

NATIONAL PRIORITIES LIST, FEDERAL
SECTION (BY GROUP)—Continued

[August 1990]

NPL Gr ¹	St	Site name	City/county
11.....	NH	Pease Air Force Base.	Portsmouth/ Newington.
11.....	NM	Lee Acres Landfill (USDO).	Farmington.
11.....	WY	F.E. Warren Air Force Base.	Cheyenne.
12.....	CA	Castle Air Force Base.	Merced.
12.....	AZ	Luke Air Force Base.	Glendale.
12.....	AZ	Williams Air Force Base.	Chandler.
12.....	PA	Tobyhanna Army Depot.	Tobyhanna.
12.....	CA	Barstow Marine Corps Logist Base.	Barstow.
13.....	PA	Letterkenny Army Depot (PDO Area).	Franklin County.
13.....	CA	El Toro Marine Corps Air Station.	El Toro.
13.....	NJ	Fort Dix (Landfill Site).	Pemberton Township.
13.....	CA	Tracy Defense Depot.	Tracy.
13.....	AL	Alabama Army Ammunition Plant.	Childersburg.
13.....	CT	New London Submarine Base.	New London.
13.....	WA	Hanford 1100-Area (USDOE).	Benton County.
13.....	DE	Dover Air Force Base.	Dover.
13.....	UT	Monticello Mill Tailings (USDOE).	Monticello.
14.....	MA	Fort Devens-Sudbury Training Ann.	Middlesex County.
14.....	NY	Seneca Army Depot.	Romulus.
14.....	WA	Fort Lewis Logistics Center.	Tillicum.
15.....	IL	Joliet Army Ammu Plant (LAP Area).	Joliet.
15.....	OH	Mound Plant (USDOE).	Miamisburg.

NATIONAL PRIORITIES LIST, FEDERAL
SECTION (BY GROUP)—Continued

[August 1990]

NPL Gr ¹	St	Site name	City/county
15.....	RI	Davisville Naval Constr Batt Cent.	North Kingstown.
15.....	ME	Loring Air Force Base.	Limestone.
15.....	PR	Naval Security Group Activity.	Sabana Seca.
16.....	PA	Letterkenny Army Depot (SE Area).	Chambersburg.
16.....	NY	Griffiss Air Force Base.	Rome.
16.....	VA	Defense General Supply Center.	Chesterfield County.
16.....	KS	Fort Riley	Junction City.
16.....	WA	Fort Lewis (Landfill No. 5).	Tacoma.
18.....	CA	Camp Pendleton Marine Corps Base.	San Diego County.
17.....	MO	Lake City Army Plant (NW Lagoon).	Independence.
17.....	MN	Twin Cities Air Force (SAR Lndfill).	Minneapolis.
17.....	CA	Edwards Air Force Base.	Kern County.
17.....	SD	Ellsworth Air Force Base.	Rapid City.
17.....	CA	George Air Force Base.	Victorville.
17.....	WA	Naval Undersea Warf Sta (4 Areas).	Keyport.
17.....	NC	Camp Lejeune Military Reservation.	Onslow County.
18.....	RI	Newport Naval Educat/Training Cen.	Newport.
18.....	AZ	Yuma Marine Corps Air Station.	Yuma.
18.....	FL	Jacksonville Naval Air Station.	Jacksonville.
18.....	IL	Joliet Army Ammu Plant (Mfg Area).	Joliet.

NATIONAL PRIORITIES LIST, FEDERAL
SECTION (BY GROUP)—Continued

[August 1990]

NPL Gr ¹	St	Site name	City/county
18.....	FL	Cecil Field Naval Air Station.	Jacksonville.
18.....	WA	Fairchild Air Force Base (4 Areas).	Spokane County.
19.....	CA	March Air Force Base.	Riverside.
19.....	TX	Lone Star Army Ammunition Plant.	Texarkana.
19.....	CA	Lawrence Livermore Lab-300 (USDOE).	Livermore.
19.....	OR	Umatilla Army Depot (Lagoons).	Hermiston.
19.....	MD	Aber Prov Ground-Michaelsville Lt.	Aberdeen.
20.....	MN	Naval Industrial Reserve Ordnance.	Fridley.
20.....	WA	Bangor Ordnance Disposal.	Bremerton.
20.....	NY	Plattsburgh Air Force Base.	Plattsburgh.
20.....	LA	Louisiana Army Ammunition Plant.	Doyline.
20.....	MO	Weldon Spring Form Army Ord Works.	St. Charles County.
21.....	IA	Iowa Army Ammunition Plant.	Middletown.
21.....	NJ	Naval Weapons Stat Earle (Site A).	Colts Neck.
21.....	CA	Travis Air Force Base.	Solano County.
21.....	CA	Moffett Naval Air Station.	Sunnyvale.
22.....	CA	Mather Air Force Base.	Sacramento.
22.....	HI	Schofield Barracks.	Oahu.

Number of NPL Federal Facility Sites: 116

* State top priority site.

¹: Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.

[FR Doc. 90-20385 Filed 8-29-90; 8:45 am]

BILLING CODE 6560-50-M

Register

Federal

Thursday
August 30, 1990

Part III

Federal Emergency Management Agency

44 CFR Part 206

**Disaster Assistance; Hazard Mitigation
Planning and Hazard Mitigation Grant
Program; Final Rules**

**FEDERAL EMERGENCY
MANAGEMENT AGENCY****44 CFR Part 206**

RIN 3067-AB45

**Disaster Assistance; Hazard Mitigation
Planning (Subpart M)****AGENCY:** Federal Emergency
Management Agency (FEMA).**ACTION:** Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) is today publishing a final rule at 44 CFR Part 206 to implement the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93-288, as amended (the Stafford Act, or the Act.) The Disaster Relief Act of 1974 was amended by the Disaster Relief and Emergency Assistance Amendments of 1988, Pub. L. 100-707. This subpart pertains to the hazard mitigation planning requirements of section 409 of the Stafford Act which prescribes Federal, State and local responsibilities following the declaration of a major disaster, or declaration for fire suppression assistance. Although the amendments to the Disaster Relief Act did not modify section 409, this rule was issued to update, simplify and clarify the existing Subpart M regulations. As appropriate, comments on the proposed rule, published September 14, 1989 (54 FR 37952), have been incorporated in this final rule.

EFFECTIVE DATE: This final rule will be effective on October 1, 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 Patricia Stahlschmidt, Program Officer, at (202) 646-3678.

SUPPLEMENTARY INFORMATION: With the passage of Public Law 100-707, section 406 of the Disaster Relief Act of 1974 was renumbered as section 409 of the Stafford Act, though the language in this section was not amended. The final regulations which are being published today have taken into account comments received on the proposed rule. Four sets of comments on the proposed rule were received from State governments and Federal agencies. The following discussion of comments is arranged in the order in which the subjects appear in the regulation.

**1. General Comment on Need for
Flexibility in Federal Policy**

One reviewer commented that hazard mitigation objectives, needs, and

capabilities will vary with the size of the State, the population densities, and the size of the areas at risk. The reviewer stated that flexibility in exercising Federal policy is needed to achieve hazard mitigation goals. FEMA agrees with this comment. As in the past, the planning requirements of Subpart M will be tailored to meet the needs and capabilities of each State. No changes to the regulations are required.

**2. Requirements of the National
Environmental Policy Act**

A comment was made that although the actions addressed by Subpart M will be undertaken by State and local governments, where the National Environmental Policy Act does not apply, the final rule should specify how the requirements of the National Environmental Policy Act would be met when actions are authorized, approved, or funded by FEMA. There are, however, existing FEMA regulations addressing environmental requirements that pertain to all FEMA actions. These can be found at 44 CFR part 9 (Floodplain Management and Protection of Wetlands) and at 44 CFR part 10 (Environmental Considerations.) Since the existing environmental regulations will ensure compliance with National Environmental Policy Act, it was felt that no changes to the subpart M regulations were necessary.

**3. Distinction Between Natural and
Technological Hazards—Section 206.401**

One comment suggested that the final rule more clearly distinguish between natural disasters and technological disasters. Section 409 of the Stafford Act states that " * * * the State or local government shall agree that the natural hazards in the areas in which the proceeds of the grants or loans are to be used shall be evaluated and appropriate action shall be taken to mitigate such hazards * * * ". For the purposes of this regulation, a natural disaster will be defined as any natural catastrophe, including any hurricane, tornado, storm, high water, wind driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, fire, or drought. Major disaster declarations can be made for natural disasters and for any fire, flood, or explosion, regardless of cause. If a declaration is made for a technological hazard, the recipients of Federal disaster assistance will be expected to evaluate those technological hazards for which assistance is made available. However, in order to be consistent with the language in section 409, subpart M emphasizes natural hazards only. The

regulations have been changed to include a definition of natural disaster.

**4. Definition of the State Hazard
Mitigation Officer—Section 206.401**

A reviewer proposed that the State Hazard Mitigation Officer be designated by the Governor's Authorized Representative, as is the case in the Interim Regulations for the Hazard Mitigation Grant Program found at § 206.431(k), published May 22, 1989 (54 FR 22173). Several States have a full time State Hazard Mitigation Officer, designated by the Governor to handle mitigation issues before, during, and after disasters. When a Presidential disaster is declared, the Governor's Authorized Representative is appointed to coordinate the recovery effort. The State Hazard Mitigation Officer may not be appointed directly by the Governor's Authorized Representative, but will work through the Governor's Authorized Representative in managing hazard mitigation issues related to the disaster. If the State has a full time State Hazard Mitigation Officer, that person should work on the disaster recovery to ensure continuity in hazard mitigation planning for the State. The inconsistency in definition of the State Hazard Mitigation Officer in Subparts M and N has been corrected by deleting the separate definition previously found in the Interim Regulations for Subpart N, and by slightly revising the definition of State Hazard Mitigation Officer to include all mitigation programs and activities required under the Stafford Act.

**5. Role and Responsibilities of the
Governor's Authorized Representative—
Section 206.402**

One commenter suggested that the final rule should indicate the responsibilities of the Governor's Authorized Representative, as opposed to the State, for the development/update of the hazard mitigation plan. Section 206.402(c) of the final rule describes the responsibilities of the State in carrying out the requirements of section 409 of the Stafford Act. This section states that the State Hazard Mitigation officer will report to the governor or his or her authorized representative. Since the Governor's Authorized Representative is appointed by the Governor, FEMA does not see the need to distinguish between the State and the Governor's Authorized Representative. Moreover, mitigation planning can span a long period of time and can include a variety of activities, from evaluation of hazards through updating of the mitigation plan. These activities may or may not be under the

responsibility of the Governor's Authorized Representative, depending on the circumstances under which the plan is developed, and on the discretion of the State. Therefore, no changes have been made to the regulations concerning the role and responsibilities of the Governor's Authorized Representative.

6. Responsibilities of the State Hazard Mitigation Officer—Section 206.402(c)

One reviewer suggested that the final rule more clearly state the responsibilities of the State Hazard Mitigation Officer, such as in preparation of the hazard mitigation plan and participation on the post disaster hazard mitigation teams. Section 206.402 (c) (1) has been revised to state that the State Hazard Mitigation Officer will coordinate all post disaster hazard mitigation activities, as well as serve as the point of contact for them. Section 206.402 (c) (2) and (3) already include preparation of the mitigation plan and participation on the post disaster mitigation teams as responsibilities of the State, and therefore of the State Hazard Mitigation Officer. Section 206.402 (c)(4) has been expanded to require the State Hazard Mitigation Officer to arrange for appropriate State, as well as local, participation on the post disaster mitigation teams. Further clarification of the State Hazard Mitigation Officer responsibilities is provided in FEMA guidance documents rather than in regulation.

7. Evaluation of a Statewide Comprehensive Hazard Mitigation Plan, Program or Strategy—Section 206.403(b) (1)

One reviewer was uncertain what was meant by FEMA's evaluation of the status of a statewide comprehensive hazard mitigation plan, program, or strategy in responding to a request for a disaster declaration. The purpose of this requirement is to recognize that many States have adopted a statewide approach to hazard mitigation planning so that mitigation measures, such as improved standards for roads, will have an impact throughout the State. The status of the statewide plan, program, or strategy is to be evaluated as part of the pre-declaration process to determine whether or not the statewide plan has had any impact on the disaster for which assistance is being requested. In fact, § 206.405(b) encourages States to develop basic mitigation plans that can simply be expanded or updated as new disaster declarations are made so that a new plan does not need to be developed for each disaster declaration.

8. Goals of Hazard Mitigation Plans—Sections 206.405(a) (3) and 206.406(f)

One comment suggested that the goal of hazard mitigation plans specifically include protection of natural and beneficial values of floodplains as well as flood loss protection. FEMA agrees with this statement, but does not think the final rule is the place for identifying specific goals of the hazard mitigation plans. This level of guidance is provided in the handbook for State officials in implementation of subpart M, and in other materials. No changes were made to the regulations as a result.

9. Identification of Projects to be Funded Under the Hazard Mitigation Grant Program—Section 206.406(g)

This paragraph of the regulations has been revised to more precisely describe the relationship between the hazard mitigation planning requirements of subpart M and the Hazard Mitigation Grant Program requirements of subpart N.

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, 1987 (E.O. 12612, 52 FR 41685). The purpose of the order is to assure the appropriate division of government 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 12612. 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.

Information Collection Requirement

The information collection requirement contained in this rule has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and assigned OMB control number 3067-0212. Public reporting burden for the requirement is estimated to average 480 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each plan. Send comments regarding this burden estimate or any aspect of this requirement, including suggestions for reducing this burden, to Information Collections Management, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472; and to the Office of Management and Budget, Paperwork Reduction Project (3067-0212), Washington, DC 20503.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire prevention, Grant programs—housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs—housing and community development, Natural resources, Penalties, Reporting and recordkeeping requirements.

Accordingly, FEMA is amending part 206, subpart M of chapter I, subchapter D, of title 44 CFR to read as follows:

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

1. The authority citation for part 206 is revised to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93-288, as amended by Pub. L. 100-707; 42 U.S.C. 5121, *et seq.*; Reorganization Plan No. 3 of 1978 (3 CFR 1979, p. 329); E.O. 12148 (3 CFR, 1980, p. 412) as amended by E.O. 12673 (3 CFR, 1990, p. 214), and E.O. 12673.

2. Part 206 is amended by revising subpart M to read as follows:

Subpart M—Hazard Mitigation Planning

206.400 General.
206.401 Definitions.

- 206.402 Responsibilities.
- 206.403 Pre-declaration activities.
- 206.404 Mitigation survey teams.
- 206.405 Hazard mitigation plan.
- 206.406 Hazard mitigation planning process.
- 206.407 Minimum standards.

Subpart M—Hazard Mitigation Planning

§ 206.400 General.

This subpart prescribes the requirements for implementation of section 409 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93-288, as amended, hereinafter referred to as the "Stafford Act") and prescribes Federal, State and local hazard mitigation planning responsibilities following the declaration of a major disaster or emergency, or declaration for fire suppression assistance pursuant to section 420 of the Stafford Act.

§ 206.401 Definitions.

Federal Hazard Mitigation Officer is the FEMA employee responsible for carrying out the overall responsibilities for hazard mitigation and for this subpart, including coordinating post-disaster hazard mitigation actions with other agencies of government at all levels.

Hazard Mitigation means any action taken to reduce or eliminate the long-term risk to human life and property from natural hazards.

Hazard Mitigation Grant Program means the program authorized under section 404 of the Stafford Act, which may provide funding for certain mitigation measures identified through the evaluation of hazards conducted under section 409 of the Stafford Act.

Hazard Mitigation Plan means the plan resulting from a systematic evaluation of the nature and extent of vulnerability to the effects of natural hazards present in society and includes the actions needed to minimize future vulnerability to hazards, as required under section 409 of the Stafford Act.

Hazard Mitigation Plan Update means an update to the existing hazard mitigation plan, which may be accomplished either by updating the status of mitigation actions within the existing plan, or by expanding the existing plan to address additional hazards or mitigation issues.

Hazard Mitigation Survey Team means the FEMA/State/Local survey team that is activated following disasters to identify immediate mitigation opportunities and issues to be addressed in the section 409 hazard mitigation plan. The Hazard Mitigation Survey Team may include representatives of other Federal agencies, as appropriate.

Interagency Hazard Mitigation Team means the mitigation team that is activated following flood related disasters pursuant to the July 10, 1980 Office of Management and Budget directive on Nonstructural Flood Protection Measures and Flood Disaster Recovery, and the subsequent December 15, 1980 Interagency Agreement for Nonstructural Damage Reduction.

Local Hazard Mitigation Officer is the representative of local government who serves on the Hazard Mitigation Survey Team or Interagency Hazard Mitigation Team and who is the primary point of contact with FEMA, other Federal agencies, and the State in the planning and implementation of post-disaster hazard mitigation activities.

Measure means any mitigation measure, project, or action proposed to reduce risk of future damage, hardship, loss or suffering from disasters.

Natural Disaster is any natural catastrophe, including any hurricane, tornado, storm, high water, wind driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, fire, or drought.

State Hazard Mitigation Officer is the representative of State government who is the primary point of contact with FEMA, other Federal agencies, and local units of government in the planning and implementation of post-disaster mitigation programs and activities required under the Stafford Act.

§ 206.402 Responsibilities.

(a) *General*. This section identifies the key responsibilities of FEMA, States, and local participants in carrying out the requirements of section 409 of the Stafford Act.

(b) *FEMA*. The key responsibilities of the FEMA Regional Director are to:

(1) Oversee all FEMA-related pre- and post-disaster hazard evaluation and mitigation programs and activities;

(2) Appoint a Federal Hazard Mitigation Officer for each disaster to manage hazard mitigation programs and activities;

(3) Provide technical assistance to State and local governments in fulfilling mitigation responsibilities;

(4) Conduct periodic review of State hazard mitigation activities and programs to ensure that States are adequately prepared to meet their responsibilities under the Stafford Act;

(5) Assist the State in the identification of the appropriate mitigation actions that a State or locality must take in order to have a measurable impact on reducing or avoiding the adverse effects of a specific hazard or hazardous situation.

(6) Subsequent to a declaration, follow-up with State and local governments to ensure that mitigation commitments are fulfilled, and when necessary, take action, including recovery of funds or denial of future funds, if mitigation commitments are not fulfilled.

(c) *States*. The key responsibilities of the State are to coordinate all State and local responsibilities regarding hazard evaluation and mitigation, and to:

(1) Appoint a State Hazard Mitigation Officer, who reports to the governor's authorized representative, and who serves as the point of contact for and coordinates all matters relating to section 409 hazard mitigation planning and implementation;

(2) Prepare and submit, in accordance with the FEMA/State Agreement and the requirements of this subpart, a hazard mitigation plan(s) or update to existing plan(s), as required under § 206.405. Such plan or update is to include an evaluation of the natural hazards in the declared area, and an identification of appropriate actions to mitigate those hazards;

(3) Participate in the Hazard Mitigation Survey Team or Interagency Hazard Mitigation Team activated after the declaration;

(4) Arrange for appropriate State and local participation on the Hazard Mitigation Survey Team or Interagency Hazard Mitigation Team and in the section 409 planning process;

(5) Follow-up with State agencies and local governments to assure that appropriate hazard mitigation actions are taken. This involves coordination of plans and actions of local governments to assure that they are not in conflict with each other or with State plans;

(6) Ensure that the activities, programs and policies of all State agencies related to hazard evaluation, vulnerability, and mitigation are coordinated and contribute to the overall lessening or avoiding of vulnerability to natural hazards.

(d) *Local Governments*. The key responsibilities of local governments are to:

(1) Participate in the process of evaluating hazards and adoption of appropriate hazard mitigation measures, including land use and construction standards;

(2) Appoint a Local Hazard Mitigation Officer, if appropriate;

(3) Participate on Hazard Mitigation Survey Teams and Interagency Hazard Mitigation Teams, as appropriate;

(4) Participate in the development and implementation of section 409 plans or plan updates, as appropriate;

(5) Coordinate and monitor the implementation of local hazard mitigation measures.

§ 206.403 Pre-declaration activities.

(a) *General.* As part of FEMA's response to a Governor's request for a declaration, FEMA will evaluate information concerning the status of hazard mitigation efforts in the impacted State and localities.

(b) *Mitigation evaluation.* The mitigation review of State and local government activities in the impacted area shall include:

(1) The status of a statewide comprehensive hazard mitigation plans, programs, or strategies;

(2) The status of hazard mitigation plans or plan updates required as a condition of any previous declaration;

(3) The status of any actions which the State or localities agreed to undertake as a condition of past disaster assistance;

(4) The status of any mitigation measures funded under section 404 of the Stafford Act for any previous declaration;

(5) The status of any other hazard evaluation and mitigation projects funded under other FEMA or other Federal agency programs;

(6) An evaluation of the impact of the hazard(s) and any corresponding mitigation issues pertinent to the area for which Federal disaster assistance is being requested;

(7) Any other hazard evaluation and mitigation information available and considered relevant.

(c) *FEMA-State agreement.* Based on the conditions warranted by the declaration, and on the findings of the mitigation evaluation, the FEMA-State Agreement shall include appropriate mitigation provisions, such as the requirement to prepare a hazard mitigation plan or update.

§ 206.404 Mitigation survey teams.

(a) *Hazard mitigation surveys.* Hazard mitigation surveys are performed immediately following the declaration of a disaster to identify the following:

(1) Hazard evaluation and mitigation measures that must be incorporated into the recovery process;

(2) Possible measures for funding under the Hazard Mitigation Grant Program, or under other disaster assistance programs;

(3) Issues for inclusion in the section 409 hazard mitigation plan.

(b) *Hazard Mitigation Survey Teams.* Hazard Mitigation Survey Teams shall be activated by the Regional Director immediately following the declaration to conduct hazard mitigation surveys. The

Hazard Mitigation Survey Team shall consist of FEMA, State, and appropriate local government representatives, and representatives of any other Federal agencies that may be appropriate. In the case of flood declarations, the Interagency Hazard Mitigation Team will serve the purpose of the Hazard Mitigation Survey Team.

(c) *Survey team reports.* Within 15 days following a declaration Hazard Mitigation Survey Team report shall be prepared and distributed in accordance with FEMA policies and procedures. The Regional Director has the authority to extend this due date when necessary.

§ 206.405 Hazard mitigation plan.

(a) *General.* In order to fulfill the requirement to evaluate natural hazards within the designated area and to take appropriate action to mitigate such hazards the State shall prepare and implement a hazard mitigation plan or plan update. At a minimum the plan shall contain the following:

(1) An evaluation of the natural hazards in the designated area;

(2) A description and analysis of the State and local hazard management policies, programs, and capabilities to mitigate the hazards in the area;

(3) Hazard mitigation goals and objectives and proposed strategies, programs, and actions to reduce or avoid long term vulnerability to hazards;

(4) A method of implementing, monitoring, evaluating, and updating the mitigation plan. Such evaluation is to occur at least on an annual basis to ensure that implementation occurs as planned, and to ensure that the plan remains current.

(b) *Plan approach.* Hazard mitigation plans should be oriented toward helping States and localities to develop hazard management capabilities and programs as part of normal governmental functions. All States are encouraged to develop a basic mitigation plan prior to the occurrence of a disaster, so that the basic plan can simply be expanded or updated to address specific issues arising from the disaster. At the time of a declaration, the Regional Director, in consultation with the State, shall determine whether a new mitigation plan is required as a result of the declaration, or whether an existing plan can simply be updated or expanded.

(c) *Plan content and format.* The specific content and format of a hazard mitigation plan or plan update shall be determined through guidance and technical assistance that the Regional Director provides to the State during the section 409 planning process. At a minimum, the plan or update must

address the items listed in paragraph (a) of this section.

(d) *Plan submission.* All States shall submit a hazard mitigation plan or plan update on behalf of the State and any appropriate local governments included in the designated area. The plan or update is due to FEMA within 180 days of the date of the declaration. The Regional Director may grant extensions to this date not to exceed 365 days from the date of the declaration when adequate justification is received in writing from the State. Extensions beyond that date must be forwarded with justification to the Associate Director for approval.

(e) *Plan approval.* Upon receipt of a hazard mitigation plan or plan update, the Regional Director shall acknowledge receipt in writing to the Governor or appropriate agency. Written comments shall state whether the plan is approved, shall detail any shortcomings that may exist, and shall include a suggested method and timeline for correction if necessary.

(Approved by the Office of Management and Budget under OMB control number 3067-0212.)

§ 206.406 Hazard mitigation planning process.

(a) *General.* A sound planning process is essential to the development and implementation of an effective hazard mitigation plan. A critical element of successful mitigation planning is the involvement of key State agencies, local units of government, and other public or private sector bodies or agencies that influence hazard management or development policies within a State or local unit of government. This section identifies principal components of the mitigation planning process.

(b) *FEMA technical assistance.* States may request the Regional Director to provide technical assistance and guidance throughout the planning process to ensure that the plan or update adequately addresses mitigation concerns related to the disaster. Technical assistance may include but is not limited to:

(1) Identification of mitigation issues through the Interagency Hazard Mitigation Team or Hazard Mitigation Survey Team report;

(2) Initial meeting with the State to identify key staff, timeline, and scope of work for development of the hazard mitigation plan or update;

(3) Review of timelines, outlines, drafts, and other appropriate material during development of the hazard mitigation plan or update.

(4) Provision of Federal technical assistance information and identification of technical experts, if needed.

(c) *State involvement.* Though the primary responsibility for development of a hazard mitigation plan is assigned to one State agency, any State agency that influence development within hazardous areas through ongoing programs and activities should be involved in the development and implementation of hazard mitigation plans. This includes, but is not limited to, agencies involved with emergency management, natural resources, environmental regulations, planning and zoning, community development, building regulations, infrastructure regulation or construction, public information, and insurance. It is the responsibility of the State agency assigned lead responsibility for hazard mitigation to ensure that all other appropriate State agencies have the opportunity to participate in development and implementation of hazard mitigation planning.

(d) *Local involvement.* Local participation in hazard mitigation planning is essential because regulation and control of development within hazardous areas normally occurs at the local level. It is the responsibility of the State to ensure that appropriate local participation is obtained during development and implementation of hazard mitigation planning.

(e) *Private sector involvement.* When appropriate, a State or local government may choose to involve the private sector in the planning process. Support from the private sector is often essential to successful implementation of mitigation strategies at the local level. Involvement of the private sector in the early stages of the planning process may facilitate understanding and support for mitigation.

(f) *Development of hazard mitigation goals and objectives.* The participants in the planning process shall develop the basic mitigation goals and objectives from which the proposed hazard mitigation strategies, programs, and actions required under § 206.405(3) shall be drawn.

(g) *Identification of projects to be funded under the Hazard Mitigation Grant Program.* The Hazard Mitigation Grant Program, authorized under section 404 of the Stafford Act, provides up to 50 percent Federal funding for cost-effective mitigation measures that are consistent with the evaluation of hazards under section 409. Throughout the process of preparing a hazard mitigation plan or plan update, the State and local governments will be

evaluating natural hazards and identifying potential mitigation measures which may be eligible for funding under the Hazard Mitigation Grant Program. 44 CFR part 206, subpart N sets forth the regulations for funding these mitigation measures.

(h) *Coordination with other hazard evaluation and mitigation planning efforts.* During the process of developing a mitigation plan to satisfy requirements under this subpart, the State will ensure that the planning effort is coordinated with any other hazard evaluation and mitigation planning program within the State or local unit of government, including but not limited to the Disaster Preparedness Improvement Grant Program, the Hurricane Program, the Earthquake Hazard Reduction Program, the Dam Safety Program, the National Flood Insurance Program, and other similar programs of FEMA and other Federal agencies.

(i) *Evaluation and monitoring.* The State is responsible for monitoring and evaluating implementation of the hazard mitigation plan and for submitting annual progress reports to FEMA. The progress report will briefly indicate the status of implementation of the mitigation actions contained within the plan, and will include documentation relating to measures which have been implemented, where appropriate. The Regional Director may require the State to provide additional progress reports or more specific information on particularly critical mitigation actions, if necessary.

§ 206.407 Minimum standards.

(a) *General.* As a condition of any disaster loan or grant made under the Stafford Act, section 409 requires that the recipient shall agree that any repair or construction shall be in accordance with applicable standards of safety, decency, and sanitation, and in conformity with applicable codes, specifications, and standards. The hazard mitigation planning process required under section 409 can assist with the identification of inadequate standards as described below.

(b) *Local standards.* The cost of bringing a facility up to minimum standards is an eligible cost under subpart H of this part when such standards apply to the types of work being performed. These standards, including standards for hazard mitigation, can either be in place at the time of the disaster or can be adopted prior to approval of the project. Where current mitigation standards are inadequate, new standards may be identified in the following ways:

- (1) Through the Interagency Hazard Mitigation Team or Hazard Mitigation Survey Team;
- (2) Through the hazard mitigation planning process;
- (3) By the State or local governments;
- (4) Through the public assistance program; and,
- (5) Through identification of mitigation measures under the Hazard Mitigation Grant Program.

(c) *Compliance.* The State shall ensure that the sub-grantee meets compliance with minimum standards as that term is used in section 409.

Dated: August 17, 1990.

Grant C. Peterson,
Associate Director, State and Local Programs
and Support.

[FR Doc. 90-20224 Filed 8-29-90; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067-AB37

Disaster Assistance; Hazard Mitigation Grant Program (Subpart N)

AGENCY: Federal Emergency
Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) is today publishing Final Rule at 44 CFR part 206 to implement section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93-288, as amended (the Stafford Act, or the Act.) The Disaster Relief Act of 1974 was amended by the Disaster Relief and Emergency Assistance Amendments of 1988, Pub. L. 100-707. This subpart pertains to the Hazard Mitigation Grant Program (HMGP), authorized under section 404 of the Stafford Act, 42 U.S.C. 5170c. The HMGP provides up to 50 percent funding to State and local governments and certain private nonprofit organizations for hazard mitigation measures. As appropriate, comments on the Interim Rule, published May 22, 1989, have been incorporated in this Final Rule.

EFFECTIVE DATE: This Final Rule will be effective on October 1, 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 Patricia Stahlschmidt, Program Officer, at (202) 646-3678.

SUPPLEMENTARY 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, Public Law 93-288, and retitled it the Stafford Act. On May 22, 1989, FEMA published in the Federal Register at 54 FR 22173 an Interim Rule with a request for comments. The Interim Rule was published to implement section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The Final Regulations which are being published today have been taken into account comments received on the Interim Rule. Existing regulations at 44 CFR part 205 remain in effect to govern those major disasters and emergencies declared to enactment of the Stafford Act.

Seven sets of comments 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.

1. General Comment on the Tone of the Regulation

One reviewer commented that, while it believed the mitigation project criteria were flexible and represented an excellent approach to accomplishing mitigation needs, it objected to the directive tone of the regulation. The reviewer suggested that terms such as "recommend" and "suggest" would be more appropriate to fostering a partnership approach to mitigation between FEMA and the States. While FEMA agrees that implementation of the HMGP does involve a partnership with States, the purpose of subpart N is to establish minimum requirements that State and local governments must meet. Terms such as "recommend" and "suggest" do not establish requirements, and can lead to unclear and inconsistent implementation of the program. Therefore, no changes have been made to the regulation to the use these types of terms in place of minimum requirements.

2. Definition of Application—Section 206.431(b)

Several reviewers confused funding under section 404 with hazard mitigation for damaged public facilities eligible under section 406. A new definition for applicant was suggested to grant first priority to section 406 projects. FEMA met with these reviewers and clarified the fact that hazard mitigation for public facilities is an eligible item under section 406, as described under § 206.226, and that section 404 is a separate grant program which is not to

be used as a substitute for section 406. On that basis the comment was dropped. However, several reviewers still objected to the 60 day deadline for submission of the HMGP application. That deadline has changed as described below under the discussion of § 206.436(c). The definition of "Application" has been also been revised to delete the reference to the 60 day period.

3. Definitions of Hazard Mitigation Survey Team, Interagency Hazard Mitigation Team, and State Hazard Mitigation Officer—Section 206.431 (e), (f), and (k)

These definitions have been deleted from subpart N because they are contained in 44 CFR part 206, subpart M, § 206.401, which is published elsewhere in this issue.

4. Definition of Supplement—Section 206.431(k)

Some users of the interim regulations have been confused over the term supplement. A definition for this term has been added to the regulations to clarify its meaning.

5. Federal Grant Assistance—Section 206.432

One reviewer indicated support for the approach to estimating Federal funding available as explained in the Supplementary Information for the interim regulation, because it permits funding of projects immediately after the disaster declaration. The approach was to allow the State to operate under an initial estimate of funds available, beginning with the Preliminary Damage Assessment information, until such time as adequate public assistance data is available to determine the final figure of funds available under the HMGP. The final figure of Federal funds available under the HMGP is limited to ten percent of the Federal share of funds authorized under section 406 of the Act. This figure includes the associated expenses authorized under section 406 as well as the grants for damaged public facilities. In order to clarify this fact, the phrase "and all associated expenses" has been added to this section of the regulations, and to the definition of "Grant."

6. Cost Sharing—Section 206.432(c)

It was suggested that the last two sentences of this section, which stated that costs above the Federally approved estimate for mitigation are the responsibility of the grantee and subgrantee, be deleted. The rationale was that these sentences assume that the grantee and subgrantee will always

share in these costs, and that other sources of funds might not be used. The intent here was to make it clear that any costs above the Federally approved estimate for the mitigation are not the responsibility of FEMA, not to dictate who else should pay those costs. On that basis these sentences have been revised to clarify FEMA's intent.

7. State Hazard Mitigation Officer Title and Responsibilities—Section 206.433(c)

One commenter felt that the regulation inappropriately dictates the position title and job responsibilities of the State Hazard Mitigation Officer in the above section and in § 206.431(k) and § 206.437(b)(2). The commenter felt that these paragraphs usurp the State's prerogative to determine staff organization and job tasks, and that they exceed requirements and intent as contained in § 206.402(c), which delineates the State responsibilities under subpart M Hazard Mitigation Planning. The regulation does not intend to dictate the State's staff organization nor job tasks or titles by requiring that a State Hazard Mitigation Officer be appointed to serve as the responsible individual for all matters relating to the HMGP. However, just as with the individual and public assistance programs, it is necessary that an individual on the State staff be a point of contact and be responsible for the HMGP. The regulation does not dictate from what agency the individual should be appointed, and does not dictate job title or responsibilities outside of his or her relationship to the HMGP. With respect to this exceeding the requirements and intent of § 206.402(c) of the hazard mitigation planning regulations, the HMGP provides a method of funding mitigation measures identified through the hazard mitigation plan required under section 409 and subpart M. The HMGP and the hazard mitigation planning requirements are both key responsibilities of the State Hazard Mitigation Officer and are integrally related. Therefore, the HMGP regulations do not exceed the intent of § 206.402(c).

8. Minimum Project Criteria—Section 206.434(b)

One commenter expressed concern that the minimum project criteria relative to funding studies and analyses was too restrictive. It was felt that this approach would not allow an analysis to be conducted to determine the best mitigation alternative, particularly if there were an immediate threat to public health and safety. Section 206.434(b)(4) states that mitigation projects that

merely identify or analyze hazards or problems are not in and of themselves mitigation, and are therefore not eligible. This does not preclude funding a study or analysis, so long as mitigation measure(s) actually result from the study or analysis, and are a part of the total project. Section 206.434(b)(5)(i), which lists the factors used to determine the cost-effectiveness of a project, has been revised to include a reference to public health and safety when evaluating the cost-effectiveness of a project.

9. Measuring Cost-Effectiveness of Projects—Section 206.434(b)(5)

One commenter strongly recommended that rigid and involved criteria such as "Principles and Guidelines" not be used to measure cost effectiveness, as this discriminates against nonstructural flood protection programs, and can be an expensive, time consuming process. The regulation does not require the use of "Principles and Guidelines" to measure cost-effectiveness, nor does it intend to require procedures that would discourage nonstructural mitigation projects. The cost-effectiveness criteria in the regulation are designed to encourage that the most practical, effective, and environmentally sound project is selected after consideration of a range of alternatives. FEMA guidance on measuring cost-effectiveness does require that both benefits and costs must be calculated on a net present value basis, and that applicants use the discount rate of 10 percent, as established in OMB Circular No. A-94. The method used to determine cost-effectiveness should be appropriate to the cost and type of project for which funds are being requested. No change has been made to this section based on this comment.

10. Funding of Projects to Protect Private Property—Section 206.434(c)

There was some concern that, since the HMGP funding is determined by the funding available under section 406 for public assistance, mitigation would be limited to public facilities. This reviewer was pleased to see that the regulation also allows projects that protect private property.

11. Duplication of Programs—Section 206.434(d)

Concern was expressed that the mere existence of a program under other Federal authority does not mean that sufficient funds or services are available to meet identified hazard mitigation needs. The limitations expressed in this paragraph were therefore thought to be

inconsistent with other sections of the Stafford Act dealing with duplication of benefits, and with major disaster and emergency assistance programs. In order to address this concern a phrase was added to this section stating that section 404 funds could not be used as a substitute or replacement to fund projects or programs that are available under other Federal authorities, except under limited circumstances in which there are extraordinary threats to lives, public health or safety or improved property. The intent of this phrase is to ensure that critical mitigation measures that must be taken to protect life and property from imminent threat are not lost because another Federal program or authority exists but has no funding.

12. Project Identification and Selection Criteria—Section 206.435

Support was expressed for the key role of the State's hazard mitigation plan, required under section 409 of the Act, in setting funding priorities under the HMGP. It was felt that the other selection criteria for projects were properly few and appropriate. The Stafford Act states that the measures to be funded under section 404 shall be identified following the evaluation of hazards under section 409. The close tie between sections 404 and 409 is therefore readily apparent, and is substantiated by this comment.

13. Hazard Mitigation Application Period—Section 206.436(c)

A number of comments were received relative to the application period. Several commenters felt that the 60 day time frame for submission of the application is too short. Initial experience with the HMGP seems to bear this out. In all major disaster declarations that have occurred since the passage of the Stafford Act, time extensions for the 60 day application period have been granted to States, though this delay is due in part to the fact that States did not have administrative plans in place for the HMGP prior to the declaration. One commenter expressed support for the 60 day deadline because it provided incentive for the State to complete preliminary mitigation planning as quickly as possible, and to take advantage of immediate post-disaster mitigation opportunities. This was exactly the reason for setting the 60 day application in the interim regulation. Another commenter suggested that the wording be changed to permit the Governor's Authorized Representative to submit a notice that the grantee will submit one or more mitigation measures for funding without designating a

specific section 404 mitigation project within the first 60 day period. In order to address these concerns, this section of the regulation has been revised to require that the State submit a letter of intent to participate or not participate in the HMGP within the first 60 days. The HMGP application can be submitted anytime up to the final deadline for submission of new projects, though it is still encouraged that the application be submitted within the first 60 days following the declaration so that immediate post-disaster opportunities for mitigation are not lost.

14. Deadline for Submitting Hazard Mitigation Grant Program Mitigation Projects to FEMA—Section 206.436(e)

One reviewer felt that the final deadline for identification and submission of mitigation measures to be funded under the HMGP is too short. The Interim Regulation required that all measures be submitted to FEMA within 60 days of FEMA approval of the section 409 mitigation plan. This deadline has now been revised to require submission of all projects within 90 days of FEMA approval of the mitigation plan. The Regional Director may grant up to a 90 day extension to this deadline upon receipt of written justification from the State. This extension will be particularly appropriate for States that already have an acceptable hazard mitigation plan at the time of the declaration, and need the full 180 days to identify HMGP projects.

15. State Administrative Plan—Section 206.437

Very diverse comments were received relative to the State administrative plan for the HMGP. One commenter expressed support for the requirement to have the administrative plan in place prior to a disaster. Other commenters disagreed on whether the administrative plan should become a part of the State's overall emergency response or operations plan as a separate chapter or annex, or should merely be incorporated by reference. Yet another commenter felt that the planning requirements under disaster assistance programs were duplicative and not coordinated. Because there was no agreement on whether the administrative plan should be part of the overall emergency response or operations plan, and because this section of the regulations merely states that the administrative plan "should" and not "must" be a separate annex or chapter, no change was made to the regulation.

With respect to duplication of planning requirements, FEMA encourages close coordination between

development of the administrative plans for public assistance and the HMGP, which have similar funding and grant management requirements. The regulation also requires very close coordination between the HMGP and the section 409 plan, because the section 409 plan is instrumental in identifying projects to be funded under the HMGP. FEMA does not intend that the administrative plan for the HMGP be a lengthy document. The emphasis should be on providing useful guidance to the State on the procedures necessary to implement the HMGP. The State and the FEMA regional office should work together to ensure that the format of the administrative plans fits the State's needs, and that the planning requirements are clear and well understood. Because the regulations allow the administrative plan to be tailored to meet the States' needs, so long as the minimum criteria outlined in § 206.437 are met, there was no change to this section of the regulation.

16. Project Management Cost Overruns—Section 206.438(b)

One commenter felt that the requirement for the grantee to submit all cost overruns over 10 percent to the Regional Director for final determination was arbitrary. Further, the commenter felt that the linkage of cost overruns to offsetting cost underruns unjustly disadvantages the grantee and subgrantee. The intent of these requirements was to provide the grantee with some flexibility in managing minor cost overruns or underruns, while at the same time ensuring that FEMA was involved in more significant cost changes. FEMA has agreed to delete the requirement that the cost overruns above 10 percent be approved by the Regional Director. This paragraph has been revised to state that cost overruns which can be met without additional Federal funds, or which can be met with offsetting cost underruns on other projects, need not be submitted to the Regional Director for approval, so long as the full scope of work on all affected projects can still be met. If additional Federal funds are needed for project(s), the Governor's Authorized Representative shall submit such requests, with a recommendation and justification, to the Regional Director for final approval. The requirement remains that in no case will the total amount obligated exceed the funding limits of the HMGP. FEMA will continue to be aware of the status of all projects through the quarterly reporting requirement.

17. Quarterly Progress Reports—Section 206.438(c)

One commenter suggested that the requirement for progress reports be made semi-annually rather than quarterly. It was felt that in a large scale disaster the requirement for a quarterly report places a tremendous administrative burden on the State disaster recovery staff, especially in the first three to six months of the recovery period. FEMA chose to require quarterly progress reports because this is a new grant program which will require fairly close monitoring, and because quarterly reporting is the normal requirement for other FEMA programs. It is not intended that these quarterly progress reports be lengthy or complex.

FEMA's primary concern is that any schedule or cost deviations from the approved scope-of-work be reported in a timely manner. It is not anticipated that this reporting requirement would be a burden in the early stages of a disaster because the first quarterly report would not be required until three months after funding of the first HMGP project, which might be several months after the declaration. Until such time as FEMA and States develop more experience with the HMGP, and it is proven that less frequent reporting would be sufficient, FEMA will continue to require quarterly progress reports for the HMGP.

18. Allowable Costs—Section 206.439

No comments were received on this section of the regulation. However, changes have been made to this section based on comments that were submitted previously to § 206.228 (subpart H Public Assistance Eligibility) of the Interim Rule for public assistance, because the grantee and subgrantee are entitled to the same administrative and management costs in both programs. The comments received by public assistance are described below, along with the revisions made to § 206.439 to address these comments.

One letter questioned the use of the term "direct costs" and "indirect costs" as used in § 206.228 (a) and (b) of the interim regulations, and their relationship to what is eligible under OMB Circular A-87. This circular is referenced in FEMA's regulation 44 CFR part 13. 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, (section 406(f)), and that the grantee's total cost of administering the program can also be calculated. The commenter contends that the difference between

the two should be eligible as "State management costs." This is essentially correct. 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. A revision has been made to § 206.439 to clearly label the two types of direct costs as "Statutory Costs" (those covered under section 406(f) of the Act), and "State Management Costs," which are all other direct administrative costs of the grantee allowed by Part 13.

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 part 13. In OMB Circular A-87, Attachment A, paragraph A states in part: "The 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 50 percent cost sharing requirements of section 404 are applied to the administrative costs associated with those grants. § 206.439 has been revised to state that this cost sharing applies.

Third, the commenter 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 as percentage allowance is provided for "Extraordinary costs incurred by a State * * * 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 costs supersedes 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 comment concerning costs of administration is the item of "indirect costs." In response to the commenter, a new category of costs has been added to § 206.439 to allow for reimbursement of 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.

19. Appeals—Section 206.440

Three groups commented on the requirement for FEMA to issue rules for fair and impartial consideration of appeals. The same comments had been made previously to § 206.206 (subpart G Public Assistance Project Administration) of the Interim Rule for public assistance. In addition, public assistance received two letters commenting on the length of the time allowed for submission of, and response to, appeals. Since the HMGP and public assistance provide consistent guidance for appeals, both § 206.206 and § 206.440 have been revised to address the concerns described below.

One item of major concern was whether a subgrantee had the right to appeal to FEMA. The question arose because the interim regulations at § 206.440(a) states: "The Governor's Authorized Representative 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 part 13, 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 a State project, but also to a local government or private non-profit organizations or institutions. 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.

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 the commenter.

After the Regional Director 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 Regional Director has 90 days to make a determination.

If the Regional Director denies the appeal, the appellant may make a second appeal to the Associate Director for State and Local Programs and Support. The same time limits for submission and response apply to the second appeal. One letter stated that the Associate Director should have only 90 days for the entire process. FEMA believes that the Regional Director and the Associate Director 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. 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 H. Rpt. No. 100-517, 100th Cong., 2d Sess., 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 public assistance appeals to the Associate Director 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, as demonstrated in the public assistance program, 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.

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 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 Order is to assure the appropriate division of governmental responsibilities between 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 Executive Order 12612. 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 information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3501 *et seq.* Public reporting burden for the requirements is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each form. Send comments regarding this burden estimate or any aspect of this requirement, including suggestions for reducing the burden, to Information Collections Management,

Federal Emergency Management Agency, 500 C Street, SW., Washington DC 20472; and to the Office of Management and Budget, Paperwork Reduction Projects (3067-0207 and 3067-0208), Washington, DC 20503.

List of Subjects in 44 CFR Part 206

Administrative practices and procedure, Coastal zone, Community facilities, Disaster assistance, Fire prevention, Grant programs—housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs—housing and community development, Natural resources, Penalties, Reporting and recordkeeping requirements.

Accordingly, FEMA is amending part 206, subpart N of chapter I, subchapter D, of title 44 CFR to read as follows:

PART 206—FEDERAL DISASTER ASSISTANCE FOR DISASTERS DECLARED ON OR AFTER NOVEMBER 23, 1935

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

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93-288, as amended by Pub. L. 100-707; 42 U.S.C. 5121, *et seq.*; Reorganization Plan No. 3 of 1978 (3 CFR, 1979, p. 329); E.O. 12148 (3 CFR, 1980, p. 412) as amended by E.O. 12673 (3 CFR, 1990, p. 214).

2. Part 206 is amended by revising subpart N to read as follows:

Subpart N—Hazard Mitigation Grant Program

- 206.430 General.
- 206.431 Definitions.
- 206.432 Federal grant assistance.
- 206.433 State responsibilities.
- 206.434 Eligibility.
- 206.435 Project identification and selection criteria.
- 206.436 Application procedures.
- 206.437 State administrative plan.
- 206.438 Project management.
- 206.439 Allowable costs.
- 206.440 Appeals.

Subpart N—Hazard Mitigation Grant Program

§ 206.430 General.

This subpart provides guidance on the administration of hazard mitigation grants made under the provisions of section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93-288, as amended) hereafter referred to as the Stafford Act, or the Act.

§ 206.431 Definitions.

(a) *Applicant* means a State agency, local government, or eligible private nonprofit organization, as defined in

subpart H of this part, submitting an application to the Governor's Authorized Representative for assistance under the Hazard Mitigation Grant Program.

(b) *Application* means the initial request for section 404 funding, as outlined in § 206.436.

(c) *Grant* means an award of financial assistance. The total grant award shall not exceed ten percent of the estimated Federal assistance provided under section 406 of the Stafford Act.

(d) *Grantee* means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. For purposes of this part, except as noted in § 206.436(g)(1), the State is the grantee.

(e) *Measure* means any mitigation measure, project, or action proposed to reduce risk of future damage, hardship, loss or suffering from disasters. The term "measure" is used interchangeably with the term "project" in this part.

(f) *Project* means any mitigation measure, project, or action proposed to reduce risk of future damage, hardship, loss or suffering from disasters. The term "project" is used interchangeably with the term "measure" in this part.

(g) *Section 409 Hazard Mitigation Plan* is the hazard mitigation plan required under section 409 of the Act as a condition of receiving Federal disaster assistance under Public Law 93-288, as amended. This hazard mitigation plan is the basis for the identification of measures to be funded under the Hazard Mitigation Grant Program.

(h) *State Administrative Plan for the Hazard Mitigation Grant Program* means the plan developed by the State to describe the procedures for administration of the Hazard Mitigation Grant Program.

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

(j) *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. Subgrantees can be a State agency, local government, private nonprofit organization, or Indian tribe as outlined in § 206.434.

(k) *Supplement* means an amendment to the hazard mitigation application to add or modify one or more mitigation measures.

§ 206.432 Federal grant assistance.

(a) *General*. This section describes the extent of Federal funding available

under the State's grant, as well as limitations and special procedures applicable to each.

(b) *Limitations on federal expenditures* The total of Federal assistance under section 404 shall not exceed 10 percent of the estimated Federal assistance provided under section 406. The estimate of Federal assistance under section 406 shall be based on the Regional Director's estimate of all Damage Survey Reports, associated expenses, and any other assistance authorized under section 406.

(c) *Cost sharing.* All mitigation measures approved under the State's grant will be subject to the cost sharing provisions established in the FEMA-State Agreement. FEMA may contribute up to 50 percent of the cost of measures approved for funding under the Hazard Mitigation Grant Program. The nonfederal share may exceed the Federal share. FEMA will not contribute to costs above the Federally approved estimate.

§ 206.433 State responsibilities.

(a) *Grantee.* The State will be the Grantee to which funds are awarded and will be accountable for the use of those funds. There may be subgrantees within the State government.

(b) *Priorities.* The State will determine priorities for funding. This determination must be made in conformance with § 206.435.

(c) *Hazard Mitigation Officer.* The State must appoint a Hazard Mitigation Officer, as required under 44 CFR part 206 subpart M, who serves as the responsible individual for all matters related to the Hazard Mitigation Grant Program.

(d) *Administrative plan.* The State must have an approved administrative plan for the Hazard Mitigation Grant Program in conformance with § 206.437.

§ 206.434 Eligibility

(a) *Applicants.* The following are eligible to apply for the Hazard Mitigation Program Grant:

(1) State and local governments;

(2) Private non-profit organizations or institutions that own or operate a private non-profit facility as defined in § 206.221(e);

(3) Indian tribes or authorized tribal organizations and Alaska Native villages or organizations, but not Alaska native corporations with ownership vested in private individuals.

(b) *Minimum project criteria.* To be eligible for the Hazard Mitigation Grant Program, a project must:

(1) Be in conformance with the hazard mitigation plan developed as a requirement of section 409;

(2) Have a beneficial impact upon the designated disaster area, whether or not located in the designated area;

(3) Be in conformance with 44 CFR part 9, Floodplain Management and Protection of Wetlands, and 44 CFR part 10, Environmental Considerations;

(4) Solve a problem independently or constitute a functional portion of a solution where there is assurance that the project as a whole will be completed. Projects that merely identify or analyze hazards or problems are not eligible;

(5) Be cost-effective and substantially reduce the risk of future damage, hardship, loss, or suffering resulting from a major disaster. The grantee must demonstrate this by documenting that the project:

(i) Addresses a problem that has been repetitive, or a problem that poses a significant risk to public health and safety if left unsolved,

(ii) Will not cost more than the anticipated value of the reduction in both direct damages and subsequent negative impacts to the area if future disasters were to occur. Both costs and benefits will be computed on a net present value basis,

(iii) Has been determined to be the most practical, effective, and environmentally sound alternative after consideration of a range of options,

(iv) Contributes, to the extent practicable, to a long-term solution to the problem it is intended to address,

(v) Considers long-term changes to the areas and entities it protects, and has manageable future maintenance and modification requirements.

(c) *Types of projects.* Projects may be of any nature that will result in protection to public or private property. Eligible projects include, but are not limited to:

(1) Structural hazard control or protection projects;

(2) Construction activities that will result in protection from hazards;

(3) Retrofitting of facilities;

(4) Acquisition or relocation;

(5) Development of State or local mitigation standards;

(6) Development of comprehensive hazard mitigation programs with implementation as an essential component;

(7) Development or improvement of warning systems.

(d) *Duplication of programs.* Section 404 funds cannot be used as a substitute or replacement to fund projects or programs that are available under other Federal authorities, except under limited circumstances in which there are extraordinary threats to lives, public health or safety or improved property.

(e) *Packaging of programs.* Section 404 funds may be packaged or used in combination with other Federal, State, local, or private funding sources when appropriate to develop a comprehensive mitigation solution, though section 404 funds cannot be used as a match for other Federal funds.

§ 206.435 Project identification and selection criteria.

(a) *Identification.* It is the State's responsibility to identify and select hazard mitigation projects. All funded projects must be consistent with the State's section 409 hazard mitigation plan. Hazard mitigation projects may be identified through the section 409 planning process, or through any other appropriate means. Procedures for the identification, funding, and management of mitigation projects shall be included in the State's administrative plan.

(b) *Selection.* The State will establish procedures and priorities for the selection of mitigation measures. At a minimum the criteria must be consistent with the criteria stated in § 206.434(b) and include:

(1) Measures that best fit within an overall plan for development and/or hazard mitigation in the community, disaster area, or State;

(2) Measures that, if not taken, will have a severe detrimental impact on the applicant, such as potential loss of life, loss of essential services, damage to critical facilities, or economic hardship on the community;

(3) Measures that have the greatest potential impact on reducing future disaster losses;

(c) *Other considerations.* In addition to the selection criteria noted above, consideration should be given to measures that are designed to accomplish multiple objectives including damage reduction, environmental enhancement, and economic recovery, when appropriate.

§ 206.436 Application procedures.

(a) *General.* This section describes the procedures to be used by the State in submitting an application for funding for hazard mitigation grants. Under the Hazard Mitigation Grant Program the State is the grantee and is responsible for processing subgrants to applicants in accordance with 44 CFR parts 13 and 206.

(b) *Governor's Authorized Representative.* The Governor's Authorized Representative serves as the grant administrator for all funds provided under the Hazard Mitigation Grant Program. The Governor's Authorized Representative's

responsibilities as they pertain to procedures outlined in this section include providing technical advice and assistance to eligible subgrantees, and ensuring that all potential applicants are aware of assistance available and submission of those documents necessary for grant award.

(c) *Letter of intent to participate.* Within 60 days of the disaster declaration, the State (Governor's Authorized Representative) will notify FEMA in writing of its intent to participate or not participate in the Hazard Mitigation Grant Program. States are also encouraged to submit a hazard mitigation application within this timeframe so that immediate post-disaster opportunities for hazard mitigation are not lost.

(d) *Hazard mitigation application.* Upon identification of mitigation measures, the State (Governor's Authorized Representative) will submit its section 404 Hazard Mitigation Application to the FEMA Regional Director. The Application will identify one or more mitigation measures for which funding is requested. The Application must include a Standard Form (SF) 424, Application for Federal Assistance, SF 424D, Assurances for Construction Programs if appropriate, and a narrative statement. The narrative statement will contain any pertinent project management information not included in the State's administrative plan for Hazard Mitigation. The narrative statement will also serve to identify the specific mitigation measures for which funding is requested. Information required for each mitigation measure shall include the following:

- (1) Name of the subgrantee, if any;
- (2) State or local contact for the measure;
- (3) Location of the project;
- (4) Description of the measure;
- (5) Cost estimate for the measure;
- (6) Analysis of the measure's cost-effectiveness and substantial risk reduction, consistent with § 206.434(b);
- (7) Work schedule;
- (8) Justification for selection;
- (9) Alternatives considered;
- (10) Environmental information consistent with 44 CFR part 9, Floodplain Management and Protection of Wetlands, and 44 CFR part 10, Environmental Considerations;

(e) *Supplements.* The application may be amended as the State and subgrantees develop the section 409 hazard mitigation plan and continue to identify measures to be funded. Amendments to add or modify measures are made by submitting supplements to the application. All supplements to the application for the purpose of

identifying new mitigation measures must be submitted to FEMA within 90 days of FEMA approval of the section 409 plan. The Regional Director may grant up to a 90 day extension to this deadline upon receipt of written justification from the State that the extension is warranted. The supplements shall contain all necessary information on the measure as described in paragraph (d) of this section.

(f) *FEMA approval.* The application and supplement(s) will be submitted to the FEMA Regional Director for approval. FEMA has final approval authority for funding of all projects.

(g) *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 Regional Director when assistance is authorized under the Act and a State is unable to assume the responsibilities prescribed in these regulations.

(2) *Time limitations.* The time limitation shown in paragraph (c) of this section may be extended by the Regional Director when justified and requested in writing by the Governor's Authorized Representative.

(Approved by the Office of Management and Budget under OMB Control Number 3067-0207.)

§ 206.437 State administrative plan.

(a) *General.* The State shall develop a plan for the administration of the Hazard Mitigation Grant Program.

(b) *Minimum criteria.* At a minimum, the State administrative plan must include the items listed below:

- (1) Designation of the State agency will have responsibility for program administration;
- (2) Identification of the State Hazard Mitigation Officer responsible for all matters related to the Hazard Mitigation Grant Program.

(3) Determination of staffing requirements and sources of staff necessary for administration of the program;

(4) Establishment of procedures to:

- (i) Identify and notify potential applicants (subgrantees) of the availability of the program;

(ii) Ensure that potential applicants are provided information on the application process, program eligibility and key deadlines;

(iii) Determine applicant eligibility;

(iv) Conduct environmental and floodplain management reviews;

(v) Establish priorities for selection of mitigation projects;

(vi) Process requests for advances of funds and reimbursement;

(vii) Monitor and evaluate the progress and completion of the selected projects;

(viii) Review and approve cost overruns;

(ix) Process appeals;

(x) Provide technical assistance as required to subgrantee(s);

(xi) Comply with the administrative requirements of 44 CFR parts 13 and 206;

(xii) Comply with audit requirements of 44 CFR part 14;

(xiii) Provide quarterly progress reports to the Regional Director on approved projects.

(b) *Format.* The administrative plan is intended to be a brief but substantive plan documenting the State's process for the administration of the Hazard Mitigation Grant Program and management of the section 404 funds. This administrative plan should become a part of the State's overall emergency response or operations plan as a separate annex or chapter.

(c) *Approval.* The State must submit the administrative plan to the Regional Director for approval. Following each major disaster declaration, the State shall prepare any updates, amendments, or plan revisions required to meet current policy guidance or changes in the administration of the Hazard Mitigation Grant Program. Funds shall not be awarded until the State administrative plan is approved by the FEMA Regional Director.

(Approved by the Office of Management and Budget under OMB control number 3067-0208.)

§ 206.438 Project management.

(a) *General.* The State serving as grantee has primary responsibility for project management and accountability of funds as indicated in 44 CFR part 13. The State is responsible for ensuring that subgrantees meet all program and administrative requirements.

(b) *Cost overruns.* During the execution of work on an approved mitigation measure the Governor's Authorized Representative may find that actual project costs are exceeding the approved estimates. Cost overruns which can be met without additional Federal funds, or which can be met by offsetting cost underruns on other projects, need not be submitted to the Regional Director for approval, so long as the full scope of work on all affected projects can still be met. For cost overruns which exceed Federal obligated funds and which require additional Federal funds, the Governor's Authorized Representative shall evaluate each cost overrun and shall submit a request with a

recommendation to the Regional Director for a determination. The applicant's justification for additional costs and other pertinent material shall accompany the request. The Regional Director shall notify the Governor's Authorized Representative in writing of the determination and process a supplement, if necessary. All requests that are not justified shall be denied by the Governor's Authorized Representative. In no case will the total amount obligated to the State exceed the funding limits set forth in § 206.432(b). Any such problems or circumstances affecting project costs shall be identified through the quarterly progress reports required in paragraph (c) of this section.

(c) *Progress reports.* The grantee shall submit a quarterly progress report to FEMA indicating the status and completion date for each measure funded. Any problems or circumstances affecting completion dates, scope of work, or project costs which are expected to result in noncompliance with the approved grant conditions shall be described in the report.

(d) *Payment of claims.* The Governor's Authorized Representative shall make a claim to the Regional Director for reimbursement of allowable costs for each approved measure. In submitting such claims the Governor's Authorized Representative shall certify that reported costs were incurred in the performance of eligible work, that the approved work was completed and that the mitigation measure is in compliance with the provisions of the FEMA-State Agreement. The Regional Director shall determine the eligible amount of reimbursement for each claim and approve payment. If a mitigation measure is not completed, and there is not adequate justification for noncompletion, no Federal funding will be provided for that measure.

(e) *Audit requirements.* Uniform audit requirements as set forth in 44 CFR part 14 apply to all grant assistance provided under this subpart. FEMA may elect to conduct a Federal audit on the disaster assistance grant or on any of the subgrants.

§ 206.439 Allowable costs.

(a) *General.* 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.

(b) *Eligible direct costs.* The eligible direct costs for administration and management of the program are divided into the following two categories.

(1) *Statutory administrative costs—(i) Grantee.* Pursuant to 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 applications, quarterly reports, 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 section 404 of the Stafford 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 total net eligible costs under section 404 of the Stafford 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.

(2) *State management costs—(i) Grantee.* Except for the items listed in paragraph (b)(1)(i) of this section, other administration costs shall be paid in accordance with 44 CFR 13.22. Costs of State personnel (regular time salaries only) assigned to administer the Hazard Mitigation Grant Program may be eligible when approved by the Regional Director. Such costs shall be shared in accordance with the cost share provisions of section 404 of the Act. For grantee administrative costs in the Disaster Field Office, the State shall submit a plan for the staffing of the Disaster Field Office within 5 days of the opening of the office. This staffing plan shall be in accordance with the administrative plan requirements of § 206.437. After the close of the Disaster Field Office, costs of State personnel (regular time salaries only) for continuing management of the hazard mitigation grants may be eligible when approved in advance by the Regional Director. The State shall submit a plan

for such staffing in advance of the requirement.

(c) *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 (b)(1)(ii) of this section necessary costs of requesting, obtaining and administering Federal assistance.

§ 206.440 Appeals.

(a) *Subgrantee.* The subgrantee may appeal any determination previously made related to Federal assistance for a subgrantee. The subgrantee's appeal shall be made in writing and submitted to the grantee within 60 days after receipt of a 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 Regional Director within 60 days.

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

(d) *Associate Director.* (1) If the Regional Director 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 Regional Director, and shall be submitted not later than 60 days after receipt of notice of the Regional Director'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 Associate Director shall notify the grantee, in writing, of the disposition of the appeal. If the decision is to grant the appeal, the Regional

Director will be instructed to take appropriate implementing action.

(2) In appeals involving highly technical issues, the Associate Director, 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 Associate Director 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 Regional Director, and shall be submitted not later than 60 days after receipt of notice of the Associate Director'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 Regional Director 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 paragraph (d) (3) and (4) of this section, the Director shall render a determination and notify the grantee of the disposition of the appeal.

Dated: August 17, 1990.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 90-20225 Filed 8-29-90; 8:45 am]

BILLING CODE 6716-02-M