a) *General.* After a declaration of a major disaster or emergency coordinated effort of all participants is required to identify the significant hazards and appropriate mitigation measures to cope with those hazards.

(b) *FEMA.* The Regional Director shall include appropriate provisions for hazard mitigation under this subpart in the FEMA-State Agreement. He/she shall coordinate with the Governor's Authorized Representative to provide for a joint Federal/State team to survey the disaster affected area soon after a major disaster or emergency declaration for these purposes:

(1) Identify significant hazards in the affected area, giving priority to disaster-related hazards;

(2) Evaluate the impacts of these hazards and measures which will mitigate these impacts; and

(3) Recommend appropriate hazard mitigation measures.

The Regional Director shall designate a FEMA staff member to serve as Hazard Mitigation Coordinator (HMC) on the FEMA/State survey team and to confer with local, State and Federal officials concerning these hazards and hazard mitigation measures. Based on these consultations by the FEMA HMC and the Regional Director, and on decisions by local or State agencies which may establish new or modified land use regulations or standards, the Regional Director may recommend that the Associate Director approve or prescribe appropriate standards. The Regional Director shall also designate a FEMA planner to serve on the FEMA/State planning teams. Concurrently with the FEMA/State survey team activities, the FEMA planner shall coordinate with the State planner designated by the Governor's Authorized Representative in working with participating Federal, State and local agencies, organizations or individuals in accomplishing hazard mitigation planning as required by the Regional Director in accordance with 44 CFR 206.403(e), 206.405, 206.410(b), and 206.411(c). The Regional Director may provide technical advice and assistance to local or State agencies for the purpose of accomplishing hazard mitigation activities under this subpart. He/she shall review State evidence of compliance with approved hazard mitigation activities and shall provide to the Associate Director an after-action report when all such hazard mitigation activities are completed or terminated. Because the Regional Director requires that each applicant take appropriate hazard mitigation measures as a condition for approval of a FEMA grant or loan, he/she shall follow up with the State to recover Federal funding whenever an applicant fails to satisfy any conditions upon which the approval of the grant was based. The Regional Director may arrange for other Federal agencies to participate in hazard mitigation activities under this subpart.

(c) *State.* The Governor's Authorized Representative is responsible for State performance of hazard mitigation activities under the FEMA-State Agreement and this subpart. He/she shall designate a State Hazard Mitigation Coordinator (HMC) to serve on the FEMA/State survey team and a State planner to serve on the FEMA/State hazard mitigation planning team. The Governor's Authorized Representative shall arrange for State and local participation in FEMA/State surveys and FEMA/State planning in the affected areas of the State for purposes stated above. The State HMC shall arrange for consultations on the findings and recommendations from the joint survey and shall follow up to assure that timely and adequate local and State hazard mitigation actions are taken. Whenever appropriate, he/she shall arrange for State funding or technical assistance to eligible applicants for the purposes of accomplishing State-approved hazard mitigation actions. He/she shall arrange for State inspection or audit to verify compliance with approved hazard mitigation measures. When these activities are completed in accordance with the FEMA-State Agreement, he/she shall submit a final report of compliance with hazard mitigation requirements by State and local governments to the Regional Director for review and acceptance. Similarly, the State planner shall work with the FEMA planner in accomplishing the tasks referenced in paragraph (b) of this section.

(d) *Local.* The applicant is responsible for local performance of hazard mitigation measures under the FEMA-State Agreement and this subpart. Each applicant shall designate a local Hazard Mitigation Coordinator (HMC) to work with the FEMA/State survey team as required by the State HMC. Working with the FEMA/State survey team, the local HMC will assess the damage within the local jurisdiction. The local HMC shall arrange for local participation in consultations with FEMA/State survey teams about hazard mitigation actions under this subpart. The local HMC is responsible for informing local officials and interested citizens about significant survey teams activities. He/she shall also collect any local comments on these matters and report them to the State HMC. With any project application, each applicant shall submit adequate assurances that any required hazard mitigation measures have been taken or will be completed. The applicant, to the extent of its legal authority, is responsible for implementing and enforcing land use regulations and safe construction practices which are conditions agreed upon for FEMA grants or loans. The applicant shall provide evidence of compliance with conditions for any approved FEMA grants or loans as required by the Governor's Authorized Representative. The applicant's local Authorized Representative shall arrange for the applicant's planner to work with the FEMA/State planning team in reviewing and updated existing hazard mitigation plans, or in developing new hazard mitigation plans as may be scheduled by the Governor's Authorized Representative and requested by the Regional Director.

(e) *FEMA-State Agreement.* When necessary to clarify responsibilities under this subpart for a major disaster and emergency, clarification shall be provided by amendment to the FEMA-State Agreement. The following is a typical paragraph:

Hazard Mitigation Clause Added to the Federal-State Agreement

"The State agrees that, as a condition for any Federal loan or grant, the State or the applicant shall evaluate the natural hazards in the areas in which the proceeds of the grants or loans are to be used and shall make appropriate recommendations to mitigate such hazards for federally assisted projects. The State further agrees: (1) To follow up with applicants, within State capabilities, to assure that, as a condition for any grant or loan under the Act, appropriate hazard mitigation actions are taken; (2) to prepare and submit not later than 180 days after the declaration to the Regional Director for concurrence, hazard mitigation plan or plans for the designated areas, and (3) to review and update as necessary disaster mitigation portions of the emergency plans."

"The Regional Director agrees to make Federal technical advice and assistance available to support the planning efforts and actions."

§ 206.404 Surveys.

(a) *Damage assessments.* Prior to a declaration of a major disaster or emergency, local State and Federal preliminary assessments of damage may identify major hazards and opportunities for hazard mitigation actions. This information will be transmitted to the FEMA/State survey team as indicated below. During the period immediately following a major disaster or emergency, each applicant is expected to use its resources and capabilities as necessary to perform emergency work, such as debris removal or emergency measures to save lives, or to protect public health and safety or to protect property. The identification of hazards by the damage assessment team and the performance of the emergency work may result in significant hazard mitigation. Damage Survey Reports (DSR) completed by Federal inspectors will also include identification of hazards and recommendations of mitigation measures to be incorporated in the repair work.

(b) *Survey activities.* After a declaration of a major disaster or emergency, the Governor's Authorized Representative shall schedule a briefing for State staff members about their participation in FEMA/State survey team activities. The survey team shall be made up of the FEMA HMC and the State HMC, plus other Federal or State staff members or consultants. This FEMA/State survey team shall work with the appropriate local HMC. Utilizing the information from the preliminary damage assessments, the DSR's referred to above, and all other pertinent information readily available, the survey team shall visit the sites of significant damage to evaluate the hazards. This evaluation may include investigation of selected individual damaged facilities plus review of applicable land use regulations, construction standards, and other appropriate hazard mitigation measures. The federal/State survey team shall work with the local HMC and other local officials as necessary during this evaluation. The FEMA HMC shall supply model regulations, suggested standards, and other pertinent references for use by the survey team. For each identified significant hazard the survey team shall include appropriate recommendations of hazard mitigation measures in its final report (see 44 CFR 206.411(c)).

§ 206.405 Hazard mitigation plans.

(a) *Plans.* For each hazard-prone area, the FEMA/State planning team shall review and evaluate existing local or State emergency plans for hazard mitigation. Particular attention shall be given to the adequacy of plans for warning and evacuation. In those cases where no such plans exist, this planning team shall report its findings and recommendations concerning specific needs to develop and maintain such plans. The Regional Director shall require the State to update existing State or local plans or to develop such new hazard mitigation plans as he/she deems necessary in consultation with the Governor's Authorized Representative. In determining whether to impose such a requirement on a local government, consideration shall be given to the opportunities presented for effective hazard mitigation, the size and composition of the local government, the local government's authority to regulate land use and to require safe construction practices, and the local government's exercise of such authority. The Governor's Authorized Representative, or Regional Director, may provide technical advice and assistance to State agencies or local governments in developing new plans or updating existing plans to mitigate hazards identified as the result of the major disaster or emergency within the affected areas.

(b) *Objectives.* The identification of hazards following a major disaster or emergency and accomplishment of appropriate hazard mitigation measures are the short-term planning objectives to be required by the FEMA-State Agreement. The Regional Director and the Governor's Authorized Representative shall focus with highest priority on these objectives in verifying compliance with the Agreement as a condition for Federal loans or grants.

(c) *Mapping.* The FEMA/State planning team shall verify the impact of the major disaster on disaster frequencies computed prior to the major disaster through contacts with agencies maintaining such records. This planning team shall also consider the advisability of redefining boundaries of high-hazard areas as the result of their findings and shall make recommendations to the Regional Director on any needs for new mapping of high hazard areas.

(d) *Schedules.* In its recommendations of appropriate hazard mitigation measures, the planning team shall suggest target dates and schedules for accomplishment of each recommended measure.

(e) *Measures as conditions for FEMA assistance.* Measures which relate only to specific construction projects shall be specified as conditions for approval of applicable FEMA grants or loans. Those hazard mitigation measures which require other actions by applicants for FEMA grants of loans shall be reported by the FEMA/State survey team to the Governor's Authorized Representative, for referral to the FEMA/State planning team or other appropriate action.

§ 206.406 Hazard mitigation measures.

(a) *General.* Certain types of actions may be taken to achieve hazard mitigation including:

(1) Avoidance,

(2) Reduction, and

(3) Adoption and enforcement of land use regulations and of safe construction practices.

(b) *Avoidance.* For siting new construction of facilities or structures, location outside of high hazard areas is the preferred solution. For each hazard identified following a major disaster or emergency, the survey team shall assess the feasibility of avoidance of high hazard areas in cases where new construction, alteration, or major repairs are involved in restoration of damaged or destroyed facilities. The survey team shall also make specific recommendations concerning land use regulations and rezoning to achieve the objectives of avoidance whenever appropriate.

(c) *Reduction.* Reduction of the effects of hazards on facilities and people may be achieved by reducing the area or level of the hazard itself or by reducing the impact of the hazard on individual facilities. Examples of the first are flood control projects such as dams, levees, floodwalls or channel improvements. In some situations, these may be the only practicable measures to protect facilities or structures already located in the floodplain. Reducing the impact on a facility may be accomplished by such measures as installing shearwalls or bracing in buildings or installing check valves in utility lines in earthquake-prone areas. In flood-prone areas, tie downs may be used for mobile homes, lower levels of building may be waterproofed, water damage resistant materials may be used in reconstruction, or such lower levels may be restricted to nonhazardous uses.

§ 205.407 Land use regulations.

(a) *Local zoning.* Regulation of land use within its jurisdiction is normally a function of local government. In some cases, the local government may have already adopted land use regulations or zoning prior to a major disaster or emergency. Modification or updating based on current maps and model regulations may be necessary. Some re-mapping may frequently be required. In certain cases, the existing land use regulation may be adequate to cope with the identified hazards, if properly enforced. State, federal, or private interests may propose model zoning regulations, but adoption and enforcement of such regulations remain with the responsible State or local government. Certain State or Federal restrictions may be locally adopted and enforced by mutual agreement, or as a condition for certain types of financial assistance. The survey team shall make its recommendation based on field observations and evaluation of hazards within the affected areas. Consultations with the applicant, the State HMC, and the FEMA HMC may then be necessary to identify the applicant's options for decision making. The State or FEMA HMC shall provide encouragement, technical advice, and assistance to the applicant to adopt and enforce appropriate land use regulations. The FEMA/State planning team shall follow up on contacts with the State or local government if appropriate.

(b) *State land use regulations.* For State-owned properties outside of local jurisdiction, the responsible State agency adopts and enforces land use regulations. In some cases, these State regulations may serve as model regulations for local governments. The planning team may make recommendations on new State land use regulations for State lands and provide technical advice and assistance to the State for developing such regulations. The State may require local adoption of Statewide land use regulations as a condition for State aid, such as grants, loans, or technical assistance.

(c) *Federal land use regulations.* For federally owned lands outside of local or State jurisdictions, the responsible Federal agency adopts and enforces land use regulations which may serve as models for local or State regulations in like circumstances. The FEMA/State planning team may encourage the Federal agency to adopt land-use regulations currently used locally as being applicable to the Federal property. A Federal agency may require local or State governments to adopt and enforce certain hazard mitigation regulations as a condition for Federal assistance or participation in federally assisted programs. For example, the National Flood Insurance Program requires certain minimum floodplain management regulations for participation by State or local government. Executive Order 11988 also imposes additional constraints on Federal grants or loan assistance within the floodplains. After reviewing a project application in accordance with FEMA's Floodplain Management regulation (44 CFR Part 9), the Regional Director may determine that no practical alternative to locating in floodplain exists. The Regional Director then shall require appropriate measures to minimize harm to the facility, to other property and to the floodplain and to preserve and restore the natural and beneficial values of the floodplain. Non-structural uses of floodplains and wetlands, such as open space and parks, shall be encouraged whenever practicable. Coastal zone management plans impose similar requirements for local, State, and Federal floodplain management regulation. As model hazard mitigation regulations become available to cope with other types of major disasters or emergencies including earthquakes, windstorms, and fires, the survey team may recommend them as requirements for federally assisted projects, or for adoption and enforcement by applicants for Federal grants or loan assistance. Survey or planning teams shall make findings and recommendations as appropriate for development or updating of model hazard-mitigation regulations by various Federal agencies for mitigation of hazards identified following a major disaster or emergency. The FEMA planner may arrange for Federal technical advice and assistance to local or State governments in modifying model land use regulations to satisfy local governments.

(d) *FEMA land use standards.* As the result of a major disaster or emergency, the Regional Director may determine that there is no practicable alternative to permitting approval of a grant or loan for an action within a high hazard area. For example, refer to 44 CFR Part 9 covering the eight-step decisionmaking process for floodplain management. In these cases where a practicable alternative exists outside the base floodplain, the Regional Director shall decline to approve a FEMA grant or loan unless the facility or structure is relocated. The Regional Director may take similar action for other types of disasters, such as tornadoes or earthquakes, where a practicable alternative exists outside the high hazard area. Under the Act, the Associate Director may prescribe appropriate standards as applicable for FEMA assisted projects as the result of a major disaster or emergency, as discussed in 44 CFR 206.402(d). When the Regional Director determines that restoration of a damaged or destroyed facility in a hazard area is not a practicable alternative, he/she may decline to authorize FEMA disaster assistance to restore facilities at the original site, or within the hazard area where such facilities are subject to repetitive heavy damages or destruction. When an applicant decides to relocate facilities being restored under section 402 of the Act outside of a high hazard area, purchase and development of the site is the applicant's responsibility. The Regional Director may approve Federal grant assistance for permanent restoration of eligible facilities erected on the new site: Provided, That the Regional director determines that the Federal grant assistance for such project is practicable and in the public interest.

§ 206.408 Construction practices.

(a) *General.* In certain cases, permanent repairs, alterations, or new construction to predisaster design may not provide usable facilities or structures safe from identified hazards. Alternate actions available are relocation; restorative work to conform to updated safe construction practices; or no approval for Federal funding of the proposed work. For FEMA-assisted projects under the Act, the applicant's decision on standards for restorative work shall be subject to review and approval by the Governor's Authorized Representative and the Regional Director. In identifying hazards and in its damage evaluation, the survey team shall inventory existing construction practices or standards related to damaged or destroyed facilities and may recommend adoption and enforcement by each applicant of additional safe construction practices.

(b) *Local standards.* When a major disaster or emergency occurs, the FEMA/State survey team shall inventory and evaluate the standards already adopted by the applicants for the types of repairs, reconstruction, or restorative work for which Federal grant or loan assistance is being requested. During the field surveys this team, or the FEMA/State planning team may also have model State or Federal standards available for consideration by the applicants. Such standards for new construction may be different from those for repairs or alterations to existing facilities or structures. Federal or State agencies may provide technical advice and assistance to local governments, particularly in the form of model standards to be modified for local use. In discussions of hazard mitigation measures, the survey team or the planning team may develop appropriate recommendations to the applicant for updating existing standards, or for adopting new ones. As the result of the major disaster or emergency, each applicant has the responsibility for adopting or updating appropriate standards and for enforcing them. Such local action for nonfederally funded projects shall be encouraged by the survey team and the planning team working together for a common purpose. An applicant may request State or FEMA technical advice and assistance in taking these actions. A new standard which the applicant submits for approval by the Associate Director shall include the scope of application of the standard; that is, whether the standard covers all public facilities or certain federally funded projects only. The standard shall also be accompanied by a description of local or State enforcement procedures.

(c) *State standards.* For State-owned buildings, structures, or facilities outside local jurisdictions, the responsible State agency adopts and enforces applicable standards. In some cases these may serve as a model for similar action by local governments. As a condition for State approval of grant or loan assistance as the result of a major disaster or emergency, the Governor's Authorized Representative may recommend to the Regional Director that the Associate Director prescribe certain standards for the FEMA-assisted project for hazard mitigation purposes. The State HMC may also provide technical advice and assistance on hazard mitigation measures to applicants, private organizations, and individuals.

(d) *Federal standards.* (1) For Federally owned buildings, structures, or facilities outside local or State jurisdictions, the responsible Federal agency adopts and enforces applicable Federal standards. These may serve as models for local or State adoption and enforcement in similar circumstances.

(2) The National Flood Insurance Program (NFIP) prescribes certain Federal standards for repairs, alterations, and new construction within floodplains as a condition for acceptance of a flood-prone community within the program. The Associate Director has prescribed as a standard, floodproofing measures which are appropriate as disaster proofing and practicable under E.O. 11988 for facilities within the 100-year floodplain or for critical facilities within the 500-year floodplain. For other types of disaster, similar standards for hazard mitigation may be available and

appropriate for local, State and Federal use.

(3) The FEMA/State survey team, and the planning team, shall be aware of existing standards and shall recommend appropriate examples to applicants for consideration as hazard mitigation related to the major disaster or emergency.

(e) *FEMA standards.* Working with the State and applicants, through the survey team and the planning team, the Regional Directors shall encourage local adoption and enforcement on all projects, including nonfederally assisted projects, of appropriate standards for hazard mitigation. When a local or State government takes such action, the Regional Director may recommend that the Associate Director approve such standards as applicable for FEMA-assisted projects, after appropriate consultations with FEMA, with local and State officials, and with appropriate elected officials, and with appropriate local governments. Based on these consultations and all available information, the Associate Director may approve such standards as deviations applicable to FEMA assisted projects. When the local or State government declines to adopt and to enforce them for non-FEMA-assisted projects, the Associate Director, after appropriate FEMA, State and local consultations, may prescribe appropriate standards which are applicable only to FEMA assisted projects. (Refer also to 44 CFR 206.402(d).) The Regional Director may then approve FEMA grant or loan assistance to enable the applicant to comply with them on FEMA assisted projects. The Regional Director may suspend or refuse to approve any project application until he/she is satisfied that the approved work will result in a facility or structure safe and usable for the predisaster function, or for alternate functions proposed as flexible funding by the applicant in accordance with these regulations.

§ 206.409 Consultations.

(a) *General.* It is the intent of these regulations to provide opportunity for State and local officials and interested individuals to participate in the hazard mitigation process. At various points in the process, consultations and meetings with the FEMA/State survey team or planning team will provide input from these sources as detailed in the following paragraphs.

(b) *Survey team.* Members of the survey team shall make frequent contacts and have consultations with various applicants until the filed surveys are completed and appropriate hazard mitigation measures are recommended. The State HMC is responsible under the FEMA-State Agreement to arrange for appropriate consultations and notices to inform the public on those decision making processes involved in the work of the survey team. An applicant or the FEMA HMC may request such arrangements when desired.

(c) *Planning team.* Similarly, members of the FEMA/State planning team, in coordination with the survey team, shall make contacts and have consultations with various applicants or their planners as the planning team may require to accomplish its assigned tasks.

(d) *Meetings.* After the declaration of a major disaster or emergency, the Governor's Authorized Representative, in coordination with the Regional Director, schedules one or more meetings with local and State officials representing potential applicants for Federal assistance. These are generally known as "Applicant's Briefings". At these meetings FEMA and State staff members brief these local and State officials on FEMA policies and procedures for Federal grant or loan assistance under the Act. The Governor's Authorized Representative may arrange for the survey team and the planning team to participate in these briefings when desirable. The FEMA/State survey team and the planning team will normally schedule followup meetings later to discuss hazard mitigation measures with State and local officials. When necessary under FEMA's regulations pertaining to floodplain management and environmental review (44 CFR Parts 9 and 10) early public notice may be given of pending Federal actions. Based on the responses to such public notice, or when otherwise appropriate, the Regional Director may request the Governor's Authorized Representative to schedule public hearings for purposes of consultation with interested parties on hazard mitigation measures or problems.

(e) *Project management.* Normal FEMA procedures for damage survey reports, project applications, final inspections, audits, and final payments require local, State, and Federal contacts and coordination. Appeal procedures provide for further reviews and consultations of all interested parties including the Associate Director and his/her staff. These procedures provide documentation to support the hazard mitigation measures taken under section 409 of the Act.

§ 206.410 Compliance.

(a) *FEMA-State Agreement.* Requirements for evidence of compliance may vary for each major disaster or emergency depending on its nature, severity, and magnitude as well as on variations in the sources, capabilities, organization, and staffing of the local and State governments. Any specific requirement for State evidence of compliance with hazard mitigation measures may be spelled out in the FEMA-State Agreement.

(b) *Plans.* Review and acceptance of hazard mitigation plans submitted by the applicant or by the State in accordance with the FEMA-State Agreement provides the Governor's Authorized Representative in coordination with the Regional Director opportunities to schedule spot inspections, audits, and follow-up consultations. Through these activities, compliance with hazard mitigation objectives, schedules, and commitments may be verified.

(c) *Project administration.* As a condition for approval of a project application, and subsequently for approval of a voucher for final payment, the Governor's Authorized Representative and the Regional Director shall require documentation of required hazard mitigation measures, including compliance with applicable land use regulations or construction standards. In making Final Inspection Reports, Federal and State inspectors shall be specifically asked to verify compliance by the applicant with approved hazard mitigation standards. Similarly, auditors shall be required to verify such compliance in their audit reports.

(d) *Reporting.* The Regional Director may specify in the FEMA-State Agreement that the State provide reports of compliance with approved hazard mitigation plans or actions. The Governor's Authorized Representative may also require such progress reports from each applicant or he/she may submit one comprehensive report when scheduled. Prior to termination of the FEMA-State Agreement, the Governor's Authorized Representative shall submit a final report of compliance with hazard mitigation requirements by State and local governments to the Regional Director for review and acceptance.

§ 206.411 Evaluation.

(a) *Critiques.* If requested by the Regional Director, the Governor's Authorized Representative shall arrange for a special critique of hazard mitigation plans and actions as the result of the major disaster or emergency. Each applicant shall be notified of the critique and may be invited to participate. As an alternative, a critique of hazard mitigation plans and actions may be scheduled to be covered at the FEMA/State critique covering all disaster assistance activities as the result of the major disaster or emergency.

(b) *Final survey team report.* Prior to terminating the survey team activities, the FEMA HMC and State HMC shall prepare a joint report of their activities and recommendations to the Governor's Authorized Representative and to the Regional Director.

(c) *Final planning team report.* Upon completion of its assigned mission, as discussed in 44 CFR 206.405, the FEMA/State planning team shall make a final report of its activities, findings and recommendations to the Regional Director through the Governor's Authorized Representative. This final report shall specifically identify any remaining planning requirements for hazard mitigation as the result of the major disaster or emergency requiring State or FEMA followup.

(d) *Followup actions.* The Regional Director shall review the reports from the survey team and the planning team plus the report of compliance from the Governor's Authorized Representative. The Regional Director's report to the Associate Director shall focus on the positive results achieved through hazard mitigation plans and actions as the result of the major disaster or emergency. He/she also shall provide in the report specific findings and recommendations for Federal follow-up action which should be taken after termination of the FEMA-State Agreement to provide mitigation of such hazards as the result of future disasters. The Associate Director may then arrange for appropriate Federal actions as the result of each such recommendation.

§§ 206.412 through 206.430 [Reserved]

Subpart N—Hazard Mitigation Grant Program [Reserved]

PART 207—GREAT LAKES PLANNING ASSISTANCE [RESERVED]

2. A new Part 207 is added and reserved as set forth above.

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Grant C. Peterson,

Associate Director, State and Local Programs and Support.

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