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

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) 646–3615.

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 beleives 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

Subpart B—The Declaration Process

Subpart C—Emergency Assistance

* * * * *

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 expeditously 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. Informtion 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) Thew 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 not be enlarged to cover the space required by the extra users. The commenter was concerned that a replacement facility would not include designed increases in capacity made after the original design. The sentence in question makes reference to "designed capacity". By this is meant the capacity for which the facility was designed, either originally, or by later modification. Clarifying language has been added to this section.

2. Time limits for Project Approval—Section 206.202(e)

It was suggested that the Regional Director (RD) be required to approve Damage Survey Reports (DSR) within 30 days of their completion and to obligate funds within 15 days of receipt of the project application on Standard Form (SF) 424 (Application for Federal Assistance). Looking first at the second part of this recommendation, the process now being used for taking the application makes it impossible to have such a time limit for the obligation of funds. There is but a single SF 424 which is submitted by the grantee for each disaster, and it may be submitted before there are any DSR's against which to obligate funds. Then, as DSR's are approved, funds are obligated against them to the grantee on behalf of the particular subgrantee. The actual process consists of the RD signing an approval of a DSR or group of DSR's for one or more subgrantees. This approval is a legal obligation of FEMA funds to the grantee. Those funds are then available to the grantee to make withdrawals through the Letter of Credit process.

The actual mechanics of the process are that the approval is transmitted to the Office of the Comptroller in Washington, DC, and the obligation is entered into the Financial Accounting and Reporting System (FARS) computer, normally within five days of the RD's approval. Each approval by the RD is also forwarded to the grantee and the grantee is thereby notified that the funds are available. The grantee is expected to notify the subgrantee of approvals of their DSR's and inform them when actual funds will be forthcoming. After funds are obligated to the grantee, it is the responsibility of the grantee (State) to then disburse the funds to the subgrantee in accordance with its own laws. It is assumed that grantees will use an application process between themselves and the subgrantees similar to FEMA's process. Thus, as a practical matter, by the time the grantee makes an approval to a subgrantee, the funds will be available from the Letter of Credit for disbursement to the subgrantee.

One other aspect of the "approval—obligation—payment" process should be discussed here. That is the requirement in section 601(a)(2) of the Act that regulations issued by FEMA "... shall provide that payment of any assistance under this Act to the State shall be completed within 60 days after the date of approval of such assistance." This time limit is not specifically provided in the regulation because the process described in the previous paragraphs does not allow it.

For small projects, in which the Federal share is authorized to be paid immediately upon approval of the DSR, such a time limit has no effect because the funds are immediately available to the State, subject to U.S. Treasury regulations. For large projects, in which payments are made incrementally as work progresses and final payment is made after the project is complete, the time limit also cannot be applied within the strict meaning of the language in the law. This is because the work is almost never completed within 60 days of the approval of the DSR and thus payment cannot "be completed within 60 days after the date of approval of such assistance." However, since the RD's approval of the DSR makes the funds available to the grantee to be paid out as work progresses, payment is actually made to the State well within the required 60 days of when it is needed.

In the interest of improving the process even further, FEMA is currently testing a procedure of entering obligations into the FARS computer directly from the Disaster Field Office (DFO). When this is fully implemented, funds will be immediately available to the grantee upon approval by the RD. For these reasons, it is not appropriate to place a time limit between the approval of a DSR and the obligation of funds.

Concerning a time limit for approving a DSR after its completion by an inspector, there are a number of items which must be considered before a DSR is ready for final approval. There may be a floodplain management review, a review for mitigation opportunities, or an environmental assessment which could delay the approval. In order to allow time for these special considerations, a time limit of forty-five days is being instituted for FEMA's processing of a DSR. Within that time the RD shall either approve or disapprove the DSR or provide a written explanation of any delay and transmit that determination to the grantee.

3. Cost Overruns—Section 206.204(e)

For restoration projects which are classified as "large projects" ($35,000 or more), reasonable costs actually expended on a project are generally eligible. Thus, the final amount reimbursed for a project may be different from the amount initially approved. In the regulations at § 206.204(e), there is a short list of typical reasons for cost overruns which will be considered for increasing the amount approved. It was suggested that two reasons be added to the list: "Presence of previously unanticipated field conditions encountered during construction"; and "Increases in DSR approved quantities caused by construction activity". As recognized in the comment itself, both of these items are already included in the item (e)(2) of that paragraph: "Changes in the scope of eligible work;". The intent in the current wording of this paragraph was to keep the reasons broad in their definition to maintain simplicity and flexibility. No change is being made.

4. Progress Reports—Section 206.204(f)

Two comments were made concerning the requirement for a grantee to submit quarterly progress reports to FEMA on all projects on which final payment had not yet been made. Both suggested the requirement be changed to every six months. The point was made that such a requirement was a burden on the grantee, especially during the first few months of a disaster. It should be noted that the date for submission of the first report may be negotiated by the grantee and FEMA (§ 206.204(f)). Another point was that for some large projects, there may be no progress to report during some three month periods. While this may be true for some projects, others will have significant progress which should be reported. Having a reporting requirement may also keep attention on a project and thus speed things along. The interval selected is in keeping with guidance provided in the common rule, 44 CFR part 13. The requirement is only placed on large projects, which in the past have made up only seven percent of the total number of projects. In addition, FEMA is planning on giving the grantee access to the computer system by which it tracks project progress and financial data. Changes are being planned for this system to add features which will be particularly useful to the grantee for tracking project completions. Thus, much of the reporting may be automated. The reporting requirement will remain at three months.

5. Payments to subgrantees for small projects—Section 206.205

Seven commenters addressed the issue of payments, to subgrantees, of the Federal share of eligible costs for "small projects".

The suggestion was made by some States that payment for these small projects should be made on the basis of actual costs, instead of on the basis of the Federal estimate. The commenters were concerned that a State might be held responsible for recovering unspent funds from a subgrantee when actual costs are less than the estimate which was paid to them.

FEMA believes that a delay of final payment until actual costs could be determined would defeat the purpose of the simplified procedure section of the law. In the Stafford Act, the Congress established a "Simplified Procedure" for those projects for which the Federal estimate was less than $35,000. Section 422 of the Act specifies that the Federal contribution may be made on the basis of such Federal estimate. This frees FEMA from the burden of having to determine the actual costs for approximately 93% of of all projects which FEMA assists. The intent of this section is to simplify procedures for these projects and thus expedite payments to the subgrantees. Because the Federal share is being paid on the basis of the estimate, the expenditure of less than the estimated amount will not reduce the amount of the Federal contribution. In order to answer some of this concern, an addition has been made to the payment section of the regulation. (Section 206.205(a)), to the effect that the amount of the Federal contribution will not be reduced as a result of approved funds for a small project not being completely spent by a subgrantee.

However, there is still a requirement that an approved project be completed, either restoration of the original damaged facility or an alternate project as provided in § 206.203(d)(2). Normally, FEMA will not be performing final inspections on these projects. However, FEMA audit regulations at 44 CFR part 14, still allow FEMA to conduct audits or inspections of any project. This provision, coupled with the requirement that the grantee certify that all projects were completed in accordance with FEMA approvals, has made a few States reluctant to pay out the full Federal share until they can verify that the work was actually completed. Because disaster assistance is basically a categorical grant program, notwithstanding the exceptions for alternate projects and simplified procedures for payment of small projects, the requirement that a project be completed must be maintained.

A comment was also made on the other side of the issue. One State requested that the ability to pay on the basis of the estimate *not* be removed so that they could maintain flexibility in the process. The changes noted above will continue payment of the Federal share on the basis of the estimate while assuring the grantee as much as possible that their liability concerning the Federal share will be limited.

Three organizations representing local units of government requested that payments to subgrantees be required to be made upon approval of the funds by FEMA. The role of the State as grantee places certain requirements on this process which will probably not allow the immediate payment of funds to a subgrantee. Under the "Common Rule", 44 CFR part 13, FEMA makes one grant to the State as the grantee which is based on approved DSR's written for subgrantees. The grantee then makes subgrants to the local governments or private nonprofit organizations (PNP's) based on each subgrantee's DSR's. Actual payment to the grantee is made by Letter of Credit (LOC) method, and the grantee is authorized to make drawdowns on the LOC as soon as the obligation is made by FEMA. However, subsequent payment to a subgrantee must be in accordance with State laws. Although these comments concern the timing of payments more than the basis for payment, the use of the estimate rather than actual costs would speed final payments to the subgrantees.

This comment also requested that a definition of "Project Approval" to mean "approval of the DSR" be added. A definition of Project Approval has been added, but for a different reason. Previous discussion of time limits on payments noted that when the RD approves a DSR, that action also, in effect, obligates funds for that project. The definition takes account of that dual function of the RD's approval.

All of the above discussion concerns approval and payment of the Federal share for projects. As stated in the policy paragraph at § 206.200(b), FEMA expects grantees to expedite payments to subgrantees of the Federal share and the State's share of disaster assistance as much as possible. However, FEMA cannot place requirements on what the basis of the grantee's share will be (estimated costs vs. actual costs) or on the timing of distribution of that share.

6. Appeals—Section 206.206

Five letters addressed the issue of the right of the subgrantee to appeal assistance decisions to FEMA, and one letter representing three groups commented on the requirement for FEMA to issue rules for fair and impartial consideration of appeals. Two of these letters also commented on the length of time allowed for submission of and response to appeals.

One item of major concern was whether a subgrantee had the right to appeal to FEMA. The question arose because the regulations at § 206.200(a) stated: "The grantee may appeal any determination previously made related to Federal assistance for a subgrantee." This was interpreted to mean that *only* the grantee could make such an appeal. Section 423 of the Stafford Act relates to appeals from applicants. Under the new administrative procedures of the "Common Rule," there is only one application from the grantee for each disaster, and this is why the regulation section was written the way it was. [An exception to the one application rule may occur if a State cannot process the assistance for an Indian tribe, and a separate application is taken directly from the tribe.]

Upon review, it is clear from the usage of the word "applicant" in the Act that the reference is not only to a State agency for the State project, but also to a local government or PNP. Accordingly, the appeals section has been changed to specifically provide that a subgrantee may appeal through the grantee to FEMA. The subgrantee has 60 days after receiving notice of the action which it is appealing to submit the appeal. The grantee is then required to make an evaluation and forward the appeal to FEMA with a written recommendation within 60 days of its receipt of the appeal. For those areas within the jurisdiction of the grantee, such as certain time extensions, the grantee will make the determination and is required to do so within 90 days of its receipt of the appeal.

The 60 day limit for submission of the appeal is contained in the Act and thus cannot be extended, as one letter requested. However, the 60 day limit applies separately to the actions of the subgrantee and the grantee, and not to the combined actions of those two parties. This should satisfy the concern of this commenter.

After the RD receives the appeal, a response must be made within 90 days. That response may take the form of a determination or a request for additional information from the applicant. After receipt of any additional information which is requested, the RD has 90 days to make a determination.

If the RD denies the appeal, the appellant may made a second appeal to the Associate Director for State and Local Programs and Support (AD). The same time limits for submission and response apply to the second appeal. One letter stated that the AD should have only 90 days for the entire process. FEMA believes that the RD and the AD should have the opportunity to request additional information when necessary and should have sufficient time for that purpose. Without the extra information, appeals might have to be resolved based on inadequate information. This could be detrimental to the applicant's cause.

The remaining contentious area concerning appeals involves whether the regulation provides for fair and impartial consideration of appeals as required by section 423(c) of the Act. The commenter believed that the procedure proposed for submitting highly technical appeals to an independent scientific body did not satisfy the requirement of the Act and made several suggestions for change. The first was that appeals at the National Office level should be decided by the Agency Director, rather than the Associate Director. The Director of FEMA has delegated to the Associate Director all of the authorities of the Stafford Act, with the exception of the authority to make major disaster or emergency declaration recommendations to the President. Therefore, the Associate Director is an appropriate authority to make program decisions at the National Office level. A second suggestion was that, at the unilateral request of the grantee or subgrantee, an appeal would be submitted to an independent technical or scientific body for decision. The commenter stated that it was the intent of Congress for such a process to be used because the House Public Works Committee Report relating to H.R. 2707 stated that the President should consider alternative dispute resolution mechanisms to the extent they may be appropriate. The process proposed in the interim rule was an attempt to respond to the Committee's concern. However, in response to the comment, FEMA has made a further examination of the procedure described in the interim rule and determined that an additional level of review is appropriate. Currently the Associate Director has the final appeal authority. For approximately the past year, FEMA has been tracking appeals to the AD in its computer system. A review of this information shows that approximately seventy percent of the funds requested in these appeals have been approved. Thus, the process has been working generally in favor of the applicant.

Nevertheless, FEMA has decided to provide an additional level of appeal beyond the Associate Director. If an appellant is dissatisfied with the decision of the Associate Director, it may submit an appeal to the Director of FEMA. In appeals involving highly technical issues, the Director may solicit input from persons or organizations with expertise in the subject matter of the appeal. The Director would also have the option of delegating to FEMA personnel who are not associated with FEMA's Disaster Assistance Programs office, or to persons who are not employed by FEMA, either from the public or private sector, authority to recommend a proposed appeal decision. FEMA believes that this broad range of options for soliciting input to assist in the resolution of appeals will ensure fair and impartial consideration of appeals.

One final comment asked that some independent organization be tasked to review all of FEMA's appeal determinations for fairness and impartiality and to report its findings on an annual basis to the President and to Congress. FEMA does not believe that such a procedure is necessary, especially in light of the additional level of review which will be provided to appellants in the future. Therefore, no such change to the interim regulation is being made.

7. Administrative Plans.—Section 206.207

One letter commented on requirements for the Public Assistance Administrative Plan. The commenter requested that such plan not be a mandatory part of the Emergency Plan described in Subpart A (Published at 54 FR 22162 on May 22, 1989). The plans for the public assistance program and Individual and Family Grant program are administrative plans, not operations plans, and thus would not normally be put in the body of the Emergency Operations Plan. They may be made as annexes to the basic plan and distributed only to those persons who need them. States may incorporate disaster assistance capabilities into new or existing State emergency plans in the format most appropriate to the State.

8. Single Audit—Section 206.207

One State asked how the cost of a State's single audit is treated. The costs of audits made in compliance with the Single Audit Act of 1984 are eligible in accordance with 44 CFR part 14, Appendix A. These audits are system audits rather than specific program audits. As such, they examine an entity's entire operation and the costs are shared between the Federal government and the State. Paragraph 16. b. of this Appendix A states;

> Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

The audit costs of local government subgrantees, however, are treated differently. Section 406(f)(1) of the Stafford Act states that necessary costs of requesting, obtaining, and administering Federal assistance are covered by that subsection's percentage allowance for an applicant. Thus, audit costs are assumed to be included in the allowance.

9. Direct Federal Assistance—Section 206.208(a)

Three commenters asked that this section be changed to state that FEMA may direct any Federal agency to do eligible debris removal and/or emergency work, with or without reimbursement. The commenters contend that the phrase "with or without reimbursement" in section 502(a)(1) of the Act means that assistance may be provided at 100 percent Federal share. In response, we should first point out that this section in the regulations is referring to the performance of work eligible under section 402(4), 403, and 407 of the Act, and therefore the comment should have referred to section 402(1) which contains the same phrase. Nevertheless, FEMA interprets both sections 402(1) and 502(a)(1) of the Act to relate to whether FEMA reimburses the other Federal agency when that agency is performing work under its own authorities. The cost sharing provisions of the Title IV sections of the Act are not changed by the fact that a Federal agency may be performing the work directly. Therefore, the nonfederal portion of the costs must be paid in the form of a reimbursement to FEMA. This is the reimbursement referred to in § 206.208(b)(1)(iii) of the regulations and not reimbursement between Federal agencies. No change is being made to the regulation other than the addition of listing the applicable sections of the Act in § 206.208(a).

Public Assistance Eligibility (Subpart H)

1. Maintenance—Preamble Page 11613, Paragraph 13

A commenter stated that Federal disaster assistance was never intended to fund routine maintenance. This comment was directed at the discussion in the preamble about work which was of the same type as maintenance. The reader felt that routine maintenance which exceeded the minimum DSR amount ($250) would be eligible under the new interpretation. This is not the case; maintenance work is still not eligible. If damages existed before the disaster event, and they can be distinguished from the disaster related damage, they are not eligible. Maintenance work falls in this category.

2. Definition of "Immediate threat"—Section 206.221(c)

Two comments were made concerning the definition of "immediate threat". The term is used in the criteria which must be met for emergency debris removal and emergency protective measures to be eligible for assistance, §§ 206.224 and 206.225. The interim rule defined immediate threat as that threat from an event which could reasonably be expected to occur within one year which is a change from the five year event previously used. Both comments requested that a five year event be used instead of a one year event on the basis that much of the reconstruction work being protected required more than one year to be completed. The comments also stated that, in actual practice, the difference between a level of protection from a one year event and a five year event is not very great. FEMA agrees with the comments and the definition is changed accordingly.

3. Definition of "Standards"—Section 206.221(i)

One letter requested a change to the definition of "Standards" to make it conform to the wording from the legislation by removing the references to legal requirements and differences between repair or new construction standards. The definition is being changed as requested, and the discussion of State or Federal legal requirements is being added to the section on the criteria for the eligibility of a standard, § 206.226(a). The reference to the difference between new construction and repair standards is also moved to this section.

4. Work Within Authority of Another Federal Agency—Section 206.223(b)

Four comments objected to FEMA's policy of not providing disaster assistance to restore disaster damaged facilities when another Federal agency has specific authority for the same work. This policy was stated at § 206.223(b) of the interim regulations. The commenters contend that FEMA should grant assistance under the Stafford Act when another Federal agency has the authority but not the funds to pay for certain work. The lack of funds may exist either because Congress appropriated no funds for the other Federal agency's response authority or because funds which Congress appropriated to the other Federal agency have already been expended. The commenters feel that sections 402 and 502 of the Act, which give the President the authority to "* * * direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law * * *", contemplate the provision of disaster assistance under either the Stafford Act or another Federal agency's authorities.

Another comment contends that Congress consciously decides to appropriate disaster assistance funds to the President's Disaster Fund which is administered by FEMA, rather than to the appropriations of other Federal agencies with disaster assistance authorities, and that under these circumstances FEMA should have a policy of routinely funding such disaster activities from the President's Disaster Fund. There may be situations where it is clear that Congress intended for other Federal agencies' authorities to be used as the sole or primary response mechanism to a particular catastrophe, while there will undoubtedly be other cases where Congress' intent is not so well defined.

The regulatory mandate that "Disaster assistance will not be made available under the Stafford Act when another Federal agency has specific authority to restore facilities damaged or destroyed by an event which is declared a major disaster" applies only to permanent restorative work under section 406 of the Stafford Act. Emergency work which is eligible under the authority of sections 403, 407, 418, 419 or 502 of the Act can be approved under the Stafford Act in those cases where another Federal agency has authority to provide assistance but is unable to respond on a timely basis because of a lack of funds.

In an effort to clarify this rule the wording of paragraph 206.223(b) under the heading "General work eligibility" has been transferred to paragraph 206.226(a) under the heading "Restoration of damaged facilities." This clarifies that this policy applies only to permanent restoration of facilities and not to emergency work.

5. Eligibility of standards—Section 206.226(a)

Another comment asks that § 206.226(a)(1) be changed from "Apply to the type of repair or restoration required"; to "Be in conformity with current applicable codes, specifications, and standards related to the type of repair or restoration required." The regulation as currently worded already says this. It is just that the words "* * * in conformity with the following * * *" are in the beginning paragraph of this section. The reason for this organization of the section is that "Standards" is just one of eight criteria with which eligible work must be in conformity.

6. Historic Properties—Section 206.226(c)(2)

One comment addresses the issue of eligible work when an historic property is involved. The applicable section in the regulations, § 206.226(c), Repair vs Replacement, states that a facility is eligible for full replacement when repair costs equal or exceed 50 percent of the cost of replacing the facility. However, an applicant may elect to perform repairs to the facility instead of replacement. The eligible costs, however, will be limited to the less expensive of the two options. The commenter asks for an exception for historic facilities when repair costs to restore to historic significance exceed replacement with a functionally equivalent but not identical facility.

It has been FEMA's long standing practice, based on legislative history, to replace the functional capacity of a facility but not necessarily to restore the historical features of such facility. The legislative history of Pub. L. 93-288, provides guidance on this issue. In the Congressional Record for the House of Representatives for May 15, 1974, there is a discussion of what is meant by "* * * restoration based on the design of the facility as it existed immediately before the disaster * * *". Congressman Treen was concerned that an estimate for the restoration of some beautiful Greek revival structures based on the existing design could run substantially higher than the cost of a substitute structure of comparable functional capacity and thus provide excessive payments. Congressman Jones explained that "design" did not mean an exact physical reproduction, but a new structure which would have the same capacity as the old structure (See 120 Cong. Rec. 14710). This principle has not been changed by the Stafford Act, and thus FEMA believes that an exception for historic facilities would be contrary to the legislative intent.

7. Relocation costs.—Section 206.226(d)

One commenter suggested that additional items be listed as eligible costs when a facility is required by the RD to be relocated (§ 206.226(d)(2)). The items which were listed in that paragraph are: land acquisition, roads, utilities, and demolition. It was not clear that the listed items were in addition to those items normally eligible. The requested list: environmental documentation, architectural fees and administrative costs, when associated with eligible work, are already eligible and do not need to be listed separately. An addition is being made to the regulation to indicate that the listed items are in addition to normally eligible work on a facility.

Another comment on relocation asks that when a facility can neither be built at its original location nor relocated, that eligible costs equal to replacement costs at the original location be provided. This situation may arise when a facility in a particularly vulnerable location is destroyed, but it is not feasible to relocate because of costs or of the type of facility it is. In such cases the applicant has the option of selecting an alternate project and receiving a grant equal to 90% of the grant which it would have normally received. Prior regulations did not allow this option in this situation.

The same comment goes on to ask that when a facility provides an essential public service, replacement in the original location be allowed, notwithstanding provisions of other parts of 44 CFR which might prohibit such replacement. It should be noted that reviews conducted in compliance with the Floodplain Management or Hazard Mitigation regulations consider, in particular, the need for the facility when determining whether the original location is a practicable alternative. Therefore, the decision to deny funding is not arrived at lightly, but the provisions of the cited regulation cannot be ignored. The regulations are not being changed in response to this comment.

8. Inactive Facilities.—Section 206.226(h)(2)

One commenter requested that an addition be made to the exceptions for the normal ineligibility of a facility not in active use at the time of the disaster. The requested exception is when a facility is temporarily vacant due to a change in occupancy. Discussion with the commenter revealed that his concern was for a situation in which an applicant intended to use a temporarily vacant facility, but did not have a firm schedule at the time of the disaster. This situation might arise when an applicant was reviewing a number of alternatives for the use of the facility. The regulation is being changed to allow an exception when the applicant can demonstrate, to FEMA's satisfaction, its intention for future use of the facility.

9. Applicant Owned Equipment Rates—Section 206.228(a)(1)

Five commenters asked that FEMA accept an applicant's equipment rates for force account work. The interim rule required that an applicant submit a request to FEMA for any rate which was higher than the rate on FEMA's Schedule of Equipment Rates. The commenters contend that this is a burdensome procedure. The rule has been changed to allow reasonable applicant rates which have been developed or approved under State guidelines to be used as the basis for reimbursement. There is an upper limit of $75 per hour on these automatically accepted rates. Requested rates above that shall be evaluated by FEMA on a case by case basis. Locally developed rates which exceed the FEMA rate and which do not follow State guidelines may still be submitted to FEMA for approval. FEMA will be evaluating the applicant owned equipment rate procedures during the next year and the suggestions provided will be considered.

10. Administrative Costs—Sections 206.228(a)(2) & 206.228(b)

One letter questioned the use of the terms "direct costs" and "indirect costs" and their relationship to what is eligible under OMB Circular A-87. This circular is part of FEMA's regulation 44 CFR part 13 by reference. There are four separate issues in the comment.

First, the commenter believes that a grantee's administrative costs can be calculated under the Stafford Act, (Sec. 406(f)), and that the grantee's total cost of administering the program can be calculated. The commenter contends that the difference between the two should be eligible as "State management costs." This is essentially correct and § 206.228 is being changed accordingly. There are now two categories of direct administrative costs for the grantee: "Statutory" and "State Management." Statutory administrative costs are calculated in accordance with section 406(f) of the Stafford Act. The State Management administrative costs follow the guidance of 44 CFR Part 13. However, with respect to subgrantees of the States, the only administrative costs which are eligible are those covered by the Stafford Act. This is because section 406(f) of the Act defines as eligible those costs relating to "requesting, obtaining and administering Federal assistance * * *" FEMA interprets this provision to mean that all of a subgrantee's administrative expenses are to be covered by this percentage allowance.

Second, the commenter questions whether the grantee's direct administrative costs should be cost shared. The requirement for the grantee to cost share direct administrative expenses is entirely consistent with the Stafford Act and with the "common rule." In OMB CIRCULAR A-87, Attachment A, paragraph A states in part: "This principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in the financing of a particular grant." Therefore, the cost sharing requirements of the sections of the Act under which the assistance grants are being made, (Sections 402, 403, 406, 407, 502 and 503) are applied to the administrative costs associated with these grants.

Thirdly, the comment questions whether certain items such as overtime should be ineligible. There is a misunderstanding here. It is not that overtime is ineligible, but that it is specifically covered by a provision of the legislation which limits the amount which may be paid for overtime and other items. In section 406(f)(2) of the Act a percentage allowance is provided for "Extraordinary costs incurred by a State for preparation of damage survey reports, final inspection reports, project applications, final audits, and related field inspections by State employees, including overtime pay and per diem and travel expenses of such employees, but not including pay for regular time of such employees, * * *". This section of the law covering these three items of cost supercedes the provisions of 44 CFR part 13 and Circular A-87. FEMA recognizes that States have assumed a significant role in the management of the disaster assistance program, but the provisions of the law must be followed. Except for these three items, normal administrative costs will be considered in accordance with 44 CFR part 13.

The fourth item concerning costs of administration is the item of "Indirect costs". That term, as it was used in the interim rule is incorrect. The percentage allowances discussed in Section 206.228(b), Eligibile Indirect Costs, were really direct costs of project administration. As noted above, the regulations now have direct costs covered in two paragraphs: "Statutory Administrative Costs" which are the percentage allowances, and "Other Administrative Costs" which are all other administrative costs allowed by the "common rule". A new category of cost has also been added to the regulation: "Eligible Indirect Costs". These costs for the grantee are eligible in accordance with Circular A-87. However, the subgrantee will not receive indirect costs because all administrative expenses are covered by the statutory percentage allowance at section 406(f) of the Stafford Act.

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

Coastal Barrier Resources Act (Subpart J)

No comments were received concerning this subpart. Therefore, no changes have been made.

Community Disaster Loans (Subpart K)

The preamble to the interim rule (54 FR 11615) noted that the Community Disaster Loan program had recently been revised extensively in a proposed rule published in April, 1987 (52 FR 15348) and a final rule published in April, 1988 (53 FR 12681), and that the interim subpart was revised only to incorporate new section and paragraph numbers.

1. Use of Loan Funds—Section 206.361(f)

One comment suggested that § 206.361(f) be changed to eliminate the prohibition against the use of loan funds for capital improvements related to the repair or restoration of damaged facilities, and the payment of the nonfederal share of disaster related recovery costs. A related comment suggested that § 206.366(b)(4), which defines disaster related expenses of a municipal operation character, be changed to include capital improvements.

The legislative history relating to the Community Disaster Loan authority indicates this program was to provide a source of funds to enable a local government to continue to provide non-capital essential municipal services (such as police and fire protection, trash collection, school operation, etc.) at a time when it had suffered a substantial loss of tax and other revenue as a result of a major disaster.

Based on the foregoing legislative intent, FEMA determined that community disaster loan funds should not be disbursed from the Treasury to meet municipal capital requirements, and that a shortfall in revenue to support capital expenditures should not be a consideration for loan cancellation. While it is recognized that municipal funds normally are co-mingled, FEMA excludes capital expenditures from the operating budget-type figures as published in annual financial reports for determining loan cancellation.

For the above reasons, it is concluded that no change should be made in the language of the rule.

2. Operating Budget—Section 206.364(b)(2)

Another comment suggested clarification of the term "operating budget" as defined in § 206.364(b)(2). For loan application purposes, the amount of the loan is limited to 25 percent of the annual operating budget. For this determination, the Agency adopted the definition contained in publications by the Municipal Finance Officers Association which defined the term as a budget which applies to all outlays other than capital outlays.

For loan cancellation purposes, the cancellation determination is based on actual financial results of the local government over a three fiscal year period. Early program experience indicated that budget figures were too vague and imprecise to use in the cancellation determination. Consequently, for the purpose of the loan cancellation determination, the Agency interpreted the term to mean actual published revenues and expenditures.

This explanation is contained in § 206.364(b)(2), and consequently, no change is being made in the final rule.

3. Promissory Note—Section 206.364(d)(2)

One comment objected to the requirement in § 206.364(d)(2)(i) for the State to co-sign the promissory note.

In response to similar comments received in response to the earlier proposed rule, this requirement was modified in the earlier final rule to provide in § 205.94(d)(2)(ii) that the local government could pledge collateral security in the event that the State cannot legally cosign the promissory note.

The language in § 206.364(d)(2)(ii) of the current interim rule is considered adequate, and consequently, no change is made in the final rule.

Fire Suppression Assistance (Subpart L)

No comments were received concerning this subpart. Therefore, no changes have been made.

Environmental Considerations

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

Regulatory Flexibility

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

Federalism Assessment

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

List of Subjects in 44 CFR Part 206

Disaster Assistance: Public Assistance, Coastal Barrier Resources Act, Community Disaster Loans, and Fire Suppression Assistance.

Accordingly, FEMA is amending chapter I, subchapter D, of title 44 by revising part 206, subparts G, H, J, K, and L to read as follows (and the authority citation continues to read as set forth below):

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

* * * * *

* * * * *

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 Order 12148 (3 CFR, 1980 p. 412); and 12673 (54 FR 12571, March 28, 1989).

Subpart G—Public Assistance Project Administration

§ 206.200 General.

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

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

§ 206.201 Definitions.

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

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

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

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

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

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

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

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

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

(j) *Project approval* means the process where the RD signs an approval of work and costs on a DSR or group of DSR's. Such approval is also an obligation of funds to the grantee.

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

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

§ 206.202 Application procedures.

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

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

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

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

(e) *Grant approval.* Upon completion of the field surveys the Damage Survey Report-Data Sheets are reviewed and action is taken by the Regional Director (RD). This will be done within 45 days of the date of inspection or a written explanation of any delay will be provided to the grantee. Prior to the obligation of any funds the Grantee shall submit a Standard Form (SF) 424, Application for Federal Assistance, and SF 424D, Assurances for Construction Programs, to the RD. Following receipt of the SF 424 and 424D, the RD will then obligate funds to the State based upon the approved DSR's. The grantee shall then approve subgrants to the applying entities based upon DSR's approved for each applicant.

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

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

(2) *Time limitations.* The time limitations shown in paragraphs (c) and (d) of this section may be extended by the RD when justified and requested in writing by the Grantee. Such justification shall be based on extenuating circumstances beyond the grantee's or subgrantee's control.

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

§ 206.203 Federal grant assistance.

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

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

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

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

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

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

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

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

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

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

§ 206.204 Project performance.

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

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

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

Completion Deadlines

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

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

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

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

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

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

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

(1) Variations in unit prices;

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

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

The subgrantee shall evaluate each cost overrun and, when justified, submit a request for additional funding through the grantee to the RD for a final determination. All requests for the RD's approval shall contain sufficient documentation to support the eligibility of all claimed work and costs. The grantee shall include a written recommendation when forwarding the request. The RD shall notify the Grantee in writing of the final determination. FEMA will not normally review an overrun for an individual small project. The normal procedure for small projects will be that when a subgrantee discovers a significant overrun related to the total final cost for all small projects, the subgrantee may submit an appeal for additional funding in accordance with § 206.206 below, within 60 days following the completion of all of its small projects.

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

§ 206.205 Payment of claims.

(a) *Small projects.* Final payment of the Federal share of these projects shall be made to the Grantee upon approval of the project. The grantee shall make payment of the Federal share to the subgrantee as soon as practicable after Federal approval of funding. Prior to the closeout of the disaster contract, the Grantee shall certify that all such projects were completed in accordance with FEMA approvals and that the State contribution to the non-Federal share, as specified in the FEMA-State Agreement, has been paid to each subgrantee. Such certification is not required to specify the amount spent by a subgrantee on small projects. The Federal payment for small projects shall not be reduced if all of the approved funds are not spent to complete a project. However, failure to complete a project may require that the Federal payment be refunded.

(b) *Large projects.* (1) The Grantee shall make an accounting to the RD of eligible costs for each approved large project. In submitting the accounting the Grantee shall certify that reported costs were incurred in the performance of eligible work, that the approved work was completed, that the project is in compliance with the provisions of the FEMA-State Agreement, and that payments for that project have been made in accordance with 44 CFR 13.21, Payments. Each large project shall be submitted as soon as practicable after the subgrantee has completed the approved work and requested payment.

(2) The RD shall review the accounting to determine the eligible amount of reimbursement for each large project and approve eligible costs. If a discrepancy between reported costs and approved funding exists, the RD may conduct field reviews to gather additional information. If discrepancies in the claim cannot be resolved through a field review, a Federal audit may be conducted. If the RD determines that eligible costs exceed the initial approval, he/she will obligate additional funds as necessary.

§ 206.206 Appeals.

(a) *Subgrantee.* The subgrantee may appeal any determination previously made related to Federal assistance for a subgrantee, including a time extension determination made by the grantee. The subgrantee's appeal shall be made in writing and submitted to the grantee within 60 days after receipt of notice of the action which is being appealed. The appeal shall contain documented justification supporting the subgrantee's position.

(b) *Grantee.* Upon receipt of an appeal from a subgrantee, the grantee shall review the material submitted, make such additional investigations as necessary, and shall forward the appeal with a written recommendation to the RD within 60 days.

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

(d) *Associate Director.* (1) If the RD denies the appeal, the subgrantee may submit a second appeal to the Associate Director. Such appeals shall be made in writing, through the grantee and the RD, and shall be submitted not later than 60 days after receipt of notice of the RD's denial of the first appeal. The Associate Director shall render a determination on the subgrantee's appeal within 90 days following receipt of the appeal or shall make a request for additional information. Within 90 days following the receipt of such additional information, the AD shall notify the grantee, in writing, of the disposition of the appeal. If the decision is to grant the appeal, the RD will be instructed to take appropriate implementing action.

(2) In appeals involving highly technical issues, the AD, at his/her discretion, may ask an independent scientific or technical group or person with expertise in the subject matter of the appeal to review the appeal in order to obtain the best possible evaluation. In such cases, the 90 day time limit will run from the submission of the technical report.

(e) *Director.* (1) If the AD denies the appeal, the subgrantee may submit an appeal to the Director of FEMA. Such appeals shall be made in writing, through the grantee and the RD, and shall be submitted not later than 60 days after receipt of notice of the AD's denial of the second appeal.

(2) The Director shall render a determination on the subgrantee's appeal within 90 days following receipt of the appeal or shall make a request for additional information if such is necessary. Within 90 days following the receipt of such additional information, the Director shall render a determination and notify the grantee, in writing, of the disposition of the appeal. If the decision is to grant the appeal, the RD will be instructed to take appropriate implementing action.

(3) In appeals involving highly technical issues, the Director may, at his/her discretion, submit the appeal to an independent scientific or technical person or group having expertise in the subject matter of the appeal for advice and recommendation. Before making the selection of this person or group, the Director may consult with the grantee and/or the subgrantee.

(4) The Director may also submit appeals which he/she receives to persons who are not associated with FEMA's Disaster Assistance Programs office for recommendations on the resolution of appeals.

(5) Within 60 days after the submission of a recommendation made pursuant to paragraphs (d) (3) and (4) of this section, the Director shall render a determination and notify the grantee of the disposition of the appeal.

§ 206.207 Administrative and audit requirements.

(a) *General.* Uniform administrative requirements which are set forth in 44

CFR part 13 apply to all disaster assistance grants and subgrants.

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

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

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

(iii) Procedures for:

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

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

(C) Assisting FEMA in determining applicant eligibility;

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

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

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

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

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

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

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

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

(3) In accordance with the Interim Rule published March 21, 1989, the Grantee was to have submitted an administrative plan to the RD for approval by September 18, 1989. An approved plan must be on file with FEMA before grants will be approved in a future major disaster. Thereafter, the Grantee shall submit a revised plan to the RD annually. In each disaster for which Public Assistance is included, the RD shall request the Grantee to prepare any amendments required to meet current policy guidance.

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

(c) *Audit*—(1) *Nonfederal audit.* For grantees or subgrantees, requirements for nonfederal audit are contained in FEMA regulations at 44 CFR Part 14 or OMB Circular A–110 as appropriate.

(2) *Federal audit.* In accordance with 44 CFR part 14, Appendix A, Para. 10, FEMA may elect to conduct a Federal audit of the disaster assistance grant or any of the subgrants.

§ 206.208 **Direct Federal assistance**

(a) *General.* When the State and local government lack the capability to perform or to contract for eligible emergency work and/or debris removal, under sections 402(4), 403 or 407 of the Act, the Grantee may request that the work be accomplished by a Federal agency. Such assistance is subject to the cost sharing provisions outlined in § 206.203(b) of this subpart. Direct Federal assistance is also subject to the eligibility criteria contained in Subpart H of these regulations. FEMA will reimburse other Federal agencies in accordance with Subpart A of these regulations.

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

(1) A written agreement that the State will:

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

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

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

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

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

(3) A written agreement from an eligible applicant that such applicant will be responsible for the items in subparagraph (b)(1)(i) and (ii) of this section, in the event that a State is legally unable to provide the written agreement.

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

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

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

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

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

§§ 206.209–206.219 **[Reserved]**

Subpart H—Public Assistance Eligibility

§ 206.220 **General.**

This subpart provides policies and procedures for determinations of eligibility of applicants for public assistance, eligibility of work, and eligibility of costs for assistance under sections 402, 403, 406, 407, 418, 419, 421(d), 502 and 503 of the Stafford Act. Assistance under this subpart must also conform to requirements of 44 CFR part

206, Subparts G—Public Assistance Project Administration, I—Public Assistance Insurance Requirements, J—Coastal Barrier Resources Act, and M—Hazard Mitigation Planning. Regulations under 44 CFR part 9—Floodplain Management and 44 CFR part 10—Environmental Considerations, also apply to this assistance.

§ 206.221 Definitions.

(a) *Educational institution* means:

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

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

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

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

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

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

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

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

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

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

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

(5) *Custodial care facility* means those buildings, structures, or systems including those for essential administration and support, which are used to provide institutional care for persons who require close supervision and some physical constraints on their daily activities for their self-protection, but do not require day-to-day medical care.

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

(f) *Private nonprofit organization* means any nongovernmental agency or entity that currently has:

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

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

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

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

(i) *Standards* means codes, specifications or standards required for the construction of facilities.

§ 206.222 Applicant eligibility.

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

(a) State and local governments.

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

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

§ 206.223 General work eligibility.

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

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

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

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

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

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

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

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

§ 206.224 Debris removal.

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

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

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

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

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

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

§ 206.225 Emergency work.

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

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

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

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

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

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

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

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

§ 206.226 Restoration of damaged facilities.

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

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

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

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

(Standards may be different for new construction and repair work)

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

(3) Be in writing and formally adopted by the applicant prior to project approval or be a legal Federal or State requirement applicable to the type of restoration;

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

(5) For any standard in effect at the time of a disaster, it must have been enforced during the time it was in effect.

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

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

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

(3) An exception to the limitation in paragraph (d)(2) of this section may be allowed for facilities eligible for or on the National Register of Historic Properties. If an applicable standard requires repair in a certain manner, costs associated with that standard will be eligible.

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

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

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

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

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

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

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

(5) If relocation of a facility is not feasible or cost effective, the Regional Director shall disapprove Federal funding for the original location when he/she determines in accordance with 44 CFR part 9, 44 CFR part 10, or 44 CFR part 206, Subpart M, that restoration in the original location is not allowed. In such cases, an alternate project may be applied for.

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

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

(h) *Beaches.* (1) Replacement of sand on an unimproved natural beach is not eligible.

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

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

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

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

(2) *Inactive facilities.* Facilities that were not in active use at the time of the disaster are not eligible except in those instances where the facilities were only temporarily inoperative for repairs or remodeling, or where active use by the applicant was firmly established in an approved budget or the owner can demonstrate to FEMA's satisfaction an intent to begin use within a reasonable time.

§ 206.227 Snow removal assistance.

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

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

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

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

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

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

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

§ 206.228 Allowable costs.

General policies for determining allowable costs are established in 44 CFR 13.22. Exceptions to those policies as allowed in 44 CFR 13.4 and 13.6 are explained below.

(a) *Eligible direct costs—(1) Applicant-owned equipment.* Reimbursement for ownership and operation costs of applicant-owned equipment used to perform eligible work shall be provided in accordance with the following guidelines:

(i) *Rates established under State guidelines.* In those cases where an applicant uses reasonable rates which have been established or approved under State guidelines, in its normal daily operations, reimbursement for applicant-owned equipment which has an hourly rate of $75 or less shall be based on such rates. Reimbursement for equipment which has an hourly rate in excess of $75 shall be determined on a case by case basis by FEMA.

(ii) *Rates established under local guidelines.* Where local guidelines are used to establish equipment rates, reimbursement will be based on those rates or rates in a Schedule of Equipment Rates published by FEMA, whichever is lower. If an applicant certifies that its locally established rates do not reflect actual costs, reimbursement may be based on the FEMA Schedule of Equipment Rates, but the applicant will be expected to provide documentation if requested. If an applicant wishes to claim an equipment rate which exceeds the FEMA Schedule, it must document the basis for that rate and obtain FEMA approval of an alternate rate.

(iii) *No established rates.* The FEMA Schedule of Equipment Rates will be the basis for reimbursement in all cases where an applicant does not have established equipment rates.

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

(A) For the first $100,000 of total assistance provided (Federal share), three percent of such assistance.

(B) For the next $900,000, two percent of such assistance.

(C) For the next $4,000,000, one percent of such assistance.

(D) For assistance over $5,000,000, one-half percent of such assistance.

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

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

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

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

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

(3) State Management Administrative Costs.

(i) *Grantee.* Except for the items listed in paragraph (a)(2)(i) of this section, other administrative costs shall be paid in accordance with 44 CFR 13.22.

(ii) *Subgrantee.* No other administrative costs of a subgrantee are eligible because the percentage allowance in paragraph (a)(2)(ii) of this section covers necessary costs of requesting, obtaining and administering Federal assistance.

(b) *Eligible indirect costs*—(1) *Grantee.* Indirect costs of administering the disaster program are eligible in accordance with the provisions of 44 CFR part 13 and OMB Circular A–87.

(2) *Subgrantee.* No indirect costs of a subgrantee are separately eligible because the percentage allowance in paragraph (a)(2)(ii) of this section covers necessary costs of requesting, obtaining and administering Federal assistance.

§§ 206.229–206.249 [Reserved]

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Subpart J—Coastal Barrier Resources Act

§ 206.340 Purpose of subpart.

This subpart implements the Coastal Barrier Resources Act (CBRA) (Pub. L. 97-348) as that statute applies to disaster relief granted to individuals and State and local governments under the Stafford Act. CBRA prohibits new expenditures and new financial assistance within the Coastal Barrier Resources System (CBRS) for all but a few types of activities identified in CBRA. This subpart specifies what actions may and may not be carried out within the CBRS. It establishes procedures for compliance with CBRA in the administration of disaster assistance by FEMA.

§ 206.341 Policy.

It shall be the policy of FEMA to achieve the goals of CBRA in carrying out disaster relief on units of the Coastal Barrier Resources System. It is FEMA's intent that such actions be consistent with the purpose of CBRA to minimize the loss of human life, the wasteful expenditure of Federal revenues, and the damage to fish, wildlife and other natural resources associated with coastal barriers along the Atlantic and Gulf coasts and to consider the means and measures by which the long-term conservation of these fish, wildlife, and other natural resources may be achieved under the Stafford Act.

§ 206.342 Definitions.

Except as otherwise provided in this subpart, the definitions set forth in part 206 of subchapter D are applicable to this subject.

(a) *Consultation* means that process by which FEMA informs the Secretary of the Interior through his/her designated agent of FEMA proposed disaster assistance actions on a designated unit of the Coastal Barrier Resources System and by which the Secretary makes comments to FEMA about the appropriateness of that action. Approval by the Secretary is not required in order that an action be carried out.

(b) *Essential link* means that portion of a road, utility, or other facility originating outside of the system unit but providing access or service through the unit and for which no alternative route is reasonably available.

(c) *Existing facility* on a unit of CBRS established by Pub. L. 97-348 means a publicly owned or operated facility on which the start of a construction took place prior to October 18, 1982, and for which this fact can be adequately documented. In addition, a legally valid building permit or equivalent documentation, if required, must have been obtained for the construction prior to October 18, 1982. If a facility has been substantially improved or expanded since October 18, 1982, it is not an existing facility. For any other unit added to the CBRS by amendment to Pub. L. 97-348, the enactment date of such amendment is substituted for October 18, 1982, in this definition.

(d) *Expansion* means changing a facility to increase its capacity or size.

(e) *Facility* means "public facility" as defined in § 206.201. This includes any publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; and nonfederal-aid street, road, or highway; and any other public building, structure, or system, including those used for educational, recreational, or cultural purposes, or any park.

(f) *Financial assistance* means any form of Federal loan, grant guaranty, insurance, payment rebate, subsidy or any other form of direct or indirect Federal assistance.

(g) *New financial assistance* on a unit of the CBRS established by Pub. L. 97-348 means an approval by FEMA of a project application or other disaster assistance after October 18, 1982. For any other unit added to the CBRS by amendment to Pub. L. 97-348, the enactment date such amendment is substituted for October 18, 1982, in this definition.

(h) *Start of construction* for a structure means the first placement of permanent construction, such as the placement of footings or slabs or any work beyond the stage of excavation. Permanent construction for a structure does not include land preparation such as clearing, grading, and placement of fill, nor does it include excavation for a basement, footings, or piers. For a facility which is not a structure, start of construction means the first activity for permanent construction of a substantial part of the facility. Permanent construction for a facility does not include land preparation such as clearing and grubbing but would include excavation and placement of fill such as for a road.

(i) *Structure* means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a mobile home.

(j) *Substantial improvement* means any repair, reconstruction or other improvement of a structure or facility, that has been damaged in excess of, or the cost of which equals or exceeds, 50 percent of the market value of the structure or placement cost of the facility (including all "public facilities") as defined in the Stafford Act) either:

(1) Before the repair or improvement is started; or

(2) If the structure or facility has been damaged and is proposed to be restored, before the damage occurred. If a facility is a link in a larger system, the percentage of damage will be based on the relative cost of repairing the damaged facility to the replacement cost of that portion of the system which is operationally dependent on the facility. The term "substantial improvement" does not include any alternation of a structure or facility listed on the National Register of Historic Places or a State Inventory of Historic Places.

(k) "System unit" means any undeveloped coastal barrier, or combination of closely related undeveloped coastal barriers included within the Coastal Barrier Resources System as established by the section 4 of the CBRA, or as modified by the Secretary in accordance with that statute.

§ 206.343 Scope.

(a) The limitations on disaster assistance as set forth in this subpart apply only to FEMA actions taken on a unit of the Coastal Barrier Resources System or any conduit to such unit, including, but not limited to a bridge, causeway, utility, or similar facility.

(b) FEMA assistance having a social program orientation which is unrelated to development is not subject to the requirements of these regulations. This assistance includes:

(1) Individual and Family Grants that are not for acquisition or construction purposes;

(2) Crisis counseling;

(3) Disaster Legal services; and

(4) Disaster unemployment assistance.

§ 206.344 Limitations on Federal expenditures.

Except as provided in §§ 206.345 and 206.346, no new expenditures or financial assistance may be made available under authority of the Stafford Act for any purpose within the Coastal Barrier Resources System, including but not limited to:

(a) Construction, reconstruction, replacement, repair or purchase of any structure, appurtenance, facility or related infrastructure;

(b) Construction, reconstruction, replacement, repair or purchase of any road, airport, boat landing facility, or other facility on, or bridge or causeway to, any System unit; and

(c) Carrying out of any project to prevent the erosion of, or to otherwise stabilize, any inlet, shoreline, or inshore area, except that such assistance and expenditures may be made available on units designated pursuant to Section 4 on maps numbered S01 through S08 for purposes other than encouraging development and, in all units, in cases where an emergency threatens life, land, and property immediately adjacent to that unit.

§ 206.345 Exceptions.

The following types of disaster assistance actions are exceptions to the prohibitions of § 206.344.

(a) After consultation with the Secretary of the Interior, the FEMA Regional Director may make disaster assistance available within the CBRS for:

(1) Replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system;

(2) Repair of any facility necessary for the exploration, extraction, or transportation of energy resources which activity can be carried out only on, in, or adjacent to coastal water areas because the use or facility requires access to the coastal water body; and

(3) Restoration of existing channel improvements and related structures, such as jetties, and including the disposal of dredge materials related to such improvements.

(b) After consultation with the Secretary of the Interior, the FEMA Regional Director may make disaster assistance available within the CBRS for the following types of actions, provided such assistance is consistent with the purposes of CBRA;

(1) Emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 402, 403, and 502 of the Stafford Act and are limited to actions that are necessary to alleviate the impacts of the event;

(2) Replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities, except as provided in § 206.347(c)(5);

(3) Repair of air and water navigation aids and devices, and of the access thereto;

(4) Repair of facilities for scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications;

(5) Repair of facilities for the study, management, protection and enhancement of fish and wildlife resources and habitats, including but not limited to, acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects; and

(6) Repair of nonstructural proejcts for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.

§ 206.346 Applicability to disaster assistance.

(a) *Emergency assistance.* The Regional Director may approve assistance pursuant to sections 402, 403, or 502 of the Stafford Act, for emergency actions which are essential to the saving of lives and the protection of property and the public health and safety, are necessary to alleviate the emergency, and are in the public interest. Such actions include but are not limited to:

(1) Removal of debris from public property;

(2) Emergency protection measures to prevent loss of life, prevent damage to improved property and protect public health and safety;

(3) Emergency restoration of essential community services such as electricity, water or sewer;

(4) Provision of access to a private residence;

(5) Provision of emergency shelter by means of providing emergency repair of utilities, provision of heat in the season requiring heat, or provision of minimal cooking facilities;

(6) Relocation of individuals or property out of danger, such as moving a mobile home to an area outside of the CBRS (but disaster assistance funds may not be used to relocate facilities back into the CBRS);

(7) Home repairs to private owner-occupied primary residences to make them habitable;

(8) Housing eligible families in existing resources in the CBRS; and

(9) Mortgage and rental payment assistance.

(b) *Permanent restoration assistance.* Subject to the limitations set out below, the Regional Director may approve assistance for the repair, reconstruction, or replacement but not the expansion of the following publicly owned or operated facilities and certain private nonprofit facilities.

(1) Roads and bridges;

(2) Drainage structures, dams, levees;

(3) Buildings and equipment;

(4) Utilities (gas, electricity, water, etc.); and

(5) Park and recreational facilities.

§ 206.347 Requirements.

(a) *Location determination.* For each disaster assistance action which is proposed on the Atlantic or Gulf Coasts, the Regional Director shall:

(1) Review a proposed action's location to determine if the action is on or connected to the CBRS unit and thereby subject to these regulations. The appropriate Department of Interior map identifying units of the CBRS will be the basis of such determination. The CBRS units are also identified on FEMA Flood Insurance Maps (FIRM's) for the convenience of field personnel.

(2) If an action is determined not to be on or connected to a unit of the CBRS, no further requirements of these regulations needs to be met, and the action may be processed under other applicable disaster assistance regulations.

(3) If an action is determined to be on or connected to a unit of the CBRS, it is subject to the consultation and consistency requirements of CBRA as prescribed in §§ 206.348 and 206.349.

(b) *Emergency disaster assistance.* For each emergency disaster assistance action listed in § 206.346(a), the Regional Director shall perform the required consultation. CBRA requires that FEMA consult with the Secretary of the Interior before taking any action on a System unit. The purpose of such consultation is to solicit advice on whether the action is or is not one which is permitted by section 6 of CBRA and whether the action is or is not consistent with the purposes of CBRA as defined in section 1 of that statute.

(1) FEMA has conducted advance consultation with the Department of the Interior concerning such emergency actions. The result of the consultation is that the Secretary of the Interior through the Assistance Secretary for Fish and Wildlife and Parks has concurred that the emergency work listed in § 206.346(a) is consistent with the purposes of CBRA and may be approved by FEMA without additional consultation.

(2) Notification. As soon as practicable, the Regional Director will notify the designated Department of the Interior representative at the regional level of emergency projects that have been approved. Upon request from the Secretary of the Interior, the Associate Director, SLPS, or his or her designee will supply reports of all current emergency actions approved on CBRS units. Notification will contain the following information:

(i) Identification of the unit in the CBRS;

(ii) Description of work approved;

(iii) Amount of Federal funding; and

(iv) Additional measures required.

(c) *Permanent restoration assistance.* For each permanent restoration assistance action including but not limited to those listed in § 206.346(b), the Regional Director shall meet the requirements set out below.

(1) Essential links. For the repair or replacement of publicly owned or operated roads, structures or facilities which are essential links in a larger network or system:

(i) No facility may be expanded beyond its predisaster design.

(ii) Consultation in accordance with § 206.348 shall be accomplished.

(2) Channel improvements. For the repair of existing channels, related structures and the disposal of dredged materials:

(i) No channel or related structure may be repaired, reconstructed, or replaced unless funds were appropriated for the construction of such channel or structure before October 18, 1982;

(ii) Expansion of the facility beyond its predisaster design is not permitted;

(iii) Consultation in accordance with § 206.348 shall be accomplished.

(3) Energy facilities. For the repair of facilities necessary for the exploration, extraction or transportation of energy resources:

(i) No such facility may be repaired, reconstructed or replaced unless such function can be carried out only in, on, or adjacent to a coastal water area because the use or facility requires access to the coastal water body;

(ii) Consultation in accordance with § 206.348 shall be accomplished.

(4) Special-purpose facilities. For the repair of facilities used for the study, management, protection or enhancement of fish and wildlife resources and habitats and related recreational projects; air and water navigation aids and devices and access thereto; and facilities used for scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications; and, nonstructural facilities that are designed to mimic, enhance or restore natural shoreline stabilization systems:

(i) Consultation in accordance with § 206.348 shall be accomplished;

(ii) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with § 206.349.

(5) Other public facilities. For the repair, reconstruction, or replacement of publicly owned or operated roads, structures, or facilities that do not fall within the categories identified in paragraphs (c)(1), (2), (3), and (4) of this section:

(i) No such facility may be repaired, reconstructed, or replaced unless it is an "existing facility;"

(ii) Expansion of the facility beyond its predisaster design is not permitted;

(iii) Consultation in accordance with § 206.348 shall be accomplished;

(iv) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with § 206.349.

(6) Private nonprofit facilities. For eligible private nonprofit facilities as defined in these regulations and of the type described in paragraphs (c)(1), (2), (3), and (4) of this section:

(i) Consultation in accordance with § 206.348 shall be accomplished.

(ii) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with § 206.349.

(7) Improved project. An improved project may not be approved for a facility in the CBRS if such grant is to be combined with other funding, resulting in an expansion of the facility beyond the predisaster design. If a facility is exempt from the expansion prohibitions of CBRA by virtue of falling into one of the categories identified in paragraph (c)(1), (2), (3), or (4) of this section, then an improved project for such facilities is not precluded.

(8) Alternate project. A new or enlarged facility may not be constructed on a unit of the CBRS under the provisions of the Stafford Act unless the facility is exempt from the expansion prohibition of CBRA by virtue of falling into one of the categories identified in paragraph (c)(1), (2), (3), or (4) of this section.

§ 206.348 Consultation.

As required by section 6 of the CBRA, the FEMA Regional Director will consult with the designated representative of the Department of the Interior (DOI) at the regional level before approving any action involving permanent restoration of a facility or structure on or attached to a unit of the CBRS.

(a) The consultation shall be by written memorandum to the DOI representative and shall contain the following:

(1) Identification of the unit within the CBRS;

(2) Description of the facility and the proposed repair or replacement work; including identification of the facility as an exception under section 6 of CBRA; and full justification of its status as an exception;

(3) Amount of proposal Federal funding;

(4) Additional mitigation measures required; and

(5) A determination of the action's consistency with the purposes of CBRA, if required by these regulations, in accordance with § 206.349.

(b) Pursuant to FEMA understanding with DOI, the DOI representative will provide technical information and an opinion whether or not the proposed action meets the criteria for a CBRA exception, and on the consistency of the action with the purposes of CBRA (when such consistency is required). DOI is expected to respond within 12 working days from the date of the FEMA request for consultation. If a response is not received within the time limit, the FEMA Regional Director shall contact the DOI representative to determine if the request for consultation was received in a timely manner. If it was not, an appropriate extension for response will be given. Otherwise, he or she may assume DOI concurrence and proceed with approval of the proposed action.

(c) For those cases in which the regional DOI representative believes that the proposed action should not be taken and the matter cannot be resolved at the regional level, the FEMA Regional Director will submit the issue to the FEMA Assistant Associate Director for Disaster Assistance Programs (DAP). In coordination with the Office of General Counsel (OGC), consultation will be accomplished at the FEMA National Office with the DOI consultation officer. After this consultation, the Assistant Associate Director, DAP, determines whether or not to approve the proposed action.

§ 206.349 Consistency determinations.

Section 6(a)(6) of CBRA requires that certain actions be consistent with the purposes of that statute if the actions are to be carried out on a unit of the CBRA. The purpose of CBRA, as stated in section 2(b) of that statute, is to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with the coastal barriers along with Atlantic and Gulf coasts. For those actions where a consistency determination is required, the FEMA Regional Director shall evaluate the action according to the following procedures, and the evaluation shall be included in the written request for consultation with DOI.

(a) *Impact identification.* FEMA shall identify impacts of the following types that would result from the proposed action:

(1) Risks to human life;

(2) Risks of damage to the facility being repaired or replaced;
(3) Risks of damage to other facilities;
(4) Risks of damage to fish, wildlife, and other natural resources;
(5) Condition of existing development served by the facility and the degree to which its redevelopment would be encouraged; and
(6) Encouragement of new development.

(b) *Mitigation.* FEMA shall modify actions by means of practicable mitigation measures to minimize adverse effects of the types listed in paragraph (a) of this section.

(c) *Conservation.* FEMA shall identify practicable measures that can be incorporated into the proposed action and will conserve natural and wildlife resources.

(d) *Finding.* For those actions required to be consistent with the purposes of CBRA, the above evaluation must result in a finding of consistency with CBRA by the Regional Director before funding may be approved for that action.

§§ 206.350—206.359 [Reserved]

Subpart K—Community Disaster Loans

§ 206.360 Purpose.

This subpart provides policies and procedures for local governments and State and Federal officials concerning the Community Disaster Loan program under section 417 of the Act.

§ 206.361 Loan program.

(a) *General.* The Associate Director, State and Local Programs and Support (the Associate Director) may make a Community Disaster Loan to any local government which has suffered a substantial loss of tax and other revenues as a result of a major disaster and which demonstrates a need for Federal financial assistance in order to perform its governmental functions.

(b) *Amount of loan.* The amount of the loan is based on need, not to exceed 25 percent of the operating budget of the local government for the fiscal year in which the disaster occurs. The term "fiscal year" as used in this subpart means the local government's fiscal year.

(c) *Interest rate.* The interest rate is the rate for five year maturities as determined by the Secretary of the Treasury in effect on the date that the Promissory Note is executed. This rate is from the monthly Treasury schedule of certified interest rates which takes into consideration the current average yields on outstanding marketable obligations of the United States, adjusted to the nearest ⅛ percent.

(d) *Time limitation.* The Associate Director may approve a loan in either the fiscal year in which the disaster occurred or the fiscal year immediately following that year. Only one loan may be approved under section 417(a) for any local government as the result of a single disaster.

(e) *Term of loan.* The term of the loan is 5 years, unless otherwise extended by the Associate Director. The Associate Director may consider requests for an extensions of loans based on the local government's financial condition. The total term of any loan under section 417(a) normally may not exceed 10 years from the date the Promissory Note was executed. However, when extenuating circumstances exist and the Community Disaster Loan recipient demonstrates an inability to repay the loan within the initial 10 years, but agrees to repay such loan over an extended period of time, additional time may be provided for loan repayment. (See § 206.367(c).)

(f) *Use of loan funds.* The local government shall use the loaned funds to carry on existing local government functions of a municipal operation character or to expand such functions to meet disaster-related needs. The funds shall not be used to finance capital improvements nor the repair or restoration of damaged public facilities. Neither the loan nor any cancelled portion of the loans may be used as the nonfederal share of any Federal program, including those under the Act.

(g) *Cancellation.* The Associate Director shall cancel repayment of all or part of a Community Disaster Loan to the extent that he/she determines that revenues of the local government during the 3 fiscal years following the disaster are insufficient to meet the operating budget of that local government because of disaster-related revenue losses and additional unreimbursed disaster-related municipal operating expenses.

(h) *Relation to other assistance.* Any community disaster loans including cancellations made under this subpart shall not reduce or otherwise affect any commitments, grants, or other assistance under the Act or these regulations.

§ 206.362 Responsibilities.

(a) The local government shall submit the financial information required by FEMA in the application for a Community Disaster Loan and in the application for loan cancellation, if submitted, and comply with the assurances on the application, the terms and conditions of the Promissory Note, and these regulations. The local government shall send all loan application, loan administration, loan cancellation, and loan settlement correspondence through the GAR and the FEMA Regional Office to the FEMA Associate Director.

(b) The GAR shall certify on the loan application that the local government can legally assume the proposed indebtedness and that any proceeds will be used and accounted for in compliance with the FEMA-State Agreement for the major disaster. States are encouraged to take appropriate pre-disaster action to resolve any existing State impediments which would preclude a local government from incurring the increased indebtedness associated with a loan in order to avoid protracted delays in processing loan application requests in major disasters or emergencies.

(c) The Regional Director or designee shall review each loan application or loan cancellation request received from a local government to ensure that it contains the required documents and transmit the application to the Associate Director. He/she may submit appropriate recommendations to the Associate Director.

(d) The Associate Director, or a designee, shall execute a Promissory Note with the local government, and the Office of Disaster Assistance Programs in Headquarters, FEMA, shall administer the loan until repayment or cancellation is completed and the Promissory Note is discharged.

(e) The Associate Director or designee shall approve or disapprove each loan request, taking into consideration the information provided in the local government's request and the recommendations of the GAR and the Regional Director. The Associate Director or designee shall approve or disapprove a request for loan cancellation in accordance with the criteria for cancellation in these regulations.

(f) The Comptroller shall establish and maintain a financial account for each outstanding loan and disburse funds against the Promissory Note.

§ 206.363 Eligibility criteria.

(a) *Local government.* (1) The local government must be located within the area designated by the Associate Director as eligible for assistance under a major disaster declaration. In addition, State law must not prohibit the local government from incurring the indebtedness resulting from a Federal loan.

(2) Criteria considered by FEMA in determining the eligibility of a local government for a Community Disaster Loan include the loss of tax and other revenues as result of a major disaster, a

demonstrated need for financial assistance in order to perform its governmental functions, the maintenance of an annual operating budget, and the responsibility to provide essential municipal operating services to the community. Eligibility for other assistance under the Act does not, by itself, establish entitlement to such a loan.

(b) *Loan eligibility*—(1) *General.* To be eligible, the local government must show that it may suffer or has suffered a substantial loss of tax and other revenues as a result of a major disaster or emergency and must demonstrate a need for financial assistance in order to perform its governmental functions. Loan eligibility is based on the financial condition of the local government and a review of financial information and supporting justification accompanying the application.

(2) *Substantial loss of tax and other revenues.* The fiscal year of the disaster or the succeeding fiscal year is the base period for determining whether a local government may suffer or has suffered a substantial loss of revenue. Criteria used in determining whether a local government has or may suffer a substantial loss of tax and other revenue include the following disaster-related factors:

(i) Whether the disaster caused a large enough reduction in cash receipts from normal revenue sources, excluding borrowing, which affects significantly and adversely the level and/or categories of essential municipal services provided prior to the disaster;

(ii) Whether the disaster caused a revenue loss of over 5 percent of total revenue estimated for the fiscal year in which the disaster occurred or for the succeeding fiscal year;

(3) *Demonstrated need for financial assistance.* The local government must demonstrate a need for financial assistance in order to perform its governmental functions. The criteria used in making this determination include the following:

(i) Whether there are sufficient funds to meet current fiscal year operating requirements;

(ii) Whether there is availability of cash or other liquid assets from the prior fiscal year;

(iii) Current financial condition considering projected expenditures for governmental services and availability of other financial resources;

(iv) Ability to obtain financial assistance or needed revenue from State and other Federal agencies for direct program expenditures;

(v) Debt ratio (relationship of annual receipts to debt service);

(vi) Ability to obtain financial assistance or needed revenue from State and other Federal agencies for direct program expenditures;

(vii) Displacement of revenue-producing business due to property destruction;

(viii) Necessity to reduce or eliminate essential municipal services; and

(ix) Danger of municipal insolvency.

§ 206.364 Loan application.

(a) *Application.* (1) The local government shall submit an application for a Community Disaster Loan through the GAR. The loan must be justified on the basis of need and shall be based on the actual and projected expenses, as a result of the disaster, for the fiscal year in which the disaster occurred and for the 3 succeeding fiscal years. The loan application shall be prepared by the affected local government and be approved by the GAR. FEMA has determined that a local government, in applying for a loan as a result of having suffered a substantial loss of tax and other revenue as a result of a major disaster, is not required to first seek credit elsewhere (see § 206.367(c)).

(2) The State exercises administrative authority over the local government's application. The State's review should include a determination that the applicant is legally qualified, under State law, to assume the proposed debt, and may include an overall review for accuracy for the submission. The Governor's Authorized Representative may request the Regional Director to waive the requirement for a State review if an otherwise eligible applicant is not subject to State administration authority and the State cannot legally participate in the loan application process.

(b) *Financial requirements.* (1) The loan application shall be developed from financial information contained in the local government's annual operating budget (see § 206.364(b)(2)) and shall include a Summary of Revenue Loss and Unreimbursed Disaster-Related Expenses, a Statement of the Applicant's Operating Results—Cash Position, a Debt History, Tax Assessment Data, Financial Projections, Other Information, a Certification, and the Assurances listed on the application.

(i) Copies of the local government's financial reports (Revenue and Expense and Balance Sheet) for the 3 fiscal years immediately prior to the fiscal year of the disaster and the applicant's most recent financial statement must accompany the application. The local government's financial reports to be submitted are those annual (or interim) consolidated and/or individual official annual financial presentations for the General Fund and all other funds maintained by the local government.

(ii) Each application for a Community Disaster Loan must also include:

(A) A statement by the local government identifying each fund (i.e. General Fund, etc.) which is included as its annual Operating budget, and

(B) A copy of the pertinent State statutes, ordinance, or regulations which prescribe the local government's system of budgeting, accounting and financial reporting, including a description of each fund account.

(2) Operating Budget. For loan application purposes, the operating budget is that document or documents approved by an appropriating body, which contains an estimate of proposed expenditures, other than capital outlays for fixed assets for a stated period of time, and the proposed means of financing the expenditures. For loan cancellation purposes, FEMA interprets the term "operating budget" to mean actual revenues and expenditures of the local government as published in the official financial statements of the local government.

(3) Operating budget increases. Budget increases due to increases in the level of, or additions to, municipal services not rendered at the time of the disaster or not directly related to the disaster shall be identified.

(4) Revenue and assessment information. The applicant shall provide information concerning its method of tax assessment including assessment dates and the dates payments are due. Tax revenues assessed but not collected, or other revenues which the local government chooses to forgive, stay, or otherwise not exercise the right to collect, are not a legitimate revenue loss for purposes of evaluating the loan application.

(5) Estimated disaster-related expense. Unreimbursed disaster-related expenses of a municipal operating character should be estimated. These are discussed in § 206.366(b).

(c) *Federal review.* (1) The Associate Director or designee shall approve a community disaster loan to the extent it is determined that the local government has suffered a substantial loss of tax and other revenues and demonstrates a need for financial assistance to perform its governmental function as the result of the disaster.

(2) Resubmission of application. If a loan application is disapproved, in whole or in part, by the Associate Director because of inadequacy of information, a revised application may be resubmitted by the local government

within sixty days of the date of the disapproval. Decision by the Associate Director on the resubmission is final.

(d) *Community disaster loan.* (1) The loan shall not exceed the lesser of:

(i) The amount of projected revenue loss plus the projected unreimbursed disaster-related expenses of a municipal operating character for the fiscal year of the major disaster and the subsequent 3 fiscal years, or

(ii) 25 percent of the local government's annual operating budget for the fiscal year in which the disaster occurred.

(2) Promissory note. (i) Upon approval of the loan by the Associate Director or designee, he or she, or a designated Loan Officer will execute a Promissory Note with the applicant. The Note must be co-signed by the State (see § 206.364(d)(2)(ii)). The applicant should indicate its funding requirements on the Schedule of Loan Increments on the Note.

(ii) If the State cannot legally cosign the Promissory Note, the local government must pledge collateral security, acceptable to the Associate Director, to cover the principal amount of the Note. The pledge should be in the form of a resolution by the local governing body identifying the collateral security.

(Approved by Office of Management and Budget under Control Number 3067-0034)

§ 206.365 Loan administration.

(a) *Funding.* (1) FEMA will disburse funds to the local government when requested, generally in accordance with the Schedule of Loan Increments in the Promissory Note. As funds are disbursed, interest will accrue against each disbursement.

(2) When each incremental disbursement is requested, the local government shall submit a copy of its most recent financial report (if not submitted previously) for consideration by FEMA in determining whether the level and frequency of periodic payments continue to be justified. The local government shall also provide the latest available data on anticipated and actual tax and other revenue collections. Desired adjustments in the disbursement schedule shall be submitted in writing at least 10 days prior to the proposed disbursement date in order to ensure timely receipt of the funds. A sinking fund should be established to amortize the debt.

(b) *Financial management.* (1) Each local government with an approved Community Disaster Loan shall establish necessary accounting records, consistent with local government's financial management system, to account for loan funds received and disbursed and to provide an audit trail.

(2) FEMA auditors, State auditors, the GAR, the Regional Director, the Associate Director, and the Comptroller General of the United States or their duly authorized representatives shall, for the purpose of audits and examination, have access to any books, documents, papers, and records that pertain to Federal funds, equipments, and supplies received under these regulations.

(c) *Loan servicing.* (1) The applicant annually shall submit to FEMA copies of its annual financial reports (operating statements, balance sheets, etc.) for the fiscal year of the major disaster, and for each of the 3 subsequent fiscal years.

(2) The Headquarters, FEMA Office of Disaster Assistance Programs, will review the loan periodically. The purpose of the reevaluation is to determine whether projected revenue losses, disaster-related expenses, operating budgets, and other factors have changed sufficiently to warrant adjustment of the scheduled disbursement of the loan proceeds.

(3) The Headquarters, FEMA Office of Disaster Assistance Programs, shall provide each loan recipient with a loan status report on a quarterly basis. The recipient will notify FEMA of any changes of the responsible municipal official who executed the Promissory Note.

(d) *Inactive loans.* If no funds have been disbursed from the Treasury, and if the local government does not anticipate a need for such funds, the note may be cancelled at any time upon a written request through the State and Regional Office to FEMA. However, since only one loan may be approved, cancellation precludes submission of a second loan application request by the same local government for the same disaster.

§ 206.366 Loan cancellation.

(a) *Policies.* (1) FEMA shall cancel repayment of all or part of a Community Disaster Loan to the extent that the Associate Director determines that revenues of the local government during the full three fiscal year period following the disaster are insufficient, as a result of the disaster, to meet the operating budget for the local government, including additional unreimbursed disaster-related expenses for a municipal operating character. For loan cancellation purposes, FEMA interprets that term "operating budget" to mean actual revenues and expenditures of the local government as published in the official financial statements of the local government.

(2) If the tax and other revenues rates or the tax assessment valuation of property which was not damaged or destroyed by the disaster are reduced during the 3 fiscal years subsequent to the major disaster, the tax and other revenue rates and tax assessment valuation factors applicable to such property in effect at the time of the major disaster shall be used without reduction for purposes of computing revenues received. This may result in decreasing the potential for loan cancellations.

(3) If the local government's fiscal year is changed during the "full 3 year period following the disaster" the actual period will be modified so that the required financial data submitted covers an inclusive 36-month period.

(4) If the local government transfers funds from its operating funds accounts to its capital funds account, utilizes operating funds for other than routine maintenance purposes, or significantly increases expenditures which are not disaster related, except increases due to inflation, the annual operating budget or operating statement expenditures will be reduced accordingly for purposes of evaluating any request for loan cancellation.

(5) It is not the purpose of this loan program to underwrite predisaster budget or actual deficits of the local government. Consequently, such deficits carried forward will reduce any amounts otherwise eligible for loan cancellation.

(b) *Disaster-related expenses of a municipal operation character.* (1) For purpose of this loan, unreimbursed expenses of a municipal operating character are those incurred for general government purposes, such as police and fire protection, trash collection, collection of revenues, maintenance of public facilities, flood and other hazard insurance, and other expenses normally budgeted for the general fund, as defined by the Municipal Finance Officers Association.

(2) Disaster-related expenses do not include expenditures associated with debt service, any major repairs, rebuilding, replacement or reconstruction of public facilities or other capital projects, intragovernmental services, special assessments, and trust and agency fund operations. Disaster expenses which are eligible for reimbursement under project applications or other Federal programs are not eligible for loan cancellation.

(3) Each applicant shall maintain records including documentation necessary to identify expenditures for unreimbursed disaster-related expenses.

Examples of such expenses include but are not limited to:

(i) Interest paid on money borrowed to pay amounts FEMA does not advance toward completion of approved Project Applications.

(ii) Unreimbursed costs to local governments for providing usable sites with utilities for mobile homes used to meet disaster temporary housing requirements.

(iii) Unreimbursed costs required for police and fire protection and other community services for mobile home parks established as the result of or for use following a disaster.

(iv) The cost to the applicant of flood insurance required under Pub. L. 93-234, as amended, and other hazard insurance required under section 311, Pub. L. 93-288, as amended, as a condition of Federal disaster assistance for the disaster under which the loan is authorized.

(4) The following expenses are not considered to be disaster-related for Community Disaster Loan purposes:

(i) The local government's share for assistance provided under the Act including flexible funding under section 406(c)(1) of the Act.

(ii) Improvements related to the repair or restoration of disaster public facilities approved on Project Applications.

(iii) Otherwise eligible costs for which no Federal reimbursement is requested as a part of the applicant's disaster response commitment, or cost sharing as specified in the FEMA-State Agreement for the disaster.

(iv) Expenses incurred by the local government which are reimbursed on the applicant's project application.

(c) *Cancellation application.* A local government which has drawn loan funds from the Treasury may request cancellation of the principal and related interest by submitting an Application for Loan Cancellation through the Governor's Authorized Representative to the Regional Director prior to the expiration date of the loan.

(1) Financial information submitted with the application shall include the following:

(i) Annual Operating Budgets for the fiscal year of the disaster and the 3 subsequent fiscal years;

(ii) Annual Financial Reports (Revenue and Expense and Balance Sheet) for each of the above fiscal years. Such financial records must include copies of the local government's annual financial reports, including operating statements balance sheets and related consolidated and individual presentations for each fund account. In addition, the local government must include an explanatory statement when figures in the Application for Loan Cancellation form differ from those in the supporting financial reports.

(iii) The following additional information concerning annual real estate property taxes pertaining to the community for each of the above fiscal years:

(A) The market value of the tax base (dollars);

(B) The assessment ratio (percent);

(C) The assessed valuation (dollars);

(D) The tax levy rate (mils);

(E) Taxes levied and collected (dollars).

(iv) Audit reports for each of the above fiscal years certifying to the validity of the Operating Statements. The financial statements of the local government shall be examined in accordance with generally accepted auditing standards by independent certified public accountants. The report should not include recommendations concerning loan cancellation or repayment.

(v) Other financial information specified in the Application for Loan Cancellation.

(2) *Narrative justification.* The application may include a narrative presentation to amplify the financial material accompanying the application and to present any extenuating circumstances which the local government wants the Associate Director to consider in rendering a decision on the cancellation request.

(d) *Determination.* (1) If, based on a review of the Application for Loan Cancellation and FEMA audit, when determined necessary, the Associate Director determines that all or part of the Community Disaster Loan funds should be canceled, the principal amount which is canceled will become a grant, and the related interest will be forgiven. The Associate Director's determination concerning loan cancellation will specify that any uncancelled principal and related interest must be repaid immediately and that, if immediate repayment will constitute a financial hardship, the local government must submit for FEMA review and approval, a repayment schedule for settling the indebtedness on timely basis. Such repayments must be made to the Treasurer of the United States and be sent to FEMA, Attention: Office of the Comptroller.

(2) A loan or cancellation of a loan does not reduce or affect other disaster-related grants or other disaster assistance. However, no cancellation may be made that would result in a duplication of benefits to the applicant.

(3) The uncancelled portion of the loan must be repaid in accordance with § 206.367.

(4) *Appeals.* If an Application for Loan Cancellation is disapproved, in whole or in part, by the Associate Director or designee, the local government may submit any additional information in support of the application within 60 days of the date of disapproval. The decision by the Associate Director or designee on the submission is final.

(Approved by the Office of Management and Budget under Control Number 3067-0026)

§ 206.367 Loan repayment.

(a) *Prepayments.* The local government may make prepayments against loan at any time without any prepayment penalty.

(b) *Repayment.* To the extent not otherwise cancelled, Community Disaster Loan funds become du and payable in accordance with the terms and conditions of the Promissory Note. The note shall include the following provisions:

(1) The term of a loan made under this program is 5 years, unless extended by the Associate Director. Interest will accrue on outstanding cash from the actual date of its disbursement by the Treasury.

(2) The interest amount due will be computed separately for each Treasury disbursement as follows: $I=P\times R\times T$, where I= the amount of simple interest, P= the principal amount disbursed; R= the interest rate of the loan; and, T= the outstanding term in years from the date of disbursement to date of repayment, with periods less than 1 year computed on the basis of 365 days/year. If any portion of the loan is cancelled, the interest amount due will be computed on the remaining principal with the shortest outstanding term.

(3) Each payment made against the loan will be applied first to the interest computed to the date of the payment, and then to the principal. Prepayments of scheduled installments, or any portion thereof, may be made at any time and shall be applied to the installments last to become due under the loan and shall not affect the obligation of the borrower to pay the remaining installments.

(4) The Associate Director may defer payments of principal and interest until FEMA makes its final determination with respect to any Application for Loan Cancellation which the borrower may submit. However, interest will continue to accrue.

(5) Any costs incurred by the Federal Government in collecting the note shall be added to the unpaid balance of the

loan, bear interest at the same rate as the loan, and be immediately due without demand.

(6) In the event of default on this note by the borrower, the FEMA claims collection officer will take action to recover the outstanding principal plus related interest under Federal debt collection authorities, including administrative offset against other Federal funds due the borrower and/or referral to the Department of Justice for judicial enforcement and collection.

(c) *Additional time.* In unusual circumstances involving financial hardship, the local government may request an additional period of time beyond the original 10 year term to repay the indebtedness. Such request may be approved by the Associate Director subject to the following conditions:

(1) The local government must submit documented evidence that it has applied for the same credit elsewhere and that such credit is not available at a rate equivalent to the current Treasury rate.

(2) The principal amount shall be the original uncancelled principal plus related interest.

(3) The interest rate shall be the Treasury rate in effect at the time the new Promissory Note is executed but in no case less than the original interest rate.

(4) The term of the new Promissory Note shall be for the settlement period requested by the local government but not greater than 10 years from the date the new note is executed.

§§ 206.368—206.389 [Reserved]

Subpart L—Fire Suppression Assistance

§ 206.390 General.

When the Associate Director determines that a fire or fires threaten such destruction as would constitute a major disaster, assistance may be authorized, including grants, equipment, supplies, and personnel, to any State for the suppression of any fire on publicly or privately owned forest or grassland.

§ 206.391 FEMA-State Agreement.

Federal assistance under section 420 of the Act is provided in accordance with a continuing FEMA-State Agreement for Fire Suppression Assistance (the Agreement) signed by the Governor and the Regional Director. The Agreement contains the necessary terms and conditions, consistent with the provisions of applicable laws, Executive Orders, and regulations, as the Associate Director may require and specifies the type and extent of Federal assistance. The Governor may designate authorized representatives to execute requests and certifications and otherwise act for the State during fire emergencies. Supplemental agreements shall be executed as required to update the continuing Agreement.

§ 206.392 Request for assistance.

When a Governor determines that fire suppression assistance is warranted, a request for assistance may be initiated. Such request shall specify in detail the factors supporting the request for assistance. In order that all actions in processing a State request are executed as rapidly as possible, the State may submit a telephone request to the Regional Director, promptly followed by a confirming telegram or letter.

(Approved by the Office of Management and Budget under the Control Numbers 3067–0066)

§ 206.393 Providing assistance.

Following the Associate Director's decision on the State request, the Regional Director will notify the Governor and the Federal firefighting agency involved. The Regional Director may request assistance from Federal agencies if requested by the State. For each fire or fire situation, the State shall prepare a separate Fire Project Application based on Federal Damage Survey Reports and submit it to the Regional Director for approval.

§ 206.394 Cost eligibility.

(a) *Cost principles.* See 44 CFR 13.22, Allowable Costs, and the associated OMB Circular A–87, Cost Principles for State and Local Governments.

(b) *Program specific eligible costs.* (1) Expenses to provide field camps and meals when made available to the eligible employees in lieu of per diem costs.

(2) Costs for use of publicly owned equipment used on eligible fire suppression work based on reasonable State equipment rates.

(3) Costs to the State for use of U.S. Government-owned equipment based on reasonable costs as billed by the Federal agency and paid by the State. Only direct costs for use of Federal Excess Personal Property (FEPP) vehicles and equipment on loan to State Forestry and local cooperators, can be paid.

(4) Cost of firefighting tools, materials, and supplies expended or lost, to the extent not covered by reasonable insurance.

(5) Replacement value of equipment lost in fire suppression, to the extent not covered by reasonable insurance.

(6) Costs for personal comfort and safety items normally provided by the State under field conditions for firefighter health and safety.

(7) Mobilization and demobilization costs directly relating to the Federal fire suppression assistance approved by the Associate Director.

(8) Eligible costs of local governmental firefighting organizations which are reimbursed by the State pursuant to an existing cooperative mutual aid agreement, in suppressing an approved incident fire.

(9) State costs for suppressing fires on Federal land in cases in which the State has a responsibility under a cooperative agreement to perform such action on a nonreimbursable basis. This provision is an exception to normal FEMA policy under the Act and is intended to accommodate only those rare instances that involve State fire suppression of section 420 incident fires involving co-mingled Federal/State and privately owned forest or grassland.

(10) In those instances in which assistance under section 420 of the Act is provided in conjunction with existing Interstate Forest Fire Protection Compacts, eligible costs are reimbursed in accordance with eligibility criteria established in this section.

(c) *Program specific ineligible costs.* (1) Any costs for presuppression, salvaging timber, restoring facilities, seeding and planting operations.

(2) Any costs not incurred during the incident period as determined by the Regional Director other than reasonable and directly related mobilization and demobilization costs.

(3) State costs for suppressing a fire on co-mingled Federal land where such costs are reimbursable to the State by a Federal agency under another statute (see 44 CFR part 151).

§ 206.395 Grant administration.

(a) Project administration shall be in accordance with 44 CFR part 13, and applicable portions of subpart G, 44 CFR part 206.

(b) In those instances in which reimbursement includes State fire suppression assistance on co-mingled State and Federal lands (§ 206.394(b)(9)), the Regional Director shall coordinate with other Federal programs to preclude any duplication of payments. (See 44 CFR part 151.)

(c) Audits shall be in accordance with the Single Audit Act of 1984, Pub. L. 98–502. (See subpart G of this part.)

(d) A State may appeal a determination by the Regional Director on any action related to Federal assistance for fire suppression. Appeal procedures are contained in 44 CFR 206.206.

§§ 206.396–206.399 [Reserved]

Dated: January 6, 1990.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

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