

Dated: January 16, 1990.
Alberto J. Mora,
General Counsel.
[FR Doc. 90-1452 Filed 1-22-90; 8:45 am]
BILLING CODE 8230-01-M

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Matisse in Morocco, The Paintings and Drawings, 1912-1913—A USA/USSR Joint Project" (see list ¹) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the

¹ A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202/485-7978, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

listed exhibit objects at the National Gallery of Art beginning on or about March 18, 1990 to on or about June 3, 1990, and at the Museum of Modern Art, New York, NY, beginning around June 20, 1990 to September 4, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: January 16, 1990.
Alberto J. Mora,
General Counsel.
[FR Doc. 90-1451 Filed 1-22-90; 8:45 am]
BILLING CODE 8230-01-M

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "The Sculpture of Indonesia" (see list ¹) imported from

¹ A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is

abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, DC, beginning on or about July 1, 1990 to on or about November 4, 1990; at the Museum of Fine Arts, Houston, Texas, beginning on or about December 9, 1990 to on or about March 17, 1991; at the Metropolitan Museum of Art, New York, NY, beginning on or about April 21, 1991 to on or about August 18, 1991; and at the Asian Art Museum, San Francisco, California, beginning on or about September 28, 1991 to on or about January 5, 1992, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: January 17, 1990.
Alberto J. Mora,
General Counsel.
[FR Doc. 90-1450 Filed 1-22-90; 8:45 am]
BILLING CODE 8230-01-M

202/485-7978, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register

Vol. 55, No. 15

Tuesday, January 23, 1990

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

January 18, 1989.

TIME AND DATE: 10:00 a.m., Thursday, January 25, 1990.

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. Possible revisions to Commission Procedural Rules.

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 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE

INFORMATION: Jean Ellen (202) 653-5629/ (202) 708-9300 for TDD Relay; 1-800-877-8339 Toll Free.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 90-1560 Filed 1-19-90; 11:11 am]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS.

TIME AND DATE: 11:00 a.m., Monday, January 29, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street

entrance between 20th and 21st Streets, N.W., Washington, D.C. 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: January 19, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-1639 Filed 1-19-90; 3:42 pm]

BILLING CODE 6210-01-M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Wednesday, January 31, 1990 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-429 (F) (Mechanical Transfer Presses from Japan)—briefing and vote.

6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE

INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: January 17, 1990.

Kenneth R. Mason,
Secretary.

[FR Doc. 90-1557 Filed 1-19-90; 11:11 am]

BILLING CODE 7020-02-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 P.M., Wednesday, February 7, 1990.

Place: Board Hearing Room, 8th Floor, 1425 K Street, NW., Washington, DC.

Status: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of January, 1990.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523-5920.

Date of notice: January 16, 1990.

Charles R. Barnes,
Executive Director, National Mediation Board.

[FR Doc. 90-1561 Filed 1-19-90; 11:11 am]

BILLING CODE 7550-01-M

Corrections

Federal Register

Vol. 55, No. 15

Tuesday, January 23, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. 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 COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 90123-9023]

Revisions to the Commodity Control List Based on COCOM Review: Metal-Working Machinery, etc.

Correction

In rule document 89-4153 beginning on page 8290 in the issue of Tuesday, February 28, 1989, make the following correction:

On page 8297, in the second column, the first word "revising" should read "adding".

BILLING CODE 1505-01-D

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 102, 110, 114 and 9034

[Notice 1989-13]

Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions

Correction

In rule document 89-19337 beginning on page 34098 in the issue of Thursday, August 17, 1989, make the following corrections:

1. On page 34105, in the 1st column, in the 2nd complete paragraph, in the 23rd line, insert "true contributor. However, the new language would not reach an" following "the".

2. On page 34106, in the 3rd column, in the 13th line, "section 110.65" should read "section 110.6".

3. On page 34108, in the third column, in the fourth line, "Section 100.1" should read "Section 110.1".

§ 110.1 [Corrected]

4. On page 34110, in the first column, in § 110.1(f)(3), in the last line, "11 CFR 110.2(c)(4)" should read "11 CFR 110.3(c)(4)".

§ 114.8 [Corrected]

5. On page 34114, in § 114.8(g)(1), in the third column, in the second line,

"§ 110.5(g)(4)" should read
"§ 100.5(g)(4)".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 34

RIN 3150-AC12

Safety Requirements for Industrial Radiographic Equipment

Correction

In rule document 90-464 beginning on page 843 in the issue of Wednesday, January 10, 1990, make the following corrections:

§ 34.20 [Corrected]

1. On page 852, in the third column, in § 34.20(d), in the fourth line, "January 10, 1991" should read "January 10, 1992".

2. On the same page, in the same column, in § 34.20(e), in the third line, "January 10, 1995" should read "January 10, 1996".

§ 34.21 [Corrected]

3. On page 853, in the first column, in § 34.21(b), in the third and fourth lines, "January 10, 1991" and "January 10, 1995" should read "January 10, 1992" and "January 10, 1996", respectively.

BILLING CODE 1505-01-D

Tested Federal Register

Tuesday
January 23, 1990

Part II

Federal Emergency Management Agency

44 CFR Part 206

Robert T. Stafford Disaster Relief and
Emergency Assistance Act;
Implementation, etc.; Final Rules

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067-AB37

Disaster Assistance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: President Reagan signed the Disaster Relief and Emergency Assistance Amendments of 1988 (Pub. L. 100-707) on November 23, 1988. This law amended the Disaster Relief Act of 1974, Pub. L. 93-228, and retitled it the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). As a result, FEMA added a new part 206 to 44 CFR to implement the Stafford Act. Subparts A, B, and C of the final regulations, which are being published today, govern major disasters or emergencies declared by the President on or after November 23, 1988. Additional subparts D, E, F, G, H, I, J, K, L, M, and N are being published separately. Existing regulations at 44 CFR part 205 will remain in effect to govern those major disasters and emergencies declared prior to enactment of Public Law 100-707.

EFFECTIVE DATE: This final rule will be effective on February 23, 1990.

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, or contact the program officer for the particular subpart in question (202) 648-3615.

SUPPLEMENTARY INFORMATION: The Stafford Act made substantive changes to the Disaster Relief Act of 1974 and provided additional authorities. Regulations to implement the Act were developed using existing disaster regulations at 44 CFR part 205 as a guide. Sections which did not change as a result of the Stafford Act were repeated verbatim; changes were made to the appropriate sections which were amended by the Stafford Act; and additional sections were added to implement the new authorities of the Act. On May 22, 1989, FEMA published in the Federal Register at 54 FR 22162 an Interim Rule, and invited comments for 60 days ending on July 21, 1989. Comments were received from 4 sources representing local governments.

The following information is given to identify sections where major changes were made because of the legislative amendments, and also to indicate

comments and suggestions received concerning the interim regulations, and actions taken:

General Information (Subpart A)

Sections of the Stafford Act which apply to overall disaster assistance are codified in this subpart.

1. Definitions of Major Disaster and Emergency—Section 206.2

The definition of a major disaster has been amended to limit the qualifying events to natural catastrophes, except for fire, flood, or explosion, which may be declared for any cause. In order to warrant a Presidential declaration of a major disaster, the determination must be made that damages are of sufficient severity and magnitude to warrant Federal assistance to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused by the disaster event.

The definition of an emergency was amended to include any occasion or instance for which Federal assistance is needed to supplement State and local efforts and capabilities to save lives, protect property, public health and safety, or to lessen or avert the threat of a catastrophe.

The idea of restricting the recovery provisions and programs to cover primarily natural catastrophes under a major disaster is not new. Legislation was first introduced in 1982 to change the definitions of "major disasters" and "emergency" to establish separate statutory authorities for dealing with two distinct types of situations: (1) Programs of response and recovery following "major disasters", primarily of "natural" origin, and (2) "emergency" programs of short-term, immediate response to provide needed life-saving, public health, safety and property-protecting measures in a broad range of incidents.

In S. Rpt. No. 97-459 dated May 28, 1982, accompanying S. 2250, 97th Cong. 2d Sess., the Committee on Environment and Public Works stated:

The authorities of title V permit the Government to provide needed life-saving, public health, safety and property-protecting measures in a broad range of incidents. The Administration could then, in a more deliberate manner, determine whether to provide continuing assistance and, if so, identify the proper authorities under which to provide it. For unusual types of civil emergencies for which adequate response authorities do not exist, the Administration, and the Congress, as a result of enactment of the new title V, would have more time to design and enact legislation specifically tailored to the problem instead of relying

upon the Disaster Relief Act of 1974 which was written to respond to a specific class of natural catastrophes for which the Act was tailored.

Although virtually identical legislation was proposed in several bills during the 1980's, the provisions did not become law until passage of the Disaster Relief and Emergency Assistance Amendments of 1988, Pub. L. 100-707. Nevertheless, the legislative history leading to the enactment of Public Law 100-707 indicates a clear Congressional intent to authorize a much more limited range of Federal assistance in response to "emergencies" than in response to "major disasters".

2. Local Government Review of State Emergency Plans—Section 206.4

A comment was made that, prior to final adoption, States should be required to circulate their emergency plans for comment by all local governments, because local governments will be significantly affected by and must be cognizant of the terms of those plans. The purpose of this section is to insure that all requirements of the Stafford Act are included in the State plan. While FEMA supports the concept of coordination between the State and local governments, we cannot dictate specific levels of participation. We have, however, amended the section to strongly encourage a State to solicit participation at the local level.

3. Assistance by other Federal Agencies—Section 206.5

In regard to subparagraph (e) containing instructions to Federal agencies performing disaster work directed by FEMA, one group of commenters took exception to the phrase "other instructions as the Associate Director or Regional Director may issue", stating that the ability to randomly issue "other instructions" apart from the adopted Rules and Regulations will undermine the consistent and fair implementation of Public Law 100-707. Any time FEMA directs a Federal agency to perform work under Public Law 93-288, as amended by Public Law 100-707, certain administrative instructions and parameters for accomplishing the work must be included. Because those items are included in § 206.7, Implementation of assistance from other Federal agencies, this comment has been accepted and the phrase deleted.

Another comment indicated that a provision should be included for local governments to make requests directly to FEMA to direct other Federal agencies to provide assistance. Section

206.5 sets forth the kinds of assistance that may be provided under a major disaster or emergency, not the channel for identifying or requesting such assistance. In keeping with the intent of the law that assistance must be supplemental to both State and local efforts, all requests for assistance under the Stafford Act must be channeled through the State.

4. Nondiscrimination in Disaster Assistance—Section 206.11

It was suggested that the paragraph be amended to prohibit discrimination on the basis of political affiliation. The contributor fears that subrecipients may be denied assistance by higher organizational levels, of a different political persuasion, through which the assistance must pass. The language of the Stafford Act does not allow the inclusion of additional causes. In practice, however, FEMA would expect all assistance to be rendered in a fair, impartial, and non-partisan manner.

5. Recovery of Assistance—Section 206.15

Section 317 of the Stafford Act provides a new authority, not included in previous disaster legislation, for recovery of monies expended in providing Federal assistance when it is determined that any person intentionally caused the condition which resulted in a major disaster or emergency declaration.

6. Audits and Investigations—Section 206.16

Section 318 of the Act is a new authority which permits FEMA to (a) conduct audits and investigations necessary to assure compliance with the Act, (b) examine the books and records of any person related to activity funded under the Act, and (c) require audits by State and local governments in connection with assistance under the Act when necessary to assure compliance with the Act or related activities. Although the provisions of section 318(c) would allow FEMA to supplant the requirements of the Single Audit Act, and require audits by State and local governments, FEMA has decided to comply with the requirements of the Single Audit Act and not to implement those portions of this subsection of the Stafford Act which are inconsistent with the mandates of the Single Audit Act.

7. Emergency Mass Care—Section 206.17

Commenters felt this section should be deleted in its entirety because they feel it restricts the rights of States and

local governments to provide the full range of essential assistance authorized in other sections of the Act. Since the subject is covered in the appropriate FEMA handbooks, it is being deleted from subpart A of these regulations.

8. Payments to States—Section 206.18

Commenters objected to the use of the term "final claims" stating that it was inconsistent with regulations published by FEMA in § 206.203 and § 206.205 of the Public Assistance regulations in subpart G. Payments to States can be made for both Individual Assistance and Public Assistance programs, with differences attributable to each program process. Section 206.18 has been deleted in its entirety and payments to States will be included in the appropriate sections of the program regulations.

The Declaration Process (Subpart B)

This subpart outlines the process by which a major disaster or emergency may be declared, including additional actions which may result after a declaration.

1. Preliminary Damage Assessment—Section 206.33

As part of a continuing effort to streamline the disaster declaration process, FEMA is encouraging one combined damage assessment by State and Federal officials, prior to a Governor's request. It is believed that this provides a more efficient means of determining whether or not a situation warrants supplemental assistance, by providing both the Governor and FEMA with the same information on which to base a decision.

All commenters wanted to mandate local government participation on PDA terms. FEMA has always been an advocate of local participation on damage assessment teams; however, experience has shown that this is not always possible. If a local representative is required by regulation, and none is available, it could prevent a given area from being surveyed, thus impeding the declaration process. Revision has been made in the language of § 206.33(b) to strongly encourage such participation.

2. Request for Utilization of DOD Resources—Section 206.34

A new authority under the Stafford Act permits emergency assistance to be provided by Department of Defense for 10 days during the immediate aftermath of an incident which may ultimately qualify for a major disaster or emergency declaration. The assistance must be requested by the Governor to the FEMA Associate Director. If

justified, FEMA will direct the DOD through mission assignment to provide personnel and equipment to accomplish the task. The 75 percent Federal share of the cost of such assistance will be paid from funds appropriated for disaster relief under the Stafford Act. The remaining 25 percent will be paid by the State and local governments. This assistance will not supplant assistance provided by DOD or other Federal agencies under separate authorities.

Before discussing the comments, it should be reiterated that this section of the Act authorizes pre-declaration activities by Department of Defense personnel of a limited emergency nature and does not in any way affect assistance available by any arm of DOD after a disaster declaration. Prior to the enactment of Public Law 100-707, no assistance, except Fire Suppression, could be made available under Public Law 93-288 until a declaration was made by the President. The Stafford Act now makes an exception by allowing emergency work essential to the preservation of life and property, caused by an incident that may ultimately qualify for a major disaster or emergency.

Four comments were submitted in reference to this section. One objected to the use of the term "imminent" threats in subparagraph (a), stating that the law allows any emergency work which is essential for the preservation of life and property. Congressman Stangeland, one of the sponsors of H.R. 2707, 100th Cong., 2d Session, and a member of the House Committee for Public Works and Transportation, speaking before the House on October 21, 1988, stated the intent of this section of the law, as follows:

Another significant improvement in the bill is the establishment of a new authority for the President to involve the services of the Department of Defense in responding to crisis situations. This new authority, proposed by Congressman Trent Lott of Mississippi, would be available during the immediate aftermath of a natural catastrophe.

FEMA believes that the intent of Congress was to provide immediate action by DOD when the impact was so severe that it could not be dealt with effectively by the State or local governments and the threat was so great that response could not be delayed until the declaration process could be completed. In response to the comment, however, FEMA has deleted the word.

A second comment concerned the 48-hour time limit for submitting requests prescribed in subparagraph (b). It was cited as too restrictive because the need might not be apparent within that time

period. As noted by Mr. Stangeland, the section applies to crisis situations, and in most cases the need is readily apparent. FEMA has amended subparagraph (b) to include a waiver provision to allow for unusual circumstances where the provisions of this section of the Act would be required.

One individual felt that local governments should be permitted to make a request to FEMA for DOD assistance, and that either a State or local government should be permitted to request assistance by a Federal agency other than DOD. The Stafford Act authorizes pre-declaration assistance by DOD only; and it clearly states that a request for such assistance must come from the Governor of the affected State. Local government officials who have an identified need for such assistance should make this known to State officials through the proper channels.

The last comment concerned the prohibition, in subparagraph (e), on work that falls within the statutory authorities of DOD or another Federal agency. Federal disaster assistance under Public Law 93-288, as amended, is not considered necessary when the need for assistance can be addressed by other Federal agencies under their statutory authorities. Consequently, the limits addressed in subparagraph (e) appropriately reflect the intent of Congress. Additional material has been added, however, to indicate the conditions under which DOD assistance might be approved in conjunction with the involvement of other Federal agencies.

3. Requests for Emergency Declarations—Section 206.35

One group feels that time constraints given in subparagraph (a) for submitting emergency requests should be eliminated. They point out that assistance may not be needed at the outset of a situation, but as a result of a deteriorating condition.

FEMA believes it is consistent with the definition of emergency and the intent of the Act to prescribe the time limits contained in the interim regulations. The regulations have been amended, however, to provide some leeway for unexpected circumstances.

One person suggested that a provision should be included in subparagraph (a) to allow local governments to request an emergency declaration, if a State refuses to do so within 48 hours after being notified by the local government of its need. The Act allows only for a request from the Governor of an affected State. Since Federal response is supplemental to the combined efforts of a State and its

local governments, an incident might be beyond a local government's capability but not beyond the State's response. In such a case, an emergency declaration would not be warranted.

Section 501(b) of the Act does provide for an emergency declaration without a request from the Governor, but only for those situations for which the Federal government exercises exclusive or preeminent responsibility and authority for response. In the event of such an incident, a local government may make the situation known to the appropriate FEMA Regional Director, who, after investigating the circumstances, may initiate a recommendation, if warranted. The regulation has been changed to make this clear.

The commenters want the certification by the Governor of the non-Federal share of costs eliminated from the requirements for an emergency request listed in subparagraph (c). FEMA agrees that the certification is not mandated by Title V of the Act, and has eliminated the requirement at (c)(5) of the interim regulations. Title V does, however, include a provision for cost sharing by State and local governments. FEMA will review each emergency situation and, where appropriate, cost sharing percentages will be included in the declaration letter and in the FEMA-State Agreement for the emergency declaration. It should be noted that in most situations, FEMA expects to provide 75 percent of eligible costs. FEMA feels this is in accordance with Congressional intent since an earlier provision for a 100 percent Federal contribution in emergency declarations was changed in the final version of the bill. In a modified emergency declaration where the situation is a unique Federal responsibility, the Federal share may be more than 75 percent. It is anticipated that such a declaration would be extremely rare. Such a declaration would be a deviation from normal experience and would have to be evaluated on a case-by-case basis.

4. Requests for Major Disaster Declarations—Section 206.36

The Stafford Act establishes statutory provisions for cost sharing by State and local governments. The procedures for the Governor's request have been amended to include a commitment that the State and local governments will assume the non-Federal share of costs required under the Act.

Commenters want to eliminate the requirement in subparagraph (c)(3) that the Governor must state specifically those activities for which no Federal funding will be requested. This was contained in prior regulations before

there was a statutory provision for cost sharing. FEMA agrees with the suggestion, and the language has been eliminated.

Commenters objected to the requirement in subparagraph (c)(5) that additional commitments will be required from the Governor for those disasters which do not involve programs with cost sharing provisions. FEMA has agreed to eliminate the requirement since the specific language of the law only addresses a commitment to cost share. The Governor's certification of compliance with cost-sharing requirements will satisfy the need for a State and local commitment, including the requirement that the State's commitment must be a significant proportion of the combined State and local contribution.

5. Processing Requests for Declaration of a Major Disaster or Emergency—Section 206.37

Section 320 of the Act stipulates that an arithmetic formula or sliding scale may not be used as the sole basis for denying assistance. FEMA has included a list of factors in § 206.37 which will be used to evaluate all requests for a declaration of major disaster or emergency.

One commenter took exception to the last sentence of subparagraph (c)(1) which stated that mathematic formulas may be considered as indicators only and not the sole basis for determining if assistance will be provided. The commenter suggests that this be eliminated. FEMA listed many factors that will be used to evaluate a request. The sentence on mathematic formulas was included to acknowledge the Congressional prohibition on using mathematic formulas as a single factor for a determination. In response to the comment, FEMA has eliminated the sentence from the regulation.

One group feels that FEMA has not expressed the intent of Congress in subparagraph (d), relating to modified Federal emergencies, by stating that an emergency will not be recommended where the authority to respond or coordinate is within the jurisdiction of one or more Federal agencies without a Presidential declaration. Again quoting Congressman Stangeland (Congressional Record—House, October 21, 1988):

However, we do not intend for emergency declarations to be available in responding to public health problems such as disease epidemics or environmental or nuclear catastrophes for which Federal assistance is already available. Nor do we intend to interfere with existing Federal emergency

authorities or the Comprehensive Crime Control Act's law enforcement emergency assistance provisions.

FEMA feels that the Congressional intent is clear. However, where there are significant unmet needs of sufficient severity and magnitude, not addressed by other assistance, which could appropriately be addressed under the Stafford Act, the involvement of other Federal agencies would not preclude a declaration of an emergency under the Act. This language has been incorporated into the regulation.

6. Presidential Determinations—Section 206.38

It is FEMA's responsibility to gather information pertaining to assistance requested by a Governor, and provide a recommendation to the President. The ultimate decision whether to activate the Act's authorities is the President's. In response to a Governor's request for a major disaster declaration, the President may declare either a major disaster or an emergency, or deny the Governor's request. The Governor's request for an emergency, however, may result only in a declaration of an emergency or denial of the request.

7. Designation of Affected Areas and Eligible Assistance—Section 206.40

Assistance provided under a major disaster declaration may include a complete range of emergency and permanent assistance or may be limited to certain types of assistance. Assistance provided under an emergency declaration is limited only to emergency assistance necessary to save lives and protect property, public health and safety, or to lessen or avert the threat of a catastrophe.

One group of commenters thought that only the President can determine the types of assistance to be provided under a declaration and designate which areas will be included, and had the impression from the interim rule that the Associate Director could deny areas or types of assistance after they had been announced in the declaration letter. This is not FEMA's intent. These authorities have been delegated to the Director of FEMA by Executive Order 12673, dated March 23, 1989, and further redelegated to the Associate Director, State and Local Programs and Support, who is responsible for disaster assistance programs under the Act. For clarity, the announcement of types of assistance initially authorized by FEMA is included in the declaration letter. The initial designation of areas is published with the declaration announcement in the *Federal Register*. Other areas or assistance which may be added later by

the Associate Director are published in subsequent *Federal Register* Notices. The wording of § 206.40(a) and (b) has been amended to clarify the process. Relative to this, § 206.42(b), pertaining to the responsibilities of the State Coordinating Officer, has been amended to note that it is the responsibility of the State to make timely notifications to local governments of the initial, and any subsequent areas designated for assistance, as well as the types of assistance authorized.

Another comment suggested that the 30-day time limit for the State to request additional assistance is not sufficient. FEMA has always started the 30-day clock on the date that the incident period closes, not on the date that it begins. In most instances, this has sufficiently extended the time to allow all affected localities to be included. If the Governor fails to submit a timely request after an incident, or there are other factors that delay the declaration, insufficient time could result. FEMA has changed the language in subparagraph (d) to allow 30 days from the termination date of the incident period, or 30 days from the date of declaration, whichever is later, along with a provision for extension where necessary.

8. Advance of Non-Federal Share—Section 206.45

Under certain limited conditions, FEMA may lend or advance a grantee the non-Federal share of assistance. FEMA interprets the "lending" and "advancing" authorities at section 319 of the Stafford Act to be identical. Therefore, FEMA considers all advances of the non-Federal share of disaster assistance to be tantamount to loans. The terms and conditions for loans and loan repayment are given in § 206.45. There is no forgiveness feature authorized under the Act; therefore, all such loans must be repaid. In compliance with the Common Rule as referenced in 44 CFR part 13, FEMA considers the "grantee" to be the State. Therefore, all loans will be to the State as the grantee. It will be the responsibility of the State to distribute and administer loans to subgrantees.

FEMA will evaluate each loan request on its own merits, considering, as an example, disaster-related expenditures incurred by the grantee over the preceding 12 months, or the impact of a catastrophic event on the budgets of State and local governments and how it affects their ability to provide continuing services to their constituents.

9. Appeals—Section 206.46

One individual feels that local governments should be allowed to appeal (1) the denial of an emergency or disaster declaration, (2) the denial of types of assistance or areas, and (3) the denial of an advance of a non-Federal share. The law recognizes the Governor as the only person who can request disaster assistance for an affected State. In the event of a declaration, the contract for disaster assistance is established between the State and FEMA. Local governments, as political jurisdictions of the State, must present their petitions to the State.

Emergency Assistance (Subpart C)

Subpart C contains a description of the assistance available after an emergency declaration and when that assistance may be authorized. The declaration process for emergencies is included in subpart B.

1. Available Assistance—Section 206.62

Title V of the Stafford Act redefines the circumstances for which an emergency may be declared and the assistance which may be provided under an emergency declaration. Assistance under an emergency declaration is limited to essential work to save and protect lives, property, health, and safety, or to lessen or avert the threat of a catastrophe.

Title V of the Act specifically identifies the kind of assistance that may be provided under an emergency declaration. The only specific Stafford Act major disaster authorities (i.e., authorized by title IV of the Act) that Congress also made available in title V are debris removal under section 407 of the Act, and temporary housing assistance under section 408 of the Act.

Commenters indicated that "coordination" should have been included in the list of available assistance. It is covered by § 206.64, Coordination of assistance; however, § 206.62 has been amended to reflect the exact language of the law.

2. Provision of Assistance—Section 206.63

It was suggested that the prohibition on assistance that has the effect of long-term recovery or permanent restoration is not indicated in title V of the Act. Congressman Tom Ridge, one of the principal architects of the legislation, speaking before the House on October 21, 1988, indicated:

A major provision in the bill encourages the use of an emergency declaration when such assistance is warranted. The assistance will be immediate and short term. Federal

expenditures in the emergency declaration title will be capped.

If longer-term solutions were needed, the initial assistance under an emergency declaration would give the Administration more time to design and enact legislation specifically tailored to the problem instead of relying upon the Act. The language of § 206.63(a) has been revised to incorporate Congressman Ridge's phrase.

Also in question was the propriety of prioritizing the order in which assistance authorized under Title V would be provided, as stipulated in the interim regulations. A prior version of the bill specified the progression of assistance; however, since it was eliminated in the final bill, FEMA has eliminated subparagraph (b) which contained the restrictions.

3. Limitation on Expenditures—Section 206.66

There is a funding cap of \$5,000,000 per declaration. If it becomes necessary to exceed this limitation for any one incident, a report must be made to Congress and, if necessary, additional legislation would be proposed.

One contributor stated that the Act itself does not contain restrictive guidelines for measuring the time, or geographical, limit of a single emergency in applying the \$5 million trigger, and suggested amending the rules to allow emergency declarations by locality in order to prevent inequitable distribution of the \$5 million among local governments. The law looks at an "incident" within "State" as a whole; therefore, FEMA feels it is not appropriate to declare an emergency for each local entity in order to get around the \$5 million limit. In events of such magnitude that more than \$5 million is needed, the law provides an explicit mechanism. Where the conditions are met, FEMA will continue to provide assistance beyond the \$5 million limit while simultaneously reporting to Congress as specified in the Act.

Environmental Considerations

An environmental assessment has been prepared, leading to the determination that this rule will not have a significant impact on the environment and that an Environmental Impact Statement is not required. The assessment is available for review 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 these rules, FEMA has considered the President's Executive Order on Federalism issued on October 26, 1978 (E.O. 12612, 52 FR 41685). The purpose of the order is to assure the appropriate division of governmental responsibilities between the national government and the States. Among other provisions, this rule implements the requirement that agency rules be in accordance with the so-called common rule, adopted by FEMA at 44 CFR part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. These regulations conform FEMA assistance to the executive order; to describe this, a Federalism assessment has been prepared. It may be obtained or reviewed 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 subparts B and C of this rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*, and has assigned OMB Control Number 3067-0113.

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, and hazard mitigation.

Accordingly, FEMA is amending part 206, chapter I, subchapter D, of title 44 of the Code of Federal Regulations by adding subparts A, B, and C and revising the authority citation for the part to read as follows:

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

Subpart A—General

- Sec.
- 206.1 Purpose.
 - 206.2 Definitions.
 - 206.3 Policy.
 - 206.4 State emergency plans.
 - 206.5 Assistance by other Federal agencies.

- Sec.
- 206.6 Donation or loan of Federal equipment and supplies.
 - 206.7 Implementation of assistance from other Federal agencies.
 - 206.8 Reimbursement of other Federal agencies.
 - 206.9 Nonliability.
 - 206.10 Use of local firms and individuals.
 - 206.11 Nondiscrimination in disaster assistance.
 - 206.12 Use and coordination of relief organizations.
 - 206.13 Standards and reviews.
 - 206.14 Criminal and civil penalties.
 - 206.15 Recovery of assistance.
 - 206.16 Audits and investigations.
 - 206.17 Effective date.
 - 206.18-206.30 [Reserved].

Subpart B—The Declaration Process

- 206.31 Purpose.
- 206.32 Definitions.
- 206.33 Preliminary damage assessment.
- 206.34 Request for utilization of Department of Defense (DOD) resources.
- 206.35 Requests for emergency declarations.
- 206.36 Requests for major disaster declarations.
- 206.37 Processing requests for declarations of a major disaster or emergency.
- 206.38 Presidential determination.
- 206.39 Notification.
- 206.40 Designation of affected areas and eligible assistance.
- 206.41 Appointment of disaster officials.
- 206.42 Responsibilities of coordinating officers.
- 206.43 Emergency support teams.
- 206.44 FEMA-State Agreements.
- 206.45 Loans of non-Federal share.
- 206.46 Appeals.
- 206.47-206.60 [Reserved]

Subpart C—Emergency Assistance

- 206.61 Purpose.
- 206.62 Available assistance.
- 206.63 Provision of assistance.
- 206.64 Coordination of assistance.
- 206.65 Cost sharing.
- 206.66 Limitation on expenditures.
- 206.67 Requirement when limitation is exceeded.
- 206.68-206.100 [Reserved]

* * * * *

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93-288, as amended, 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978 (3 CFR, 1979 p. 329); Executive Orders 12148 (3 CFR, 1980 p. 412) and 12673 (54 FR 12571, March 28, 1989).

Subpart A—General

§ 206.1 Purpose.

The purpose of this subpart is to prescribe the policies and procedures to be followed in implementing those sections of Public Law 93-288, as amended, delegated to the Director, Federal Emergency Management Agency (FEMA).

§ 206.2 Definitions.

(a) *General.* The following definitions have general applicability throughout this part:

(1) *The Stafford Act:* The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended.

(2) *Applicant:* Individuals, families, States and local governments, or private nonprofit organizations who apply for assistance as a result of a declaration of a major disaster or emergency.

(3) *Associate Director:* The Associate Director for State and Local Programs and Support, FEMA, or his/her designated representative.

(4) *Concurrent, multiple major disasters:* In considering a request for an advance, the term concurrent multiple major disasters means major disasters which occur within a 12-month period immediately preceding the major disaster for which an advance of the non-Federal share is requested pursuant to section 319 of the Stafford Act.

(5) *Contractor:* Any individual, partnership, corporation, agency, or other entity (other than an organization engaged in the business of insurance) performing work by contract for the Federal Government or a State or local agency.

(6) *Designated area:* Any emergency or major disaster-affected portion of a State which has been determined eligible for Federal assistance.

(7) *Director.* The Director, FEMA.

(8) *Disaster Recovery Manager (DRM):* The person appointed to exercise the authority of a Regional Director for a particular emergency or major disaster.

(9) *Emergency:* Any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

(10) *Federal agency:* Any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, but shall not include the American National Red Cross.

(11) *Federal Coordinating Officer (FCO):* The person appointed by the Director, or in his absence, the Deputy Director, or alternatively the Associate Director, to coordinate Federal assistance in an emergency or a major disaster.

(12) *Governor:* The chief executive of any State or the Acting Governor.

(13) *Governor's Authorized Representative (GAR):* The person empowered by the Governor to execute, on behalf of the State, all necessary documents for disaster assistance.

(14) *Hazard mitigation:* Any cost effective measure which will reduce the potential for damage to a facility from a disaster event.

(15) *Individual assistance:* Supplementary Federal assistance provided under the Stafford Act to individuals and families adversely affected by a major disaster or an emergency. Such assistance may be provided directly by the Federal Government or through State or local governments or disaster relief organizations. For further information, see subparts D, E, and F of these regulations.

(16) *Local government:* Any county, city, village, town, district, or other political subdivision of any State; any Indian tribe or authorized tribal organization; any Alaska Native village or organization; and includes any rural community, unincorporated town or village, or other public entity for which an application for assistance is made by a State or political subdivision thereof.

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

(18) *Mission assignment:* Work order issued to a Federal agency by the Regional Director, Associate Director, or Director, directing completion by that agency of a specified task and citing funding, other managerial controls, and guidance.

(19) *Private nonprofit organization:* Any nongovernmental agency or entity that currently has:

(i) An effective ruling letter from the U.S. Internal Revenue Service granting tax exemption under section 501 (c), (d), or (e) of the Internal Revenue Code of 1954; or

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

(20) *Public assistance:* Supplementary Federal assistance provided under the

Stafford Act to State and local governments or certain private, nonprofit organizations other than assistance for the direct benefit of individuals and families. For further information, see subparts G and H of these regulations. Community Disaster Loans under section 417 of the Stafford Act and Fire Suppression Grants under section 420 of the Stafford Act are also included in Public Assistance. See subparts K and L of these regulations.

(21) *Regional Director:* A director of a regional office of FEMA, or his/her designated representative. As used in these regulations, Regional Director also means the Disaster Recovery Manager who has been appointed to exercise the authority of the Regional Director for a particular emergency or major disaster.

(22) *State:* Any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, or the Republic of the Marshall Islands.

(23) *State Coordinating Officer (SCO):* The person appointed by the Governor to act in cooperation with the Federal Coordinating Officer to administer disaster recovery efforts.

(24) *State emergency plan:* As used in section 401 or section 501 of the Stafford Act means that State plan which is designated specifically for State-level response to emergencies or major disasters and which sets forth actions to be taken by the State and local governments, including those for implementing Federal disaster assistance.

(25) *Temporary housing:* Temporary accommodations provided by the Federal Government to individuals or families whose homes are made unlivable by an emergency or a major disaster.

(26) *United States:* The 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(27) *Voluntary organization:* Any chartered or otherwise duly recognized tax-exempt local, State, or national organization or group which has provided or may provide needed services to the States, local governments, or individuals in coping with an emergency or a major disaster.

(b) *Additional definitions.* Definitions which apply to individual subparts are found in those subparts.

§ 206.3 Policy.

It is the policy of FEMA to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage that result from major disasters and emergencies by:

- (a) Providing Federal assistance programs for public and private losses and needs sustained in disasters;
- (b) Encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the States and local governments;
- (c) Achieving greater coordination and responsiveness of disaster preparedness and relief programs;
- (d) Encouraging individuals, States, and local governments to obtain insurance coverage and thereby reduce their dependence on governmental assistance; and
- (e) Encouraging hazard mitigation measures, such as development of land-use and construction regulations, floodplain management, protection of wetlands, and environmental planning, to reduce losses from disasters.

§ 206.4 State emergency plans.

The State shall set forth in its emergency plan all responsibilities and actions specified in the Stafford Act and those regulations that are required of the State and its political subdivisions to prepare for and respond to major disasters and emergencies and to facilitate the delivery of Federal disaster assistance. Although not mandatory, prior to the adoption of the final plan, the State is encouraged to circulate the plan to local governments for review and comment.

§ 206.5 Assistance by other Federal agencies.

(a) In any declared major disaster, the Associate Director or the Regional Director may direct any Federal agency to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) to support State and local assistance efforts.

(b) In any declared emergency, the Associate Director or the Regional Director may direct any Federal agency to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) to support emergency efforts by State and local governments to save lives; protect

property, public health and safety; and lessen or avert the threat of a catastrophe.

(c) In any declared major disaster or emergency, the Associate Director or the Regional Director may direct any Federal agency to provide emergency assistance necessary to save lives and to protect property, public health, and safety by:

- (1) Utilizing, lending, or donating to State and local governments Federal equipment, supplies, facilities, personnel, and other resources, other than the extension of credit, for use or distribution by such governments in accordance with the purposes of this Act;
 - (2) Distributing medicine, food, and other consumable supplies; or
 - (3) Performing work or services to provide emergency assistance authorized in the Stafford Act.
- (d) Disaster assistance by other Federal agencies is subject to the coordination of the FCO. Federal agencies shall provide any reports or information about disaster assistance rendered under the provisions of these regulations or authorities independent of the Stafford Act, that the FCO or Regional Director considers necessary and requests from the agencies.

(e) Assistance furnished by any Federal agency under paragraphs (a), (b), or (c) of this section is subject to the criteria provided by the Associate Director under these regulations.

(f) Assistance under paragraphs (a), (b), or (c) of this section, when directed by the Associate Director or Regional Director, does not apply to nor shall it affect the authority of any Federal agency to provide disaster assistance independent of the Stafford Act.

(g) In carrying out the purposes of the Stafford Act, any Federal agency may accept and utilize, with the consent of the State or local government, the services, personnel, materials, and facilities of any State or local government, agency, office, or employee. Such utilization shall not make such services, materials, or facilities Federal in nature nor make the State or local government or agency an arm or agent of the Federal Government.

(h) Any Federal agency charged with the administration of a Federal assistance program may, if so requested by the applicant State or local authorities, modify or waive, for a major disaster, such administrative conditions for assistance as would otherwise prevent the giving of assistance under such programs if the inability to meet such conditions is a result of the major disaster.

§ 206.6 Donation or loan of Federal equipment and supplies.

(a) In any major disaster or emergency, the Associate Director or the Regional Director may direct Federal agencies to donate or loan their equipment and supplies to State and local governments for use and distribution by them for the purposes of the Stafford Act.

(b) A donation or loan may include equipment and supplies determined under applicable laws and regulations to be surplus to the needs and responsibilities of the Federal Government. The State shall certify that the surplus property is usable and necessary for current disaster purposes in order to receive a donation or loan. Such a donation or loan is made in accordance with procedures prescribed by the General Services Administration.

§ 206.7 Implementation of assistance from other Federal agencies.

All directives, known as mission assignments, to other Federal agencies shall be in writing, or shall be confirmed in writing if made orally, and shall identify the specific task to be performed and the requirements or criteria to be followed. If the Federal agency is to be reimbursed, the letter will also contain a dollar amount which is not to be exceeded in accomplishing the task without prior approval of the issuing official.

§ 206.8 Reimbursement of other Federal agencies.

(a) Assistance furnished under § 206.5(a) or (b) of this subpart may be provided with or without compensation as considered appropriate by the Associate Director or Regional Director.

(b) The Associate Director or the Regional Director may not approve reimbursement of costs incurred while performing work pursuant to disaster assistance authorities independent of the Stafford Act.

(c) *Expenditures eligible for reimbursement.* The Associate Director or the Regional Director may approve reimbursement of the following costs which are incurred in providing requested assistance.

- (1) Overtime, travel, and per diem of permanent Federal agency personnel.
- (2) Wages, travel, and per diem of temporary Federal agency personnel assigned solely to performance of services directed by the Associate Director or the Regional Director in the major disaster or emergency area designated by the Regional Director.
- (3) Travel and per diem of Federal military personnel assigned solely to the

performance of services directed by the Associate Director or the Regional Director in the major disaster or emergency area designated by the Regional Director.

(4) Cost of work, services, and materials procured under contract for the purposes of providing assistance directed by the Associate Director or the Regional Director.

(5) Cost of materials, equipment, and supplies (including transportation, repair, and maintenance) from regular stocks used in providing directed assistance.

(6) All costs incurred which are paid from trust, revolving, or other funds, and whose reimbursement is required by law.

(7) Other costs submitted by an agency with written justification or otherwise agreed to in writing by the Associate Director or the Regional Director and the agency.

(d) *Procedures for reimbursement.* Federal agencies performing work under a mission assignment will submit requests for reimbursement, as follows:

(1) Federal agencies may submit requests for reimbursement of amounts greater than \$1,000 at any time. Requests for lesser amounts may be submitted only quarterly. An agency shall submit a final accounting of expenditures after completion of the agency's work under each directive for assistance. The time limit and method for submission of reimbursement requests will be stipulated in the mission assignment letter.

(2) An agency shall document its request for reimbursement with specific details on personnel services, travel, and all other expenses by object class as specified in OMB Circular A-12 and by any other subobject class used in the agency's accounting system. Where contracts constitute a significant portion of the billings, the agency shall provide a listing of individual contracts and their associated costs.

(3) Reimbursement requests shall cite the specific mission assignment under which the work was performed, and the major disaster or emergency identification number. Requests for reimbursement of costs incurred under more than one mission assignment may not be combined for billing purposes.

(4) Unless otherwise agreed, an agency shall direct all requests for reimbursement to the Regional Director of the region in which the costs were incurred.

(5) A Federal agency requesting reimbursement shall retain all financial records, supporting documents, statistical records, and other records pertinent to the provision of services or

use of resources by that agency. These materials shall be accessible to duly authorized representatives of FEMA and the U.S. Comptroller General, for the purpose of making audits, excerpts, and transcripts, for a period of 3 years starting from the date of submission of the final billing.

§ 206.9 Nonliability.

The Federal Government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of the Stafford Act.

§ 206.10 Use of local firms and individuals.

In the expenditure of Federal funds for debris removal, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities which may be carried out by contract or agreement with private organizations, firms, or individuals, preference shall be given, to the extent feasible and practicable, to those organizations, firms, and individuals residing or doing business primarily in the area affected by such major disaster or emergency. This shall not be considered to restrict the use of Department of Defense resources in the provision of major disaster assistance under the Stafford Act.

§ 206.11 Nondiscrimination in disaster assistance.

(a) Federal financial assistance to the States or their political subdivisions is conditioned on full compliance with 44 CFR part 7, Nondiscrimination in Federally-Assisted Programs.

(b) All personnel carrying out Federal major disaster or emergency assistance functions, including the distribution of supplies, the processing of the applications, and other relief and assistance activities, shall perform their work in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, or economic status.

(c) As a condition of participation in the distribution of assistance or supplies under the Stafford Act, or of receiving assistance under the Stafford Act, government bodies and other organizations shall provide a written assurance of their intent to comply with regulations relating to nondiscrimination.

(d) The agency shall make available to employees, applicants, participants, beneficiaries, and other interested parties such information regarding the provisions of this regulation and its

applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this regulation.

§ 206.12 Use and coordination of relief organizations.

(a) In providing relief and assistance under the Stafford Act, the FCO or Regional Director may utilize, with their consent, the personnel and facilities of the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other voluntary organizations in the distribution of medicine, food, supplies, or other items, and in the restoration, rehabilitation, or reconstruction of community services and essential facilities, whenever the FCO or Regional Director finds that such utilization is necessary.

(b) The Associate Director is authorized to enter into agreements with the American Red Cross, The Salvation Army, the Mennonite Disaster Service, and other voluntary organizations engaged in providing relief during and after a major disaster or emergency. Any agreement shall include provisions assuring that use of Federal facilities, supplies, and services will be in compliance with § 206.11, Nondiscrimination in Disaster Assistance, and § 206.191, Duplication of Benefits, of these regulations and such other regulations as the Associate Director may issue. The FCO may coordinate the disaster relief activities of the voluntary organizations which agree to operate under his/her direction.

(c) Nothing contained in this section shall be construed to limit or in any way affect the responsibilities of the American National Red Cross as stated in Public Law 58-4.

§ 206.13 Standards and reviews.

(a) The associate Director shall establish program standards and assess the efficiency and effectiveness of programs administered under the Stafford Act by conducting annual reviews of the activities of Federal agencies and State and local governments involved in major disaster or emergency response efforts.

(b) In carrying out this provision, the Associate Director or Regional Director may direct Federal agencies to submit reports relating to their disaster assistance activities. The Associate Director or the Regional Director may request similar reports from the States relating to these activities on the part of

State and local governments. Additionally, the Associate Director or Regional Director may conduct independent investigations, studies, and evaluations as necessary to complete the reviews.

§ 206.14 Criminal and civil penalties.

(a) *Misuse of funds.* Any person who knowingly misapplies the proceeds of a loan or other cash benefit obtained under this Act shall be fined an amount equal to one and one-half times the misapplied amount of the proceeds or cash benefit.

(b) *Civil enforcement.* Whenever it appears that any person has violated or is about to violate any provision of this Act, including any civil penalty imposed under this Act, the Attorney General may bring a civil action for such relief as may be appropriate. Such action may be brought in an appropriate United States district court.

(c) *Referral to Attorney General.* The Associate Director shall expeditiously refer to the Attorney General for appropriate action any evidence developed in the performance of functions under this Act that may warrant consideration for criminal prosecution.

(d) *Civil penalty.* Any individual who knowingly violates any order or regulation issued under this Act shall be subject to a civil penalty of not more than \$5,000 for each violation.

§ 206.15 Recovery of assistance.

(a) *Party liable.* Any person who intentionally causes a condition for which Federal assistance is provided under this Act or under any other Federal law as a result of a declaration of a major disaster or emergency under this Act shall be liable to the United States for the reasonable costs incurred by the United States in responding to such disaster or emergency to the extent that such costs are attributable to the intentional act or omission of such person which caused such condition. Such action shall be brought in an appropriate United States District Court.

(b) *Rendering of care.* A person shall not be liable under this section for costs incurred by the United States as a result of actions taken or omitted by such person in the course of rendering care or assistance in response to a major disaster or emergency.

§ 206.16 Audit and investigations.

(a) Subject to the provisions of chapter 75 of title 31, United States Code, and 44 CFR part 14, relating to requirements for single audits, the Associate Director or Regional Director shall conduct audits and investigations

as necessary to assure compliance with the Stafford Act, and in connection therewith may question such persons as may be necessary to carry out such audits and investigations.

(b) For purposes of audits and investigations under this section, FEMA or State auditors, the Governor's Authorized Representative, the Regional Director, the Associate Director, and the Comptroller General of the United States, or their duly authorized representatives, may inspect any books, documents, papers, and records of any person relating to any activity undertaken or funded under the Stafford Act.

§ 206.17 Effective date.

These regulations are effective for all major disasters or emergencies declared on or after November 23, 1988.

§§ 206.18-206.30 [Reserved]

Subpart B—The Declaration Process

§ 206.31 Purpose.

The purpose of this subpart is to describe the process leading to a Presidential declaration of a major disaster or an emergency and the actions triggered by such a declaration.

§ 206.32 Definitions.

All definitions in the Stafford Act and in § 206.2 apply. In addition, the following definitions apply:

(a) *Appeal:* A request for reconsideration of a determination on any action related to Federal assistance under the Stafford Act and these regulations. Specific procedures for appeals are contained in the relevant subparts of these regulations.

(b) *Commitment:* A certification by the Governor that the State and local governments will expend a reasonable amount of funds to alleviate the effects of the major disaster or emergency, for which no Federal reimbursement will be requested.

(c) *Disaster Application Center:* A center established in a centralized location within the disaster area for individuals, families, or businesses to apply for disaster aid.

(d) *FEMA-State Agreement:* A formal legal document stating the understandings, commitments, and binding conditions for assistance applicable as the result of the major disaster or emergency declared by the President.

(e) *Incident:* Any condition which meets the definition of major disaster or emergency as set forth in § 206.2 which causes damage or hardship that may result in a Presidential declaration of a major disaster or an emergency.

(f) *Incident period:* The time interval during which the disaster-causing incident occurs. No Federal assistance under the Act shall be approved unless the damage or hardship to be alleviated resulted from the disaster-causing incident which took place during the incident period or was in anticipation of that incident. The incident period will be established by FEMA in the FEMA-State Agreement and published in the Federal Register.

§ 206.33 Preliminary damage assessment.

The preliminary damage assessment (PDA) process is a mechanism used to determine the impact and magnitude of damage and the resulting unmet needs of individuals, businesses, the public sector, and the community as a whole. Information collected is used by the State as a basis for the Governor's request, and by FEMA to document the recommendation made to the President in response to the Governor's request. It is in the best interest of all parties to combine State and Federal personnel resources by performing a joint PDA prior to the initiation of a Governor's request, as follows.

(a) *Preassessment by the State.* When an incident occurs, or is imminent, which the State official responsible for disaster operations determines may be beyond the State and local government capabilities to respond, the State will request the Regional Director to perform a joint FEMA-State preliminary damage assessment. It is not anticipated that all occurrences will result in the requirement for assistance; therefore, the State will be expected to verify their initial information, in some manner, before requesting this support.

(b) *Damage assessment teams.* Damage assessment teams will be composed of at least one representative of the Federal Government and one representative of the State. A local government representative, familiar with the extent and location of damage in his/her community, should also be included, if possible. Other State and Federal agencies, and voluntary relief organizations may also be asked to participate, as needed. It is the State's responsibility to coordinate State and local participation in the PDA and to ensure that the participants receive timely notification concerning the schedule. A FEMA official will brief team members on damage criteria, the kind of information to be collected for the particular incident, and reporting requirements.

(c) *Review of findings.* At the close of the PDA, FEMA will consult with State

officials to discuss findings and reconcile any differences.

(d) *Exceptions.* The requirement for a joint PDA may be waived for those incidents of unusual severity and magnitude that do not require field damage assessments to determine the need for supplemental Federal assistance under the Act, or in such other instances determined by the Regional Director upon consultation with the State. It may be necessary, however, to conduct an assessment to determine unmet needs for managerial response purposes.

§ 206.34 Request for utilization of Department of Defense (DOD) resources.

(a) *General.* During the immediate aftermath of an incident which may ultimately qualify for a Presidential declaration of a major disaster or emergency, when threats to life and property are present which cannot be effectively dealt with by the State or local governments, the Associate Director may direct DOD to utilize DOD personnel and equipment for removal of debris and wreckage and temporary restoration of essential public facilities and services.

(b) *Request process.* The Governor of a State, or the Acting Governor in his/her absence, may request such DOD assistance. The Governor should submit the request to the Associate Director through the appropriate Regional Director to ensure prompt acknowledgment and processing. The request must be submitted within 48 hours of the occurrence of the incident. Requests made after that time may still be considered if information is submitted indicating why the request for assistance could not be made during the initial 48 hours. The request shall include:

- (1) Information describing the types and amount of DOD emergency assistance being requested;
- (2) Confirmation that the Governor has taken appropriate action under State law and directed the execution of the State emergency plan;
- (3) A finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and affected local governments and that Federal assistance is necessary for the preservation of life and property;
- (4) A certification by the Governor that the State and local government will reimburse FEMA for the non-Federal share of the cost of such work; and
- (5) An agreement:
 - (i) To provide all lands, easements and rights-of-way necessary to

accomplish the approved work without cost to the United States;

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

(iii) To assist DOD in all support and local jurisdictional matters.

(c) *Processing the request.* Upon receipt of the request, the Regional Director shall gather adequate information to support a recommendation and forward it to the Associate Director. If the Associate Director determines that such work is essential to save lives and protect property, he/she will issue a mission assignment to DOD authorizing direct Federal assistance to the extent deemed appropriate.

(d) *Implementation of assistance.* The performance of emergency work may not exceed a period of 10 days from the date of the mission assignment.

(e) *Limits.* Generally, no work shall be approved under this section which falls within the statutory authority of DOD or another Federal agency. However, where there are significant unmet needs of sufficient severity and magnitude, not addressed by other assistance, which could appropriately be addressed under this section of the Stafford Act, the involvement of other Federal agencies would not preclude the authorization of DOD assistance by the Associate Director.

(f) *Federal share.* The Federal share of assistance under this section shall be not less than 75 percent of the cost of eligible work.

(g) *Project management.* DOD shall ensure that the work is completed in accordance with the approved scope of work, costs, and time limitations in the mission assignment. DOD shall also keep the Regional Director and the State advised of work progress and other project developments. It is the responsibility of DOD to ensure compliance with applicable Federal, State and local legal requirements. A final report will be submitted to the Regional Director upon termination of all direct Federal assistance work. Final reports shall be signed by a representative of DOD and the State. Once the final eligible cost is determined, DOD will request reimbursement from FEMA and FEMA will submit a bill to the State for the non-Federal share of the mission assignment.

(h) *Reimbursement of DOD.* Reimbursement will be made in accordance with § 206.8 of these regulations.

§ 206.35 Requests for emergency declarations.

(a) When an incident occurs or threatens to occur in a State, which would not qualify under the definition of a major disaster, the Governor of a State, or the Acting Governor in his/her absence, may request that the President declare an emergency. The Governor should submit the request to the President through the appropriate Regional Director to ensure prompt acknowledgment and processing. The request must be submitted within 5 days after the need for assistance under title V becomes apparent, but no longer than 30 days after the occurrence of the incident, in order to be considered. The period may be extended by the Associate Director provided that a written request for such extension is made by the Governor, or Acting Governor, during the 30-day period immediately following the incident. The extension request must stipulate the reason for the delay.

(b) The basis for the Governor's request must be the finding that the situation:

- (1) Is of such severity and magnitude that effective response is beyond the capability of the State and the affected local government(s); and
- (2) Requires supplementary Federal emergency assistance to save lives and to protect property, public health and safety, or to lessen or avert the threat of a disaster.

(c) In addition to the above findings, the complete request shall include:

- (1) Confirmation that the Governor has taken appropriate action under State law and directed the execution of the State emergency plan;
- (2) Information describing the State and local efforts and resources which have been or will be used to alleviate the emergency;
- (3) Information describing other Federal agency efforts and resources which have been or will be used in responding to this incident; and
- (4) Identification of the type and extent of additional Federal aid required.

(d) *Modified declaration for Federal emergencies.* The requirement for a Governor's request under paragraph (a) of this section can be waived when an emergency exists for which the primary responsibility rests in the Federal government because the emergency involves a subject area for which, under the Constitution or laws of the United States, the Federal government exercises exclusive or preeminent responsibility and authority. Any party may bring the existence of such a

situation to the attention of the FEMA Regional Director. Any recommendation for a Presidential declaration of emergency in the absence of a Governor's request must be initiated by the Regional Director or transmitted through the Regional Director by another Federal agency. In determining that such an emergency exists, the Associate Director or Regional Director shall consult the Governor of the affected State, if practicable.

(e) *Other authorities.* It is not intended for an emergency declaration to preempt other Federal agency authorities and/or established plans and response mechanisms in place prior to the enactment of the Stafford Act.

§ 206.36 Requests for major disaster declarations.

(a) When a catastrophe occurs in a State, the Governor of a State, or the Acting Governor in his/her absence, may request a major disaster declaration. The Governor should submit the request to the President through the appropriate Regional Director to ensure prompt acknowledgment and processing. The request must be submitted within 30 days of the occurrence of the incident in order to be considered. The 30-day period may be extended by the Associate Director, provided that a written request for an extension is submitted by the Governor, or Acting Governor, during this 30-day period. The extension request will stipulate reasons for the delay.

(b) The basis for the request shall be a finding that:

(1) The situation is of such severity and magnitude that effective response is beyond the capabilities of the State and affected local governments; and

(2) Federal assistance under the Act is necessary to supplement the efforts and available resources of the State, local governments, disaster relief organizations, and compensation by insurance for disaster-related losses.

(c) In addition to the above findings, the complete request shall include:

(1) Confirmation that the Governor has taken appropriate action under State law and directed the execution of the State emergency plan;

(2) An estimate of the amount and severity of damages and losses stating the impact of the disaster on the public and private sector;

(3) Information describing the nature and amount of State and local resources which have been or will be committed to alleviate the results of the disaster;

(4) Preliminary estimates of the types and amount of supplementary Federal

disaster assistance needed under the Stafford Act; and

(5) Certification by the Governor that State and local government obligations and expenditures for the current disaster will comply with all applicable cost sharing requirements of the Stafford Act.

(d) For those catastrophes of unusual severity and magnitude when field damage assessments are not necessary to determine the requirement for supplemental Federal assistance, the Governor or Acting Governor may send an abbreviated written request through the Regional Director for a declaration of a major disaster. This may be transmitted in the most expeditious manner available. In the event the FEMA Regional Office is severely impacted by the catastrophe, the request may be addressed to the Director of FEMA. The request must indicate a finding in accordance with § 206.36(b), and must include as a minimum the information requested by § 206.36(c)(1), (c)(3), and (c)(5). Upon receipt of the request, FEMA shall expedite the processing of reports and recommendations to the President. Notification to the Governor of the Presidential declaration shall be in accordance with 44 CFR 206.39. The Associate Director shall assure that documentation of the declaration is later assembled to comply fully with these regulations.

§ 206.37 Processing requests for declarations of a major disaster or emergency.

(a) *Acknowledgment.* The Regional Director shall provide written acknowledgment of the Governor's request.

(b) *Regional summary.* Based on information obtained by FEMA/State preliminary damage assessments of the affected area(s) and consultations with appropriate State and Federal officials and other interested parties, the Regional Director shall promptly prepare a summary of the PDA findings. The data will be analyzed and submitted with a recommendation to the Associate Director. The Regional Analysis shall include a discussion of State and local resources and capabilities, and other assistance available to meet the major disaster or emergency-related needs.

(c) *FEMA recommendation.* Based on all available information, the Director shall formulate a recommendation which shall be forwarded to the President with the Governor's request.

(1) *Major disaster recommendation.* The recommendation will be based on a finding that the situation is or is not of

such severity and magnitude as to be beyond the capabilities of the State and its local governments. It will also contain a determination of whether or not supplemental Federal assistance under the Stafford Act is necessary and appropriate. In developing a recommendation, FEMA will consider such factors as the amount and type of damages; the impact of damages on affected individuals, the State, and local governments; the available resources of the State and local governments, and other disaster relief organizations; the extent and type of insurance in effect to cover losses; assistance available from other Federal programs and other sources; imminent threats to public health and safety; recent disaster history in the State; hazard mitigation measures taken by the State or local governments, especially implementation of measures required as a result of previous major disaster declarations; and other factors pertinent to a given incident.

(2) *Emergency recommendation.* The recommendation will be based on a report which will indicate whether or not Federal emergency assistance under section 502 of the Stafford Act is necessary to supplement State and local efforts to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe. Only after it has been determined that all other resources and authorities available to meet the crisis are inadequate, and that assistance provided in section 502 of the Stafford Act would be appropriate, will FEMA recommend an emergency declaration to the President.

(d) *Modified Federal emergency recommendation.* The recommendation will be based on a report which will indicate that an emergency does or does not exist for which assistance under section 502 of the Stafford Act would be appropriate. An emergency declaration will not be recommended in situations where the authority to respond or coordinate is within the jurisdiction of one or more Federal agencies without a Presidential declaration. However, where there are significant unmet needs of sufficient severity and magnitude, not addressed by other assistance, which could appropriately be addressed under the Stafford Act, the involvement of other Federal agencies would not preclude a declaration of an emergency under the Act.

§ 206.38 Presidential determination.

(a) The Governor's request for a major disaster declaration may result in either a Presidential declaration of a major

disaster or an emergency, or denial of the Governor's request.

(b) The Governor's request for an emergency declaration may result only in a Presidential declaration of an emergency, or denial of the Governor's request.

§ 206.39 Notification.

(a) The Governor will be promptly notified by the Director or his/her designee of a declaration by the President that an emergency or a major disaster exists. FEMA also will notify other Federal agencies and other interested parties.

(b) The Governor will be promptly notified by the Director or his/her designee of a determination that the Governor's request does not justify the use of the authorities of the Stafford Act.

(c) Following a major disaster or emergency declaration, the Regional Director or Associate Director will promptly notify the Governor of the designations of assistance and areas eligible for such assistance.

§ 206.40 Designation of affected areas and eligible assistance.

(a) *Eligible assistance.* The Associate Director has been delegated authority to determine and designate the types of assistance to be made available. The initial designations will usually be announced in the declaration. Determinations by the Associate Director of the types and extent of FEMA disaster assistance to be provided are based upon findings whether the damage involved and its effects are of such severity and magnitude as to be beyond the response capabilities of the State, the affected local governments, and other potential recipients of supplementary Federal assistance. The Associate Director may authorize all, or only particular types of, supplementary Federal assistance requested by the Governor.

(b) *Areas eligible to receive assistance.* The Associate Director also has been delegated authority to designate the disaster-affected areas eligible for supplementary Federal assistance under the Stafford Act. These designations shall be published in the *Federal Register*. A disaster-affected area designated by the Associate Director includes all local government jurisdictions within its boundaries. The Associate Director may, based upon damage assessments in any given area, designate all or only some of the areas requested by the Governor for supplementary Federal assistance.

(c) *Requests for additional designations after a declaration.* After a declaration by the President, the

Governor, or the GAR, may request that additional areas or types of supplementary Federal assistance be authorized by the Associate Director. Such requests shall be accompanied by appropriate verified assessments and commitments by State and local governments to demonstrate that the requested designations are justified and that the unmet needs are beyond State and local capabilities without supplementary Federal assistance. Additional assistance or areas added to the declaration will be published in the *Federal Register*.

(d) *Time limits to request.* In order to be considered, all supplemental requests under paragraph (c) of this section must be submitted within 30 days from the termination date of the incident, or 30 days after the declaration, whichever is later. The 30-day period may be extended by the Associate Director provided that a written request is made by the appropriate State official during this 30-day period. The request must include justification of the State's inability to meet the deadline.

§ 206.41 Appointment of disaster officials.

(a) *Federal Coordinating Officer.* Upon a declaration of a major disaster or of an emergency by the President, the Director, or in his absence, the Deputy Director, or alternately, the Associate Director shall appoint an FCO who shall initiate action immediately to assure that Federal assistance is provided in accordance with the declaration, applicable laws, regulations, and the FEMA-State Agreement.

(b) *Disaster Recovery Manager.* The Regional Director shall designate a DRM to exercise all the authority of the Regional Director in a major disaster or an emergency.

(c) *State Coordinating Officer.* Upon a declaration of a major disaster or of an emergency, the Governor of the affected State shall designate an SCO who shall coordinate State and local disaster assistance efforts with those of the Federal Government.

(d) *Governor's Authorized Representative.* In the FEMA-State Agreement, the Governor shall designate the GAR, who shall administer Federal disaster assistance programs on behalf of the State and local governments and other grant or loan recipients. The GAR is responsible for the State compliance with the FEMA-State Agreement.

§ 206.42 Responsibilities of coordinating officers.

(a) Following a declaration of a major disaster or an emergency, the FCO shall:

(1) Make an initial appraisal of the types of assistance most urgently needed;

(2) In coordination with the SCO, establish field offices and Disaster Application Centers as necessary to coordinate and monitor assistance programs, disseminate information, accept applications, and counsel individuals, families and businesses concerning available assistance;

(3) Coordinate the administration of relief, including activities of State and local governments, activities of Federal agencies, and those of the American Red Cross, the Salvation Army, the Mennonite Disaster Service, and other voluntary relief organizations which agree to operate under the FCO's advice and direction;

(4) Undertake appropriate action to make certain that all of the Federal agencies are carrying out their appropriate disaster assistance roles under their own legislative authorities and operational policies; and

(5) Take other action, consistent with the provisions of the Stafford Act, as necessary to assist citizens and public officials in promptly obtaining assistance to which they are entitled.

(b) The SCO coordinates State and local disaster assistance efforts with those of the Federal Government working closely with the FCO. The SCO is the principal point of contact regarding coordination of State and local disaster relief activities, and implementation of the State emergency plan. The functions, responsibilities, and authorities of the SCO are set forth in the State emergency plan. It is the responsibility of the SCO to ensure that all affected local jurisdictions are informed of the declaration, the types of assistance authorized, and the areas eligible to receive such assistance.

§ 206.43 Emergency support teams.

The Federal Coordinating Officer may activate emergency support teams, composed of Federal program and support personnel, to be deployed into an area affected by a major disaster or emergency. These emergency support teams assist the FCO in carrying out his/her responsibilities under the Stafford Act and these regulations. Any Federal agency can be directed to detail personnel within the agency's administrative jurisdiction to temporary duty with the FCO. Each detail shall be without loss of seniority, pay, or other employee status.

§ 206.44 FEMA-State Agreements.

(a) *General.* Upon the declaration of a major disaster or an emergency, the

Governor, acting for the State, and the FEMA Regional Director or his/her designee, acting for the Federal Government, shall execute a FEMA-State Agreement. The FEMA-State Agreement states the understandings, commitments, and conditions for assistance under which FEMA disaster assistance shall be provided. This Agreement imposes binding obligations on FEMA, States, their local governments, and private nonprofit organizations within the States in the form of conditions for assistance which are legally enforceable. No FEMA funding will be authorized or provided to any grantees or other recipients, nor will direct Federal assistance be authorized by mission assignment, until such time as this Agreement for the Presidential declaration has been signed, except where it is deemed necessary by the Regional Director to begin the process of providing essential emergency services or temporary housing.

(b) *Terms and conditions.* This Agreement describes the incident and the incident period for which assistance will be made available, the type and extent of the Federal assistance to be made available, and contains the commitment of the State and local government(s) with respect to the amount of funds to be expended in alleviating damage and suffering caused by the major disaster or emergency. The Agreement also contains such other terms and conditions consistent with the declaration and the provisions of applicable laws, Executive Order and regulations.

(c) *Provisions for modification.* In the event that the conditions stipulated in the original Agreement are changed or modified, such changes will be reflected in properly executed amendments to the Agreement, which may be signed by the GAR and the Regional Director or his/her designee for the specified major disaster or emergency. Amendments most often occur to close or amend the incident period, to add forms of assistance not originally authorized, or to designate additional areas eligible for assistance.

(d) In a modified declaration for a Federal emergency, a FEMA-State Agreement may or may not be required based on the type of assistance being provided.

§ 206.45 Loans of non-Federal share.

(a) *Conditions for making loans.* At the request of the Governor, the Associate Director may lend or advance to a State, either for its own use or for the use of public or private nonprofit applicants for disaster assistance under

the Stafford Act, the portion of assistance for which the State or other eligible disaster assistance applicant is responsible under the cost-sharing provisions of the Stafford Act in any case in which:

(1) The State or other eligible disaster assistance applicant is unable to assume their financial responsibility under such cost sharing provisions:

(i) As a result of concurrent, multiple major disasters in a jurisdiction, or

(ii) After incurring extraordinary costs as a result of a particular disaster;

(2) The damages caused by such disasters or disaster are so overwhelming and severe that it is not possible for the State or other eligible disaster assistance applicant to immediately assume their financial responsibility under the Act; and

(3) The State and the other eligible disaster applicants are not delinquent in payment of any debts to FEMA incurred as a result of Presidentially declared major disasters or emergencies.

(b) *Repayment of loans.* Any loan made to a State under paragraph (a) of this section must be repaid to the United States. The Governor must include a repayment schedule as part of the request for advance.

(1) The State shall repay the loan (the principal disbursed plus interest) in accordance with the repayment schedule approved by the Associate Director.

(2) If the State fails to make payments in accordance with the approved repayment schedule, FEMA will offset delinquent amounts against the current, prior, or any subsequent disasters, or monies due the State under other FEMA programs, in accordance with the established Claims Collection procedures.

(c) *Interest.* Loans or advances under paragraph (a) of this section shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance. Simple interest will be computed from the date of the disbursement of each drawdown of the loan/advance by the State based on 365 days/year.

§ 206.46 Appeals.

(a) *Denial of declaration request.* When a request for a major disaster declaration or for any emergency declaration is denied, the Governor may appeal the decision. An appeal must be made within 30 days after the date of the letter denying the request. This one-

time request for reconsideration, along with appropriate additional information, is submitted to the President through the appropriate Regional Director. The processing of this request is similar to the initial request.

(b) *Denial of types of assistance or areas.* In those instances when the type of assistance or certain areas requested by the Governor are not designated or authorized, the Governor, or the GAR, may appeal the decision. An appeal must be submitted in writing within 30 days of the date of the letter denying the request. This one-time request for reconsideration, along with justification and/or additional information, is sent to the Associate Director through the appropriate Regional Director.

(c) *Denial of advance of non-Federal share.* In those instances where the Governor's request for an advance is denied, the Governor may appeal the decision. An appeal must be submitted in writing within 30 days of the date of the letter denying the request. This one-time request for reconsideration, along with justification and/or additional information, is sent to the Associate Director through the appropriate Regional Director.

(d) *Extension of time to appeal.* The 30-day period referred to in paragraphs (a), (b), or (c) of this section may be extended by the Associate Director provided that a written request for such an extension, citing reasons for the delay, is made during this 30-day period, and if the Associate Director agrees that there is a legitimate basis for extension of the 30-day period. Only the Governor may request a time extension for appeals covered in paragraphs (a) and (c) of this section. The Governor, or the GAR if one has been named, may submit the time extension request for appeals covered in paragraph (b) of this section.

§§ 206.47-206.60 [Reserved]

Subpart C—Emergency Assistance

§ 206.61 Purpose.

The purpose of this subpart is to identify the forms of assistance which may be made available under an emergency declaration.

§ 206.62 Available assistance.

In any emergency declaration, the Associate Director or Regional Director may provide assistance, as follows:

(a) Direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical and

advisory services) in support of State and local emergency assistance efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe;

(b) Coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments;

(c) Provide technical and advisory assistance to affected State and local governments for:

(1) The performance of essential community services;

(2) Issuance of warnings of risks or hazards;

(3) Public health and safety information, including dissemination of such information;

(4) Provision of health and safety measures; and

(5) Management, control, and reduction of immediate threats to public health and safety;

(d) Provide emergency assistance under the Stafford Act through Federal agencies;

(e) Remove debris in accordance with the terms and conditions of section 407 of the Stafford Act;

(f) Provide temporary housing assistance in accordance with the terms and conditions of section 408 of the Stafford Act; and

(g) Assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance.

§ 206.63 Provision of assistance.

Assistance authorized by an emergency declaration is limited to immediate and short-term assistance, essential to save lives, to protect property and public health and safety, or to lessen or avert the threat of a catastrophe.

§ 206.64 Coordination of assistance.

After an emergency declaration by the President, all Federal agencies, voluntary organizations, and State and local governments providing assistance shall operate under the coordination of the Federal Coordinating Officer.

§ 206.65 Cost sharing.

The Federal share for assistance provided under this title shall not be less than 75 percent of the eligible costs.

§ 206.66 Limitation on expenditures.

Total assistance provided in any given emergency declaration may not exceed \$5,000,000, except when it is determined by the Associate Director that:

(a) Continued emergency assistance is immediately required;

(b) There is a continuing and immediate risk to lives, property, public health and safety; and

(c) Necessary assistance will not otherwise be provided on a timely basis.

§ 206.67 Requirement when limitation is exceeded.

Whenever the limitation described in § 206.66 is exceeded, the Director must report to the Congress on the nature and extent of continuing emergency assistance requirements and shall propose additional legislation if necessary.

§§ 206.68-206.100 [Reserved]

Dated: January 6, 1990.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067-AB37

Disaster Assistance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) is today publishing final rules at 44 CFR Part 206 (Subpart G, H, J, K, and L) to implement the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93-288, as amended. The Disaster Relief Act of 1974 was amended by the Disaster Relief and Emergency Assistance Amendments of 1988, Pub. L. 100-707. These subparts pertain primarily to disaster assistance to State and local governments and certain private nonprofit organizations. As appropriate, comments on the Interim Rule, published March 21, 1989, have been incorporated in this final rule.

DATES: These final rules will be effective on February 22, 1990.

FOR FURTHER INFORMATION CONTACT:

Charles B. Stuart, Program Officer, Disaster Assistance Programs, State and Local Programs and Support at 202-646-3691, for subparts G, H, and J; or Eugene Morath, Program Officer, Disaster Assistance Programs, State and Local Programs and Support at 202-646-3683, for subparts K and L.

SUPPLEMENTARY INFORMATION:

General Information

The President signed the Disaster Relief and Emergency Assistance Amendments of 1988 (Pub. L. 100-707) on November 23, 1988. This law amended the Disaster Relief Act of 1974, Pub. L. 93-288, and retitled it the Stafford Act. As a result, on March 21, 1989, FEMA published in the *Federal Register* at 54 FR 11610 an Interim Rule at 44 CFR part 206 with a request for comments. The interim rule was published for two purposes: 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. The "common rule" had been recently adopted by FEMA at 44 CFR part 13 (effective on October 1, 1988). The final regulations which are being published today have taken into account comments received on the interim rule. They will govern disasters or emergencies declared by the President on or after November 23, 1988. Existing regulations at 44 CFR part 205 remain in effect to govern those major disasters and emergencies declared prior to enactment of the amendments.

The March 21, 1989, publication contained subparts D through M.

Today's document contains final rules for subparts G, H, J, K, and L. Final rules for subparts D, E, and F dealing with Individual Assistance will be published as a separate document. Subpart I pertaining to insurance requirements for public assistance will be reissued as a revised Interim Rule at a later date. Subpart M, Hazard Mitigation Planning, will be published as a proposed rule to replace the interim rule at a later date.

Fourteen comment letters were received from State and local governments and other interested groups. The following discussion of comments is arranged in the order in which the subjects appear in the regulation.

Public Assistance Project Administration (Subpart G)

1. Definition of "Predisaster Design—Section 206.201(h)

One commenter asked that the definition of "predisaster design" should be changed to remove the restriction concerning the actual use of a facility prior to the disaster. The intent of the restriction is that if a destroyed facility had been over-utilized at the time of the disaster, the replacement facility would